**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**REGION 34**

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| HEALTHBRIDGE MANAGEMENT, LLC; CARE REALTY, LLC; 107 OSBORNE STREET OPERATING COMPANY II, LLC D/B/A DANBURY HEALTH CARE CENTER; 710 LONG RIDGE ROAD OPERATING COMPANY II, LLC D/B/A LONG RIDGE OF STAMFORD; 240 CHURCH STREET OPERATING COMPANY II, LLC D/B/A NEWINGTON HEALTH CARE CENTER; 1 BURR ROAD OPERATING COMPANY II, LLC D/B/A WESTPORT HEALTH CARE CENTER; 245 ORANGE AVENUE OPERATING COMPANY II, LLC D/B/A WEST RIVER HEALTH CARE CENTER; 341 JORDAN LANE OPERATING COMPANY II, LLC D/B/A WETHERSFIELD HEALTH CARE CENTER; | Case Nos. | 34-CA-070823<br>34-CA-072875<br>34-CA-075226<br>34-CA-083335<br>34-CA-084717 |

And

NEW ENGLAND HEALTH CARE EMPLOYEES UNION, DISTRICT 1199, SEIU, AFL-CIO

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**HEALTHBRIDGE MANAGEMENT, LLC'S REQUEST FOR SPECIAL PERMISSION TO APPEAL ADMINISTRATIVE LAW JUDGE'S ORDER DENYING HEALTHBRIDGE MANAGEMENT, LLC'S PETITION TO REVOKE SUBPOENA DUCES TECUM B-612838**

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HealthBridge Management, LLC (hereinafter "HealthBridge"), pursuant to Rule 102.26 of the Board's Rules and Regulations, files this Request for Special Permission to Appeal ("Special Appeal") the Administrative Law Judge's Order on September 13, 2012, in which the Administrative Law Judge ("ALJ") denied HealthBridge's Petition to Revoke Subpoena Duces Tecum No. B-612838 (hereinafter the "Subpoena").

The portions of the ALJ's Order to which HealthBridge requests permission for a Special Appeal include the ALJ's denial of HealthBridge's petition to quash subpoenaed items relating to the single employer issue, specifically items 1a.-n., 2a.-e. 3, 4, 5, 6a.-b., 7a.-b, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19a-e., 20, 21, 22, 23, 24, 25 and 26. Additionally, HealthBridge requests permission for a Special Appeal of the denial of HealthBridge's petition to quash the following: subpoenaed items seeking irrelevant information, specifically items 23 and 24; and subpoenaed items which are unduly burdensome and/or overly broad, specifically items 1a.-n., 2a.-e. 3, 4, 5, 6a.-b, 7a.-b, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19a-e., 21, 22, 23, 24, 25 and 26. In support of this Special Appeal, HealthBridge states as follows:

1. On August 22, 2012, Counsel for the Acting General Counsel issued the Subpoena to HealthBridge in advance of an unfair labor practice hearing. Identical subpoenas were issued to the seven other Respondents named in the Third Amended Consolidated Complaint (hereinafter "Complaint"): Care Realty, LLC; 107 Osborne Street Operating Company II, LLC d/b/a Danbury Health Care Center; 710 Long Ridge Road Operating Company II, LLC d/b/a Long Ridge of Stamford; 341 Jordan Lane Operating Company II, LLC d/b/a Wethersfield Health Care Center; 1 Burr Road Operating Company II, LLC d/b/a Westport Health Care Center; and 245 Orange Avenue Operating Company II, LLC d/b/a West River Health Care Center, as well as to two other entities (CareOne, LLC and CareOne Management, LLC) not named in the Complaint.[1]

[1] The ALJ granted the Acting General Counsel's motion to add CareOne, LLC to the Complaint subject to an opposition that is to be filed by CareOne's attorneys on or before October 10, 2012.

2. As it pertains to this Special Appeal, the Subpoena seeks production of certain documents in an effort to establish single employer status between the named Respondents and other subpoenaed entities through items numbered 1a.-n., 2a.-e. 3, 4, 5, 6a.-b., 7a.-b, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19a-e., 20, 21, 22, 23, 24, 25 and 26. Additionally, the Subpoena seeks production of certain documents related to entities that were not named in any timely filed charge or in the Complaint and against which there has been no allegation of wrongdoing through its requests numbered 1a.-n., 2a.-e. 3, 4, 5, 6a.-b., 7a.-b, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19a-e., 21, 22, 23, 24, 25 and 26. These documents also relate to the single employer issue. A copy of the Subpoena is attached as Exhibit A.

3. On August 28, 2012, HealthBridge filed a Petition to Revoke the Subpoena, arguing the only proper Employers involved in this case are 107 Osborne Street Operating Company II, LLC d/b/a Danbury Health Care Center; 710 Long Ridge Road Operating Company II, LLC d/b/a Long Ridge of Stamford; 240 Church Street Operating Company II, LLC d/b/a Newington Health Care Center; 1 Burr Road Operating Company II, LLC d/b/a Westport Health Care Center; 245 Orange Avenue Operating Company II, LLC d/b/a West River Health Care Center; and 341 Jordan Lane Operating Company II, LLC d/b/a Wethersfield Health Care Center (hereinafter "Health Care Centers"). HealthBridge further argued the proper Employers are not a "single employer" or involved in a "single-integrated business enterprise" with any of the other Respondents named in this case and that even assuming *arguendo* that the issue of single employer status might somehow be arguably relevant in this case, such alleged relevancy would only possibly pertain to the remedial phase of this case. A copy of

HealthBridge's petition is attached as Exhibit B. The other subpoenaed entities filed similar petitions on August 23, 2012, August 27, 2012 and August 28, 2012.

4. Counsel for the Acting General Counsel argued against HealthBridge's Petition to Revoke on September 12, 2012, in a single response to all ten petitions. In response to HealthBridge's arguments regarding the requests seeking to establish single employer status, Counsel for the Acting General Counsel argued the single and joint employer status of the subpoenaed entities was relevant to the substance of the allegations contained in the Complaint.

5. On September 13, 2012, the ALJ denied HealthBridge's Petition to Revoke Subpoena Duces Tecum B-612838 and the petitions submitted by the other subpoenaed entities. In the Order, the ALJ stated that:

> The documents requested by the subpoena on all ten entities are germane and relevant in order to establish or not establish the issue of single/joint employer status. Documents to establish the interrelationship of operations, common management, centralized control, labor relations and common ownership of financial control and all the relevant and material factors on this issue to establish or not to establish single employer status. In addition this is not a remedial compliance issue. And as noted by the Acting General Counsel, it's best to resolve this issue of single employer status at this stage of the process than to wait until a supplemental hearing down the road.

The transcript pages containing the ALJ's Order are attached as Exhibit C. No other analysis accompanied the ALJ's Order.

6. Notwithstanding the ALJ's Order, Counsel for the Acting General Counsel should not be permitted to obtain discovery on the single employer issue. The Subpoena is an improper "fishing expedition" into the financial and business operations of HealthBridge and the other entities. Counsel for the Acting General Counsel is using

this proceeding to try to acquire materials that are irrelevant to the present litigation, but which could be used for other purposes. These materials were not sought during the investigatory stage. As such, the Subpoena requests relating to single employer status are merely sought as part of the "fishing expedition" into matters that do not bear upon the issues before the ALJ. *See United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry*, 325 NLRB 1235, 1236 (1999). In accordance with the NLRB's Rules and Regulations, discovery is prohibited in unfair labor practice cases and "fishing" for possible new evidence (or information a party would just like to have, even if irrelevant to the litigation at hand) is an improper use of the NLRB's subpoena mechanism. *See* NLRB Casehandling Manual, Section 10292.4 (stating federal rules regarding pretrial discovery not applicable to Board proceedings; "Any attempt to use such discovery should be resisted"); *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214 (1978). Therefore, HealthBridge should not be compelled to respond to discovery on the single employer issue.

