

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

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
	34-CA-072875
	34-CA-075226
	34-CA-083335
	34-CA-084717

and

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

**CARE ONE, LLC’S REQUEST FOR SPECIAL PERMISSION TO APPEAL
ADMINISTRATIVE LAW JUDGE’S ORDER DENYING CARE ONE’S PETITION TO
REVOKE SUBPOENA DUCES TECUM B-612873 TO ITS OUTSIDE AUDITORS**

Care One, LLC (hereinafter “Care One”), pursuant to Rule 102.26 of the Board’s Rules and Regulations, files this Request for Special Permission to Appeal (“Special Appeal”) the on-the-record ruling of the Honorable Kenneth Chu, Administrative Law Judge (“ALJ”), dated October 17, 2012, denying Care One’s Petition to Revoke Subpoena Duces Tecum No. B-612873 to Care One’s outside auditors, CliftonLarsenAllen LLP (hereinafter “CLA”) (hereinafter the “Subpoena”). In support of this Special Appeal, Care One states as follows:

A. The Nature of the Financial Statements at issue in the Petition to Revoke

1. Care One is a privately owned family business with no employees. Its financial information, including its audited financial statements, contain confidential statistical data and data concerning the amounts and sources of income, profits, and losses of Care One; as well as non-public information about the nature and scope of investments made by Care One. They also contain extremely sensitive and private personal information about Care One's owners, members, and other investors, including their identities and the nature and extent of the financial interests they hold.

2. As Care One is not a public company, its audited financial statements are not publicly available. Care One takes careful steps to preserve the confidentiality of its audited financial statements. Copies are made available only to certain of its owners and outside auditors and other tax and legal advisors. All recipients of these statements are provided these statements in confidence and are legally obligated to safeguard the confidentiality of these statements.

3. Public disclosure of Care One's audited financial statements would result in irreparable harm to Care One and its owners, members, and investors. Among other things, it would allow competitors of Care One to gain an unfair competitive advantage over Care One by acquiring non-public information about Care One's income, profits, losses, and investments. It would also allow members of the public to obtain highly sensitive and private information about Care One's owners, members, and other investors.

B. The AGC Improperly Obtains Care One's Audited Financial Statements for 2009 and 2010

4. Sometime prior to August 24, 2012, Nicole Roberts ("Roberts") counsel for the AGC, came into possession of copies of Care One's 2009 and 2010 financial statements

through an as-yet unidentified source that was not entitled to possess them. Instead of notifying Care One that she had these documents, Roberts telephoned CLA, Care One's outside auditors, on August 24, 2012, seeking additional information regarding these documents.

5. Roberts spoke with Matthew Claeys, a partner of CLA, at approximately 4:10 p.m. on August 24, 2012. During this call, Roberts described herself as a "prosecutor" with the Board in connection with a case against Care One and various affiliates in Connecticut. Roberts told Mr. Claeys that she wanted information regarding Care One and its affiliates and asked if Mr. Claeys could provide information. Roberts said that if Mr. Claeys did not provide the requested information, she would serve a subpoena for this information. Roberts stated that there was a trial starting on September 10, 2012, and that it would be quicker if Mr. Claeys simply gave her the information she sought and answered her questions. (Claeys 10/17/12 Dec. ¶ 4).¹

6. Roberts informed Mr. Claeys that she was in possession of copies of Care One's audited financial statements for 2009 and 2010 and wanted additional details regarding these statements. As noted above, these audited financial statements contain extremely sensitive and confidential financial information regarding Care One and various individual owners of Care One, and they are non-public documents. CLA maintains these records in strict confidence and does not disclose them to third parties without its clients' express authorization or compulsory legal process. Roberts did not explain to Mr. Claeys how she had come into possession of these financial statements. (Claeys 10/17/12 Dec. ¶ 5).

7. Roberts then stated that she wanted to know whether HealthBridge Management, LLC ("HealthBridge"), Care Realty, LLC ("Care Realty"), Osborn Street LLC and a number of

¹ A copy of the October 17, 2012 declaration of Matthew Claeys is annexed hereto as Exhibit A.

other entities were covered within the scope of the financial statements. After listing several entities, Roberts told Mr. Claeys that she was inquiring about many entities and would email him the list of the entities. Mr. Claeys informed Roberts that she could email Mr. Claeys her list. Roberts never did so. (Claeys 10/17/12 Dec. ¶ 6).

8. Mr. Claeys told Roberts that he would have to inform Care One and CLA's in-house counsel about Roberts's inquiry and that he would get back to her. Mr. Claeys was not prepared to provide information regarding his client's highly sensitive and confidential financial statements without first speaking with counsel and receiving his client's consent. (Claeys 10/17/12 Dec. ¶ 7). In response, Roberts was adamant that Mr. Claeys *not* tell Care One about her inquiry, claiming it would only "slow down the process." In this call, Roberts acknowledged that she had not obtained copies of Care One's financial statements through legitimate channels, noting that the AGC had previously served a subpoena upon Care One seeking this information, but that Care One had objected. (Claeys 10/17/12 Dec. ¶ 8).

9. Mr. Claeys stated that he needed to consult with his firm's in-house counsel. Roberts insisted that after Claeys did so, he should call Roberts back before 5:00 p.m. that afternoon, or else over the weekend on her cell phone number if he could not return her call by 5:00 p.m. (Claeys 10/17/12 Dec. ¶ 8). Mr. Claeys did not call Roberts back or provide any additional information to her, but instead, notified CLA's in-house counsel. (Claeys 10/17/12 Dec. ¶ 9). Roberts thereafter served the Subpoena at issue in this Special Appeal. (Claeys 10/17/12 Dec. ¶ 10).

C. The AGC Refuses to Return the Improperly-Obtained Financial Statements

10. On August 29, 2012, Care One, through the undersigned counsel, e-mailed Roberts a letter demanding the immediate return of the improperly obtained Care One financial

statements that Roberts referenced in her August 24 telephone call with Mr. Claeys. Care One's counsel also demanded that Roberts disclose how she obtained the statements and refrain from using them in any way. (Exhibit B).

11. On August 30, 2012, Roberts responded by e-mailed letter stating that she would not address the issue of the improperly-obtained documents until Care One's counsel entered an appearance in the above-referenced proceedings. (Exhibit C).

12. Care One's responded by letter emailed on August 30, 2012, stating that Care One was not required to enter an appearance to address Roberts' improper possession of Care One's financial statements. (Exhibit D).

13. Roberts responded by letter emailed on August 31, 2012, reiterating her refusal to address the issue of the improperly-obtained documents with Care One's counsel and stating that the AGC and its attorneys would only communicate about case-related matters with attorneys who represent the parties in the administrative case before the Board. (Exhibit E).

14. The AGC issued the Subpoena to CLA on or about August 28, 2012, and CareCare One filed its Petition to Revoke the Subpoena on September 4, 2012 (Exhibit F). Thereafter, the AGC moved to strike the petition on the grounds that Care One had not filed a formal notice of appearance. (Exhibit G). Although the pertinent statute and Board regulation addressing petitions to revoke do not require the filing of a formal notice of appearance before the filing of a Petition to Revoke, see 29 U.S.C. § 161(1); 29 C.F.R. § 102.31(b), Care One mooted the AGC's motion to strike by filing a "Notice of Appearance" Form 4701 on September 19, 2012. (See Exhibit H). By letter dated October 5, 2012, the undersigned renewed its demand that Roberts return the improperly-obtained financial statements. (Exhibit I). Roberts did not respond. Care One opposed the motion to strike and replied in further

support of the Petition to Revoke on October 10, 2012. (Copy without exhibits attached as Exhibit J). The AGC replied to Care One's opposition on October 16, 2012. (Copy without Exhibits attached as Exhibit K).

15. In a ruling on the record on October 17, 2012, ALJ Chu denied Care One's Petition to Revoke the Subpoena to CLA. ALJ Chu expressly declined to rule on the issue of whether Ms. Roberts had improperly obtained one of Care One's financial statements and whether she improperly contacted Care One's outside auditors for additional information, reserving decision on that issue until such time as the AGC sought to introduce these financial statements into evidence. However, he held that the documents in possession of the outside auditors and covered by the Subpoena should be produced to the AGC. Care One now files this Special Appeal and respectfully requests that the ALJ's ruling on this issue should be reversed.

LEGAL ARGUMENT

THE ALJ SHOULD HAVE GRANTED THE PETITION TO REVOKE THE SUBPOENA

A. The AGC's Improper Ex Parte Contact with Care One's Outside Auditors about a Document it Improperly Obtained Alone Warrants Revocation of the Subpoena

16. The Citizens Protection Act of 1998 provides that "an attorney for the Government shall be subject to State laws and rules, and local Federal court rules, governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State." 28 U.S.C. § 530B(a). Moreover, Section 10058 of the Board's Case Handling Manual, Unfair Labor Practice Proceedings ("Manual"), provides that "[a]s general rule, unless otherwise authorized by law, all attorneys, including Agency attorneys, must comply with the ethics codes adopted by their licensing State or States and/or those adopted by the state in which their contact with the witness occurs, and with the ethics codes adopted by the Federal courts before which they appear."

17. Both the Model Rules of Professional Conduct and the New York Rules of Professional Conduct (which governs Roberts as a New York-admitted attorney) prohibit a lawyer from “us[ing] methods of obtaining evidence that violate the legal rights of such a person.” Model RPC 4.4(a); New York RPC 4.4(a). Both sets of rules likewise prohibit attorneys from engaging in “conduct involving dishonesty, fraud, deceit or misrepresentation,” or “conduct that is prejudicial to the administration of justice.” Model RPC 8.4(c), 8.4(d); New York RPC 8.4(c), 8.4(d).

18. Here, as shown more fully above, Roberts obtained Care One’s confidential audited financial statements under circumstances that she knew or reasonably should have known were in violation of Care One’s rights. Indeed, the documents are not publicly filed or available, and Roberts knew from her participation in this case that Care One had objected to producing any of its audited financial statements on the grounds that they contained highly sensitive and confidential information.

