

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Washington, D.C.**

VERITAS HEALTH SERVICES, INC.
d/b/a CHINO VALLEY MEDICAL
CENTER,

Respondent,

v.

UNITED NURSES ASSOCIATIONS OF
CALIFORNIA/UNION OF
HEALTHCARE PROFESSIONALS,
NUHHCE, AFSCME, AFL-CIO,

Charging Party.

Case No. 31-CA-29713, 31-CA-29714,
31-CA-29715; 31-CA-29716,
31-CA-29717, 31-CA-29738,
31-CA-29745, 31-CA-29749,
31-CA-29768, 31-CA-29769,
31-CA-29786, 31-CA-29936,
31-CA-29965, 31-CA-29966

**RESPONDENT VERITAS HEALTH SERVICES, INC.
d/b/a CHINO VALLEY MEDICAL CENTER'S EXCEPTIONS
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Respondent Veritas Health Services, Inc. d/b/a Chino Valley Medical Center (“Respondent”) hereby takes exception to the decision of Administrative Law Judge William G. Kocol (“ALJ”) dated October 17, 2011 (“Decision” or “ALJD”), and to determinations made during the hearing but not addressed in the Decision itself, as follows:

1. Finding that Buesching was not a credible witness, and ignoring altogether her testimony regarding her relevant experience as a persuader (ALJD 4:5-6) (B).¹ See T 1045-1047, Supporting Brief, Part II(E)(1), IV(B)(1) and (C).²

¹ “A” shall denote that exception is taken on the basis that the portion of the Decision excepted to is unsupported by law. “B” shall denote that exception is taken on the basis that the portion of the Decision excepted to is unsupported by substantial evidence.

² “Supporting Brief” shall refer to Respondent’s Brief in Support of Exceptions filed herewith; the reference to the specific portion of the Supporting Brief shall incorporate all argument and evidence cited therein.

2. Finding that Buesching unlawfully threatened employees in violation of Section 8(a)(1) of the Act (ALJD 3:40-4:14) (A, B). *See* T 570-571, 584-585, 1045-1047; RX 81; Supporting Brief, Part II(E)(1), II(G)(1), IV(A)(1), (B)(1) and (C).

3. Failure to consider all campaign communications by Respondent when analyzing the “threat” allegations of the Complaint (ALJD 3:15-6:26) (A, B). *See* T 38, 126-130, 162, 245, 303-305, 570-571, 584-585, 1045-1047, 1051-1052; GCX 6, 56; RX 78-84; Supporting Brief, Part II(E)(1)-(4), II(G)(1)-(4), IV(A)(1), (B)-(E).

4. Finding that Gonzalez’s meeting with and statements to Lina violated Section 8(a)(1) of the Act (ALJD 4:16-33) (A, B). *See* T 38; GCX 56; RX 78-84; Supporting Brief, Part II(E)(2), II(G)(2) IV (A)(1), (B).

5. Finding that Magsino was terminated on May 10, 2010 (ALJD 4:37) (B). *See* T 234, 278; GCX 32.

6. Concluding that statements made by Richards violated Section 8(a)(1) of the Act (ALJD 5:5-6) (A, B). *See* T 245; GCX 6, 56; RX 78-84; Supporting Brief, Part II(E)(3), IV(B)(1) and (D).

7. Mischaracterizing and failing to consider all communications and circumstances surrounding Lally’s statement made to Roncesvalles (ALJD 5:26-27) (A, B). *See* T 126-130, 162; GCX 3, 6, 56; RX 78-84; Supporting Brief, Part II(E)(4), II(G)(4), IV(B)(1) and (E).

8. Finding that Gilliatt was in attendance and participated in March 31 meeting (ALJD 6:10-11) (B). *See* T 126-127, Supporting Brief, Part II(E)(4), IV(A)(1) and (E).

9. Finding that Respondent coercively interrogated employees about Union activities in violation of Section 8(a)(1) of the Act (ALJD 6:11-13) (A, B). *See* T 126-130, 162 GCX 3, 6, 56; RX 78-84; Supporting Brief, Part II(E)(4), II(G)(4), IV(1) and (E).

