

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

---

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

---

**EMPLOYER’S REQUEST FOR SPECIAL PERMISSION TO APPEAL  
ADMINISTRATIVE LAW JUDGE’S RULING DENYING EMPLOYER’S PETITION TO  
PARTIALLY REVOKE SUBPOENA DUCES TECUM B-612073 AS IT APPLIES TO  
ITEMS 7, 8, AND 9 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 Ruling on May 2, 2011 in which the Administrative Law Judge (“ALJ”) denied the Employer’s Petition to Partially Revoke Subpoena Duces Tecum B-612073. Specifically, the ALJ should have granted the Employer’s petition to quash subpoenaed items 7–9. In support of this Request and Special Appeal, the Employer states as follows:

1. On April 18, 2011, 1199 SEIU United Healthcare Workers East New Jersey Region (“Union” or “Charging Party”) issued Subpoena B-612073 to the Employer. As it pertains to this appeal, the Subpoena seeks production of the following documents:

7. Documents reflecting the reasons for, and circumstances surrounding, the termination of employment of Elizabeth Heedles as the Administrator for Respondent.

8. The personnel file for Doreen Illis during her employment with Respondent, including but not limited to documents reflecting her application for employment, the offer of employment, her period of employment and her job functions.

9. The personnel file for Inez Konjoh during her employment with Respondent, including but not limited to documents reflecting her application for employment, the offer of employment, her period of employment, her job functions, any and all discipline imposed, and the circumstances surrounding her departure from her employment with Respondent.

A copy of the Subpoena is attached as Exhibit A.

2. On April 25, 2011, the Employer filed a Petition to Partially Revoke the Subpoena Duces Tecum,<sup>1</sup> arguing that subpoenaed items 7–9 were overly broad, sought irrelevant and immaterial documents, and were an improper attempt at discovery and a “fishing expedition.” The Employer’s Petition to Partially Revoke Subpoena Duces Tecum B-612073 is attached as Exhibit B.

3. The Charging Party responded to the Employer’s Petition to Partially Revoke on April 25, 2011. In regards to subpoenaed items 7 and 8, the Union asserted through speculation that documents surrounding the removal of former Administrator Elizabeth Heedles are relevant to issues of 1) Employer animus and motive and 2) allegations in the Consolidated Complaint alleging unlawful conduct committed by

---

<sup>1</sup> Section 103.31 of the NLRB’s Rules and Regulations provide that a “petition to revoke, if made prior to the hearing, shall be filed with the Regional Director and the Regional Director *shall* refer the petition to the administrative law judge or the Board for ruling.” Although Employer’s Petition to Revoke was filed on April 25, 2011, before the hearing began, the Regional Director failed to transfer the petition to the ALJ or the Board. Accordingly, the ALJ lacks jurisdiction over this matter.

current Administrator Doreen Illis. The Union's speculative rationale was not supported by any facts. The Union's Opposition to Employer's Petition to Partially Revoke is attached as Exhibit C.

4. In regards to subpoenaed item 9, the Union asserted through speculation that the personnel file of Director of Nursing Inez Konjoh is relevant 1) because she was named in the Consolidated Complaint, 2) because she was involved in discipline of the alleged discriminatees and recently left her employment with the Employer, and 3) the Union believes that the personnel records reflect that the supervisor's employment was an effort to frustrate employees' protected activities. The Union's speculative rationale was not supported by any facts.

5. Initially the ALJ, on the record during the hearing in this case, granted the Employer's Petition to Partially Revoke Subpoena Duces Tecum B-612073 as it pertained to subpoenaed items 7-9. (Hearing Tr. Vol. 4, 795:24-796:17, May 2, 2011, attached as Exhibit D). Subsequently, however, on May 10, 2011, in a conference call with the parties, the ALJ reversed his ruling, finding that subpoenaed items 7-9 were relevant. By letter dated May 11, 2011, the ALJ confirmed his decision, stating that the subject documents were relevant and should be produced "as they relate to the motivation of the Employer in actions allegedly taken against the alleged discriminatees, and as to other issues." A copy of the ALJ's letter is attached as Exhibit E.

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

7. The information sought in subpoenaed items 7–9 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 union subpoena issued by NLRB in preparation for unfair labor practice hearing).

8. Documents sought in subpoenaed items 7–9 are completely irrelevant to any issue pending in this case. The reasons for and circumstances surrounding a manager’s arrival and/or departure cannot be relevant to any issue in this case.