19. However, instead of notifying Care One that she had these documents, and instead of seeking a judicial or quasi-judicial determination before using them, Roberts telephoned Care One’s outside auditors on August 24, 2012, seeking additional information about these documents. Moreover, when the auditor with whom she spoke, Mr. Claeys, stated that he would need to contact Care One before disclosing additional financial information to her, Roberts became adamant that the auditor not tell Care One that Roberts had contacted him.

20. By asking Care One’s outside auditors to breach their obligations to Care One by disclosing confidential information in their possession, and by further asking these auditors to keep that improper request a secret, Roberts violated the above-described ethical rules. To allow the AGC to pursue this line of inquiry further and obtain the documents from Care One’s outside

auditors sought in the Subpoena would only legitimize the AGC's improper conduct and encourage future violations. For this reason alone, the Petition to Revoke should have been granted.

B. The Information Sought in the Subpoena is Highly Confidential

21. Moreover, there is no question that the documents sought from Care One's outside auditors by this Subpoena are highly confidential. As demonstrated in Care One's Petition to Revoke, the Subpoena seeks highly confidential financial details about Care One including: (1) its combined financial statements; (2) all other entities covered by the financial statements; (3) relationships with other entities; (4) equity and ownership interests; (5) debt secured by Care One for any of these entities; and (6) all of its members.

22. Indeed, the financial statements sought in the Subpoena contain highly confidential statistical data and data concerning the amounts and sources of income, profits, and losses of Care One; as well as non-public information about the nature and scope of investments made by Care One. They also contain extremely sensitive and private personal information about Care One's owners, members, and other investors, including their identities and the nature and extent of the financial interests they hold.

23. As Care One is a privately-owned family business, none of this information is publicly available. Moreover, disclosure of this information would irreparably harm Care One in that it would allow competitors of Care One to gain an unfair competitive advantage over Care One, *inter alia*, by acquiring non-public information about Care One's income, profits, losses, and investments, as well as highly sensitive and private information about Care One's owners, members, and other investors.

24. In opposing the Petition to Revoke before the ALJ, the AGC asserted, without support, that the subpoenaed information “at least in part, is available pursuant to the Freedom of Information Act (FOIA).” However, the AGC did not specify what “part” of the information covered by the subpoena is publicly available under FOIA, nor did it specify how the AGC actually acquired the confidential financial statements to which Roberts referred in her telephone conversation with Mr. Claeys on August 24, 2012.

25. Contrary to the AGC’s position, none of the information called for in the subpoena is available through FOIA. FOIA’s exemption 4 protects “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.” 5 U.S.C. § 552(b)(4). All of the information covered by the Subpoena clearly falls within that category.

26. Moreover, to the extent that there could be any argument that any of this information was not exempt from disclosure, the Board’s own regulations required it to provide Care One with reasonable notice and an opportunity to object before releasing information that it reasonably believed contains information protected from disclosure by FOIA, including “commercial or financial information obtained by the Agency from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.” 29 C.F.R. § 102.117(c)(2)(iv). The AGC never provided Care One with any notice that it had Care One’s audited financial statements or that it intended to use them in connection with this consolidated matter.

27. Thus, the AGC’s unsupported claim that the information is available “in part” through FOIA does not undermine the confidentiality of the documents sought in the Subpoena. Since the documents are clearly confidential documents, and since public disclosure of the documents would irreparably harm Care One, the Petition to Revoke should have been granted.

C. The Information Sought in the Subpoena is Irrelevant or only Marginally Relevant

28. Contrary to the AGC's position, the documents sought from Care One's outside auditors in the Subpoena are not relevant to any disputed issue in this case. The AGC argued below that Care One is a "joint and single employer" with the eight named respondents in this case. However, Care One is a holding company with no employees and, therefore, cannot be an "employer" under the Act. *Operating Engineers Local 487 Health Fund*, 308 NLRB 805 (1991).

29. Moreover, even if Care One could be considered a single or joint employer with one or more of the other respondents, its requested financial records are not relevant, or are only marginally relevant, to determining joint or single employer status. In order to establish that Care One is a joint employer with one or more of the respondents, the AGC must show that the entities "share or codetermine those matters governing the essential terms and conditions of employment." *Aim Royal Insulation, Inc. and Jacobson Staffing, L.C. and International Association of Heat & Frost Insulators & Allied Workers, AFL-CIO, Local No. 73*, 358 NLRB No. 91, slip op. at 7-8 (Jul. 30, 2012) (citing *Laerco Transportation*, 269 NLRB 324, 325 (1984)). There must be evidence that one employer "meaningfully affects matters relating to the employment relationship such as hiring, firing, discipline, supervision, and direction of the other employer's employees." *Id.*

30. Financial statements are, at best, minimally relevant to this test. Historically, the Board has applied four criteria in determining whether separate entities constitute a single employer: (1) interrelation of operations, (2) common management, (3) centralized control of labor relations, and (4) common ownership or financial control. *HydroLines, Inc.*, 305 NLRB No. 40 (1991); *Continental Radiator Corp.*, 283 NLRB 234, 234 n. 4 (1987). However, the Board has stressed that the first three criteria are more critical than common ownership. *Airport*

Bus Service, 273 NLRB 561 (1984), disavowed on other grounds in *St. Marys Foundry Co.*, 284 NLRB 221 n. 4 (1987).

31. Thus, even if the records sought by the Subpoena were otherwise relevant – and they are not – they would at best relate only to the fourth criteria for determining single employer status – common ownership and control – which the Board has stressed is less important than the other three factors. *Airport Bus Service*, 273 NLRB 561. Further, even if some information relating to this factor were relevant, the AGC simply has no need to obtain the broad categories of information from Care One’s outside auditors sought in the Subpoena, particularly given the highly sensitive and confidential nature of that information.

D. The Records Sought by the Subpoena were Never Sought in the Investigatory Phase of this Case

32. The Petition to Revoke should have been granted for the further reason that the materials sought in the Subpoena were never 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).

33. 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, CLA should not be compelled to respond to discovery on the single employer issue.

34. Further, as noted above, the highly sensitive and confidential information sought from Care One's outside auditors in the Subpoena 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."

35. Moreover, in order to be entitled to enforcement of a subpoena, the Board must demonstrate that: (1) its investigation is for a legitimate purpose; (2) the inquiry is relevant to that purpose; (3) the agency does not already possess the information requested; (4) all administrative requirements have been complied with; and (5) the demand is not unreasonably broad or burdensome. *EEOC v. Kronos, Inc.*, 620 F.3d 287, 298 n.4 (3d Cir. 2010); *see also United States v. Powell*, 379 U.S. 48, 57-58 (1964); *NLRB v. Champagne Drywall, Inc.*, 502 F. Supp. 2d 179 (2007) (applying standard to NLRB subpoena); *NLRB v. G. Rabine & Sons, Inc.*, No. 00-C-5965, 2001 U.S. Dist. LEXIS 15511, at *7 (N.D. Ill. 2001) (applying investigative standard to union subpoena issued by NLRB in preparation for unfair labor practice hearing).

36. Furthermore, in the context of a hearing (or adjudicative) subpoena, as distinguished from an investigatory 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).

37. Here, the Subpoena is an adjudicative hearing subpoena, not an investigatory subpoena. The AGC never sought any of the information covered by the Subpoena during the investigative stage of the case. Indeed, it never even sought any information pertaining to Care One's alleged liability at any point during the investigatory phase. It should not be permitted to do so at this late date.

CONCLUSION

Based on the foregoing, Care One respectfully requests special permission to appeal the ALJ's Order denying Care One's Petition to Revoke Subpoena Duces Tecum No. B-612873, and further respectfully requests that the Subpoena be revoked.

Respectfully submitted,

K&L Gates LLP

Attorneys for Care One, LLC

/s/ Rosemary Alito

Rosemary Alito

Dated: November 6, 2012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the aforesaid Request for Special Permission to Appeal Administrative Law Judge's Order Denying Care One's Petition to Revoke Subpoena Duces Tecum B-612873 were served on November 6, 2012, in the manner set forth below:

Lester A. Heltzer, Executive Secretary
National Labor Relations Board
1099 14th Street, N.W., Suite 11100
Washington, DC 20570

E-Filing on Agency Website

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

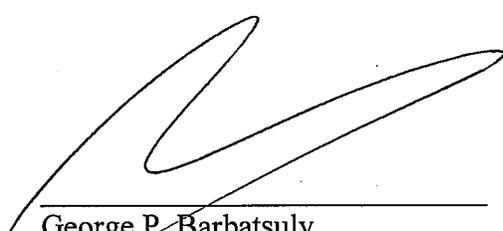
E-Filing on Agency Website

Jennifer F. Dease
John McGrath john.mcgrath@nlrb.gov
Counsel for the Acting General Counsel
NLRB - Region 34
A.A. Ribicoff Federal Building
450 Main Street, Suite 410
Hartford, CT 06103

E-Mail Jennifer.dease@nlrb.gov

Kevin A Creane, Esq.
Law Firm of John M. Creane
92 Cherry Street
P.O. Box 170
Milford, CT 06460

E-Mail KACreane@aol.com



George P. Barbatsuly

EXHIBIT A

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

In the matter of:

HealthBridge Management, LLC, et al.

**Case Nos. 34-CA-070823
 34-CA-072875
 34-CA-073303
 34-CA-075226
 34-CA-083335**

DECLARATION OF MATTHEW CLAEYS

I, MATTHEW CLAEYS, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I have personal knowledge of the facts set forth herein and, if called upon as a witness, I could competently testify as set forth herein.

2. I am a Partner at CliftonLarsonAllen LLP. My firm serves as the independent accountants for Care One.

3. On the afternoon of August 24, 2012, I received a message from my colleague, Mitch Gerstein, that he had received a phone call at approximately 2:00 p.m. from a person who identified herself as Nicole Roberts at the NLRB. Mr. Gerstein relayed Ms. Roberts's message that she wanted information regarding CareOne LLC and affiliates. I subsequently called Ms. Roberts back and left a message for her to return my call.