10. Inferring that Lally’s failure to testify signifies that his testimony would not have been helpful to Respondent (ALJD 5:45-46) (A, B). *See* T 126-130, 162; GCX 3, 6, 56; RX 78-84; Supporting Brief, Part II(E)(4), II(G)(4) IV(B)(1) and (E).

11. Concluding that Respondent impliedly threatened employees with discipline and layoffs if the Union was elected in violation of Section 8(a)(1) of the Act (ALJD 6:23-27, 7:1-2) (A, B). *See* T 126-130, 162; GCX 6, 56; RX 78-84; Supporting Brief, Part II(E)(1)-(4), II(G)(1)-(4), IV(A)(1) and (B)-(D).

12. Finding that Lally threatened Magsino for his Union activity on multiple occasions (ALJD 6:31) (A, B). *See* T 301-322; Supporting Brief, Part II(E)(8), IV(A).

13. Concluding that Respondent improperly monitored Union activity in violation of Section 8(a)(1) of the Act (ALJD 6:29-51) (A, B). *See* T 242-243 301-302; Supporting Brief, Part II(E)(8), IV(A) and (F).

14. Mischaracterizing and failing to consider all testimony by Hower (ALJD 7:5-35) (B). *See* T 83, 102-103, 607-608; Supporting Brief, Part II(E)(10), II(G)(10), IV(A)(1) and (G).

15. Concluding that Respondent explicitly threatened employees with loss of benefits if the Union was elected in violation of Section 8(a)(1) of the Act (ALJD 7:20-22) (A, B). *See* T 38; GCX 6, 56; RX 78-84; Supporting Brief, Part II(E)(1) and (G)(10), IV(A) and (G).

16. Finding that Hower made an “announcement” regarding a change in Respondent’s vacation policy (ALJD 7:18-26) (A, B). *See* T 82-83, 85-86, 102-103, 607-608; Supporting Brief, Part II(E)(10), II (G)(10), IV(A) and (G).

17. Concluding that Respondent violated Section 8(a)(1) of the Act by changing its vacation policy (ALJD 7:33-35) (A, B). *See* T 82-83, 85-86, 102-103, 607-608; Supporting Brief, Part II(E)(10), II (G)(10), IV(A) and (G).

18. Concluding that Respondent gave employees the impression that their Union activities were under surveillance in violation of Section 8(a)(1) of the Act (ALJD 7:38-8:2) (A, B). *See* T 84-85, 110-114; Supporting Brief, Part II(E)(9), IV(H).

19. Finding that statements made by Casas were linked to employee union activity (ALJD 7:44) (A, B). *See* T 763-765; Supporting Brief, Part II(E)(9), IV(H).

20. Finding that Reddy is the chief executive officer of Respondent (ALJD 8:10) (B).

21. Finding that Respondent claimed that the Union was responsible for scratch on Gilliatt's car (ALJD 8:17-18) (B).

22. Finding General Counsel witnesses to be credible, and finding that General Counsel established violations of the Act by Reddy by a preponderance of the evidence (ALJD 8:4-50) (A, B). *See* T 42, 69-70, 79-81, 107, 109, 183-185, 203-206, 218-219, 222-223, 246-247, 306-310, 401, 444-447, 572, 589, 593, 900-904, 992-995; Supporting Brief, Part II(E)(11), II(G)(11), IV(A)(1) and (I).

23. Finding that Reddy "announced" the end of family atmosphere at Chino Valley because employees voted for the Union (ALJD 8:46-47) (A, B). *See* T 42, 69-70, 79-81, 107, 109, 183-185, 203-206, 218-219, 222-223, 246-247, 306-310, 401, 444-447, 572, 589, 593, 900-904, 992-995; Supporting Brief, Part II(E)(11), II(G)(11), IV(A)(1) and (I).

24. Concluding that Respondent violated Section 8(a)(1) of the Act by announcing that it would change its policies and/or enforcement thereof due to the presence of the Union (ALJD 8:46-49) (A, B). *See* T 42, 69-70, 79-81, 107, 109, 183-185, 203-206, 218-219, 222-223, 246-247, 306-310, 401, 444-447, 572, 589, 593, 900-904, 992-995; Supporting Brief, Part II(E)(11), II(G)(11), IV(A)(1) and (I).