9. Moreover, subpoenaed items 8 and 9 are broadly worded and seek all information and documents contained in the personnel files of two of the Employer’s managers. The personal information about a manager and/or the employment history of the Employer’s managers is entirely irrelevant to the issues in this case.

10. Although Director of Nursing Inez Konjoh is named in the Consolidated Complaint, that fact alone does not make her personnel file relevant. As it pertains to Ms. Konjoh, the Consolidated Complaint alleges the following:

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) [sic] 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.

(Consolidated Complaint at ¶ 8, attached as Exhibit G).

11. Likewise, the Consolidated Complaint, as it pertains to Doreen Illis, alleges as follows:

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 employees' complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if employees refrained from union organization activities.

(Consolidated Complaint at ¶ 7).

12. The personnel files of the Employer's managers, however, contain personal and proprietary, business-related information that pertain to the individual named in the file and the Employer's relationship with its key management personnel.

Examples of the type of documents found in management personnel files include:

- Employment applications;
- Background and reference checks;
- License certifications;

- W-4 Forms;
- Acknowledgments of handbooks and other policies;
- Wage and benefit summaries;
- Job Descriptions;
- Performance appraisals; and
- Salary and benefit information

Thus, the personnel records requested in subpoenaed items 8 and 9 consist of managers' *personal* employment information (some of which is also proprietary information of the Employer, the disclosure of which could negatively impact the Employer's business) all of which is entirely irrelevant to the present issues of whether these managers verbally interrogated and solicited employees or improperly disciplined or discharged any employees.

13. Even in the context of a union seeking information from an employer during the grievance procedure (a more lenient standard than is applied in this context), courts have recognized that "information about supervisors is not presumptively relevant." *United States Postal Service*, 2002 NLRB LEXIS 332, at \* 177–78 (2002). In this case, the Union's only purported reasons for seeking managers' personnel files are 1) because the manager's name was mentioned in the Consolidated Complaint, 2) the manager was involved in discipline of the alleged discriminatees, 3) the manager left employment with the Employer, or 4) the Union *believes* the personnel records reflect that the manager's employment was an effort to frustrate employees' protected activities.

14. Significantly, the Union's "beliefs" or speculation do not make subpoenaed information *relevant* to a matter in question in this proceeding. Most importantly, the Union fails to explain how its inquiry for managers' personal employment records relate to its stated reasons for requesting the records. Personnel records reflecting a

manager's personal employment history do not contain any information pertaining to disciplinary measures imposed upon employees. In fact, the Union already has made separate requests for the documents related to the discipline of the alleged discriminates and those documents have been produced. Moreover, whether a manager remains employed with the Employer is irrelevant to the inquiry as to whether the manager interrogated or solicited employees *during* the manager's employment. Finally, managers' personnel records, which reflect the *managers'* own employment history and which do not reflect discipline imposed upon employees, would in no way reflect the Employer's *motivation* for terminating the alleged discriminatees. Thus, the information contained in these managers' personnel records is entirely unrelated to the Union's so-called "reasons" for requesting the personnel records (as stated by the Union in its Opposition to Employer's Petition to Revoke).

15. Indeed, the Union's subpoenaed items 7–9 are merely a "fishing expedition" into managers' personnel records and should, therefore, be revoked. See *United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry*, 328 NLRB 1235, 1236 (1999). As explained above, subpoenaed items 7–9 are not relevant to any issue in this case. Moreover, subpoenaed items 7–9 contain the managers' personal, *confidential* information that should not, and in some instances cannot consistent with privacy laws, be disclosed to third-parties such as the Union. In accordance with the NLRB's Rules and Regulations, discovery is prohibited in unfair labor practice cases, and "fishing" for possible new evidence is an improper use of the NLRB's subpoena mechanism. Significantly, Counsel for the Acting General Counsel, who bears the burden of proof in this case, has not requested these documents (nor

has he alleged that these documents are necessary for his case) and (like the Union) has rested the presentation of his 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-612073 with regard to items 7, 8, and 9 and submits that the Employer should not be required to produce subpoenaed items 7, 8, and 9 of Subpoena Duces Tecum B-612073.