4. Ms. Roberts returned my call at approximately 4:10 p.m. that same afternoon. Ms. Roberts told me that she was a "prosecutor" with the NLRB. I believe she stated that she was prosecuting claims against Care One and various affiliates located in Connecticut. Ms. Roberts asked if I could provide information regarding CareOne and the affiliates, and informed me that if I did not, she would serve a subpoena for the information. Ms. Roberts told me that

her trial was scheduled to start September 10th and that it would be quicker if I just provide the information and answer her questions.

5. Ms. Roberts informed me that she was in possession of copies of Care One's audited financial statements for 2009 and 2010 and wanted additional details regarding these financial statements. These audited financial statements contain extremely sensitive and confidential financial information regarding Care One and various individual owners of Care One, and they are non-public documents. Our firm maintains these records in strict confidence and does not disclose them to third parties without our clients' express authorization or compulsory legal process. Ms. Roberts did not explain to me how she came into possession of these financial statements.

6. Ms. Roberts then specified that she wanted to know whether HealthBridge Management LLC, Care Realty, LLC, Osborn Street LLC and a number of other entities were included in the financial statements. After listing several entities, Ms. Roberts told me that she was inquiring about many entities and would email me the list of the entities. I informed Ms. Roberts that she could email me her list. She never did so.

7. I informed Ms. Roberts that I would have to call my client as well as my firm's in-house counsel but that I would get back to her. I was not prepared to provide information regarding my client's highly sensitive and confidential financial statements without first speaking with counsel and receiving my client's consent.

8. Ms. Roberts was adamant that I not call CareOne, stating that this would only "slow down the process." She said that the NLRB had already served a subpoena for the information upon Care One and that Care One had refused to respond. I told her that I needed to consult with my firm's in-house counsel. Ms. Roberts insisted that I do so and call her back

before 5:00 p.m. that afternoon, or else over the weekend on her cell phone number if I could not return her call by 5:00 p.m.

9. I did not call Ms. Roberts back or provide any additional information to her, but instead, notified my firm's in-house counsel.

10. On August 28, 2012, I received a subpoena from Ms. Roberts, a copy of which is annexed hereto as Exhibit A, seeking additional documents and information relating to the audited financial statements that Ms. Roberts mentioned she had during our call on August 24.

11. I declare under the penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information and belief.


MATTHEW CLAEYS

Executed on October 17, 2012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Declaration of Matthew Claeys was served on October 17, 2012, in the manner set forth below:

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

E-Filing on Agency Website

Jennifer F. Dease
John McGrath
Counsel for the Acting General Counsel
NLRB - Region 34
A.A. Ribicoff Federal Building
450 Main Street, Suite 410
Hartford, CT 06103

E-Mail: Jennifer.dease@nlrb.gov
john.mcgrath@nlrb.gov

Kevin A Creane, Esq.
Law Firm of John M. Creane
92 Cherry Street
P.O. Box 170
Milford, CT 06460

E-Mail: KACreane@aol.com

/s/ George P. Barbatsuly

George P. Barbatsuly

EXHIBIT B

August 29, 2012

Rosemary Alito
D 973.848.4022
F 973.848.4001
rosemary.alito@klgates.com

Via E-Mail (nicole.roberts@nlrb.gov)

Nicole Roberts, Esq.
National Labor Relations Board
Niagra Center Building
130 S. Elmwood Avenue, Suite 630
Buffalo, NY 14202-2465

Re: *Care One, LLC*

Dear Ms. Roberts:

This firm represents Care One, LLC in connection with certain matters. We have been advised that you claim to be in possession of my client's combined financial statements. You did not obtain them from Care One, LLC, its attorneys or its financial advisors. As a consequence, we must conclude that you obtained them through improper channels from an individual or entity not authorized to be in possession of them.

These improperly obtained materials are highly confidential and they are not relevant to any proceeding before the NLRB. We therefore ask that you return all copies to us immediately, along with any other records of Care One, LLC in your possession. We also ask that you disclose how you obtained these records and refrain from using or disclosing them in any way. Please confirm your agreement by return email or facsimile.

Very truly yours,



Rosemary Alito

RA:ct

EXHIBIT C



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 34
450 MAIN ST STE 410
HARTFORD, CT 06103-3078

Agency Website: www.nlr.gov
Telephone: (860)240-3522
Fax: (860)240-3564

VIA E-MAIL

August 30, 2012

Rosemary Alito, Esq.
K&L Gates
One Newark Center, Tenth Floor
Newark, New Jersey 07102-5252

RE: *HealthBridge Management, LLC et. al.*
Case 34-CA-070823; 072875; 075226; 083335; 084717

Dear Ms. Alito:

I am in receipt of your e-mailed letter dated August 29, 2012.

Please submit a notice of appearance to Region 34 of the National Labor Relations Board if you intend to represent Care One, LLC in the above-referenced matter. Currently, another attorney is representing the Respondents in the matter.

Upon receipt of your appearance, I will be able to communicate with you about the case.

Very truly yours,

Nicole Roberts
Counsel for the Acting General Counsel

EXHIBIT D

Rosemary Alito
D 973.848.4022
F 973.848.4001
rosemary.alito@klgates.com

August 30, 2012

Via E-Mail

Ms Nicole Roberts
Counsel for the Acting General Counsel
National Labor Relations Board
Region 34
450 Main Street, STE 410
Hartford, CT 06103-3078

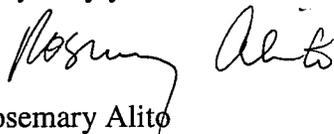
Re: Care One, LLC

Dear Ms Roberts:

We are under no obligation to enter an appearance to address the issue of your improper possession of my client's financial records.

Please respond within the next 24 hours. If I do not hear from you, I will be forced to pursue all legal options to protect my client's interests.

Very truly yours,



Rosemary Alito

RA/rhl

EXHIBIT E



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 34
450 MAIN ST STE 410
HARTFORD, CT 06103-3078

Agency Website: www.nlr.gov
Telephone: (860)240-3522
Fax: (860)240-3564

VIA E-MAIL

August 31, 2012

Rosemary Alito, Esq.
K&L Gates
One Newark Center, Tenth Floor
Newark, New Jersey 07102-5252

RE: *HealthBridge Management, LLC et. al.*
Cases 34-CA-070823; 072875; 075226; 083335; 084717

Dear Ms. Alito:

I am in receipt of your e-mailed letter dated August 30, 2012.

Your inquiry concerns a matter pending for trial in Region 34 of the National Labor Relations Board. The Region, and its attorneys assigned to the trial, will only communicate about case-related matters with attorneys who represent the parties in the case. In this regard, the attorney of record for Care One, LLC can raise any concerns to the administrative law judge during the trial proceedings.

Very truly yours,

Nicole Roberts,
Counsel for the Acting General Counsel

EXHIBIT F

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

In the matter of:

HealthBridge Management, LLC, et al.

**Case Nos. 34-CA-070823
 34-CA-072875
 34-CA-073303
 34-CA-075226
 34-CA-083335**

**PETITION OF THIRD PARTY CARE ONE, LLC
TO REVOKE SUBPOENA DUCES TECUM B-612873
ISSUED AT THE REQUEST OF NICOLE ROBERTS, COUNSEL FOR THE ACTING
GENERAL COUNSEL**

Pursuant to Rule 102.31 of the National Labor Relations Board's ("NLRB") Rules and Regulations, third-party Care One, LLC ("Care One") submits this Petition to revoke Subpoena Duces Tecum B-612873 (hereinafter the "Subpoena"), addressed to CliftonLarsenAllen LLP, (incorrectly identified in the Subpoenas as "Larsen Allen, LLP") (hereinafter "CLA"). As grounds for this Petition, Care One, states:

1. CLA is the auditor for Care One. Neither CLA nor Care One is a Respondent or other party in this case.
2. On August 28, 2012, the National Labor Relations Board ("NLRB") issued the Subpoena at the request of Nicole Roberts, Counsel for the Acting General Counsel.
3. The Subpoena commands the production, on September 10, 2012, of the books, records, correspondence, and documents listed on an attached "Instructions and Document" be produced at that time. A copy of the Subpoena is attached. Among other things, the Subpoena seeks production of:

- a. Care One's combined financial statements for years ending 2009, 2010, and 2011;
- b. documents showing entities described by the terms "Care One, LLC and Affiliates" as used in these combined financial statements;
- c. documents, including "source data," showing the relationship between Care One and twelve other named entities (the "Entities");
- d. documents showing the equity interests or other ownership interests of Care One and its affiliates in each of the Entities;
- e. documents showing any debt secured by care One and its affiliates in each of the Entities; and
- f. documents that identify the members of Care One and its affiliates for 2009, 2010, 2011, and 2012.

4. The information sought by the Subpoena is highly sensitive and confidential financial information belonging to Care One and its affiliates. This information is non-public information and disclosure of this information would constitute an invasion of the privacy of Care One, its members, the Entities, and the members of the Entities.

5. Moreover, the gravamen of the Acting General Counsel's allegations in this case are that the named Respondents failed to bargain with the Charging Party union in good faith and unilaterally implemented a set of bargaining proposals on June 17, 2012. The highly sensitive and confidential information belonging to Care One – a third-party to this case – and sought by the Subpoena has absolutely no conceivable relevance to any of the claims in this case.

