

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SODEXO AMERICA LLC

and

Case 21-CA-39086

PATRICIA ORTEGA, an Individual

SODEXO AMERICA LLC; AND  
USC UNIVERSITY HOSPITAL

and

Case 21-CA-39109

SERVICE WORKERS UNITED

USC UNIVERSITY HOSPITAL

and

Cases 21-CA-39328  
21-CA-39403

NATIONAL UNION OF HEALTHCARE  
WORKERS

RESPONDENT USC UNIVERSITY HOSPITAL'S  
REQUEST FOR SPECIAL PERMISSION TO APPEAL AND  
APPEAL FROM THE NOVEMBER 30, 2012 ORDER OF THE ADMINISTRATIVE  
LAW JUDGE SETTING THE CASE FOR HEARING

COMES NOW the Employer, Keck Hospital of USC, formerly known as USC University Hospital, (the "Hospital") pursuant to § 102.26 of the National Labor Relations Board's (the "Board") Rules and Regulations, by and through counsel, and requests special permission to appeal and hereby appeals the Order of Administrative Law Judge William G. Kocol (the "ALJ") setting the above entitled actions for hearing on December 5, 2012. The Order was issued on November 30, 2012. This request and appeal are based on the facts that the ALJ is without jurisdiction to order this matter to hearing, that the Order violates long established Board practices and procedures, and that the Order will result in an unnecessary waste of time and resources for all parties, including the Board and the ALJ, for no purpose or gain. The Hospital therefore respectfully requests that the Board grant the Hospital's request for special permission to appeal, and that it grant the appeal, and order the ALJ to rescind his Order to proceed to hearing and that the matter be stayed unless and until jurisdiction over these actions is returned to the Board.

I

**INTRODUCTION**

On November 24, 2010, Region 21 of the National Labor Relations Board filed a consolidated complaint against the Hospital and Sodexo America, LLC. In this consolidated action, it was alleged, among other things, that the Hospital had committed an unfair labor practice by maintaining a facially invalid off duty access policy and by disciplining four employees for violating the policy. On April 8, 2011, the ALJ ruled that the policy was not overbroad, and dismissed the complaint. On July 3, 2012, the Board

issued a Decision and Order (“Decision”) overturning the ALJ’s decision. (Sodexo America, LLC, and USC University Hospital, et al, 358 NLRB No. 79) The Board’s Decision contained, essentially, three requirements: 1) that the Hospital take certain steps to rescind and/or modify its policy; 2) that the Hospital and Sodexo post a notice, and 3) that the ALJ reopen the record to take testimony as to the activities of the employees who had been disciplined as a result of violating the off duty access policy. 358 NLRB No. 79, 3.

Motions to reconsider the Decision were brought by both the Hospital and Sodexo, which were denied on September 27, 2012. Both the Hospital and Sodexo filed Petitions for Review of the Decision and of the denial of the Motions for Reconsideration with the Court of Appeals for the District of Columbia Circuit, arguing, among other things, that the Board was not properly constituted and therefore had no authority to issue the Decision, and that, in any event, the policy was lawful. These Petitions were filed on October 15, 2012 and October 19, 2012 respectively. (Face pages, without exhibits, of the Petitions, are attached hereto as Exhibits 1 and 2, respectively; the Hospital’s Statement of Issues is attached as Exhibit 3.)

On November 28, 2012, the Board filed its Cross Petition for Order of Enforcement as to the entire Decision and Order of the Board. (Exhibit 4) At that time, the Board filed its certified index to the record with the Court of Appeals. (Exhibit 5)

Therefore, as of November 28, 2012, exclusive jurisdiction over all of the matters covered by the complaint and encompassed in the Decision was with the Court of Appeals. On November 29, 2012, the Hospital advised the Region and the ALJ of the perfecting of the matter before the Court of Appeals, and requested that further

proceedings be taken off calendar unless and until the Board once again had jurisdiction over these cases. (Exhibit 6)

On November 30, 2012, the ALJ denied the request and ordered that the matter go forward on December 5, 2012. (Exhibit 7)

The Hospital hereby requests special permission to appeal and appeals this interlocutory Order.

## II

### ARGUMENT

A. The ALJ Has No Jurisdiction to Proceed with Cases That Are Exclusively Within the Jurisdiction of the Court of Appeals.