25. Concluding that Respondent violated Section 8(a)(1) of the Act by broadly prohibiting employees from speaking to the media about the Union or terms and conditions of employment (ALJD 9:4-6) (A, B). *See* T 42, 69-70, 79-81, 107, 109, 183-185, 203-206, 218-219, 222-223, 246-247, 306-310, 401, 444-447, 572, 589, 593, 900-904, 992-995; Supporting Brief, Part II(E)(11), II(G)(11), IV(A)(1) and (I).

26. Concluding that information sought by Respondent's subpoenas was not relevant to the issues at the objections hearing, and failure to consider each request individually (ALJD 9:12-10:21) (A, B). *See* T 15-19; GCX 10; RX 31-32, 36-38, 40, 42, 105; Supporting Brief, Part II(C), II(E)(13), II(G)(13), IV(A)(1) and (J).

27. Concluding that subpoenas *in camera* inspection language was not relevant to alleged violation (ALJD 10:1-6) (A, B). *See* T 15-19; GCX 10; RX 31-32, 36-38, 40, 42, 105; Supporting Brief, Part II(C), II(E)(13), II(G)(13), IV(A)(1) and (J).

28. Concluding that Respondent violated Section 8(a)(1) of the Act by serving subpoenas on employees requesting information about Union activity (ALJD 10:18-21) (A, B). *See* T 15-19; GCX 10; RX 31-32, 36-38, 40, 42, 105; Supporting Brief, Part II(C), II(E)(13), II(G)(13), IV(A)(1) and (J).

29. Failure to properly state and consider Respondent's proffered reasons for terminating Magsino (ALJD 10:35-22:24) (A, B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-394, 435-440, 637-640, 681-685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-1042, 1060-1063, 1071; GCX 8, 9, 9(a)-(c), 18, 29, 32, 33, 36, 51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

30. Implying that Respondent mishandled patient information in violation of HIPAA (ALJD 10:39, 11:12) (A, B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-394, 435-440, 637-640, 681-685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-1042, 1060-1063, 1071; GCX 8, 9, 9(a)-(c), 18, 29, 32, 33, 36, 51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

31. Finding that Gilliatt authorized Magsino to print a copy of patient's emergency room report and take it home with him (ALJD 11:32-33, 11:51-52; 20:35-36; 21:5) (A, B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-394, 435-440, 637-640, 681-

685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-1042, 1060-1063, 1071; GCX 8, 9, 9(a)-(c), 18, 29, 32, 33, 36, 51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

32. Finding that Magsino was disciplined because Respondent was fined by the State (ALJD 11:46-47) (A, B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-394, 435-440, 637-640, 681-685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-1042, 1060-1063, 1071; GCX 8, 9, 9(a)-(c), 18, 29, 32, 33, 36, 51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

33. Failure to consider that DeSantiago immediately shredded patient's record after accessing it (ALJD 12:8) (A, B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-394, 435-440, 637-640, 681-685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-1042, 1060-1063, 1071; GCX 8, 9, 9(a)-(c), 18, 29, 32, 33, 36, 51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

34. Consideration of grievance and attendant documents for impermissible purposes (ALJD 12:20-14:9, 15:12-15) (A, B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-394, 435-440, 637-640, 681-685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-1042,

1060-1063, 1071; GCX 8, 9, 9(a)-(c), 18, 29, 32, 33, 36, 51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

35. Finding that “Yago” was present during meeting on May 14 (ALJD 14:14-15) (B). *See* GCX 148.

36. Finding testimony of Ruggio not credible, including misconstruing and failing to consider same (ALJD 10:35-22:45) (A, B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-394, 435-440, 637-640, 681-685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-1042, 1060-1063, 1071; GCX 8, 9, 9(a)-(c), 18, 29, 32, 33, 36, 51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

37. Failure to consider credible evidence and entire record with respect to testimony regarding HIPAA violations (ALJD 10:35-22:) (A, B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-394, 435-440, 637-640, 681-685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-1042, 1060-1063, 1071; GCX 8, 9, 9(a)-(c), 18, 29, 32, 33, 36, 51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

38. Finding that Ruggio stated that no breach occurred (ALJD 15:30-31) (B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-394, 435-440, 637-640, 681-685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-1042, 1060-1063, 1071; GCX 8, 9, 9(a)-(c), 18, 29, 32, 33, 36,