6. Based upon the foregoing, Subpoena Duces Tecum B-612873 should be revoked.

Respectfully submitted

K&L GATES LLP
Attorneys for Care One, LLC

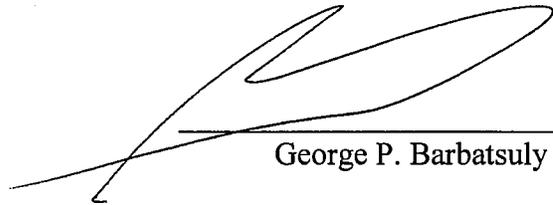
By: Rosemary Alito
Rosemary Alito

DATED: September 4, 2012

CERTIFICATE OF SERVICE

The undersigned certifies that on September 4, 2012, the foregoing Petition to Revoke was served via e-mail upon:

Nicole Roberts
Counsel for the Acting General Counsel
National Labor Relations Board, Region 34
A.A. Ribicoff Federal Building
450 Main Street, Suite 410
Hartford, Connecticut 06103
Nicole.Roberts@nlrb.gov



George P. Barbatsuly

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

To Larsen Allen, LLP

Attn: MATTHEW CLAEYS, PARTNER or CUSTODIAN OF RECORDS
610 West Germantown Pke, Suite 400, Plymouth Meeting, PA 19462

As requested by Nicole Roberts, Counsel for the Acting General Counsel

whose address is A. A. Ribicoff Federal Building, 450 Main Street, Suite 410 Hartford, CT 06103
(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, 2012 at 10:00 (a.m.) (p.m.) or any adjourned

or rescheduled date to testify in HEALTHBRIDGE MANAGEMENT, LLC, ET AL.

(Case Name and Number)
Case Nos. 34-CA-070823, et al.

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.

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

B - 612873

Issued at Hartford, Connecticut

this 28th day of August, 2012



Lester A. Neltzer

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

PRIVACY ACT STATEMENT

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

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
- 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.

DOCUMENTS

1. The Combined Financial Statements for Care One, LLC and Affiliates for years ending 2009, 2010 and 2011.

2. Those documents showing the entities described by the terms "Care One, LLC and Affiliates" as used in the Combined Financial Statements for Care One, LLC and Affiliates, for the years ending 2009, 2010 and 2011.

3. Those documents, including source data, showing the relationship between Care One, LLC and each of the following (collectively, the Entities) for the years ending 2009, 2010 and 2011:

- a. Care Realty, LLC ("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 Management, LLC (“Care One Management”)
- j. THCI Company, LLC (“THCI Company”);
- k. THCI Holding Company, LLC (“THCI Holding Company”); and
- l. THCI Mortgage Holding Company, LLC (“THCI Mortgage Holding Company”).

4. Those documents showing equity interests or other ownership interests of Care One, LLC and Affiliates in each of the Entities listed above, for the years ending 2009, 2010, 2011, and 2012.

5. Those documents showing any debt secured by Care One, LLC and Affiliates for any of the Entities listed above during the years ending 2009, 2010, 2011, and 2012.

6. Those documents that identify the members of Care One, LLC and Affiliates for the years 2009, 2010, 2011, and 2012.

EXHIBIT G

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

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 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

and

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

Case Nos. 34-CA-070823

34-CA-072875

34-CA-075226

34-CA-083335

34-CA-084717

**AFFIDAVIT OF SERVICE OF COUNSEL FOR ACTING GENERAL COUNSEL'S
MOTION TO STRIKE NON-APPEARING COUNSEL'S PETITION TO REVOKE THIRD
PARTY SUBPOENA DUCES TECUM**

I, the undersigned employee of the National Labor Relations Board, state under oath that on September 6, 2012, I served the above-entitled document(s) by certified mail upon the following persons, addressed to them at the following addresses:

ROSEMARY ALITO
ONE NEWARK CENTER, TENTH FLOOR
NEWARK, NJ 07102-5285
Certified Mail
70103090000339331073

George W. Loveland II, Esquire
Littler Mendelson, P.C.
3725 Champion Hills Dr
Ste 3000
Memphis, TN 38125-0500
Certified Mail
70103090000339330892

September 6, 2012

Date

Tanisha Velasquez, Designated Agent of
NLRB

Name


Signature

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

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 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

and

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

**Case Nos. 34-CA-070823
34-CA-072875
34-CA-075226
34-CA-083335
34-CA-084717**

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S MOTION TO STRIKE NON-
APPEARING COUNSEL'S PETITION TO REVOKE THIRD PARTY SUBPOENA
DUCES TECUM**

On August 29, 2012, a Subpoena Duces Tecum (No. B-612873) was served on Larsen Allen LLP, a third-party to the above-captioned matter. A copy of the Subpoena is attached hereto as Exhibit A. On September 4, 2012, Attorney Rosemary Alito filed a Petition to Revoke attached hereto as Exhibit B. For the following reasons, Counsel for the Acting General Counsel seeks to strike the Petition and urges the Administrative Law Judge to find the Petition null and void.

Background

Larsen Allen LLP, also referred to as Clifton Larsen Allen, LLP, is the auditor for Care One LLC (herein "Care One"). Attorney Alito (herein "Petitioner") filed the Petition on behalf of Care One, a named Respondent in the Third Consolidated Amended Complaint, as modified by the Notice of Intent to Amend¹ (collectively, the Complaint). The Complaint alleges that Care One and eight other named Respondents are joint and single employers. The attorney of record for Care One and all of the named Respondents is George Loveland II of Littler Mendelson, P.C. As such, Loveland filed Petitions to revoke subpoenas duces tecums served on Care One and each of the named Respondents. However, Loveland has not filed, on behalf of Care One, a Petition to Revoke the third-party Subpoena served on Larsen Allen, LLP.

On August 29, 2012, Petitioner, by letter to the undersigned, claimed to represent Care One in "certain matters", but she failed to assert that she represented Care One in matters before the National Labor Relations Board. She further concluded, without any proof or explanation, that Care One's combined financial statements were obtained through "improper channels" and demanded their return.

On August 30, 2012, Counsel for the Acting General Counsel requested that Petitioner submit to Region 34 a Notice of Appearance to permit further communication about the case. Petitioner was also informed that another attorney represented the Respondents in this matter. On the same date, Petitioner, by letter, refused to submit a Notice of Appearance, and threatened legal action for what she concluded was the "improper possession" of her clients' confidential records. On August 31, 2012, Counsel

¹ On August 29, 2012, Counsel for the Acting General Counsel filed a Notice of Intent to Amend the Third Consolidated Amended Complaint to include Care One, LLC. The Notice of Intent to Amend the Complaint and the Complaint are attached hereto as Exhibits C and D. Care One has been a named party to the consolidated case since the charges were filed (Case 34-CA-075226), and was plead in the Third Amended Consolidated Complaint as Care Realty, LLC "aka Care One."

for the Acting General Counsel responded to Petitioner that her inquiry involved a matter pending for trial in Region 34 of the NLRB, and that the attorneys assigned to the hearing will only communicate about case related matters with attorneys who represent the parties. Lastly, Petitioner was told that the Attorney of Record for Care One can raise any concerns on behalf of Care One during the administrative proceedings.

Grounds to Strike Petition to Revoke

1. Petitioner failed to comply with the Board's notice requirement for represented parties. Case Handling Manual, Unfair Labor Practice Proceedings, Section 10058.1(b). In this regard, Petitioner is not the attorney of record for Care One in the matter pending before Region 34 of the National Labor Relations Board. Therefore it is improper to recognize the Petition because doing so would grant "defacto" representation to Petitioner who refuses to accept the full responsibility attributed to a formal appearance. Although Care One would have standing to file a petition to revoke a third-party subpoena that seeks Care One documents, only the attorney of record for Care One may do so. Therefore, Counsel for the Acting General Counsel urges the Administrative Law Judge to strike the Petition in its entirety.

2. Petitioner has failed to demonstrate that the Subpoenaed information is in fact confidential or otherwise protected. The party that seeks to avoid production of subpoenaed records bears the burden of establishing such records are confidential, and that production would cause clearly defined and serious injury. See e.g. Ha Management and Oahu Publications, Case 37-CA-8074 (2011) WL 826294. Petitioner is unlikely to meet such a burden primarily because the Subpoenaed information, at least in part, is available pursuant to the Freedom of Information Act (FOIA), despite

Petitioner's claim that the information is "non-public." Thus Petitioner's unsupported and conclusory accusation that Counsel for the Acting General Counsel obtained Care One's combined financial statements through "improper channels" is wholly without merit.

3. In the event Care One's attorney of record raises a confidentiality interest in the Subpoenaed documents, such matters are best addressed by a motion for a protective order rather than a wholesale revocation of the Subpoena. If the confidential nature of the documents are specified and established, Counsel for the Acting General Counsel will consider what if any protective measures may be necessary to permit the forum to see the information while protecting Care One's confidentiality interests.

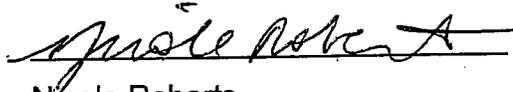
4. Petitioner asserts that the Subpoenaed documents have "absolutely no conceivable relevance to any of the claims in this case." However, Petitioner ignores Complaint Paragraphs 2(a),(b),(c)(d), 3(a)(b), 4(a)(b)(c)(d), as modified by the Notice of Intent to Amend, that alleges Care One and the eight named Respondents are joint and single employers. The combined financial statements include unspecified "affiliates." It is believed that these affiliates include some, if not all, of the eight Respondents. To establish single employer status, the Board considers whether there is common ownership or financial control. Silver Court Nursing Ctr., Inc. & Health Care Services Group, Inc., 313 NLRB 1141, 1142 (1994); referencing Radio Union v. Broadcast Service of Mobile, Inc., 380 U.S. 255, 256 (1965). In this regard, the financial records of Care One and "affiliates" are germane to the issues raised in the pleadings and Respondents' anticipated defenses, and thus the Subpoena is relevant under the standard applied to Board subpoenas. GHR Energy Corp., 707 F.2d 110, 114 (5th Cir.

1982); NLRB v. United Aircraft Corp., 200 F. Supp. 48, 50 (D. Conn. 1961); aff'd 300
F.2d 442 (2nd Cir. 1962).