The Hospital does not argue, and indeed concedes, that the mere filing of a petition for review or a petition for enforcement does not immediately deprive the Board of jurisdiction over a case. There is a period of time during which the jurisdiction of the Board and the jurisdiction of the Court of Appeals are concurrent. However, that concurrent jurisdiction ceases upon the filing of the administrative record on appeal. Section 10(d) of the National Labor Relations Act, (the “Act”) 29 U.S.C. § 10(d) provides that “[u]ntil the record in a case shall have been filed in a court” the Board can “modify or set aside, in whole or in part, any finding or order made or issued by it”. However, the Board’s power to process, modify, reconsider, or otherwise implement its own orders disappears with the filing of the administrative record. Indeed, Section 10(e) of the Act (29 U.S.C. § 160(e)) specifically provides that the court’s jurisdiction becomes exclusive “upon the filing of the record.”

The record was filed in this case on November 28, 2012 by the Board, both as to the two petitions for review filed by the Hospital and Sodexo, and also as to the Board's own cross petition for enforcement. By filing the cross petition for enforcement, and the certified index to the record, the Board conceded that the question of what part(s), if any, of this Decision would survive and/or be implemented was now a question only the Court of Appeals could determine. The Board has no more authority to force a reopening of the record than it has to force a posting of the notice or a modification or rescission of the policy. All aspects of the Decision are pending exclusively before the Court of Appeals. Sodexo and the Hospital objected to the entire Decision as being improperly issued (Exhibits 1, 2, and 3); The Board asked for enforcement of the entire Decision. (Exhibit 4) The Board, having placed the entire matter in the hands of the Court of Appeals, cannot now cut and paste the Decision, leaving some of it to the Court of Appeals to control, and unilaterally ordering compliance with other aspects of the Decision. There simply is no jurisdiction to proceed outside of the jurisdiction of the Court of Appeals.

Even if the actual statute under which the Board functions did not provide for exclusive jurisdiction in the Court of Appeals upon the perfecting of the appeal, which it does, the most fundamental principles of federal jurisdiction provide that when one body has exclusive jurisdiction over an action, no other body can act upon it. That is the precise meaning of "exclusive" jurisdiction. In general federal litigation, jurisdiction is moved from the lower court to the appellate court upon the filing of the appeal. However, whether jurisdiction transfers upon the filing of the appeal, or upon the certification of the record, the effect of a transfer of jurisdiction is the same; the lower body loses its power to act. As the United States Supreme Court has stated, the

perfecting of an appeal transfers jurisdiction away from the original body to the body now handling the appeal. See, Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982) (*per curiam*) ("The filing of a notice of appeal is an event of jurisdictional significance--it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal."). The body from which the matter was appealed has no more power to proceed, once the operative event conferring exclusive appellate jurisdiction has taken place. Visioneering Constr. & Dev. Co. v. United States Fidelity & Guar., 661 F.2d 119, 124 n. 6 (9th Cir. 1981) ("Once a notice of appeal is filed jurisdiction is vested in the Court of Appeals, and the trial court thereafter has no power to modify its judgment in the case or proceed further except by leave of the Court of Appeals.").

Since exclusive jurisdiction over this entire matter now resides with the Court of Appeals, the Board has no jurisdiction to continue processing this case.

B. The Setting of the Hearing Violates Long Standing Board Precedent.

The Board has not disputed, and indeed the Act precludes any argument, that once the record is filed in the Court of Appeals, the Board loses jurisdiction over a matter and it rests exclusively with the Court of Appeals. In fact, the Board has routinely relied on this jurisdictional fact on any occasion where an aggrieved party sought to amend or review a record which the Board contended was no longer in its power to revise. Thus, for example, in both NLRB v. Legacy Health Systems, 662 F.3d 1124 (9th Cir. 1996) and New York Presbyterian Hospital v. NLRB, 649 F.3d 723 (D.C. Cir, 2011) the Board contended, and the Courts of Appeals agreed, that failure to raise certain issues with the

Board during the period of concurrent jurisdiction, and before exclusive jurisdiction rested in the Courts of Appeals, barred those issues from being raised later. Clearly, if the Board is now taking the position that additional evidence may be added to the record after the matter has been submitted to the exclusive jurisdiction of the Court of Appeals, the entire premise of the Board's defense in those cases is undermined.