7. Further, information relating to the single employer issue is irrelevant and immaterial to any issue raised in the Complaint at this stage of the proceedings. Section 102.31(b) 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." The Board, to enforce a subpoena, must demonstrate that: (1) its investigation is for a legitimate purpose; (2) the inquiry is relevant to that purpose; (3) the agency does not already

possess the information requested; (4) all administrative requirements have been complied with; and (5) the demand is not unreasonably broad or burdensome. *EEOC v. Kronos, Inc.*, 620 F.3d 287, 298 n.4 (3d Cir. 2010); *see also United States v. Powell*, 379 U.S. 48, 57-58 (1964); *NLRB v. Champagne Drywall, Inc.*, 502 F. Supp. 2d 179 (2007) (applying standard to NLRB subpoena); *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). 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). In the context of a hearing (or adjudicative) subpoena, "[t]here is, of course, a difference in that the relevancy of an investigative subpoena is measured against the general purposes of the agency's investigation, while **the relevancy of an adjudicative subpoena is measured against the charges specified in the complaint**." *Federal Trade Commission v. Anderson*, 631 F.2d 741, 745-46 (D.C. Cir. 1979) (internal citations omitted) (emphasis added). Here, Counsel for the Acting General Counsel seeks enforcement of an adjudicative hearing subpoena, not an investigative subpoena. Accordingly, Counsel for the Acting General Counsel must meet the narrower standard for relevancy.

8. The Subpoena should be revoked in its entirety until such time as any liability has been found with regard to any of the proper Employers involved in this case. Such deferment would increase the efficiency of the unfair labor practice proceedings and save the parties potentially unnecessary time and expense. Should no unfair labor

practice be found by the ALJ, documents relating to the single employer issue would be irrelevant to the unfair labor practice proceedings and potentially confusing.

9. While Counsel for the Acting General Counsel argued that information relating to the single employer issue is relevant because the Complaint alleges the named Respondents are a single and joint employer and collectively committed unfair labor practices, the Subpoena seeks information about more than just the relationships between the Respondents. For example, the Subpoena seeks documents relating to the relationship between the Respondents and CareOne Management, Care Ventures, THCI Company, THCI Holding Company, LLC, THCI Mortgage Holding Company, LLC – all entities which are not named as Respondents in any Charge or Amended Charge. Further, the Complaint does not allege that these entities are a single employer with any of the Respondents.

10. In addition to the above-referenced deficiencies in the Subpoena, the Subpoena seeks other irrelevant information in requests numbered 23 and 24, and unduly burdensome and/or overly broad information in nearly all of the numbered requests. The Subpoena includes requests for approximately 80 separate categories of documents, counting each item's subparts. The Subpoena is extremely broad, seeks many more documents than would be needed to attempt to prove the single employer issue or any of the substantive allegations in the Complaint, and easily requires the production of tens, or even hundreds, of thousands of documents which will take months to gather.

11. For example, Subpoena item 4, which seeks "those documents, including but not limited to pamphlets, brochures and Internet communications or websites,

setting forth a description of the services provided by the Entity, properties owned or managed by the Entity, the nature of the business of the Entity, and the nature of the relationship of the Entity to any other Entity or other businesses, for the period January 1, 2009 to the present," is unduly burdensome. Subpoena item 5 seeks payroll and personnel records of employees for *14 different corporate entities*. Subpoena item 15 seeks the names and addresses for each and every attorney and accountant used by 14 different corporate entities, as well "[a]ll advertisements to the public" that reference "Care Realty, or Care One or Care One Management." Furthermore, Subpoena item 21 seeks "[a]ll financial statements" and "[a]ll forms or sources of debt, credit, equity, or financial resources" for 14 different corporate entities. The incredibly broad search which HealthBridge would be required to conduct to locate all documents responsive to these requests, among other subpoenaed items, would be highly burdensome. Moreover, the breadth of information requested by most of the items in the Subpoena is not reasonably tied to proof on the single employer issue.

12. Further, numerous subpoenaed items specifically request emails, or request "correspondence" which reasonably could be construed as including email correspondence. HealthBridge objected to these items as overly broad, such as in item 17 which seeks "documents, including but not limited to email, correspondence, minutes of meetings, notes, memorializations of oral communications, and memoranda showing the following information for any businesses (including, but not limited to, Care Realty, Care One, Care One Management, and Care Ventures) which provided direct or indirect oversight of the operations management or financial management of HealthBridge and the Health Care Centers, for the period January 1, 2009 to the present . . ." The

information broadly described in subpoenaed items such as item 17 will require HealthBridge to conduct a search of all of its internal and external email communications simply to determine whether or not there are any documents that may be responsive. When analyzing such a large scale request for information, the Board must balance the potential relevancy of any of the requested information against the burdensomeness and costs of producing such voluminous information. *CNN America, Inc.* 352 NLRB 675, 676 (2008).

13. The Subpoena's multiple requests for emails do not identify any particular names of HealthBridge officials whose emails are to be searched. As such there are potentially an unlimited number of email accounts that HealthBridge must search to determine which electronic documents and communications may be responsive. Over a three and one-half year time period (January 1, 2009 to the present), taking the high turnover during that time period into account, there could be as many as 20 or more HealthBridge officials' email accounts that HealthBridge would need to search. HealthBridge officials use email throughout the day to communicate as a regular function of their job not just on an hourly, but often on a minute-by-minute basis, resulting in potentially hundreds of emails per person per day. Because of the way HealthBridge's email system is set up and maintained, HealthBridge will have to utilize outside IT consultants to engage in a multi-step process to restore and process email boxes of its officials.

14. First, HealthBridge must restore the email boxes of its officials. HealthBridge currently engages a third-party provider to create tape drives, which are data storage devices that back up electronic information including HealthBridge's email

system. After five weeks, these backup tapes are only retained on a monthly basis and reflect a user's email mailbox as of the first weekend following the first day in each month. The tape drives backup a user's email mailbox as it existed when the backup was performed. To access a single user's email history for the period January 1, 2009 to the present, IT consultants must restore from the tape drives all backups that exist for the user during that period – approximately 42 backups for the 42-month period requested. To "restore" a one-month backup tape costs $400.00, so to restore *one* official's mailbox for the requisite time period (42 months) it will cost approximately $16,800.00.

15. Moreover, HealthBridge's IT consultants are limited on the number of restores they can perform each week, depending on the volume of emails and their commitments to other clients. For only one email account (for a three and one-half year period) to be produced, approximately 42 restores must be performed and it will take many weeks or even months simply to *restore* that one email account. If more than one email account needs to be produced, then more restores must be performed and it would take months longer to restore the information requested in the Subpoena.