51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

39. Finding that Magsino was treated in a disparate manner when compared to DeSantiago, and failure to consider record evidence regarding same (ALJD 16:13-19) (A, B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-394, 435-440, 637-640, 681-685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-1042, 1060-1063, 1071; GCX 8, 9, 9(a)-(c), 18, 29, 32, 33, 36, 51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

40. Finding testimony of Magsino credible, discrediting testimony of Gilliatt, and failure to consider record evidence regarding same (ALJD 10:35-22:24) (A, B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-394, 435-440, 637-640, 681-685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-1042, 1060-1063, 1071; GCX 8, 9, 9(a)-(c), 18, 29, 32, 33, 36, 51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

41. Finding that CDPH determined that no HIPAA violation occurred (ALJD 16:41-42) (A, B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-394, 435-440, 637-640, 681-685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-1042, 1060-1063, 1071; GCX 8, 9, 9(a)-(c),

18, 29, 32, 33, 36, 51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

42. Failure to consider and finding testimony of Richards not credible (ALJD 10:35-22:24, including 18:3-4, 40, 44-47; 19:6-10) (B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-394, 435-440, 637-640, 681-685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-1042, 1060-1063, 1071; GCX 8, 9, 9(a)-(c), 18, 29, 32, 33, 36, 51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

43. Finding that Respondent created “fabrications,” and did not have just or sufficient cause to terminate Magsino (ALJD 19:43-44) (A, B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-394, 435-440, 637-640, 681-685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-1042, 1060-1063, 1071; GCX 8, 9, 9(a)-(c), 18, 29, 32, 33, 36, 51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

44. Finding that Navarro was not established as an expert in privacy issues at acute care facilities (ALJD 19:48-50) (A, B). *See* T 1021-1035; RX 92; Supporting Brief, Part II(E)(12), IV(A).

45. Finding testimony of Navarro not credible and misconstruing and failing to properly consider record evidence regarding same (ALJD 19:48-20:7) (A, B). *See* T 1021-1042; RX 92; Supporting Brief, Part II(E)(12), IV(A).

46. Application of improper legal standard with respect to analysis of HIPAA violations (ALJD 20:30-49) (A, B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-

394, 435-440, 637-640, 681-685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-1042, 1060-1063, 1071; GCX 8, 9, 9(a)-(c), 18, 29, 32, 33, 36, 51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

47. Misconstruing and relying on GCX 84 (ALJD 16:37-43, 18:44-46, 19:42-44, 20:33-34) (A, B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-394, 435-440, 637-640, 681-685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-1042, 1060-1063, 1071; GCX 8, 9, 9(a)-(c), 18, 29, 32, 33, 36, 51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

48. Finding that Magsino's alleged HIPAA violations were a pretextual reason to disguise Respondent's "unlawful motive" for terminating Magsino (ALJD 21:1-31) (A, B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-394, 435-440, 637-640, 681-685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-1042, 1060-1063, 1071; GCX 8, 9, 9(a)-(c), 18, 29, 32, 33, 36, 51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

49. Finding that Respondent believed or admitted that Magsino's treatment of patient medical records did not violate HIPAA (ALJD 21:6) (A, B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-394, 435-440, 637-640, 681-685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-

807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-1042, 1060-1063, 1071; GCX 8, 9, 9(a)-(c), 18, 29, 32, 33, 36, 51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

50. Finding that reasons offered by Respondent for terminating Magsino were pretextual (ALJD 21:10-31) (A, B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-394, 435-440, 637-640, 681-685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-1042, 1060-1063, 1071; GCX 8, 9, 9(a)-(c), 18, 29, 32, 33, 36, 51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

51. Concluding that Respondent disparately treated Magsino (ALJD 21:33-22:19) (A, B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-394, 435-440, 637-640, 681-685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-1042, 1060-1063, 1071; GCX 8, 9, 9(a)-(c), 18, 29, 32, 33, 36, 51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

52. Finding that Respondent failed to educate Magsino regarding proper handling of patient medical records (ALJD 22:7-8) (A, B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-394, 435-440, 637-640, 681-685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-

1042, 1060-1063, 1071; GCX 8, 9, 9(a)-(c), 18, 29, 32, 33, 36, 51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