Furthermore, such a position, in addition to being directly contradicted by the Act and by fundamental principles of federal jurisdiction, could not possibly be allowed on the basis that only the Board has the power to obtain a reopening of the record after review has been perfected at the Court of Appeals. It would be the height of due process violations to allow the Board to reopen records, add and subtract evidence, and proceed as if no appeal were perfected, and at the same time deny respondents a similar right if respondents wanted to reopen a record to make revisions, or modifications, and/or take additional evidence.

Such a concept further fails in light of the fact that the Courts of Appeals are charged with reviewing the decisions that come before them based on the record, as it is certified. If that record can be changed, modified, or supplemented during the appeal process, the confusion and disruption to the appeal process would be horrendous.

As with all litigation matters, there comes a point in time when the record is as it is, the decision is as it is, and the parties are left to argue their best positions with a higher court. In the case of petitions for review or for enforcement of decisions of the Board, that time is when the record on appeal is certified. From that point forward, the record stands as it is, and no additional proceedings take place outside the jurisdiction of the

Court of Appeals. There is no legal or rational basis for ignoring that fundamental standard.

C. The Order Represents A Waste Of Judicial Resources And An Unnecessary Expense To All Parties.

As noted above, the ALJ found the policy at issue to be valid and dismissed the complaint. If, as the Hospital and Sodexo contend, the ALJ was correct, and/or if as is also contended, the Board was without authority to issue the disputed Decision, then this matter is closed. Prior to spending time and money on further litigation, these threshold issues need to be determined and they will be at the Court of Appeals. There is no gain to anyone in incurring the time, and expense of trying and briefing additional issues in these cases if those issues are never going to be relevant.

Furthermore, the Board has never contended that there were any pressing or emergency issues that pertained to the cases litigated in this complaint that would compel some extraordinary reversal of or change to normal administrative and judicial processes. To go forward with this case, in circumstances where the contested jurisdictional issue will surely create complicated and difficult additional problems, is inappropriate. Indeed, a Board proceeding undertaken without jurisdiction to proceed is of no force or effect whatsoever. Drug Plastics & Glass Co. v. National Labor Relations Board, 44 F.3d 1017, (D.C. Cir. 1997) Such an activity is a frivolous waste of the ALJ's time, the Board's resources, and the respondents' time and money. This record should be reopened, if at all, only after the Court of Appeals has determined that such a reopening of the record has been properly ordered, and jurisdiction to do so has been returned to the Board.

III

**CONCLUSION**

The Board has no jurisdiction to proceed with implementing its Decision in this matter, and the Order of the ALJ attempting to do so is *ultra vires*. The Act, fundamental principles of federal jurisdiction, and the most minimal respect for the time, money and other resources of the Board, the Hospital and Sodexo require that the Order be reversed. Therefore the Hospital respectfully requests that its request for special permission to appeal be granted, that the appeal be granted, that the Order be reversed, and that further proceedings in this matter be stayed unless and until jurisdiction to do so has been returned to the Board.

Dated: December 2, 2012

Respectfully submitted,

By:   
Linda Van Winkle Deacon  
Attorneys for Respondent  
Keck Hospital of USC, formerly  
known as USC University Hospital  
E-mail: lindaedeacon@gmail.com

# **EXHIBIT 1**

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

-----X		
<b>Keck Hospital of USC, formerly known as</b>	)	<b>Case Number</b>
<b>USC University Hospital,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
v.	)	<b>Case No: _____</b>
	)	
<b>National Labor Relations Board,</b>	)	
	)	
<b>Respondent.</b>	)	
	)	
-----X		

**PETITION FOR REVIEW**

Notice is hereby given on this 15<sup>th</sup> day of October, 2012 that Keck Hospital of USC, formerly known as USC University Hospital, (the "Hospital") hereby petitions the United States Court of Appeals for the District of Columbia Circuit for the review of the Decision and Order of Respondent, National Labor Relations Board ("Board") entered on or about July 3, 2012, in the unfair labor practice proceeding in Case Nos. 21-CA-39086, 21-CA-39109, 21-CA-39328, 21-CA-39403. A copy of the Decision and Order is attached as Exhibit "1." The Hospital also seeks the Court's review of the order denying its motion for reconsideration that was entered on or about September 27, 2012, a copy of which is attached as Exhibit "2."