16. After the email history has been restored, the extensive number of emails must be processed by the IT consultants, who must run keyword searches on the restored email accounts. The IT consultants have provided an estimate for processing, indexing and de-duplicating (redundant information is eliminated) by their email investigation software. Estimating that anywhere from 50,000 to 100,000 emails may be generated in a restoration of one user account during each month, IT consultants have estimated that the total size of these files would be approximately 2.25 GB for a

one-month time period, which could be processed, indexed and de-duplicated by their email investigation software in roughly 2.5 hours for approximately $375.00 per user account. For a three and one-half year (42 month) period for *one user*, therefore, the cost of processing, indexing, and de-duplication would be approximately *$15,750.00.*

17. Further, the IT consultants have estimated it would take approximately 2.5 hours to complete the processing, indexing, and de-duplication stage for one user during a one-month time period. Accordingly, it would take approximately *105 hours (more than 2.5 work-weeks)* to complete this process for only *one user* for the requisite 42 month time-period.

18. Once the emails have been processed, indexed, and de-duplicated, they must still be sorted by keywords. The IT consultants have estimated that it would take approximately 1.25 hours per user account to sort the emails for a one-month period, and it would cost approximately an additional $375.00 per user account. Sorting the emails for *one user* account during a three and one-half year (42 month) period, therefore, would take another *52.5 hours of time (more than one work-week)* and would cost an estimated additional *$15,750.00.*

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

20. The total estimated cost, therefore, of restoring only *one user's* email accounts for the three and one-half year period of January 1, 2009 to the present, is *more than $48,300.00* (assuming no corrupted files). Moreover, the total time of

restoring and processing one user email account could extend for weeks or even months. The cost and time, of course, increases exponentially if more users' emails must be searched.

21. Multiple subpoenaed items such as item 17 would also require HealthBridge to search though all of the minutes of every meeting within a three and one-half year time period. Such items seek many more documents than would be needed to attempt to prove the single employer issue or any of the substantive allegations in the Complaint.

22. In summary, it is clear that the production of the emails, minutes and other documents sought in subpoenaed item 17 and numerous other subpoenaed items would be disruptive to HealthBridge's business operations, unduly expensive and time-consuming. As such, the Board must strike a balance between the relevancy of the requested information and the burdensomeness and costs of production. Because the information is not essential to Counsel for the Acting General Counsel's case, is part of a "fishing expedition," and would be extremely burdensome and costly, all such subpoenaed items should be revoked.

23. The burdensomeness of producing the documents sought by Counsel for the Acting General Counsel is further highlighted by the fact that the single employer issue is being pursued solely to ensure there are sufficient financial resources available to cover the potential liability <u>if</u> HealthBridge is determined to have violated the Act. The documents sought by Counsel for the Acting General Counsel are not necessary and not relevant to the resolution of any of the substantive matters at issue in this matter. Accordingly, it is entirely possible HealthBridge will be required to spend a significant

amount of time and incur significant expense producing documents relevant to what could prove to be a moot issue. As stated above, there is no reason to force HealthBridge to engage in this process at this point in the proceedings. There is no prejudice to Counsel for the Acting General Counsel if the single employer issue is resolved after (and only if) a violation is found during compliance proceedings. On the other hand, there is significant prejudice to HealthBridge if it is forced to produce these documents before a violation is found.

24. Furthermore, nearly all of the Subpoena items call for the production of documents, material or information that HealthBridge considers proprietary, confidential, private and/or sensitive ("Protected Information"). Without waiving the aforementioned objections, and to the extent that HealthBridge is required to produce any Protected Information, HealthBridge requests that the Protected Information be covered by a protective order. HealthBridge requests that the Protected Information be only used for purposes of this Complaint and that the Protected Information be disseminated only to (a) representatives of the National Labor Relations Board; and (b) any person upon written agreement of the parties. In addition, HealthBridge requests that the protective order require the Board to return Protected Information to HealthBridge within thirty (30) days after termination of this case by settlement, dismissal or final judgment. In the event of a request under the Freedom of Information Act ("FOIA") that might otherwise result in disclosure of the Protected Information, the Board will not disclose the Protected Information without first providing the parties notice of at least ten (10) working days of the proposed disclosure of such information. Following such written notice, HealthBridge shall have the right to file a written statement explaining why the

Protected Information comes within an exemption to FOIA and to object to its disclosure. If the Board rejects the objection and decides to disclose, the Board will notify the parties of that decision and wait three (3) working days before making such disclosure to permit HealthBridge the opportunity to take further steps to prevent the disclosure. In the event of a lawsuit seeking to enjoin the disclosure of the Protected Information, the Board will refrain from disclosing the Protected Information pending final disposition of that lawsuit.

WHEREFORE, for the foregoing reasons, HealthBridge respectfully requests special permission to appeal the Administrative Law Judge's Order denying HealthBridge's Petition to Revoke Subpoena Duces Tecum No. B-612838

Respectfully submitted,

George W. Loveland, II
John Doran
Nicole H. Bermel
Littler Mendelson, P.C.
3725 Champion Hills Drive, Suite 3000
Memphis, TN 38125
901-795-6695

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the aforesaid Request for Special Permission to Appeal Administrative Law Judge's Order Denying HealthBridge's Petition to Revoke Subpoena Duces Tecum B-612838 were served on October 4, 2012, in the manner set forth below:

Lester A. Heltzer, Executive Secretary — E-Filing on Agency Website
National Labor Relations Board
1099 14th Street, N.W., Suite 11100
Washington, DC 20570

Kenneth Chu, Administrative Law Judge — E-Filing on Agency Website
National Labor Relations Board, Division of Judges
120 West 45th Street
New York, New York 10036

Jennifer F. Dease — E-Mail Jennifer.dease@nlrb.gov
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Kevin A Creane, Esq. — E-Mail KACreane@aol.com
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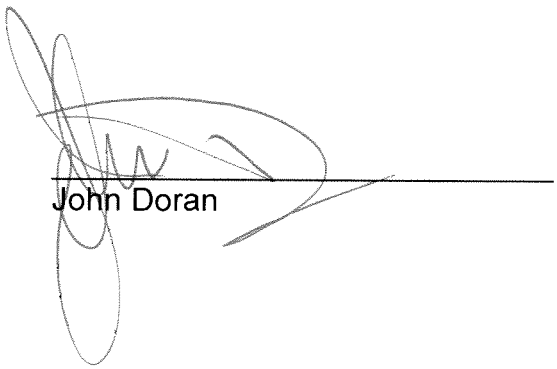
Milford, CT 06460



John Doran

# EXHIBIT A

FORM NLRB-31
(12-07)

# SUBPOENA DUCES TECUM

## UNITED STATES OF AMERICA
## NATIONAL LABOR RELATIONS BOARD

To HealthBridge Management, LLC
Attn: CUSTODIAN OF RECORDS
341 Jordan Lane, Wethersfield, CT 06109

As requested by John A. McGrath, Counsel for the Acting General Counsel

whose address is A. A. Ribicoff Federal Building, 450 Main Street, Suite 410
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge of the National Labor Relations Board

at A. A. Ribicoff Federal Building, 450 Main Street, Suite 410

In the City of Hartford, Connecticut

on the 10th day of September 20 12 at 10:00 (a.m.) (p.m.) or any adjourned

or rescheduled date to testify in HEALTHBRIDGE MANAGEMENT, LLC, ET AL.
Case Nos. 34-CA-070823, et al.
(Case Name and Number)

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

See attached
Instructions and Documents

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 - 612838

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

Issued at Hartford, Connecticut

this 14th day of August 20 12

Lester A. Heltzer

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

**PRIVACY ACT STATEMENT**

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

*Exhibit A*

## INSTRUCTIONS & DEFINITIONS

1. The term "document" as used herein shall include, but is not limited to, any electronically stored information, e-mail, paper, pamphlet, brochure, periodical, literature, letter, memorandum, magazine, telegram, telex, cable, facsimile transmission, other correspondence, report, record, newspaper article, study, note, diary, working paper, chart, book, graph, index, floppy disk, removable hard disk, computer generated tape, any magnetic medium, teletype, data sheet or data processing card, time sheet, computation, schedule, contract, analysis, summary, instruction, brief, pleading, or other litigation paper, transcript, or any accounting or draft or preliminary copy of any of the foregoing, together with any attachments, inclusions, enclosures, and annotations thereof or thereto, as well as any other tangible thing on which information is recorded in writing, sound, picture, punches, circuits, programs, or other manner, including supporting, underlying, or prefatory material, however produced or reproduced, to which you have had any access whether or not in your present possession, custody or control.