For the reasons noted above, Counsel for the Acting General Counsel
respectfully urges the Administrative Law Judge to strike Petitioner's Petition to Revoke
Third Party Subpoena in its entirety.

Dated at Hartford, Connecticut this 7th day of September, 2012.

Respectfully submitted,



Nicole Roberts
Counsel for Acting General Counsel
National Labor Relations Board
Region 34

EXHIBIT H

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

HEALTHBRIDGE MANAGEMENT LLC et al.

and

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

CASE 34-CA-070823
34-CA-072875
34-CA-075226
34-CA-083335
34-CA-084717

REGIONAL DIRECTOR

EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF _____
Care One, LLC

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

REPRESENTATIVE IS AN ATTORNEY

IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: Rosemary Alito

MAILING ADDRESS: K&L Gates LLP, One Newark Center, 10th Floor, Newark, New Jersey 07102

E-MAIL ADDRESS: rosemary.alito@klgates.com

OFFICE TELEPHONE NUMBER: (973) 848-4022

CELL PHONE NUMBER: _____ FAX: (973) 848-4001

SIGNATURE: *Rosemary Alito*
(Please sign in ink)

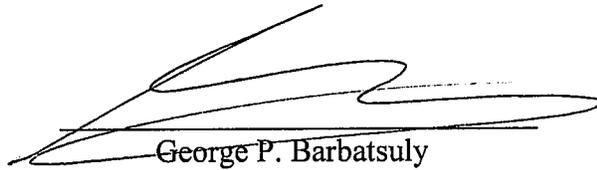
DATE: September 19, 2012

¹ IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

CERTIFICATE OF SERVICE

The undersigned certifies that on this 19th day of September, 2012, the foregoing Notice of Appearance was served via e-mail upon:

Jennifer Dease
Counsel for the Acting General Counsel
National Labor Relations Board, Region 34
A.A. Ribicoff Federal Building
450 Main Street, Suite 410
Hartford, Connecticut 06103
jennifer.dease@nlrb.gov



George P. Barbatsuly

EXHIBIT I

October 5, 2012

Rosemary Alito
D 973.848.4022
F 973.556.1018
rosemary.alito@klgates.com

Via E-Mail nicole.roberts@nlrb.gov

Nicole Roberts, Esq.
National Labor Relations Board
Niagra Center Building
130 S. Elmwood Avenue, Suite 630
Buffalo, NY 14202-2465

Re: Care One, LLC

Dear Ms. Roberts:

I previously wrote to you about your improper possession of Care One, LLC (“Care One”) combined financial statements. You refused to communicate with me unless I entered an appearance for Care One in administrative proceedings in which Care One was not then a party.

Since that time, Care One has been conditionally added as a party to the administrative proceeding, subject to further briefing on October 10, 2012 ruling by the Administrative Law Judge. As a consequence, I have entered an appearance.

I therefore reiterate the request set forth in my letter of August 29, 2012, a copy of which is enclosed:

These improperly obtained materials are highly confidential and they are not relevant to any proceeding before the NLRB. We therefore ask that you return all copies to us immediately, along with any other records of Care One, LLC in your possession. We also ask that you disclose how you obtained these records and refrain from using or disclosing them in any way. Please confirm your agreement by return email or facsimile.

The statement in your Motion to Strike our Petition to Revoke Third Party Subpoena Duces Tecum that “The Subpoenaed information, **at least in part**, is available pursuant to the Freedom of Information Act (FOIA),” is inapposite, because Care One’s consolidated financial statements are not publicly available.

Nicole Roberts, Esq.
October 5, 2012
Page 2

Please reply by Monday, October 8, 2012.

Sincerely,

A handwritten signature in blue ink that reads "Rosemary Alito". The signature is written in a cursive style with a large initial "R" and a distinct "Alito" at the end.

Rosemary Alito

RA:ct
Enclosure

EXHIBIT J

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

In the matter of:

HealthBridge Management, LLC, et al.

**Case Nos. 34-CA-070823
 34-CA-072875
 34-CA-073303
 34-CA-075226
 34-CA-083335**

**CARE ONE, LLC’S OPPOSITION TO MOTIONS OF COUNSEL FOR THE ACTING
GENERAL COUNSEL TO STRIKE PETITION TO REVOKE SUBPOENA DUCES
TECUM B-612873, AND FOR LEAVE TO AMEND COMPLAINT TO ADD CARE ONE,
LLC AS A RESPONDENT**

PRELIMINARY STATEMENT

Care One, LLC (“Care One”) submits this opposition to the motions of Counsel for the Acting General Counsel (“AGC”) (i) seeking to strike Care One’s Petition to Revoke the Subpoena Duces Tecum B-612873 addressed to CliftonLarsenAllen LLP (hereinafter “CLA”), and (ii) for leave to amend the Complaint to add Care One as a respondent. As demonstrated further below, the AGC’s motion to strike should be denied and Care One’s Petition to Revoke should be granted. Moreover, since Care One is not a joint or single employer with the named Respondents, it should not be added as a party to this proceeding.¹

COUNTER-STATEMENT OF FACTS RELEVANT TO THE MOTIONS

A. The Nature of the Financial Statements at issue in the Petition to Revoke

Care One is a privately owned family business with no employees. Its financial information, including its audited financial statements, contain confidential statistical data and

¹ The Administrative Law Judge has conditionally added Care One as a party, subject to further briefing on this issue.

data concerning the amounts and sources of income, profits, and losses of Care One; as well as non-public information about the nature and scope of investments made by Care One. They also contain extremely sensitive and private personal information about Care One's owners, members, and other investors, including their identities and the nature and extent of the financial interests they hold.

As Care One is not a public company, its audited financial statements are not publicly available. Care One takes careful steps to preserve the confidentiality of its audited financial statements. Copies are made available only to certain of its owners and outside auditors and other tax and legal advisors. All recipients of these statements are provided these statements in confidence and are legally obligated to safeguard the confidentiality of these statements.

Public disclosure of Care One's audited financial statements would result in irreparable harm to Care One and its owners, members, and investors. Among other things, it would allow competitors of Care One to gain an unfair competitive advantage over Care One by acquiring non-public information about Care One's income, profits, losses, and investments. It would also allow members of the public to obtain highly sensitive and private information about Care One's owners, members, and other investors.

B. The AGC Improperly Obtains Care One's Audited Financial Statements for 2009 and 2010

Sometime prior to August 24, 2012, Nicole Roberts ("Roberts") counsel for the AGC, came into possession of copies of Care One's 2009 and 2010 financial statements through an as-yet unidentified source that was not entitled to possess them. Instead of notifying Care One that she had these documents, Roberts telephoned CLA, Care One's outside auditors, on August 24, 2012, seeking additional information regarding these documents. Roberts spoke with Matthew Claeys, a partner of CLA, at approximately 4:10 p.m. on August 24, 2012. During this call,

Roberts described herself as a “prosecutor” with the Board in connection with a case against Care One and various affiliates in Connecticut. Roberts told Mr. Claeys that she wanted information regarding Care One and its affiliates and asked if Mr. Claeys could provide information. Roberts said that if Mr. Claeys did not provide the requested information, she would serve a subpoena for this information. Roberts stated that there was a trial starting on September 10, 2012, and that it would be quicker if Mr. Claeys simply gave her the information she sought and answered her questions.

Roberts informed Mr. Claeys that she was in possession of copies of Care One’s audited financial statements for 2009 and 2010 and wanted additional details regarding these statements. As noted above, these audited financial statements contain extremely sensitive and confidential financial information regarding Care One and various individual owners of Care One, and they are non-public documents. CLA maintains these records in strict confidence and does not disclose them to third parties without its clients’ express authorization or compulsory legal process. Roberts did not explain to Mr. Claeys how she had come into possession of these financial statements.

Roberts then stated that she wanted to know whether HealthBridge Management, LLC (“HealthBridge”), Care Realty, LLC (“Care Realty”), Osborn Street LLC and a number of other entities were covered within the scope of the financial statements. After listing several entities, Roberts told Mr. Claeys that she was inquiring about many entities and would email him the list of the entities. Mr. Claeys informed Roberts that she could email Mr. Claeys her list. Roberts never did so.

Mr. Claeys told Roberts that he would have to inform Care One and CLA’s in-house counsel about Roberts’s inquiry and that he would get back to her. Mr. Claeys was not prepared

to provide information regarding his client's highly sensitive and confidential financial statements without first speaking with counsel and receiving his client's consent. In response, Roberts was adamant that Mr. Claeys not tell Care One about her inquiry, claiming it would only "slow down the process." In this call, Roberts acknowledged that she had not obtained copies of Care One's financial statements through legitimate channels, noting that the AGC had previously served a subpoena upon Care One seeking this information, but that Care One had objected.

Mr. Claeys stated that he needed to consult with his firm's in-house counsel. Roberts insisted that after Claeys did so, he should call Roberts back before 5:00 p.m. that afternoon, or else over the weekend on her cell phone number if he could not return her call by 5:00 p.m. Mr. Claeys did not call Roberts back or provide any additional information to her, but instead, notified CLA's in-house counsel. Roberts thereafter served the subpoena at issue in the Petition to Revoke on CLA.

C. The AGC Refuses to Return the Improperly-Obtained Financial Statements

On August 29, 2012, Care One, through the undersigned counsel, e-mailed Roberts a letter demanding the immediate return of the improperly obtained Care One financial statements that Roberts referenced in her August 24 telephone call with Mr. Claeys. Care One's counsel also demanded that Roberts disclose how she obtained the statements and refrain from using them in any way. (Exhibit A). On August 30, 2012, Roberts responded by e-mailed letter stating that she would not address the issue of the improperly-obtained documents until Care One's counsel entered an appearance in the above-referenced proceedings. (Exhibit B). Care One's responded by letter emailed on August 30, 2012, stating that Care One was not required to enter an appearance to address Roberts' improper possession of Care One's financial statements. (Exhibit C). Roberts responded by letter emailed on August 31, 2012, reiterating her

refusal to address the issue of the improperly-obtained documents with Care One's counsel and stating that the AGC and its attorneys would only communicate about case-related matters with attorneys who represent the parties in the administrative case before the Board. (Exhibit D).