Dated: October 15, 2012

Respectfully submitted,

By:   
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By:

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*Counsel for Petitioner Keck Hospital*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 15<sup>th</sup> day of October, 2012, a true and correct copy of the foregoing Petition for Review was sent to the following via overnight mail to:

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---

Desmond T. McIlwain

## **EXHIBIT 2**

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SODEXO AMERICA, LLC

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

CASE NO. \_\_\_\_\_

PETITION FOR REVIEW OF AN AGENCY'S ORDER

Notice is hereby given on this 18th day of October 2012 that Sodexo America, LLC ("Sodexo") hereby petitions the United States Court of Appeals for the District of Columbia Circuit for review of the Decision and Order of Respondent, National Labor Relations Board ("Board"), entered on or about July 3, 2012 in the unfair labor practice proceedings in Case Nos. 21-CA-39086, 21-CA-39109, 21-CA-39328, and 21-CA-39403. A copy of the Decision and Order is attached as Exhibit "1." Sodexo also seeks the Court's review of the order denying its motion for reconsideration that was entered on or about September 27, 2012, a copy of which is attached as Exhibit "2."

This Petition for Review is related to the Petition for Review filed on October 15, 2012 captioned as *Keck Hospital of USC, formerly known as USC University Hospital v. National Labor Relations Board*, Case No. 12-1413.

DATED: October 18, 2012

Respectfully submitted,

By: Mark T. Bennett  
MARK T. BENNETT

Attorneys for Sodexo America, LLC

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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SODEXO AMERICA, LLC

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

CASE NO. \_\_\_\_\_

PROOF OF SERVICE BY MAIL

I am over the age of eighteen years and not a party to the action; I am employed in the County of San Diego, California; where the mailing occurs; and my business address is 4747 Executive Drive, Suite 700, San Diego, California 92121-3107. I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service pursuant to which practice the correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. I caused to be served the following document(s): **PETITION FOR REVIEW OF AN AGENCY'S ORDER**, by placing either a copy thereof in a separate overnight envelope or by electronic mail for each address well known and draw any doing see listed as follows:

/////

/////

/////

/////

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/////

/////

/////

/////

I then sealed the envelope(s) and, with the postage thereon fully prepaid, either deposited it/each in the United States Postal Service or placed it/each for collection and mailing on October 18, 2012 at San Diego, California, following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 18, 2012.



---

BRANDI D. PAAPE

## **EXHIBIT 3**

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

KECK HOSPITAL OF USC, formerly known  
as USC UNIVERSITY HOSPITAL,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Case No.: 12-1413

CONSOLIDATED WITH 12-1426

**PETITIONER'S NON-BINDING  
STATEMENT OF ISSUES**

Issue: Did the National Labor Relations Board ("Board") exceed its statutory authority because it did not have a proper quorum at the time it decided USC University Hospital, 358 NLRB No. 79 (July 3, 2012), and when it denied USC University Hospital's (the "Hospital") motion for reconsideration?

Issue: Does the Hospital's off-duty access policy violate the National Labor Relations Act, 29 U.S.C § 8(a)(1)?

Issue: Does substantial evidence on the record as a whole support the Board's finding that the Hospital's off-duty access policy, on its face, prohibits access in violation of employee's Section 7 rights (29 U.S.C. §157) while permitting access for any activity specifically directed by management?

Issue: Does substantial evidence on the record as a whole support the Board's finding that the Hospital's off-duty access policy gave the Hospital "free rein to set the terms of off duty employee access" to the Hospital's interior and to working areas outside the Hospital?"

Issue: Did the Board violate its own standards and procedures when it overturned the credibility findings of the administrative law judge?

Issue: Did the Board violate its own standards and procedures when it ignored stipulated, undisputed facts in the record?

Issue: Did the Board violate its own standards and procedures when it interpreted the Hospital's Off Duty Access Policy?

Issue: What is the appropriate standard of appellate court review when the Board overturns the administrative law judge's credibility findings?

Issue: What is the appropriate standard of appellate court review when the Board overturns the factual findings and conclusions of the administrative law judge?

Issue: What is the appropriate standard of appellate court review when the Board overturns the policy interpretation of the administrative law judge?

Issue: Did the Board abuse its discretion when, without providing reasons, it included the following language in the Notice to Employees: "We will not do anything that interferes with [rights guaranteed by NLRA Section 7, 29 U.S.C. §157]?"

Issue: Did the Board abuse its discretion when, without explanation, it issued an order that was broader than Counsel for the Acting General Counsel requested, either in the complaint, or at any other time?