2. All requests for documents in your possession or control include those in the possession or control of or by your agents, servants, representatives and counsel. "Control" also includes all those documents that you can obtain that are responsive to this request. If a privilege is asserted with respect to any document, please identify that document and state the nature of the privilege.

3. Electronically stored information and e-mails should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

4. If you fail, refuse or are unable to produce any documents requested, please provide the following information relative to each document not produced, stating in writing and with particularity:

a. the date and form of the document;

b. the subject matter of the document;

c. the identity of the person who created the document and any and all persons to whom it was distributed;

d. the asserted grounds for failure, refusal or inability to produce the document, including citation of the statutory or decisional authority alleged to justify the failure or refusal to produce on grounds of privilege, or an account of the unsuccessful efforts made to locate documents as to which inability to produce is claimed;

e. the identity, including address and telephone number(s), of the individual(s) having present custody of the document; and



*Exhibit A*

f. the paragraph or paragraphs of this Subpoena to which the document is responsive.

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

6. This request seeks production of responsive documents in their entirety, without abbreviation, redaction, deletion or expurgation.

7. When used in this subpoena, the term "documents regarding" means all documents that, in whole or in part, discuss, describe, mention, pertain to, reflect, refer to, or relate to the subject of the subpoenaed item.

8. Whenever used in this subpoena, 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; the masculine shall be deemed to include the feminine, and vice versa; the disjunctive "or" shall be deemed to include the conjunctive "and," and vice versa; and the words "each," "every," "any," and "all" shall be deemed to include each of the other words.

9. References to the parties or other named entities shall be deemed to include any of their officers, agents, and representatives.

10. All documents produced pursuant to this subpoena are to be organized according to the subpoena paragraph to which the documents are responsive. Labels referring to that subpoena paragraph are to be affixed to each document or set of documents.

11. Unless otherwise notes, this subpoena does not supersede, revoke, or cancel any other subpoena issued in this proceeding.



*Exhibit A*

## DOCUMENTS

1. The Articles of Incorporation, Partnership Agreements, documents forming limited liability corporations, registration or bylaws, and any changes and amendments thereto, for each of the following entities (collectively, "the Entities"):

a. Care Realty, LLC a/k/a Care One ("Care Realty");

b. HealthBridge Management, LLC ("HealthBridge");

c. 107 Osborne Street Operating Company II, LLC d/b/a Danbury Health Care Center ("Danbury");

d. 710 Long Ridge Road Operating Company II, LLC d/b/a Long Ridge of Stamford ("Long Ridge");

e. 240 Church Street Operating Company II, LLC d/b/a Newington Health Care Center ("Newington");

f. 1 Burr Road Operating Company II, LLC d/b/a Westport Health Care Center ("Westport");

g. 245 Orange Avenue Operating Company II, LLC d/b/a West River Health Care Center ("West River");

h. 341 Jordan Lane Operating Company II, LLC d/b/a Wethersfield Health Care Center ("Wethersfield");

i. Care One, LLC ("Care One");

j. Care One Management, LLC ("Care One Management");

k. Care Ventures, LLC ("Care Ventures");

l. THCI Company, LLC ("THCI Company");

m. THCI Holding Company, LLC ("THCI Holding Company"); and

n. THCI Mortgage Holding Company, LLC ("THCI Mortgage Holding Company").

2. For each of the Entities, those documents, including but not limited to annual reports, public offering statements, financial statements, balance sheets, minutes of director's meetings and public filings (including but not limited to filings with the State of Connecticut, the State of Delaware, the Commonwealth of Massachusetts, and the State of New Jersey), which show the following information for each of the Entities for the period from January 1, 2009 to the present:



*Exhibit A*

a. The identity of all corporate, partnership or other business entity officers, directors, managers and managing members;

b. The identity of all shareholders, partners, members or owners, and the extent of their interest;

c. The corporate, partnership or other business entity structure of each Entity, including the identity of all subsidiaries or affiliated business entities;

d. The location of facilities where business is conducted and a description of the business conducted at each facility; and

e. The extent of ownership interest of each Entity held by any of the other Entities or corporate or partnership officers, directors, members or managers of the other Entities, the date or dates such ownership was acquired, and the consideration paid for such ownership.

3. For each of the Entities, those documents showing the relationship between or among the corporations and individuals listed or referenced in paragraphs 1 and 2 above, for the period from January 1, 2009 to the present.

4. For each of the Entities, those documents, including but not limited to pamphlets, brochures and Internet communications or websites, setting forth a description of the services provided by the Entity, properties owned or managed by the Entity, the nature of the business of the Entity, and the nature of the relationship of the Entity to any other Entity or other businesses, for the period from January 1, 2009 to the present.

5. For each of the Entities, those documents, including corporate, payroll, personnel or other records, books, reports, manuals, notes, correspondence, tables of organization and other writings memorializing, relating or referring to the supervisory and/or managerial hierarchy and structure of each of the Entities, for the period from January 1, 2009 to the present.

6. For each of the Entities, those documents regarding the ownership and management of HealthBridge which will show the following, for the period from January 1, 2009 to the present:

a. The nature of the business relationship and/or ownership interest between each of the Entities and HealthBridge; and

b. The date upon which the business relationship and/or ownership interest commenced between each of the Entities and HealthBridge.

7. For each of the Entities, those documents regarding the ownership and management of Danbury, Long Ridge, Newington, West River, Westport and

Wethersfield (collectively, "the Health Care Centers"), which show the following, for the period from January 1, 2009 to the present:

a. The nature of the business relationship and/or ownership interest between each of the Entities and each of the Health Care Centers; and

b. The date upon which the business relationship and/or ownership interest commenced between each of the Entities and each of the Health Care Centers.

8. For each of the Entities, those documents showing the complete address (including building floor) of its principal office and ownership of the buildings in which those offices are located, the leases for the space occupied by those offices, and any shared office services, including but not limited to telephone, fax, utilities and personnel, as well as the identity of the provider of such services, for the period from January 1, 2009 to the present.

9. For each of the Entities, those documents, including but not limited to contracts, agreements and invoices, showing all personnel, services or products which are sold, shared or provided by each of the Entities(or any of the owners or principals of the Entities) to any other Entities, for the period from January 1, 2009 to the present.