53. Finding that Respondent would not have terminated Magsino but for his Union activities (ALJD 22:14-19) (A, B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-394, 435-440, 637-640, 681-685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-1042, 1060-1063, 1071; GCX 8, 9, 9(a)-(c), 18, 29, 32, 33, 36, 51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

54. Concluding that Respondent's decision to terminate Magsino was unlawfully motivated (ALJD 22:18-19, 21-23) (A, B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-394, 435-440, 637-640, 681-685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-1042, 1060-1063, 1071; GCX 8, 9, 9(a)-(c), 18, 29, 32, 33, 36, 51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

55. Failure to properly consider record evidence with respect to Respondent's argument that Magsino was a Section 2(11) supervisor (ALJD 22:22-45) (A, B). *See* T 202, 208-209, 390-394, 681-684, 738, 754-755, 757-758, 761-763; GCX 55; RX 106; Supporting Brief, Part II(B)-(C), II(E)(12), II(G)(12), IV(A).

56. Failure to draw reasonable inferences from record evidence, and failure to acknowledge evidence not in dispute with respect to Magsino's status as a supervisor (ALJD 22:22-45) (A, B). *See* T 202, 208-209, 390-394, 681-684, 738, 754-755, 757-758, 761-763; GCX 55; RX 106; Supporting Brief, Part II(E)(12), (G)(12), IV(A).

57. Concluding that Respondent violated Section 8(a)(3) of the Act by terminating Magsino (ALJD 22:43-45) (A, B). *See* T 202, 208-209, 252-254, 256, 266-271, 277-283, 285-290, 301-302, 312-313, 318, 330-335, 337-344, 346, 351-356, 359-362, 365-366, 372-376, 390-394, 435-440, 637-640, 681-685, 712-714, 717-720, 722-723, 728-729, 737-739, 745-748, 754-755, 757-758, 761-763, 768-777, 784-786, 779-781, 795, 800-807, 811-813, 817-818, 836-838, 840, 841-846, 852-893, 897-900, 904-908, 920, 941, 1021-1028, 1035-1042, 1060-1063, 1071; GCX 8, 9, 9(a)-(c), 18, 29, 32, 33, 36, 51, 55, 84, 86, 88, 92, 137, 140, 148, 169; RX 31, 46, 48-55, 57-62, 63, 88, 92, 106; Supporting Brief, Part II(E)(12), IV(A).

58. Finding that Lally's message of April 12 to supervisors was in response or related to union activity (ALJD 23:35-37) (A, B). *See* Supporting Brief, Part II(E)(5)-(6), IV(K).

59. Finding that Lally's message was an "admission" that Respondent had been lax in enforcing its work rules and policies (ALJD 23:39-40) (B). *See* Supporting Brief, Part II(E)(5)-(6), IV(K).

60. Finding testimony of Roncesvalles credible regarding alleged changes in enforcement of work rules and policies (ALJD 23:50-52) (A, B). *See* T 156-181; GCX 22, 23, 24, 25; RX 1, 3; Supporting Brief, Part II(E)(5)-(7), IV(K).

61. Finding that Respondent changed its tardiness policy following the Union election (ALJD 24:36) (A, B). *See* T 626, 632, 678-679, 684-685, 690-692, 736, 829-830, 965-966, 990-991; GCX 7, 15, 17, 89-91, 102, 105, 107, 129, 131, 133, 150, 151, 153-154, 156, 158, 163, 168; RX 1, 45, 77, 88; Supporting Brief, Part II(E)(6), II(G)(7), IV(K).

62. Finding that verbal warnings regarding punctuality were considered and given weight by Respondent in disciplining Magsino and De Santiago (ALJD 24:44-46) (A, B). *See* T 882-886; Supporting Brief, Part II(12), IV(A), (K)-(L).

63. Finding that verbal warnings have a material and substantial impact on employees' working conditions (ALJD 24:43-46) (A,B). *See* RX 88; Supporting Brief, Part IV(K).