Respectfully submitted,



Jay W. Kieseletter

Tanja L. Thompson

KIESEWETTER WISE KAPLAN PRATHER, PLC

3725 Champion Hills Drive, Suite 3000

Memphis, Tennessee 38125

Telephone: (901) 795-6695

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

## CERTIFICATE OF SERVICE

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

Steven Davis, Administrative Law Judge  
National Labor Relations Board, Division of Administrative Law Judges  
120 West 45<sup>th</sup> Street  
New York, New York 10036  
Steven.Davis@nlrb.gov

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

Ellen Dichner, Esq.  
Gladstein, Reif & Meginniss, LLP  
817 Broadway, 6<sup>th</sup> Floor  
New York, NY 10003  
EDichner@grmny.com

  
\_\_\_\_\_  
Tanja L. Thompson

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

To Custodian of Records Somerset Valley Rehab and  
Nursing Center, 1621 Route 22 West, Bound Brook, NJ 08805

As requested by Ellen Dichner, Esq.

whose address is 817 Broadway - 6<sup>th</sup> Floor Newark NY 10003  
(Street) (City) (State) (ZIP)

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

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

in the City of Newark, NJ 07102

on the 26<sup>th</sup> day of April 2011 at 9:30 (a.m.) (p.m.) or any adjourned

or rescheduled date to testify in \_\_\_\_\_

Somerset Valley Rehabilitation and Nursing Center  
(Case Name and Number)

Case 22-RC-20628

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

See 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 - 612073**

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

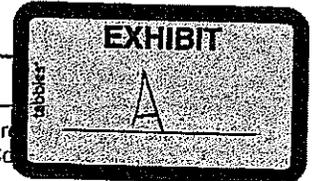
Issued at Newark, New Jersey

this 18<sup>th</sup> day of April

2011



*Lesper A. Melzer*



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

### 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, leaflets, 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 of 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, electronic data or electronically stored information, 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, or on behalf of said subpoenaed party.
- 2) The word "person" or "persons" means natural persons, corporation(s), partnership(s), sole proprietorship(s), associations(s), or any other kind of entity.
- 3) The "Respondent" means 1621 Route 22 West Operating Company, LLC d/b/a Somerset Valley Rehabilitation and Nursing Center, its employers, agents, consultants, supervisors and anyone else acting on its behalf.
- 4) "NLRB election" means the election conducted by the NLRB on September 2, 2010.
- 5) The "Union" or "1199" refers to SEIU 1199 United Health Care Workers East, New Jersey Region.
- 6) 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.
- 7) 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.

- 8) 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.
- 9) This request seeks production of all documents described, including all drafts and non-identical or distribution copies.
- 10) This request contemplates production of responsive documents in their entirety, without abbreviation, redaction, deletion or expurgation.
- 11) All documents produced pursuant to this subpoena are to be organized by the 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.

### **SUBPOENAED MATERIALS**

1. Documents reflecting any and all communications by the Respondent with its employees concerning unions, 1199 and/or the NLRB election during the period July 1, 2010 to the present.
2. Documents reflecting any and all communications by the Respondent with its employees in group meetings and/or individual interactions, concerning unions, 1199 and/or the NLRB election during the period July 1, 2010 to the present.
3. Videotapes, power point presentations and/or any other visual materials used in meetings held by Respondent with employees concerning unions, 1199 and/or the NLRB election during the period July 1, 2010 to the present.
4. Notices, agendas, sign-in sheets and/or any other documents reflecting meetings held by Respondent with its employees concerning unions, 1199 and/or the NLRB election, including documents as will show the names of the individuals who attended such meetings and/or the topics addressed at these meetings.
5. Documents as will show all disciplinary notices issued to each and every certified nursing assistant during the period July 1, 2009 to March 31, 2011 and the ultimate discipline imposed for each discipline.
6. Documents reflecting all in-service and/or instructional sessions conducted by Respondent with certified nursing assistants during the period July 1, 2009 to March 31, 2011.
7. Documents reflecting the reasons for, and circumstances surrounding, the termination of employment of Elizabeth Heedles as the Administrator for Respondent.
8. The personnel file for Doreen Illis during her employment with Respondent, including but not limited to documents reflecting her application for employment, the offer of employment, her period of employment and her job functions.

9. The personnel file for Inez Konjoh during her employment with Respondent, including but not limited to documents reflecting her application for employment, the offer of employment, her period of employment, her job functions, any and all discipline imposed, and the circumstances surrounding her departure from her employment with Respondent.

10. Documents reflecting all communications of Respondent, including but not limited to the investigation of the circumstances upon which Respondent relied in its determination to discipline and/or terminate the employment of the following former employees: Jillian Jacques, Sheena Claudio, Valarie Wells, Lynette Tyler and Shannon Napolitano.

11. Documents, including employee handbooks and human resources materials as will show attendance rules in effect for the Employer's employees at any and all times during the period January 1, 2009 to December 1, 2010.

12. Payroll records, showing hours worked and wage rates, including shift and/or week-end differentials, for all certified nursing assistants for the period January 1, 2010 through October 31, 2010.