10. For each of the Entities, those documents, including but not limited to contracts, memoranda of understanding, account statements, and filings with governmental agencies, showing financial resources pooled, exchanged, or shared between any Entity and any other of the Entities, including but not limited to the following, for the period from January 1, 2009:

a. Health insurance, vision insurance, disability insurance, worker's compensation insurance, life insurance, liability insurance, and any other insurance provided or offered to the employees, officers, or directors of the Entities;

b. Retirement plans or funds, including but not limited to 401(k) plans, provided or offered to the employees, officers, or directors of the Entities;

c. Bank accounts, funds, expense accounts, or discount or rewards programs to which any two (or more) Entities have access, authority or control;

d. Letters of credit, lines of credit, guarantees, bonds, security, or any other source of credit to which any two (or more) Entities have access;

e. The debt of any Entity held, serviced, guaranteed, or co-signed by any other Entity; and

f. Agreements, contracts, applications, statements, instruments, certifications, or filings by any Entity and guaranteed, warranted, insured, co-signed, or endorsed by any other Entity.

11. Those documents, including titles, deeds, leases, contracts, purchase agreements and memoranda of understanding, indicating or relating to the purchase, lease, possession, sale, ownership and management of the Health Care Centers and the properties on which they are situated, for the period from January 1, 2009 to the present.

12. Those documents, including titles, deeds, leases, contracts, purchase agreements and memoranda of understanding, indicating or relating to the purchase, possession, sale, ownership and management of HealthBridge, for the period from January 1, 2009 to the present.

13. Those documents showing the operating plans for the Health Care Centers, for the period from January 1, 2009 to the present.

14. Those documents showing all applications for licenses or permits filed by any of the Entities with the local, state or federal governments, with respect to the ownership and operations of the Health Care Centers or HealthBridge Management, and any licenses or permits issued, for the period January 1, 2009 to the present.

15. Those documents showing all filings and applications by any Entity with the State of Connecticut's Department of Public Health or Department of Social Services, regarding the ownership and operations of the Health Care Centers (or their predecessor licensees) or of HealthBridge Management (or its predecessor HealthBridge Management, Inc.), and any licenses issued by, and agreements reached with those agencies, for the period January 1, 2009 to the present.

16. Those documents which show the following for each of the Entities, for the period January 1, 2009 to the present:

a. The names and addresses of attorneys and accountants who provided service to any of the Entities;

b. The Entity holding and paying accounts with utility, telephone/fax, and internet providers;

c. All advertisements to the public for the Health Care Centers or HealthBridge which reference Care Realty or Care One or Care One Management;

d. The logos maintained by each of the Entities;

e. All letterheads or fax cover sheets bearing the logo of more than one Entity.

17. Those documents, including but not limited to emails, correspondence, minutes of meetings, notes, memorializations of oral communications, and

memoranda, showing the following information for any businesses (including, but not limited to, Care Realty, Care One, Care Management, and Care Ventures) which provided direct or indirect oversight of the operations management or financial management of HealthBridge and the Health Care Centers, for the period January 1, 2009 to the present:

a. The name of the Entity for which oversight was provided;

b. The name of the business providing the oversight;

c. The names of the owners, members, or shareholders of the business;

d. The names of the individual who represented the business in providing the oversight;

e. The reasons for any changes in the identity of the businesses providing such oversight, and the dates of such changes.

18. Those documents setting forth for HealthBridge, the organizational structure, including all departments, the supervisory and managerial structure for each department, the names of the individuals who occupied those positions, the dates they occupied those positions, the business which pays them, and the positions they hold with any other Entity, for the period from January 1, 2009 to the present.

19. Those documents including but not limited to emails, internal memoranda and reports, notes, and communications between and among officers, agents, or representatives of any of the Entities, pertaining to any group (including but not limited to the Entities bargaining team, bargaining committee, or executive committee) tasked with formulating, designing, implementing, maintaining or monitoring labor relations at the Health Care Centers, which show the following, for the period from January 1, 2009 to the present:

a. The identity the members of any such group by name, employer(s), title(s), job description(s), and the Entities which provide them with compensation;

b. The name of the group and the responsibilities of the group;

c. Agendas of all the group's meetings;

d. The scheduling and attendance of the group's meetings, including attendance by individuals not members of the group;

e. Labor relations decisions, or other operational or financial decisions affecting labor relations, made by the group.

20. Those documents setting forth the organizational structure of the Health Care Centers, including all departments, and the supervisory and managerial structure for each department, for the period from January 1, 2009 to the present.

21. Those documents that show the state of each Entity's financial condition, including, but not limited to, the following documents, for the period from January 1, 2009 to the present:

a. All financial statements, balance sheets and profit and loss statements;

b. All forms or sources of debt, credit, equity, or financial resources;

c. All state and federal tax returns.

22. For each of the Entities, those documents relating to ownership, directorship, officership, membership, service in an advisory or decision-making capacity, or employment of the following individuals by or for any of the Entities listed or referred to in paragraphs 1 and 2 above, which will show their position(s) held, any written description for such position, the individuals to whom they report, the Entities which compensate them, any authority held by them to act in the interest of any of the Entities, for the period from January 1, 2009 to the present:

a. Kevin P. Breslin

b. Albert Lugo, Esq.

c. Lisa Crutchfield

d. Edmund Remillard

e. Daniel E. Straus

f. Moshael J. Straus

g. Warren D. Cole

h. Larry Condon

i. Dinette Manzi

j. Anne Stuart

k. Tim Hodges

l. Elizabeth Straus

m. David Wilson

n. Pat Leja



*Exhibit A*

23. Those documents, including employee manuals, code of conduct, and other rules and procedures, issued to newly hired or rehired employees at each of the Health Care Centers, for the period from January 1, 2009 to the present.

24. The orientation handbook issued to newly hired or rehired employees at the Health Care Centers, for the period from January 1, 2009 to the present.

25. The human resources policies and procedures manuals used by supervisors or managers at the Health Care Centers, for the period from January 1, 2005 to the present.

26. Those documents, including but not limited to emails, internal memoranda and reports, notes, and communications between and among officers, agents, or representatives of any of the Entities, and documents received from or provided to the State of Connecticut, pertaining to the closure of Wethersfield Health Care Center.

# EXHIBIT B

**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**REGION 34**

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| | | |
|---|---|---|
| HEALTHBRIDGE MANAGEMENT, LLC; CARE REALTY, LLC; 107 OSBORNE STREET OPERATING COMPANY II, LLC D/B/A DANBURY HEALTH CARE CENTER; 710 LONG RIDGE ROAD OPERATING COMPANY II, LLC D/B/A LONG RIDGE OF STAMFORD; 240 CHURCH STREET OPERATING COMPANY II, LLC D/B/A NEWINGTON HEALTH CARE CENTER; 1 BURR ROAD OPERATING COMPANY II, LLC D/B/A WESTPORT HEALTH CARE CENTER; 245 ORANGE AVENUE OPERATING COMPANY II, LLC D/B/A WEST RIVER HEALTH CARE CENTER; 341 JORDAN LANE OPERATING COMPANY II, LLC D/B/A WETHERSFIELD HEALTH CARE CENTER | Case Nos. | 34-CA-070823<br>34-CA-072875<br>34-CA-075226<br>34-CA-083335<br>34-CA-084717 |

And

NEW ENGLAND HEALTH CARE EMPLOYEES UNION, DISTRICT 1199, SEIU, AFL-CIO

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**HEALTHBRIDGE MANAGEMENT, LLC's**
**PETITION TO REVOKE SUBPOENA DUCES TECUM B-612838**

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HealthBridge Management, LLC (hereinafter "HealthBridge") hereby files, pursuant to Rule 102.31 of the Board's Rules and Regulations, its Petition to Revoke Subpoena Duces Tecum No. B-612838 (hereinafter "Subpoena"), served on the Custodian of Records for HealthBridge on August 22, 2012.[1] In support of its Petition to Revoke, HealthBridge states as follows:

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

A. The only proper Employers involved in this case are 107 Osborne Street Operating Company II, LLC d/b/a Danbury Health Care Center; 710 Long Ridge Road Operating Company II, LLC d/b/a Long Ridge Of Stamford; 240 Church Street Operating Company II, LLC d/b/a Newington Health Care Center; 1 Burr Road Operating Company II, LLC d/b/a Westport Health Care Center; 245 Orange Avenue Operating Company II, LLC d/b/a West River Health Care Center; and 341 Jordan Lane Operating Company II, LLC d/b/a Wethersfield Health Care Center (hereinafter "Health Care Centers"). Accordingly, HealthBridge seeks to revoke the Subpoena in its entirety to the extent that it attempts to seek any documents from HealthBridge.