64. Concluding that Respondent more strictly enforced attendance and tardiness policy because of Union activity in violation of Section 8(a)(1), (3) and (5) of the Act (ALJD 24:46-48, 25:5-8) (A, B). *See* T 626, 632, 678-679, 684-685, 690-692, 736, 829-830, 965-966, 990-991; GCX 7, 15, 17, 89-91, 102, 105, 107, 129, 131, 133, 150, 151, 153-154, 156, 158, 163, 168; RX 1, 45, 77, 88; Supporting Brief, Part II(E)(5)-(6), IV(K).

65. Improperly referencing matters for compliance stage and providing instruction to General Counsel on how to address/proceed on compliance (ALJD 24:FN 7, 26:FN 8) (A, B). *See* Supporting Brief, Part IV(A) and (M).

66. Failure to consider all evidence with respect to Respondent's decision to discipline employees for failing to appear for mandatory meetings (ALJD 25:34-35) (A, B). *See* T 58-61, 66, 157-161, 740-741; GCX 13, 25; RX 88; Supporting Brief, Part II(E)(5), IV(A) and (K).

67. Finding testimony of Gilliatt not credible with respect to decision to discipline employees for failure to appear at mandatory meetings (ALJD 25:35-37) (A, B). *See* T 686-689, 740-741, 758-760; GCX 13, 25, 57, 58, 60, 63, 66-75, 77-83, 90; RX 2, 77; Supporting Brief, Part II(E)(5), IV(A) and (K).

68. Finding that Respondent's decision to discipline employees for failure to attend mandatory meetings was related to union activity (ALJD 25:45-47) (A, B). *See* T 66, 689, 760, 828-830, 991-992; GCX 90; RX 45, 70, 77, 88; Supporting Brief, Part II(E)(5), IV(A) and (K).

69. Concluding that Respondent disciplined employees for failing to attend mandatory meetings in violation of Sections 8(a)(1) and (3) of the Act (ALJD 26:3-5) (A). *See* T 66, 689, 760, 828-830, 991-992; GCX 90; RX 45, 70, 77, 88; Supporting Brief, Part II(E)(5), IV(A) and (K).

70. Finding that Respondent was required to bargain prior to giving verbal warnings for attendance violations (ALJD 23:34-26:18) (A, B). *See* T 66, 689, 760, 828-830, 991-992; GCX 90; RX 45, 70, 77, 88; Supporting Brief, Part II(E)(5), IV(A) and (K).

71. Finding that Union was not required to request to bargain over Respondent's alleged unlawful unilateral charges (ALJD 26:13-18) (A). *See* T 66, 689, 760, 828-830, 991-992; GCX 90; RX 45, 70, 77, 88; Supporting Brief, Part II(E)(5), IV(A) and (K).

72. Failure to properly consider record evidence and conclusion that Respondent had a past practice of reimbursing part-time RNs for time attending certification classes (ALJD 26:24-27:47) (A, B). *See* T 633, 727, 835, 968-969, 975-977, 990; GCX 6; RX 75, 88; Supporting Brief, Part II(E)(7), (G)(7), IV(A) and (L).

73. Finding testimony of Gilliatt not credible with respect to pay for certification classes (ALJD 27:36-37). (A, B). *See* T 703-709; GCX 22; Supporting Brief, Part II(E)(7), IV(A) and (L).

74. Concluding that a past practice existed whereby part-time employees were reimbursed for time spent attending certification classes (ALJD 27: 31-32) (A, B). *See* T 703-709, 975-977; RX 75; Supporting Brief, Part II(E)(7), (G)(7), IV(A) and (L).

75. Concluding that Respondent violated Sections 8(a)(1), 2(6) and 2(7) of the Act (ALJD 30:45-31:27) (A). *See* all evidence and brief cites above.

76. Concluding that Respondent violated Sections 8(a)(1), 8(a)(3), 2(6) and 2(7) of the Act (ALJD 31:28-38) (A). *See* all evidence and brief cites above.

77. Concluding that Respondent violated Sections 8(a)(1), 8(a)(5), 2(6) and 2(7) of the Act (ALJD 31:41-32:2) (A). *See* all evidence and brief cites above.

78. Issuance of a broad Order against Respondent (ALJD 32:24-28, 33:3-35:4, Appendix) (A, B). *See* all evidence and brief cites above; Supporting Brief, Part IV(M).

79. Issuance of reading Order against Respondent (*Id.*) (A, B). *See* all evidence and brief cites above; Supporting Brief, Part IV(M).