13. Documents, including employee handbooks, human resources materials, memoranda and notifications to employees, describing per diem status and any changes relating to per diem status during the period January 1, 2010 to October 31, 2010.



UNITED STATES POSTAL SERVICE

POSTAL MONEY ORDER

U.S. Federal and State

Serial Number

18784788063

2011-04-18 088300 \$70.00

Pay to Somerset Valley

Address 622 Rt 22 West

Round Brook NJ 08805

City Subpoena

0.75% Service Charge (Federal Reserve)

⑆000008002⑆

SEE REVERSE WARNING • NEGOTIABLE ONLY IN THE U.S. AND P.R.

18784788063⑈

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  
                  22-CA-29868

and

1199 SEIU UNITED HEALTHCARE WORKERS  
EAST, NEW JERSEY REGION

---

1621 ROUTE 22 WEST OPERATING COMPANY, LLC D/B/A  
SOMERSET VALLEY REHABILITATION AND NURSING CENTER'S  
PETITION TO PARTIALLY REVOKE SUBPOENA DUCES TECUM B-612073

---

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-612073 (the "Subpoena"), requested by Counsel for 1199 SEIU United Healthcare Workers East, New Jersey Region ("Union"), and served on the Custodian of Records for Somerset Valley on April 18, 2011.<sup>1</sup> In support of its Petition, Somerset Valley states as follows:

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



B. The Subpoena seeks information that is wholly irrelevant and immaterial to any issue raised in the Consolidated Complaint. 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 Union 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.

C. 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).

D. 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.

E. 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 documents.

F. 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,

---

<sup>1</sup> A copy of the Subpoena is attached hereto as Exhibit A.

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 documents.

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 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. Moreover, this subpoena item is overly broad to the extent that it seeks information to the “present time.”
2. 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. Moreover, this subpoena item is overly broad to the extent that it seeks information to the “present time.”
3. 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. No videotapes, power point presentations and/or any other visual materials used in employee meetings are the subject of any allegation raised in the Consolidated Complaint. Moreover, this subpoena item is overly broad to the extent that it seeks information to the “present time.”

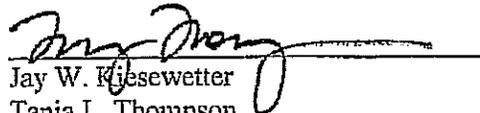
4. This subpoena item is overly broad and seeks documents that are wholly irrelevant and immaterial to any issue raised by the Consolidated Complaint.
5. This subpoena item is overly broad and wholly irrelevant and immaterial to any issue raised by the Consolidated Complaint to the extent that it seeks documents “as will show all disciplinary notices issued” in 2009 and/or 2011. Further, it is irrelevant and immaterial given that there are no allegations in the Consolidated Complaint related to the discipline of any certified nursing assistants.
6. This subpoena item is overly broad and wholly irrelevant and immaterial to any issue raised by the Consolidated Complaint to the extent that it seeks documents “reflecting all in-service and/or instructional sessions conducted” in 2009 and/or 2011. Further, it is irrelevant and immaterial given that there are no allegations in the Consolidated Complaint related to the discipline of any certified nursing assistants.
7. This subpoena item is overly broad and seeks documents that are wholly irrelevant and immaterial to any issue raised by the Consolidated Complaint or any related investigation. This subpoena item is an improper attempt at discovery and a fishing expedition. The termination of this supervisory employee is entirely irrelevant.
8. This subpoena item is overly broad and seeks documents that are wholly irrelevant and immaterial to any issue raised by the Consolidated Complaint or any related investigation. This subpoena item is an improper

attempt at discovery and a fishing expedition. The personnel file of this supervisory employee is entirely irrelevant.

9. This subpoena item is overly broad and seeks documents that are wholly irrelevant and immaterial to any issue raised by the Consolidated Complaint or any related investigation. This subpoena item is an improper attempt at discovery and a fishing expedition. The personnel file of this supervisory employee is entirely irrelevant.
10. This subpoena item may seek documents protected from disclosure by the attorney-client privilege and/or attorney work-product doctrine, including, but not limited to, documents that tend to disclose or reveal the strategies, theories, mental impressions, opinions, or conclusions of counsel for Somerset Valley. Without waiving or in any way limiting any objection to this subpoena item, Somerset Valley will produce all responsive documents not protected under the attorney-client privilege or attorney work-product doctrine subject to redaction of any confidential health information and employee and dependent social security numbers.
12. This subpoena item is overly broad and seeks documents wholly irrelevant and immaterial to any issue raised by the Consolidated Complaint to the extent that it requests wage rates, including shift and/or week-end differentials for certified nursing assistants. Without waiving or in any way limiting any objection to this subpoena item, Somerset Valley will produce daily staffing sheets showing hours worked of certified nursing assistants for the requested time period.