DATED: November 19, 2012

Respectfully submitted,

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By: /s/ Desmond T. McIlwain  
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Attorneys for Keck Hospital of USC, formerly known  
as USC University Hospital

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 19<sup>th</sup> day of November, 2012, a true and correct copy of the foregoing Petitioner's Non-Binding Statement of Issues was filed through the CM/ECF system, which will send a notice to all registered CM/ECF users.

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Dated: November 19, 2012

/s/ Desmond T. McIlwain  
Desmond T. McIlwain

# **EXHIBIT 4**



The Court has jurisdiction over this cross-application pursuant to Section 10(e) and (f) of the National Labor Relations Act, as amended (29 U.S.C. § 160(e) and (f)), because the Petitioners are aggrieved by the Board's order. Venue is proper in this Circuit under Section 10(e) and (f) of the Act. The unfair labor practices occurred in Los Angeles, California.

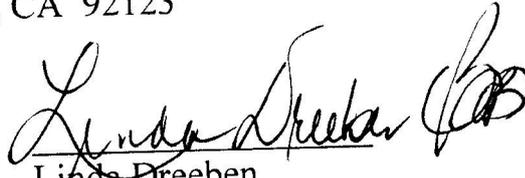
A handwritten signature in black ink, appearing to read "Linda Dreeben (P/B)", written over a horizontal line.

Linda Dreeben  
Deputy Associate General Counsel  
NATIONAL LABOR RELATIONS BOARD  
1099 14th Street, N.W.  
Washington, D.C. 20570  
(202) 273-2960

Dated at Washington, D.C.  
this 28th day of November 2012



Stephen J. Schultz, Esquire  
Marks Golis & Finch, LLP  
8620 Spectrum Center Blvd, Suite 900  
San Diego, CA 92123

A handwritten signature in black ink, appearing to read "Linda Dreeben", with a stylized flourish at the end.

Linda Dreeben

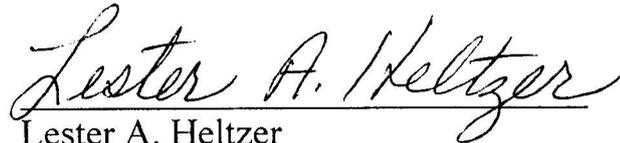
Deputy Associate General Counsel  
NATIONAL LABOR RELATIONS BOARD  
1099 14th Street, N.W.  
Washington, D.C. 20570

Dated at Washington, D.C.  
this 28th day of November 2012

# **EXHIBIT 5**



documents, transcripts of testimony, exhibits, and other material constituting the record before the Board in USC University Hospital and Sodexo America, LLC, Case Nos. 21-CA-39086, 21-CA-39109, 21-CA-39328 and 21-CA-39403.

A handwritten signature in cursive script that reads "Lester A. Heltzer". The signature is written in black ink and is positioned above the typed name.

Lester A. Heltzer

Executive Secretary

National Labor Relations Board

1099 14th Street, NW

Washington, D.C. 20570

(202) 273-2960

November 28, 2012

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## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: USC University Hospital and  
Sodexo America, LLC

Board Case Nos.: 21-CA-39086, 21-CA-39109, 21-CA-39328 and  
21-CA-39403

<u>Date</u>	<u>Documents</u>
11.04.09	Charge for 21-CA-39086
11.17.09	Charge for 21-CA-39109
05.07.10	Charge for 21-CA-39328
05.28.10	First Amended Charge for 21-CA-39109
06.30.10	Charge for 21-CA-39403
07.13.10	First Amended Charge for 21-CA-39328
07.14.10	First Amended Charge for 21-CA-39403
09.27.10	Second Amended Charge for 21-CA-39328
11.24.10	Order Consolidating Cases, Consolidated Complaint and Notice of Hearing for 21-CA-39086, 21-CA-39109, 21-CA-39328 and 21-CA-39403
12.06.10	Oder Extending Time for Filing Answer to Consolidated Complaint
12.10.10	USC University Hospital's Request for Postponement of Hearing
12.10.10	Sodexo America, LLC's Answer and Affirmative Defenses to Consolidated Complaint
12.13.10	Answer of Respondent USC University Hospital to Consolidated Complaint