After the AGC filed the instant motion to strike, the undersigned entered an appearance in this matter. (Exhibit E). Thereafter, by letter dated October 5, 2012, the undersigned renewed its demand that Roberts return the improperly-obtained financial statements. (Exhibit F). To date, Roberts has ignored this letter.

LEGAL ARGUMENT

I. THE PETITION TO REVOKE SHOULD BE GRANTED

A. The AGC's Motion to Strike Should be Denied

The AGC's motion to strike Care One's Petition to Revoke should be denied. The AGC baselessly claims that "Petitioner failed to comply with the Board's notice requirement for represented parties." The only authority Petitioner cites in support of this notice requirement is Section 10058.1(b) of the Board's Case Handling Manual, Unfair Labor Practice Proceedings ("Manual"). However, it is well-established that the Manual is not binding authority but merely a set of instructions to regional personnel. *See, e.g. CMI-Dearborn Inc.*, 327 NLRB 771, 780 n.27 (1999). The Manual itself contains a disclaimer that states that it "is not a form of binding authority, and the procedures and policies set forth in the Manual do not constitute rulings or directives of the General Counsel or the Board." Moreover, neither the pertinent statute nor Board regulation addressing petitions to revoke requires the filing of a formal notice of appearance before the filing of a Petition to Revoke. *See* 29 U.S.C. § 161(1); 29 C.F.R. § 102.31(b). The applicable statute governing such petitions merely sets out the requirement that the petition be filed within five days after service. *See* 29 U.S.C. § 161(1). The relevant Board

regulation merely sets forth the requirement that the petition be in writing. 29 C.F.R. § 102.31(b) (any person seeking to revoke a subpoena “shall, within 5 days after the date of service of the subpoena, petition in writing to revoke the subpoena”).

The AGC makes the curious assertion that it would be “improper to recognize the Petition because doing so would grant ‘defacto’ [sic] representation to Petitioner who refuses to accept the full responsibility attributed to a formal appearance.” The AGC does not specify what “the full responsibility attributed to a formal appearance” would entail. Contrary to the AGC’s position, the Board’s “Notice of Appearance” Form 4701 does not set forth a representative’s responsibilities. It merely provides a form on which the representative can set forth his or her name, address, and contact information, and it allows the representative to specify whether he or she is an attorney. However, Care One previously furnished all of this information to the Board when it electronically filed the Petition to Revoke using the Board’s website. In any event, Care One has since filed the “Notice of Appearance” Form 4701 on September 19, 2012 (See Exhibit E). Thus, any purported concerns the AGC has about the undersigned’s “full responsibility attributed to a formal appearance” are no longer viable. The motion to strike should be denied.

B. The Information Sought in the Subpoena is Highly Confidential

The AGC conclusorily asserts that Care One “has failed to demonstrate that the Subpoenaed information is in fact confidential or otherwise protected.” To the contrary, as demonstrated in the Petition to Revoke, the subpoena seeks highly confidential financial details about Care One including: (1) its combined financial statements; (2) all other entities covered by the financial statements; (3) relationships with other entities; (4) equity and ownership interests; (5) debt secured by Care One for any of these entities; and (6) all of its members. Indeed, the financial statements sought in the Subpoena contain highly confidential statistical data and data

concerning the amounts and sources of income, profits, and losses of Care One; as well as non-public information about the nature and scope of investments made by Care One. They also contain extremely sensitive and private personal information about Care One's owners, members, and other investors, including their identities and the nature and extent of the financial interests they hold. As Care One is a privately-owned family business, none of this information is publicly available. Moreover, disclosure of this information would irreparably harm Care One in that it would allow competitors of Care One to gain an unfair competitive advantage over Care One, inter alia, by acquiring non-public information about Care One's income, profits, losses, and investments, as well as highly sensitive and private information about Care One's owners, members, and other investors.

The AGC asserts, without support, that the subpoenaed information "at least in part, is available pursuant to the Freedom of Information Act (FOIA)." The AGC fails to specify what "part" of the information covered by the subpoena is publicly available under FOIA, nor does it specify how the AGC actually acquired the confidential financial statements to which Roberts referred in her telephone conversation with Mr. Claeys on August 24, 2012. Contrary to the AGC's position, none of the information called for in the subpoena is available through FOIA. FOIA's exemption 4 protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." 5 U.S.C. § 552(b)(4). All of the information covered by the Subpoena clearly falls within that category. Moreover, to the extent that there could be any argument that any of this information was not exempt from disclosure, the Board's own regulations required it to provide Care One with reasonable notice and an opportunity to object before releasing information that it reasonably believed contains information protected from disclosure by FOIA, including "commercial or financial information obtained by the

Agency from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.” 29 C.F.R. § 102.117(c)(2)(iv). The AGC never provided Care One with any notice that it had Care One’s audited financial statements or that it intended to use them in connection with this consolidated matter. Thus, the AGC’s unsupported claim that the information is available “in part” through FOIA does not undermine the confidentiality of the documents sought in the subpoena.² Since the documents are clearly confidential documents, and since public disclosure of the documents would irreparably harm Care One, the Petition to Revoke should be granted.

C. The Information Sought in the Subpoena is Irrelevant

Finally, and contrary to the AGC’s position, the documents sought in the subpoena are not relevant to any disputed issue in this case. The AGC argues that Care One is a “joint and single employer” with the eight named respondents in this case. However, Care One is a holding company with no employees and, therefore, cannot be an “employer” under the Act. Operating Engineers Local 487 Health Fund, 308 NLRB 805 (1991). Accordingly, Care One cannot be a joint or single employer (see Point II, *infra*), and the requested financial records are not relevant to determining joint or single employer status.

In order to establish that Care One is a joint employer with one or more of the respondents, the AGC must show that the entities “share or codetermine those matters governing the essential terms and conditions of employment.” Aim Royal Insulation, Inc. and Jacobson Staffing, L.C. and International Association of Heat & Frost Insulators & Allied Workers, AFL–

² The AGC alternatively argues that the Administrative Law Judge should consider a protective order in lieu of wholesale revocation to protect Care One’s confidential financial information. However, as the Subpoenaed information lacks relevance to any disputed issue in this case (see Part I.C, *infra*), there is no need for the ALJ to reach the issue of whether a protective order would sufficiently protect Care One’s confidentiality interests. In any event, given Roberts’s conduct in surreptitiously contacting Care One’s outside auditors on August 24 and then asking one of those auditors to keep that contact a secret from Care One, there is no reason to believe that the AGC would even honor any protective order that the ALJ may enter in this case.

CIO, Local No. 73, 358 NLRB No. 91, slip op. at 7-8 (Jul. 30, 2012) (citing Laerco Transportation, 269 NLRB 324, 325 (1984)). There must be evidence that one employer “meaningfully affects matters relating to the employment relationship such as hiring, firing, discipline, supervision, and direction of the other employer’s employees.” Id.

Financial statements are, at best, minimally relevant to this test. Historically, the Board has applied four criteria in determining whether separate entities constitute a single employer: (1) interrelation of operations, (2) common management, (3) centralized control of labor relations, and (4) common ownership or financial control. Hydrolines, Inc., 305 NLRB No. 40 (1991); Continental Radiator Corp., 283 NLRB 234 at n. 4 (1987). However, the Board has stressed that the first three criteria are more critical than common ownership. Airport Bus Service, 273 NLRB 561 (1984), disavowed on other grounds in St. Marys Foundry Co., 284 NLRB 221 n. 4 (1987). As shown in Point II below, Care One cannot be considered a joint or single employer under this test since it is a holding company with no employees. Given this, there is no need to allow the AGC to engage in a fishing expedition into Care One’s highly confidential financial information in possession of its outside auditors. For this additional reason, the Subpoena to CLA should be revoked.

II. THE AGC SHOULD NOT BE PERMITTED TO AMEND THE COMPLAINT TO ADD CARE ONE LLC AS A RESPONDENT

A. The AGC Never Investigated the Issue of Care One’s Potential Liability before Filing a Complaint

The Administrative Law Judge also should deny the AGC’s request to join Care One as a Respondent. Until filing its Notice of Intent to Amend the Complaint on August 28, 2012 – less than two weeks before the start of the hearing in this case – the AGC never sought to amend the Complaint to add Care One as a respondent. Indeed, before proceeding to move to amend the

complaint in this case, the AGC never even investigated the issue of Care One's liability.

According to the Manual, during the investigative stage:

(c) *Identification of Other Parties and Derivative Liability*: The Board agent should also explore with the charging party whether any entities other than those already named in the charge may be liable to remedy the alleged unfair labor practices. Thus, in certain circumstances where an unnamed party, such as an alter ego, successor, partner, individual or trustee in bankruptcy, may be derivatively liable for remedying the alleged unfair labor practices, amendment of the charge should be sought to reflect such party as derivatively liable. . . .

NLRB, Casehandling Manual, Part One, Unfair Labor Practice Proceedings (Dec. 2011), Section 10054.2(c). Moreover, “[a]ny issues of potential inability to remedy the alleged unfair labor practices should be promptly and thoroughly investigated.” Id. at Section 10056. The Manual provides that the AGC should amend the complaint to add additional parties only “when events subsequent to the issuance of complaint disclose the existence of an alter ego, successor, individual, trustee in bankruptcy, or other party which should be alleged as derivatively liable for remedying the alleged unfair labor practices.” Id. at Section 10274.4 (emphasis added) (citations and internal cross-references omitted).