For all the reasons fully set forth above, Subpoena Duces Tecum No. B-612073 is defective in part. The Subpoena, therefore, should be partially revoked.

Respectfully submitted,



Jay W. Kieseewetter

Tanja L. Thompson

KIESEWETTER WISE KAPLAN

PRATHER, PLC

3725 Champion Hills Drive, Suite 3000

Memphis, Tennessee 38125

Telephone: (901) 795-6695

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

**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 25<sup>th</sup> 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, 6<sup>th</sup> 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, 5<sup>th</sup> Floor  
Newark, NJ 07102  
[saulo.santiago@nlrb.gov](mailto:saulo.santiago@nlrb.gov)

Ellen Dichner, Esq.  
Gladstein, Reif & Meginniss, LLP  
817 Broadway, 6<sup>th</sup> Floor  
New York, NY 10003  
[EDichner@grmny.com](mailto:EDichner@grmny.com)

  
\_\_\_\_\_  
Tanja L. Thompson

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

To Custodian of Records Somerset Valley Rehab and  
Nursing Center, 1621 Route 22 West, Bound Brook, NJ 08805

As requested by Ellen Dichner, Esq.

whose address is 817 Broadway - 6<sup>th</sup> Floor Newark NY 10003  
(Street) (City) (State) (ZIP)

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

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

In the City of Newark, NJ 07102

on the 26<sup>th</sup> day of April 2011 at 9:30 (a.m.) (p.m.) or any adjourned

or rescheduled date to testify in \_\_\_\_\_

Somerset Valley Rehabilitation and Nursing Center  
(Case Name and Number)

Case 22-RC-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 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 - 612073**

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

Issued at Newark, New Jersey

this 18<sup>th</sup> day of April 2011



*Lesfer A. Neltzer*

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

**PRIVACY ACT STATEMENT**

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

**Exhibit A**

## RIDER

### 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, leaflets, 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 of 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, electronic data or electronically stored information, 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, or on behalf of said subpoenaed party.
- 2) The word "person" or "persons" means natural persons, corporation(s), partnership(s), sole proprietorship(s), associations(s), or any other kind of entity.
- 3) The "Respondent" means 1621 Route 22 West Operating Company, LLC d/b/a Somerset Valley Rehabilitation and Nursing Center, its employers, agents, consultants, supervisors and anyone else acting on its behalf.
- 4) "NLRB election" means the election conducted by the NLRB on September 2, 2010.
- 5) The "Union" or "1199" refers to SEIU 1199 United Health Care Workers East, New Jersey Region.
- 6) 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.
- 7) 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.

- 8) 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.
- 9) This request seeks production of all documents described, including all drafts and non-identical or distribution copies.
- 10) This request contemplates production of responsive documents in their entirety, without abbreviation, redaction, deletion or expurgation.
- 11) All documents produced pursuant to this subpoena are to be organized by the 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.

### SUBPOENAED MATERIALS

1. Documents reflecting any and all communications by the Respondent with its employees concerning unions, 1199 and/or the NLRB election during the period July 1, 2010 to the present.
2. Documents reflecting any and all communications by the Respondent with its employees in group meetings and/or individual interactions, concerning unions, 1199 and/or the NLRB election during the period July 1, 2010 to the present.
3. Videotapes, power point presentations and/or any other visual materials used in meetings held by Respondent with employees concerning unions, 1199 and/or the NLRB election during the period July 1, 2010 to the present.
4. Notices, agendas, sign-in sheets and/or any other documents reflecting meetings held by Respondent with its employees concerning unions, 1199 and/or the NLRB election, including documents as will show the names of the individuals who attended such meetings and/or the topics addressed at these meetings.
5. Documents as will show all disciplinary notices issued to each and every certified nursing assistant during the period July 1, 2009 to March 31, 2011 and the ultimate discipline imposed for each discipline.
6. Documents reflecting all in-service and/or instructional sessions conducted by Respondent with certified nursing assistants during the period July 1, 2009 to March 31, 2011.
7. Documents reflecting the reasons for, and circumstances surrounding, the termination of employment of Elizabeth Heedles as the Administrator for Respondent.
8. The personnel file for Doreen Illis during her employment with Respondent, including but not limited to documents reflecting her application for employment, the offer of employment, her period of employment and her job functions.