B. HealthBridge Management, LLC is not a "single employer" or involved in a "single-integrated business enterprise" with any of the proper Employers involved in this case. Even assuming *arguendo* that the issue of "single employer" status might somehow be arguably relevant in this case, such alleged relevancy would only possibly pertain to the remedial phase of this case. Accordingly, HealthBridge seeks to revoke the Subpoena in its entirety until such time as any liability has been found with regard to any of the proper Employers involved in this case.

C. The Subpoena seeks information that is not relevant to any issue raised in the Third Amended Consolidated Complaint ("Complaint"). Section 102.31(b) of the Board'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, an agency

must demonstrate, inter alia, that it is for a legitimate purpose, the inquiry is relevant to that purpose, and 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 (D. Mass. 2007) (applying standard to NLRB subpoena). In the context of a trial (or adjudicative) subpoena, "[t]here is, of course, a difference in that the relevancy of an investigative subpoena is measured against the general purposes of the agency's investigation, while **the relevancy of an adjudicative subpoena is measured against the charges specified in the complaint.**" *Federal Trade Commission v. Anderson*, 631 F.2d 741, 745-46 (D.C. Cir. 1979) (internal citations omitted) (emphasis added). The subpoena at issue here is an adjudicative hearing subpoena, not an investigative subpoena. Accordingly, to the extent the Subpoena requests documents that are not relevant to the substantive issues raised in the Complaint, it should be revoked.

D. In accordance with the Board's Rules and Regulations, discovery is prohibited in unfair labor practice cases and "fishing" for possible new evidence (or information a party would just like to have, even if irrelevant to the litigation at hand) is an improper use of the NLRB's subpoena mechanism. *See generally* NLRB Casehandling Manual, Section 10292.4 (federal rules regarding pretrial discovery not applicable to Board proceedings; "Any attempt to use such discovery should be resisted"); *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214 (1978). Inasmuch as the Subpoena is not narrowly tailored to request information which reasonably relates to the issues raised in the Complaint, it constitutes an improper "fishing expedition" and should

be revoked. *See United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry*, 325 NLRB 1235, 1236 (1999).

E. The Subpoena 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 HealthBridge to discern the items or documents requested.

F. To the extent the Subpoena seeks information that is not in the form of documents, HealthBridge does not have any obligation to create documents in response to a subpoena for documents.

G. Certain documents and/or the information contained therein responsive to the Subpoena may be protected from disclosure by the attorney-client privilege and/or attorney work-product doctrine, including, but not limited to, any documents that might tend to disclose or reveal the strategies, theories, mental impressions, opinions, or conclusions of counsel for HealthBridge. As such, HealthBridge seeks to revoke the Subpoena to the extent it may be construed to contemplate the production of any such privileged documents.

H. The Subpoena's instructions for production of documents contain instructions that are not authorized by the Board's Rules and Regulations.

I. The instructions set forth in the cover letter accompanying the Subpoena sent by Counsel for the Acting General Counsel regarding how to search e-mails and how to answer questions regarding the production of subpoenaed e-mails, are not part of the subpoena and contain instructions that are not authorized by the Board's Rules and Regulations.

j. In light and in furtherance of, but without limiting, the general objections set forth above, HealthBridge states as follows with respect to the 26 individually numbered requests in the Rider attached to the Subpoena:

1a.-h. These subpoena items seek documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues in that they seek documents related to the issue of "single employer" status. Further, these subpoena items are overly broad, unduly burdensome and seek documents that are not in HealthBridge's possession.

1i-j. These subpoena items seek documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues in that they seek documents related to the issue of "single employer" status and documents related to entities not named in the Complaint and against whom there have been no allegation of wrongdoing. Further, these subpoena items are overly broad, unduly burdensome and seek documents that are not in HealthBridge's possession.

1k.-n. These subpoena items seek documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues in that they seek documents related to the issue of "single employer" status and documents related to entities that were not named in any timely filed charge or in the Complaint and against whom there has been no allegation of wrongdoing. Further, these subpoena items are overly broad, unduly burdensome and seek documents that are not in HealthBridge's possession.

2a.-e. These subpoena items seek documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed

issues in that they seek documents related to the issue of "single employer" status and documents related to entities that were not named in any timely filed charge or in the Complaint and against whom there has been no allegation of wrongdoing. Additionally, these subpoena items seek confidential and/or proprietary information and documents involving the "Entities'" business operations. These subpoena items are overly broad, unduly burdensome and seek documents that are not in HealthBridge's possession.

3. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues in that it seeks documents related to the issue of "single employer" status and documents related to entities that were not named in any timely filed charge or in the Complaint and against whom there has been no allegation of wrongdoing. This subpoena item is overly broad, unduly burdensome and seeks documents not in HealthBridge's possession.

4. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues in that it seeks documents related to the issue of "single employer" status and documents related to entities that were not named in any timely filed charge or in the Complaint and against whom there has been no allegation of wrongdoing. Additionally, this subpoena item seeks confidential and/or proprietary information and documents involving the "Entities'" business operations. This subpoena item is overly broad, unduly burdensome and seeks documents not in HealthBridge's possession.

5. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed

issues in that it seeks documents related to the issue of "single employer" status and documents related to entities that were not named in any timely filed charge or in the Complaint and against whom there has been no allegation of wrongdoing. Additionally, this subpoena item seeks confidential and/or proprietary information and documents involving the "Entities'" business operations. This subpoena item is overly broad, unduly burdensome and seeks documents that are not in HealthBridge's possession.

6a.-b. These subpoena items seek documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues in that they seek documents related to the issue of "single employer" status and documents related to entities that were not named in any timely filed charge or in the Complaint and against whom there has been no allegation of wrongdoing. Additionally, these subpoena items seek confidential and/or proprietary information and documents involving the "Entities'" business operations. These subpoena items are overly broad and unduly burdensome.

7a.-b. These subpoena items seek documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues in that they seek documents related to the issue of "single employer" status and documents related to entities that were not named in any timely filed charge or in the Complaint and against whom there has been no allegation of wrongdoing. Additionally, these subpoena items seek confidential and/or proprietary information and documents involving the "Entities'" business operations. These subpoena items are overly broad, unduly burdensome and seek documents that are not in HealthBridge's possession.

8. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues in that it seeks documents related to the issue of "single employer" status and documents related to entities that were not named in any timely filed charge or in the Complaint and against whom there has been no allegation of wrongdoing. Additionally, this subpoena item seeks confidential and/or proprietary information and documents involving the "Entities'" business operations. This subpoena item is overly broad, unduly burdensome and seeks documents not in HealthBridge's possession.

9. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues in that it seeks documents related to the issue of "single employer" status and documents related to entities that were not named in any timely filed charge or in the Complaint and against whom there has been no allegation of wrongdoing. Additionally, this subpoena item seeks confidential and/or proprietary information and documents involving the "Entities'" business operations. This subpoena item is overly broad, unduly burdensome and seeks documents not in HealthBridge's possession.

10a.-e. These subpoena items seek documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues in that it seeks documents related to the issue of "single employer" status and documents related to entities that were not named in any timely filed charge or in the Complaint and against whom there has been no allegation of wrongdoing. Additionally, these subpoena items seek confidential and/or proprietary information and documents involving the "Entities'" business operations. These subpoena items are

overly broad, unduly burdensome and seek documents that are not in HealthBridge's possession.

11. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues in that it seeks documents related to the issue of "single employer" status and documents related to entities that were not named in any timely filed charge or in the Complaint and against whom there has been no allegation of wrongdoing. Additionally, this subpoena item seeks confidential and/or proprietary information and documents involving the "Entities'" business operations. This subpoena item is overly broad, unduly burdensome and seeks documents not in HealthBridge's possession.

12. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues in that it seeks documents related to the issue of "single employer" status. Additionally, these subpoena items seek confidential and/or proprietary information and documents involving HealthBridge Management, LLC's business operations. This subpoena item is also overly broad, unduly burdensome and seeks documents that are not in HealthBridge's possession.

13. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues. Additionally, this subpoena item seeks confidential and/or proprietary information and documents involving the "Entities'" business operations. This subpoena item is overly broad, unduly burdensome and seeks documents that are not in HealthBridge's possession. Further, this subpoena item is also vague and ambiguous

to the extent that it seeks "operating plans" in that it fails to describe the items and documents sought with sufficient particularity to allow HealthBridge to discern the documents requested.

14. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues in that it seeks documents related to the issue of "single employer" status and documents related to entities that were not named in any timely filed charge or in the Complaint and against whom there has been no allegation of wrongdoing. This subpoena item is overly broad, unduly burdensome and seeks documents that are not in HealthBridge's possession.

15. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues in that it seeks documents related to the issue of "single employer" status and documents related to entities that were not named in any timely filed charge or in the Complaint and against whom there has been no allegation of wrongdoing. This subpoena item is overly broad, unduly burdensome and seeks documents that are not in HealthBridge's possession.

16a. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues in that it seeks documents related to the issue of "single employer" status and documents related to entities that were not named in any timely filed charge or in the Complaint and against whom there has been no allegation of wrongdoing. Additionally, this subpoena item seeks confidential and/or proprietary information and documents

involving the "Entities'" business operations. This subpoena item is overly broad, unduly burdensome and seeks documents not in HealthBridge's possession. Further, this subpoena item seeks documents protected from disclosure by the attorney-client privilege and/or attorney work-product doctrine, including, but not limited to, any documents that might tend to disclose or reveal the strategies, theories, mental impressions, opinions, or conclusions of counsel for any of the "Entities."

16b. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues in that it seeks documents related to the issue of "single employer" status and documents related to entities that were not named in any timely filed charge or in the Complaint and against whom there has been no allegation of wrongdoing. Additionally, this subpoena item seeks confidential and/or proprietary information and documents involving the "Entities'" business operations. This subpoena item is overly broad, unduly burdensome and seeks documents that are not in HealthBridge's possession.

16c.-e. These subpoena items seek documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues in that they seek documents related to the issue of "single employer" status and documents related to entities that were not named in any timely filed charge or in the Complaint and against whom there has been no allegation of wrongdoing. These subpoena items are overly broad, unduly burdensome and seek documents that are not in HealthBridge's possession.

17a.-e. These subpoena items seek documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the

disputed issues in that they seek documents related to the issue of "single employer" status and documents related to entities that were not named in any timely filed charge or in the Complaint and against whom there has been no allegation of wrongdoing. Additionally, these subpoena items seek confidential and/or proprietary information and documents involving the "Entities'" business operations. These subpoena items also are overly broad, unduly burdensome, vague, and seek documents that are not in HealthBridge's possession. Further, these subpoena items seek documents protected from disclosure by the attorney-client privilege and/or attorney work-product doctrine, including, but not limited to, any documents that might tend to disclose or reveal the strategies, theories, mental impressions, opinions, or conclusions of counsel for the Entities.

18. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues in that it seeks documents related to the issue of "single employer" status. This subpoena item is overly broad and unduly burdensome.

19a.-e.These subpoena items seek documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues in that they seek documents related to the issue of "single employer" status. Additionally, these subpoena items seek confidential and/or proprietary information and documents involving the "Entities'" business operations. These subpoena items also are overly broad, unduly burdensome and seek documents that are not in HealthBridge's possession. Further, these subpoena items seek documents protected from disclosure by the attorney-client privilege and/or attorney work-product doctrine,

including, but not limited to, any documents that might tend to disclose or reveal the strategies, theories, mental impressions, opinions, or conclusions of counsel for the Entities.

20. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues. This subpoena item also is overly broad, unduly burdensome and seeks documents that are not in HealthBridge's possession.

21a.-c. These subpoena items seek documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues in that they seek documents related to the issue of "single employer" status and documents related to entities not named in any timely filed charge or in the Complaint and against whom there has been no allegation of wrongdoing. Additionally, these subpoena items seek confidential and/or proprietary information and documents involving the "Entities'" business operations. These subpoena items also are overly broad, unduly burdensome and seek documents that are not in HealthBridge's possession.

22a-n. These subpoena items seek documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues in that they seek documents related to the issue of "single employer" status and documents related to entities that were not named in any timely filed charge or in the Complaint and against whom there has been no allegation of wrongdoing. These subpoena items are overly broad, unduly burdensome and seek documents that are not in HealthBridge's possession.

23. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues. This subpoena item also is overly broad, unduly burdensome and seeks documents that are not in HealthBridge's possession.

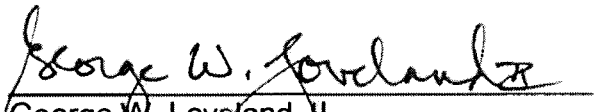
24. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed. This subpoena item also is overly broad, unduly burdensome and seeks documents that are not HealthBridge's possession.

25. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed. This subpoena item also is overly broad, unduly burdensome and seeks documents that are not in HealthBridge's possession.

26. This subpoena item seeks documents that are wholly irrelevant and immaterial to any issue raised in the Complaint and have no bearing on the disputed issues. This subpoena item also is overly broad, unduly burdensome and seeks documents that are not in HealthBridge's possession. Further, these subpoena items seek documents protected from disclosure by the attorney-client privilege and/or attorney work-product doctrine, including, but not limited to, any documents that might tend to disclose or reveal the strategies, theories, mental impressions, opinions, or conclusions of counsel for the Entities.

For all the reasons fully set forth above, Subpoena Duces Tecum No. B-612838 is defective. The Subpoena should, therefore, be revoked.