Here, there have been no “events subsequent to the issuance of the complaint” that could have given rise to a finding that Care One might be liable in this case. Although, as noted above, the Manual is not binding authority, it clearly demonstrates that the Board had the practical ability to explore the issue of Care One's possible liability long before it issued any of the four (4) separate Complaints issued in this consolidated matter. It never did so. In fact, the Union never named Care One as a respondent on the face of any of its Charges in this consolidated matter.³ The AGC should not be permitted to add Care One as a new respondent at this late date, particularly absent any justification for failing to investigate the issue of Care One's alleged

³ While the Union listed Care One on its service sheet, the Region never asked Care One to respond to the Charges during its investigations, and Care One never did so.

liability long before issuance of a Complaint. For this reason alone, the AGC's motion to add Care One as a respondent should be denied.

B. Care One is Not a Joint or Single Employer

Even if the AGC had timely investigated the issue of Care One's liability, its request to join Care One as a respondent still should be denied. As noted above, in order to establish that Care One is a joint employer with one or more of the named respondents, the AGC must show that the entities "share or codetermine those matters governing the essential terms and conditions of employment." Aim Royal Insulation, 358 NLRB No. 91, slip op. at 7-8. Care One is not a joint employer under this test. In fact, it is not an employer at all since it is a holding company with no employees. Operating Engineers Local 487 Health Fund, supra. Without any employees, Care One simply cannot share or co-determine matters governing essential terms and conditions of employment with any of the named respondents. For this additional reason, the ALJ should deny the AGC's request to add Care One as a respondent.

C. Care One is Not the Alter Ego of the Respondents

Finally, although the AGC does not argue that Care One is the alter ego of any of the named respondents, there would be no basis to add Care One as a respondent under an alter ego theory. The AGC has the burden of establishing alter ego status. US Reinforcing, Inc., 350 NLRB 404, 404 (2007). Factors relevant to alter ego status include whether two entities have substantially identical ownership, management and supervisors, business purpose, operation, customers, and equipment. Id. "The Board also looks to whether the purpose behind the creation of the alleged alter ego was legitimate or whether, instead, its purpose was to evade responsibilities under the Act." Id.

Here, the AGC cannot show that Care One is an alter ego of any of the named Respondents. First, as noted above, Care One is a holding company with no employees. As

such, it cannot have common management or supervision with any of the named Respondents. Moreover, as a holding company, its business purpose is different from those of Respondents – a management company that provides services to assisted living facilities in Connecticut, special purpose limited liability companies that operate various assisted living facilities in Connecticut, and a no-employee holding company that owns indirectly the assisted living facilities in Connecticut. Furthermore, the Board cannot claim that Care One was created to evade responsibilities under the Act, because it has been in existence long before any of the issues in this case arose. Thus, there would be no basis to join Care One as a respondent in this matter under an alter ego theory.

CONCLUSION

For each of the foregoing reasons, Care One respectfully requests that the AGC's motion to strike should be denied and Care One's Petition to Revoke the subpoena to its outside auditors, CLA, should be granted. Moreover, since Care One is not a joint or single employer with the named Respondents, Care One respectfully submits that it should not be added as a party to this proceeding

Respectfully submitted

K&L GATES LLP
Attorneys for Care One, LLC

By: /s/ Rosemary Alito
Rosemary Alito

DATED: October 10, 2012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the aforesaid Opposition to Motions of Counsel for the Acting General Counsel to Strike Petition to Revoke Subpoena Duces Tecum B-612873, and for Leave to Amend Complaint to Add Care One, LLC as a Respondent, were served on October 10, 2012, in the manner set forth below:

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

E-Filing on Agency Website

Jennifer F. Dease
John McGrath
Counsel for the Acting General Counsel
NLRB - Region 34
A.A. Ribicoff Federal Building
450 Main Street, Suite 410
Hartford, CT 06103

E-Mail: Jennifer.dease@nlrb.gov
john.mcgrath@nlrb.gov

Kevin A Creane, Esq.
Law Firm of John M. Creane
92 Cherry Street
P.O. Box 170
Milford, CT 06460

E-Mail: KACreane@aol.com

/s/ George P. Barbatsuly

George P. Barbatsuly

EXHIBIT K

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 34

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
34-CA-072875
34-CA-075226
34-CA-083335
34-CA-084717

and

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

THE ACTING GENERAL COUNSEL'S REPLY TO CARE ONE, LLC'S OPPOSITION
TO THE ACTING GENERAL COUNSEL'S MOTION TO STRIKE AND
OPPOSITION TO LEAVE TO AMEND THE COMPLAINT TO
ADD CARE ONE LLC AS A RESPONDENT

I. Introduction

On October 10, 2012, Care One LLC ("Care One") submitted an Opposition to the Motions of Counsel for the Acting General Counsel (the "AGC") seeking to (1) strike Care One's Petition to Revoke the Subpoena Duces Tecum B-612873 addressed to CliftonLarsenAllen LLP (CLA), and (2) amend the Complaint to name Care One, LLC as

a Respondent. Because Care One has been alleged by the Acting General Counsel (the AGC) to be a single and joint employer, it should be added as a party to the proceeding so that allegation can be freely and fairly litigated.

II. Care One's allegation that Counsel for the AGC possesses "improperly-obtained financial records" is unfounded.

Care One's accusation that the Counsel for the AGC is in possession of "improperly-obtained financial statements" appears to be based on no more than unrestrained suspicion and allegations of fact unhinged from reality. Counsel for the AGC is happy to present these so-called "improperly-obtained financial statements" to the ALJ for an ex-parte, in camera review, and is willing, as part of that review, to satisfy all of the ALJ's questions regarding how those documents came to its possession. Counsel for the AGC is confident that the ALJ will be entirely satisfied that Care One's allegations that the documents were improperly obtained are unjustified and unwarranted.¹

Counsel for the AGC is unwilling to provide these documents to Respondent at this time, as Counsel for the AGC has an understandable suspicion that the tone and tenor of Care One's Opposition may have been calculated to induce Counsel for the AGC to tip its proverbial hand. Counsel for the AGC may or may not attempt to enter the documents into evidence. Until then, Counsel for the AGC has important interests in keeping the sources of its information confidential. Furthermore, Counsel for the AGC has an important interest in preserving civility and decorum in its investigations and

¹ On pages 2 – 4 of its Opposition, Care One's counsel describes in detail a conversation to which she was not a party. The entire account is hearsay, and inaccurate in its descriptions and characterizations of what was said. Counsel for the AGC need not defend itself against attempts to malign its conduct or character through such hearsay. Counsel for the Acting General Counsel is confident that the in-camera review of the documents will clearly and objectively show that Ms. Alito's allegations need not, and should not, be mistaken for fact.

these proceedings. Counsel for the AGC feels that it should not be forced to indulge baseless accusations.

Counsel for Respondents has raised as an issue Region 34's insistence that Ms. Alito file an appearance before Counsel for the AGC would communicate with her about ongoing proceedings involving Care One. The Region's insistence that Ms. Alito file an appearance was not meant to impede the ability of any attorney to represent his or her client. To the contrary, it was because the Region found itself in a good-faith predicament. At the time Ms. Alito contacted Counsel for the AGC, Region 34 had a good faith belief that Mr. Loveland had appeared as the attorney of record for Care One. This was based on (1) appearances filed by Mr. Loveland in cases such as Case No. 34-CA-075226 (Exhibit A), and (2) the fact that Mr. Loveland had already filed a Petition to Revoke on behalf of Care One.²

Counsel for the AGC agrees that Care One has every right to choose its attorney, to change its attorney, or to be represented by multiple attorneys. However, for both ethical and practical reasons, the Region must be informed of whom it should treat as a party's representative.³ After the Region was contacted by Ms. Alito, the Region informed Mr. Loveland of the situation, and requested that his representational status be clarified. However, this was never done. The Region requested that Ms. Alito file an appearance, but she refused. What was the Region supposed to do? Simply put, Counsel for the AGC cannot investigate or litigate cases without knowing with certainty who represents whom.

² Previously, in Case No. 34-CA-12715, a subpoena duces tecum was served on Care One, LLC on July 20, 2011, and that on July 27, 2011, a petition to revoke was filed by Care One, LLC through Jonathan Kaplan, who is Respondents' representative in these proceedings as well as Mr. Loveland's law partner.

³ Indeed, Mr. Loveland's appearances requested that all communications be directed to him.

Now that Care One's representative has been firmly established, and that Care One's counsel has brought its concerns about allegedly "improperly-obtained financial statements" to the ALJ's attention, the issue can finally be resolved. Again, Counsel for the AGC suggests that the documents be presented for an in camera review. This will expediently resolve the issue, and the case can proceed.

III. Care One, LLC should be named as a Respondent in the Complaint so that the AGC's allegations that Care One constitutes a joint and single employer with the other named Respondents can be fully and fairly litigated.

The Complaint should be amended to add Care One as a Respondent in this proceeding because the General Counsel has alleged that Care One is a joint and single employer with the other named Respondents. The General Counsel is not required to prove its case prior to making such an allegation. Rather, the purpose of the allegation in the Complaint is for the party to be on notice of the allegation and to respond to it. Care One denies the allegation that it is a joint and single employer with the other Respondents. However, Care One's protests are no reason to prevent the Regional Director from pleading Care One in the Complaint and providing evidence in support of the allegation.

Here, amending the Complaint will enable the AGC to present its case, during which the evidence will show that Care One exerts control over its wholly owned subsidiary, HealthBridge Management, LLC, as well as over the operating companies named as Respondents in this case. The attached document, available from the Connecticut Secretary of State's public records website (www.concord-sots.ct.gov) shows that Care One LLC is listed as the principal and "manager" of HealthBridge Management, LLC. (Exhibit B.) The attached code of conduct (Exhibit C) shows that

Care One, LLC was involved with other entities in developing a code of conduct that applied to, among others, employees of HealthBridge Management, Inc.⁴ The attached employee emergency contact form, from the file of an employee at Westport Health Care Center, suggests that Care One's presence is not so remote from employees. (Exhibit D.)