9. The personnel file for Inez Konjoh during her employment with Respondent, including but not limited to documents reflecting her application for employment, the offer of employment, her period of employment, her job functions, any and all discipline imposed, and the circumstances surrounding her departure from her employment with Respondent.

10. Documents reflecting all communications of Respondent, including but not limited to the investigation of the circumstances upon which Respondent relied in its determination to discipline and/or terminate the employment of the following former employees: Jillian Jacques, Sheena Claudio, Valarie Wells, Lynette Tyler and Shannon Napolitano.

11. Documents, including employee handbooks and human resources materials as will show attendance rules in effect for the Employer's employees at any and all times during the period January 1, 2009 to December 1, 2010.

12. Payroll records, showing hours worked and wage rates, including shift and/or week-end differentials, for all certified nursing assistants for the period January 1, 2010 through October 31, 2010.

13. Documents, including employee handbooks, human resources materials, memoranda and notifications to employees, describing per diem status and any changes relating to per diem status during the period January 1, 2010 to October 31, 2010.

**UNITED STATES POSTAL SERVICE** **POSTAL MONEY ORDER** U.S. Dollars and Cents

Serial Number: **18784788063** Post Office: **2011-04-18 088300** **\$70.00**

Year, Month, Day: **2011-04-18** Amount: **SEVENTY DOLLARS & 00c** \*\*\*\*\*

To: **Parto Somerset Valley** From: \_\_\_\_\_

Address: **Acornfield Rd 22 West** Address: \_\_\_\_\_

Pay to: **David Arant MS 08805** Address: \_\_\_\_\_

Memo: **Subpoena**

POSTNET: **187847880631**

POSTNET: **187847880631**

SEE REVERSE FOR TERMS • NEGOTIABLE ONLY IN THE U.S. AND P.R.

Exhibit A

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

---

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

and

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

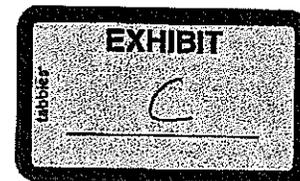
1199 SEIU UNITED HEALTHCARE  
WORKERS EAST NEW JERSEY REGION

---

**CHARGING PARTY'S OPPOSITION TO  
THE EMPLOYER'S PETITION TO REVOKE  
ITS SUBPOENA DUCES TECUM**

On April 25, 2011, the Employer, 1621 Route 22 West Operating Company, LLC d/b/a Somerset Valley Rehabilitation and Nursing Center, petitioned to partially revoke the subpoena duces tecum served by Charging party. Charging party, 1199 SEIU United Healthcare Workers East ("Union"), submits that the Employer's petition should be denied as the documents subpoenaed relate to issues being litigated in this proceeding. Addressed below are charging party's responses to each paragraph to which the Employer has raised objections.

Paragraphs 1 through 4: The subpoena seeks documents reflecting the Employer's communications with employees relating to the Union during the Union's organizational campaign and following the NLRB election, during the time period when employees covered by the NLRB's Complaint were disciplined. This evidence is relevant to demonstrating Employer



animus toward the Union and its supporters and the Employer's retaliatory motive. To the extent that the Employer objects to the documents requested to the 'present time', charging party is willing to limit the subpoena to February 10, 2011, the date discriminatee Jillian Jacques was discharged.

Paragraph 5: The Employer objects to the production of disciplines issued to certified nursing assistants (CNAs). These documents are relevant to the Employer's discipline of the discriminatees, shortly after the NLRB election, for attendance and tardiness. While the employees who were disciplined were LPNs, the CNAs are employed in the same nursing department as the LPNs and rules regarding attendance should have been applied equally to them.

Paragraph 6: Charging party withdraws this paragraph of the subpoena.

Paragraphs 7 and 8: The subpoena seeks documents relating to the circumstances surrounding the removal of Administrator Heedles in July 2010 and the appointment of Ms. Illis to replace Ms. Needles' as administrator. This change in administrators took place during the Union's organizational campaign and the circumstances surrounding this change are relevant to issues of Employer animus and motive. The information is also relevant to the allegations in the complaint alleging unlawful conduct committed by Ms. Illis during the organizational campaign. The Employer cannot establish that this evidence does not relate to any matter in question in this proceeding.