Respectfully submitted,



George W. Loveland, II
Littler Mendelson, P.C.
3725 Champion Hills Drive, Suite 3000
Memphis, TN 38125
901-795-6695

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the aforesaid Petition to Revoke Subpoena Duces Tecum B-612838 were served on August 28, 2012, in the manner set forth below:

| | |
|---|---|
| Jonathan B. Kreisberg, Regional Director<br>NLRB - Region 34<br>A. A. Ribicoff Federal Building<br>450 Main Street, Suite 410<br>Hartford, CT 06103 | E-filing on Agency website |
| John McGrath<br>Counsel for the Acting General Counsel<br>NLRB - Region 34<br>A.A. Ribicoff Federal Building<br>450 Main Street, Suite 410<br>Hartford, CT 06103 | E-Mail |
| Kevin A Creane, Esq.<br>Law Firm of John M. Creane<br>92 Cherry Street<br>P.O. Box 170<br>Milford, CT 06460 | E-Mail |

George W. Loveland, II

Firmwide:114032228.1 070487.1069

# EXHIBIT C

**BEFORE THE**

**NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

**HEALTHBRIDGE MANAGEMENT, LLC, CARE REALITY, LLC, 107 OSBORNE STREET OPERATING COMPANY II, LLC d/b/a DANBURY HCC, 710 LONG RIDGE ROAD OPERATING COMPANY II, LLC d/b/a LONG RIDGE OF STAMFORD, 240 CHURCH STREET OPERATING COMPANY II, LLC d/b/a NEWINGTON HEALTH CARE CENTER, 1 BURR ROAD OPERATING COMPANY II, LLC d/b/a WESTPORT HEALTH CARE CENTER, 245 ORANGE AVENUE OPERATING COMPANY II, LLC d/b/a WEST RIVER HEALTH CARE CENTER, 341 JORDAN LANE OPERATING COMPANY II, LLC d/b/a WETHERSFIELD HEALTH CARE CENTER,**

Respondent,

And

**NEW ENGLAND HEALTH CARE EMPLOYEES UNION, DISTRICT 1199, SEIU,**

Charging Party.

Case No. 34-CA-070823
34-CA-072875
34-CA-075226
34-CA-083335
34-CA-084717

The above-entitled matter came on for hearing pursuant to Notice, before **THE HONORABLE KENNETH CHU**, Administrative Law Judge, at the A.A. Ribicoff Federal Building, Hearing Room B, 450 Main Street, Hartford, Connecticut, on Thursday, September 13, 2012, at 9:30 a.m.

1 MS. DEASE: -- on those subpoenas.

2 MR. LOVELAND: If I may jump in. Your Honor, as far
3 as subpoena to the Charging Party, Mr. Creane and I met
4 yesterday and that matter was resolved, so you won't have to
5 rule on that.

6 MR. CREANE: That is accurate, Your Honor.

7 JUDGE CHU: So, the outstanding subpoenas right now
8 are the ones issued by Acting General Counsel on the joint and
9 single employee status?

10 MS. DEASE: Correct. And, the subpoena ad
11 testificandum issued by the Acting General Counsel, as well as
12 our motion to strike the subpoena issued to Larson Allen.

13 MR. LOVELAND: And, Your Honor, with respect to the
14 motion to strike, I wish to be heard with respect to that for a
15 second, hopefully, before the Court rules.

16 JUDGE CHU: Let me first rule on the subpoenas issued
17 by the Acting General Counsel on joint and single employee
18 status to the subpoenas and the Acting General Counsel's
19 opposition to Respondent's petition to revoke those subpoenas.
20 Briefly, the background is such that the Acting General
21 Counsel's subpoenas of August 14th, 2012 served on ten entities,
22 nine is named Respondent and tenth entity as a Respondent and
23 the Acting General Counsel's notice of intent to amend the
24 complaint to include Care One Management LLC, filed on August
25 29th, 2012.

1 MS. DEASE: Sorry, Your Honor. Care One LLC. The
2 motion to amend was for Care One, LLC.
3 JUDGE CHU: Didn't I say Care One?
4 MS. DEASE: You said Care One Management, which is
5 another entity that was subpoenaed.
6 JUDGE CHU: All right. The subpoenas against all ten
7 entities including among other things, annual report, public
8 statements, financial, minutes from directors meetings,
9 personnel and corporate payroll, bank accounts, lines and
10 credits, and other documents that Acting General Counsel
11 believes would establish the inter-relationship of the ten
12 entities.
13 As charged by the Acting General Counsel all of the
14 Respondent entities are either a single employer or a joint
15 employer liable for the allegation and charges contained in the
16 Acting General Counsel consolidated amended complaint.
17 Respondent filed a petition to revoke on August 23rd,
18 2012. Acting General Counsel filed his opposition to the
19 petition to revoke on September 6th, 2012.
20 Based upon my review of the record, petition to revoke
21 the Acting General Counsel's subpoenas against all ten
22 Respondent entities is hereby denied.
23 The documents requested by the subpoena on all ten
24 entities are germane and relevant in order to establish or not
25 to establish the issue of single or joint employee status.

1 Documents to establish the inter-relationship of operations,
2 common management, centralized control, labor relations and
3 common ownership of -- common ownership of financial control on
4 all relevant issues and material -- are relevant and material
5 factors on this issue to establish or not to establish single
6 employer status.
7 In addition, it is not a remedial compliance issue and
8 as noted by the Acting General Counsel, it's best to resolve
9 this issue of single employer status at this stage of the
10 process, than to wait until a supplemental hearing.
11 Moving on the subpoena issued to one Clifton Larson
12 Allen, custodian of record for Care One, a third-party in the --
13 MR. LOVELAND: Your Honor, excuse me. Have a moment,
14 please, I need to address this, if I may, the motion to strike?
15 This matter involves some Care One LLC is not a party
16 to this proceeding. Before Your Honor granted counsel's motion
17 to amend the complaint on Monday and Your Honor allowed, I
18 believe, until October 10 for Care One LLC to file a opposition
19 to that motion to amend. Prior to Monday, Care One LLC was not
20 a party to this proceeding. Care One LLC had not been named in
21 the complaint.
22 Prior to that time, it came to the attention of Care
23 One that there were documents in the possession of the Acting
24 General Counsel that were Care One documents. Those documents
25 were certain financial records. They became aware of that

1 C E R T I F I C A T E
2
3 This is to certify that the attached proceedings done before the
4 NATIONAL LABOR RELATIONS BOARD REGION THIRTY-FOUR

In the Matter of:

HEALTHBRIDGE MANAGEMENT, LLC, CARE REALTY, LLC a/k/a CARE ONE, 107 OSBORNE STREET OPERATING COMPANY II, LLC d/b/a DANBURY HCC, 710 LONG RIDGE ROAD OPERATING COMPANY II, LLC d/b/a LONG RIDGE OF STAMFORD, 240 CHURCH STREET OPERATING COMPANYII, LLC d/b/a NEWINGTON HEALTH CARE CENTER, 1 BURR ROAD OPERATING COMPANY II, LLC d/b/a WESTPORT HEALTH CARE CENTER, 245 ORANGE AVENUE OPERATING COMPANY II, LLC d/b/a WEST RIVER HEALTH CARE CENTER, 341 JORDAN LANE OPERATING COMPANY II, LLC d/b/a WETHERSFIELD HEALTH CARE CENTER,

And

NEW ENGLAND HEALTH CARE EMPLOYEES UNION, DISTRICT 1199, SEIU

5 Case Nos.: 34-CA-070823, 34-CA-072875, 34-CA-075226,
6 34-CA-083335, 34-CA-084717
7
8 Date: September 13, 2012
9
10 Place: Hartford, Connecticut
11
12 Were held as therein appears, and that this is the original
13 transcript thereof for the files of the Board
14
15
16 Official Reporter