The end of Mr. Kevin Breslin's employment with Care One and with other Respondents illustrates the interrelationship of employment decisions between those entities. Attached is the copy of a civil complaint filed by Care One against Mr. Breslin (Exhibit E, the "Breslin Complaint"). The Breslin Complaint alleges that Breslin breached his fiduciary duties to Care One, LLC. It further alleges that "Plaintiff terminated Mr. Breslin for 'cause' on May 18, 2012. On that same date, Mr. Breslin was also terminated for 'cause' from his employment and other positions with all other related and affiliated businesses." (Breslin Compl. at ¶ 11.) The Breslin Complaint also appears to admit that Breslin received a beneficial ownership in Care One LLC as compensation for his services to Care One, LLC "and its subsidiaries." (Breslin Compl. at ¶ 7.)

While the Breslin Complaint does not name Care One's "related and affiliated businesses," Respondents' answers indicated that Respondents HealthBridge, Danbury, Long Ridge, Newington, West River, Westport, and Wethersfield fall under that definition. Specifically, each of those entities, in its May 11, 2012 Answer to the First Amended Consolidated Complaint, admitted that Breslin was its Executive Vice President. (At ¶ 8.) However, in the July 19, 2012 Answers to the Second Amended Consolidated Complaint, Respondents HealthBridge, Danbury, Long Ridge, Newington,

⁴ To the extent that Care One argues, repeatedly, that it is a holding company with no employees, finding Care One's name on a code of conduct suggests differently.

West River, Westport, and Wethersfield, denied that Kevin Breslin was the Executive Vice President of those entities. (At ¶ 8.) Most likely because, as described in the Breslin Complaint, Breslin had been fired on May 18, 2012 from his employment with Care One LLC and its subsidiaries and affiliates.⁵ Evidently, Care One, LLC exerts some degree of control over (or at least coordination with) the other Respondents in whom they hire and fire – at least as far as executive vice presidents go.

Needless to say, this is not the entirety of the AGC's case against Care One: additional evidence of Respondent Care One's status as a joint and single employer will be introduced at trial. But Care One's opposition should not be read to require the AGC to present its case in the order Respondents prefer. This evidence is sufficient to make a threshold showing of a dispute of a material issue for hearing. As such, Care One's Opposition should be denied so that the issue can be freely and fairly litigated at hearing. To deny the AGC leave to amend the Complaint would be unjust in that it would prevent the AGC from fully litigating this allegation.

Care One has argued that it is a holding company with no employees, and therefore cannot be an "employer" under the Act. First, Counsel for the AGC does not know that necessarily to be the case. Care One has produced no evidence to support its claim that it has no employees, and has not yet produced even a single document in response to the subpoena issued to it in August. Rather, it wants the allegation pitched from the Complaint based only on its word. But, to the contrary, the Breslin Complaint

⁵ As Care One's pleadings in federal court, and Respondents' answers to the First Amended Consolidated Complaint show, Kevin Breslin was simultaneously the Executive Vice President of both Care One and several Respondents. That would suggest that Care One and Respondents do share *some* common management or supervision. Thus, Care One's claim that "...Care One is a holding company with no employees. As such, it cannot have common management or supervision with any of the named Respondents" appears inaccurate. If Counsel for the AGC is wrong, however, the swift production of those relevant documents subpoenaed from Care One should clear that right up.

described Breslin as “an employee and/or officer of Plaintiff [Care One].” (Breslin Compl. at ¶5.) Second, even if it is true that Care One has no employee on its own payroll, that is not dispositive of the issue. A holding company with no “operations” of its own, but which acted through its subsidiaries, has been held to be a single employer with one of those subsidiaries. *Mammoth Coal Company*, 358 NLRB No. 159, 10-11 (September 28, 2012). The absence of an arm’s length relationship between two companies is the hallmark of a single employer. *Covanta Energy Corp.*, 356 NLRB No. 98, at 35 (2011). “A single-employer analysis is appropriate where two ongoing businesses are coordinated by a common master.” *Id.* at 34. “[T]he fundamental inquiry is whether there exists overall control of critical matters at the policy level. *Id.* (citations and internal quotations omitted).

Care One’s citation to *Operating Engineers Local 487 Health Fund*, 308 NLRB 805 (1991), misses the mark here. There, after examining a record fully developed before the ALJ, the Board found that the respondent at issue (the Fund) was not an employer because the General Counsel had failed to prove that it exerted control over any employees, as opposed to independent contractors. 308 NLRB at 806 (“Applying the right-of-control test to the facts of this case, we find, contrary to the judge, that Michael and/or American Administrators is not an employee of the Fund.”). Care One simply cannot cite to that case to support the proposition that the AGC is at this time incapable of proving its allegation that Care One is an employer under the Act.

IV. Care One’s claim that the AGC never investigated Care One’s liability is untrue.

Respondent claims that “the Union never named Care One as a respondent on the face of any charges in this consolidated matter” and that “while the Union listed

Care One on its service sheet, the Region never asked Care One to respond to the Charges during its investigations, and Care One never did so.” (At 10.) This claim is without merit. First of all, Care One was identified on the face of several charges as “Care Realty (aka CareOne).” Semantics aside, Care One cannot claim that “Care One” cannot be found on the face of the charges. Second, as the formal papers show, box 1(a) of the charge lists several entities as Charged Parties and then states “see attached.” Care One calls the attached sheet a “service sheet,” but clearly the Union intended the sheet not to be a mere service sheet, but a continuation of the list of charged employers. Even if the Union had typed each employer’s name into box 1(a) of the charge, it would not have been able to clearly identify the employer’s addresses and other contact information on the face of the charge, as there simply was not enough room. As such, the attached sheets clearly were a continuation of the charge, and not something to be ignored.⁶

Attached as Exhibit F is a copy of the Docketing letter, Charge, and §10(j) letter sent specifically to Care One, LLC in Case No. 34-CA-070823. These letters, contrary to Care One’s assertion, requests a response. Also attached is the docketing letter in Case No. 34-CA-083335, which is addressed to Care One. (Exhibit G.) To the extent that Care One claims that it has not responded to any of the charges, Care One has no one to blame but itself. Simply put, Care One has cited to no legal authority to show that

⁶ Further, it should be noted that service on one member of a single, integrated employer is service on all other members. *Tragniew, Inc.*, 185 NLRB 962, 969 (1970).

an employer's failure to respond to a charge somehow prohibits the Regional Director from issuing a complaint against that employer.⁷

Care One's claim that "the AGC never even investigated the issue of Care One's liability" is simply wrong. The best way for Counsel for the AGC to disprove that naked allegation is by presenting its case against Care One.

V. Care One's Petition to Revoke the Third Party Subpeona issued to CliftonLarsenAllen LLP should be denied on the merits.

Even though Counsel for the AGC believes that Care One's Petition to Revoke should be struck, absent that, Care One's Petition to Revoke the Larsen Allen Subpoena should be denied on the merits because the documents responsive to that subpoena are likely to produce evidence relevant to the AGC's allegations that Care One and the other Respondents constitute a single integrated employer. Petitioner has failed to demonstrate that the Subpoenaed information is in fact confidential or otherwise protected. The party that seeks to avoid production of subpoenaed records bears the burden of establishing such records are confidential, and that production would cause clearly defined and serious injury. See e.g. *Ha Management and Oahu Publications*, Case 37-CA-8074 (2011) WL 826294. Petitioner is unlikely to meet such a burden, and has made no effort to do so. Rather, it has made mere assertions of confidentiality.

Matters of confidentiality are best addressed by a motion for a protective order rather than a wholesale revocation of the Subpoena. If the confidential nature of the documents are specified and established, Counsel for the AGC will consider what if any

⁷ Indeed, as the docketing letter warns, the failure to fully cooperate during the investigation may result in litigation.

protective measures may be necessary to permit the forum to see the information while protecting Care One's confidentiality interests.

Care One asserted that the Subpoenaed documents have "absolutely no conceivable relevance to any of the claims in this case." However, Petitioner ignores Complaint Paragraphs 2(a),(b),(c)(d), 3(a)(b), 4(a)(b)(c)(d), as modified by the Notice of Intent to Amend, that alleges Care One and the eight named Respondents are joint and single employers. The combined financial statements include unspecified "affiliates." It is believed that these affiliates include some, if not all, of the eight other Respondents. To establish single employer status, the Board considers whether there is common ownership or financial control. *Silver Court Nursing Ctr., Inc. & Health Care Services Group, Inc.*, 313 NLRB 1141, 1142 (1994). In this regard, the financial records of Care One and "affiliates" are germane to the issues raised in the pleadings and Respondents' anticipated defenses, and thus the Subpoena is relevant under the standard applied to Board subpoenas: *GHR Energy Corp.*, 707 F.2d 110, 114 (5th Cir. 1982); *NLRB v. United Aircraft Corp.*, 200 F. Supp. 48, 50 (D. Conn. 1961), *affd.* 300 F.2d 442 (2d Cir. 1962).

For the reasons noted above, Counsel for the Acting General Counsel respectfully urges the Administrative Law Judge to (1) deny Care One's Opposition to the amendment of the Complaint to include Care One as a Respondent; and (2) strike or deny Care One's Petition to Revoke Third Party Subpoena in its entirety.

Dated Hartford, Connecticut this 16th day of October, 2012.

Respectfully submitted



John A. McGrath
Counsel for the Acting General Counsel
National Labor Relations Board – Region 34
450 Main Street, Suite 410
Hartford, CT 0610

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the aforesaid Reply was served on October 16, 2012, in the manner set forth below:

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

e-file

George W. Loveland, II
Nicole H. Bermel
Littler Mendelson, P.C.
3725 Champion Hills Drive, Suite 3000
Memphis, TN 38125
gloveland@littler.com

e-mail

Rosemary Alito
K&L Gates, LLP
One Newark Center, 10th Floor
Newark, NJ 07102
rosemary.alito@klgates.com

e-mail

Kevin A Creane, Esq.
Law Firm of John M. Creane
92 Cherry Street
P.O. Box 170
Milford, CT 06460
kacreane@aol.com

e-mail

/s/ Elizabeth C. Person

Agent for NLRB