Paragraph 9: This paragraph seeks information relating to the employment of the Director of Nursing Inez Konjoh, who is named in the complaint. She replaced the prior director of nursing during the Union's organizational campaign at approximately the same time that Illis assumed her position. In addition, she was involved in the discipline of some of the

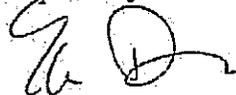
discriminatees and recently left her employment with the Employer. Given the timing of her employment and her conduct during the Union's organizational campaign, charging party believes that these documents will reflect that her employment was due, in large part, to the Employer's efforts to frustrate employees' protected activities.

Paragraph 10: These documents concern the employment of the five discriminatees who were discharged. The Employer broadly asserts the attorney-client privilege and work product doctrine. As noted in the Order issued by ALJ Steven Davis on April 22, 2011 in connection with General Counsel's subpoena, the documents that the Employer contends are protected from disclosure were insufficiently identified.

Paragraph 12: Charging party accepts the Employer's offer to produce certain documents covered by the subpoena and will not require actual payroll records.

Dated: New York, New York  
April 26, 2011

Respectfully submitted,



---

Ellen Dichner  
GLADSTEIN, REIF & MEGINNISS, LLP  
817 Broadway, 6th Floor  
New York, NY 10003  
(212) 228-7727

Counsel for 1199 SEIU United Healthcare  
Workers Union East

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

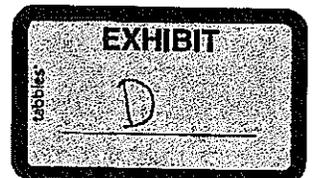
1199SEIU UNITED HEALTHCARE  
WORKERS EAST, NEW JERSEY  
REGION,

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, Veterans Administration Building, 20 Washington Place, 5th Floor, Newark, New Jersey, 07102, on Monday, May 2, 2011, 9:30 a.m.

BURKE COURT REPORTING, LLC  
1044 Route 23 North, Suite 316  
Wayne, New Jersey 07470  
(973) 692-0660



1 JUDGE DAVIS: Okay. So have any of those documents been  
2 produced?

3 MS. DICHNER: No, none of the documents.

4 JUDGE DAVIS: The documents are clearly relevant. They  
5 should be produced. Same with Number 2. Any documents received  
6 as to that?

7 MS. DICHNER: No documents.

8 JUDGE DAVIS: Is there any meetings. 3, videotapes, etc.,  
9 concerning Union's 1199 report proceeding.

10 MS. DICHNER: Nothing produced.

11 JUDGE DAVIS: And 4 as well. Paragraphs 1 through 4, in  
12 my opinion, are relevant and should be produced. And 7 and 8,  
13 you are looking for the reasons surrounding the termination of  
14 Elizabeth Heedles and the personnel file for Doreen Illis.

15 MR. KIESEWETTER: We've argued it all in our petition to  
16 revoke. But this is even way outside the ballpark as far as  
17 relevancy.

18 JUDGE DAVIS: I don't think you mentioned Paragraph 9,  
19 Inez. Is that included in the documents you are seeking?

20 MS. DICHNER: I did not receive anything. Did I miss  
21 that? I'm sorry. I missed Paragraph 9. I did not receive  
22 anything. I had lumped them all together in my mind.  
23 Paragraph 9 as well.

24 JUDGE DAVIS: All right. So 7, 8, and 9 deal with the  
25 reasons surrounding the terminations of Heedles and Inez Konjoh,

1 and the file for Doreen Illis. To me it is not relevant to our  
2 case. I think I'll have more than enough to determine  
3 concerning the terminations of the people who have been  
4 terminated, the employees who have been terminated. If we go  
5 into the reasons for the discharge of Heedles, the departure of  
6 Heedles and Inez, we'll be litigating their discharges. The  
7 Respondent will call them. There will be an entire litigation  
8 concerning the reasons for their discharges. We are not  
9 concerned with that here. I'm not concerned with that here.

10 MS. DICHNER: Well, I think there are issues relevant to  
11 timing here and these documents would reflect when certain  
12 actions were taken.

13 JUDGE DAVIS: That may be the case, but I'm just not going  
14 to go into it. We are so involved here with the employees.  
15 That's my concern. And with respect to the file of Ms. Illis.  
16 That remains irrelevant in my opinion. The petition to quash 7,  
17 8, and 9 is granted.

18 10, communications concerning the determinations of  
19 discipline and to terminate employees is relevant and should be  
20 produced.

21 MR. KIESEWETTER: Your Honor, I believe much of this has  
22 already been produced. And I don't know if there is some  
23 particular file or thing they think we didn't produce, but I  
24 think we've already produced a lot of documents with regard to  
25 this.