80. Requiring that Respondent allow agents of the Board and representatives of the Union to witness the reading of the Notice required by the reading Order. (*Id.*) (A, B). *See* all evidence and brief cites above; Supporting Brief, Part IV(M).

81. Denying Respondent a full and fair hearing before an impartial trier of fact by refusing to conduct proceedings on the record (see, i.e., T 13-15), modifying the basis for rulings in furtherance of efforts to block Respondent from obtaining relevant information (see, i.e., T 15-16, 285-286, 469, 912; RX 93-98), instructing General Counsel and/or Union on manner in which to prosecute case against Respondent (see, i.e., T 23-24, 251), assuming the role of advocate on behalf of General Counsel (see, i.e., T 51, 63, 288, 292, 298, 302, 319, 342, 368, 371, 389, 423, 488-490, 539-540, 597-599, 616-617, 616-617, 622-623, 790-791, 801-802, 838-842, 847, 950-951), harassing and showing hostility to Respondent's witnesses and evidence (see, i.e., T 257, 544-545, 711, 818, 838-842, 910-911, 1041-1043), refusing to permit Respondent to introduce and/or obtain relevant evidence, including by precluding cross examination of General Counsel's witnesses and refusals to enforce subpoenas (see, i.e., T 48-49, 67, 91, 114-115, 208, 292, 313-314, 343-344, 346, 580-581, 627-628, 643-650, 680-681, 790-791, 816, 820, 894-895, 950-951, 989, 1041-1043, 1064, 1069-1071; RX 63, 93-98, 107, 111-112, 114-115), permitting General Counsel to submit incompetent and/or irrelevant evidence (see, i.e., T 159, 165-169, 454-456, 459, 461-470, 474, 496, 507-508, 512, 518-521, 752, 848, 857-858, 863-865, 887-889), refusing to grant Respondent's request to strike nonresponsive testimony on the basis that witness "did not understand question" instead of inferring that witness was being evasive (see, i.e., T 165-166, 569), allowing Union to manipulate scheduling of hearing while denying Respondent's request to resume hearing on day following June 15 session to allow testimony by a witness not immediately available (see, i.e., T 32, 711, 1071), exhibiting hostility towards Respondent's counsel (see, i.e., T 338, 341, 498, 756-757, 910-911), expressing approval of General Counsel's case (see, i.e., T 497), interrupting Respondent's questioning of General Counsel's witness because responses show lack of credibility (see, i.e., T 52-53, 60), permitting General Counsel and Union to reopen record after hearing had been closed for the day for house-keeping purposes, then allows General Counsel and/or Union to successfully request that onerous burden be placed on Respondent relating to expert report (see, i.e., T 525-526, 605, 640-641, 909-913), rejecting testimony that is harmful to General Counsel's

case (see, i.e., T 816, 790-791), and engaging in *ex parte* communications with the General Counsel (see, i.e., T 650-651) (A, B). See Supporting Brief, Part II(F)-(G), IV(A)(4), IV(O).

82. Failure to grant Respondent's motion to dismiss based on *Peyton Packing* and *Jefferson Chemical* (ALJD 30:36-40) (A, B). See RX 23-29, Supporting Brief, Part IV(O).

83. Failure to differentiate between RNs and other employees in affirmative provisions of recommended order (ALJD 30:47-35:34) (A, B). See Supporting Brief, Part IV(N).

Dated: December 29, 2011

Respectfully submitted,

/s/ Theodore R. Scott

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VERITAS HEALTH SERVICES, INC. d/b/a

CHINO VALLEY MEDICAL CENTER

PROOF OF SERVICE BY E-MAIL

I am employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 501 W. Broadway, Suite 900, San Diego, California 92101.3577. On December 29, 2011, I served a true and correct copy of:

1. RESPONDENT'S BRIEF IN SUPPORT OF EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE (with Appendix);
2. RESPONDENT VERITAS HEALTH SERVICES, INC. d/b/a CHINO VALLEY MEDICAL CENTER'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

by e-mailing the document to the following persons at the e-mail addresses listed below:

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Executed on December 29, 2011, at San Diego, California.

/S/ Theodore R. Scott
THEODORE R. SCOTT