1

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 2, 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

BURKE COURT REPORTING, LLC  
1044 Route 23 North, Suite 316  
Wayne, New Jersey 07470  
(973) 692-0660

# FACSIMILE COVER SHEET

**National Labor Relations Board  
Division of Administrative Law Judges  
120 West 45<sup>th</sup> 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, ALJ**

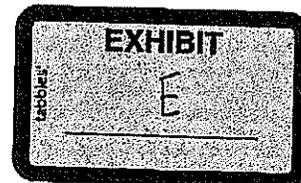
**Phone: 212-944-2941**

**Fax: 212-944-4904**

**Date: 05/11/11**

**Pages: (3) Including cover sheet**

**Comments: Somerset Valley Rehabilitation  
Case No. 22-CA-29599**





United States Government

**NATIONAL LABOR RELATIONS BOARD**

Division of Judges

120 West 45th Street - 11th Floor

New York, New York 10036-5503

May 11, 2011

RE: Somerset Valley Rehabilitation & Nursing Center  
Case No. 22-CA-29599, etc.

Dear Counsel:

This will confirm my advice to you in yesterday's conference call, that I have reconsidered part of my ruling concerning the Charging Party's Subpoena No. B-612073 to the Respondent.

I had previously, on the record, granted the Respondent's Petition to Partially Revoke paragraphs 7, 8, and 9 of the Subpoena on the ground that they are irrelevant, as set forth in the Petition.

After hearing the evidence in the General Counsel's case, while not crediting that evidence since I have not heard the Respondent's case, it appears that the documents sought in paragraphs 7, 8, and 9 of the Subpoena are relevant to the issues in this case.

The Subpoena seeks documents, essentially, relating to the termination of the employment of Elizabeth Heedles as the Respondent's administrator, the departure from employment of Inez Konjoh, and the personnel file of Doreen Illis, the new administrator.

The reasons and circumstances surrounding the departure of Heedles and Konjoh, and the appointment of Illis, are relevant to the issues in this case as they relate to the motivation of the Respondent in actions allegedly taken against the alleged discriminatees, and as to other issues.

Accordingly, the Respondent's Petition to Partially Revoke the Charging Party's Subpoena as to paragraphs 7, 8, and 9 of the Subpoena is denied.

A handwritten signature in black ink, appearing to read "Steven Davis".

Steven Davis  
Administrative Law Judge



United States Government

**NATIONAL LABOR RELATIONS BOARD**

Division of Judges

120 West 45th Street - 11th Floor

New York, New York 10036-6503

May 11, 2011

RE: Somerset Valley Rehabilitation & Nursing Center  
Case No. 22-CA-29599, etc.

Dear Counsel:

This will confirm that in yesterday's telephonic conference call between all parties and myself, we agreed that, in addition to the dates previously agreed to for hearing, namely, May 31 through June 3, we would also meet on June 7 through June 10, 2011 in the Newark Regional Office.

Thank you for your cooperation in the above.

Very truly yours,

A handwritten signature in black ink, appearing to read "S. Davis".

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

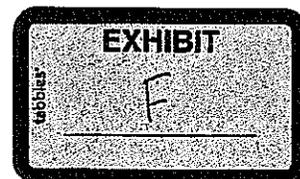
1199SEIU UNITED HEALTHCARE  
WORKERS EAST, NEW JERSEY  
REGION,

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.

BURKE COURT REPORTING, LLC  
1044 Route 23 North, Suite 316  
Wayne, New Jersey 07470  
(973) 692-0660



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

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

BURKE COURT REPORTING, LLC  
1044 Route 23 North, Suite 316  
Wayne, New Jersey 07470  
(973) 692-0660

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

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

and

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

1199 SEIU UNITED HEALTHCARE  
WORKERS EAST, NEW JERSEY REGION

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

5. At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **NOTICE OF HEARING**

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

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**

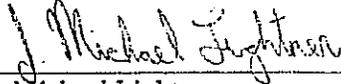
Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the amended consolidated complaint. The answer must be received by this office on or before April 20, 2011, or postmarked on or before April 19, 2011. Unless filed electronically 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.nlr.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 6<sup>th</sup> day of April, 2011.

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

Attachments

**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, time, 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 disposed of and that the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conferences, but may, if the parties agree, permit the parties to appear in person, otherwise. The conference will not necessarily be recorded, but it may well be that the issues of the conference will be reviewed 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 anticipated that formal hearings will commence or be resumed immediately upon completion of the prehearing conference. No penalties will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

*(This is not to be construed as preventing the parties from meeting earlier for similar purposes. In 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 304 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 recorded 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.

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 8 1/2 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 assigns 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 copies 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 unity 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.