- 12.14.10 Order Rescheduling Hearing
- 01.31.11 Motion by Respondent USC University Hospital for Summary Judgment
- 01.31.11 Notice of Lodging Unpublished Dispositions and Other Authorities Cited in Support of Motion by Respondent USC University Hospital for Summary Judgment
- 01.31.11 Affidavit of Eva Herberger in Support of Motion by Respondent USC University Hospital for Summary Judgment
- 01.31.11 Affidavit of Lester F. Aponte in Support of Motion by Respondent USC University Hospital for Summary Judgment
- 01.31.11 Sodexo America LLC's Joinder in Motion for Summary Judgment Filed by Respondent USC University Hospital
- 02.01.11 Amendment to Consolidated Complaint
- 02.04.11 General Counsel's Opposition to Respondent USC University Hospital's Motion for Summary Judgment and Respondent Sodexo America's Joinder Therein
- 02.07.11 Sodexo America, LLC's Reply Memorandum in Support of Motion for Summary Judgment
- 02.08.11 Reply Memorandum in Support of Motion by Respondent USC University Hospital for Summary Judgment
- 02.09.11 Answer by Respondent USC University Hospital to Amendment to Consolidated Complaint
- 02.09.11 Motion to Strike Respondent Hospital's Reply to General Counsel's Opposition to Respondents' Motion for Summary Judgment
- 02.09.11 Motion to Strike Respondent Sodexo's Reply to General Counsel's Opposition to Respondents' Motion for Summary Judgment

- 02.14.11 Sodexo America, LLC's Answer and Affirmative Defenses to Consolidated Complaint and to Amendment to Consolidated Complaint
- 02.23.11 Union's Attorney Written Withdrawal Request
- 02.25.11 Order Denying Request to Withdraw
- 02.25.11 Order Denying Motion for Summary Judgment
- 02.28.11 Hearing Opened/Closed
- 04.08.11 Administrative Law Judge's Decision
- 04.08.11 Order Transferring Proceeding to the National Labor Relations Board
- 04.12.11 Acting General Counsel's Request for Extension of Time to File Exceptions
- 04.19.11 Associate Executive Secretary's letter Extending due date for Exceptions
- 05.18.11 Acting General Counsel's Exceptions to the Administrative Law Judge's Decision and Order
- 05.27.11 Sodexo America, LLC's Request for an Extension of Time in Which to File Answering Brief and Cross-Exceptions Up to and Including June 10, 2011
- 05.27.11 Associate Executive Secretary's letter Extending due date for Answering Briefs and Cross-Exceptions
- 06.10.11 Sodexo America, LLC's Cross-Exceptions to the Decision of the Administrative Law Judge William G. Kocol Dated April 8, 2011
- 06.10.11 Answering Brief of Respondent USC University Hospital in Support of Decision by Administrative Law Judge and in Opposition to Exceptions Filed by Region 21

- 06.17.11 Associate Executive Secretary's letter advising Sodexo America to resubmit Answering Brief
- 06.20.11 Sodexo America, LLC's Answering Brief
- 07.03.12 Decision and Order Remanding in Part
- 07.27.12 Respondent USC University Hospital's Motion for Reconsideration
- 07.27.12 Respondent Sodexo America LLC's Motion for Reconsideration and for Stay of Decision
- 07.30.12 Respondent Sodexo America LLC's Notice of Joinder in USC University Hospital's Motion for Reconsideration
- 08.02.12 General Counsel's Opposition to Respondents' Motions for Reconsideration of Board's Decision
- 08.02.12 NUHW's Joinder in General Counsel's Opposition to Respondents' Motions for Reconsideration of Board's Decision
- 08.07.12 Respondent's Sodexo America LLC's Reply to Opposition to Motion for Reconsideration and for Stay of Decision
- 08.07.12 Respondent USC University Hospital's Reply Brief
- 09.27.12 Order Denying Motions for Reconsideration



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/s/Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
NATIONAL LABOR RELATIONS BOARD  
1099 14th Street, N.W.  
Washington, D.C. 20570

Dated at Washington, D.C.  
this 28th day of November 2012

# **EXHIBIT 6**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
San Francisco Branch Office**

SODEXO AMERICA LLC

Case No. 21-CA-39086

and

PATRICIA ORTEGA, an Individual

SODEXO AMERICA LLC; AND  
USC UNIVERISTY HOSPITAL

and

Case No. 21-CA-39109

SERVICE WORKERS UNITED

USC UNIVERSITY HOSPITAL

and

Case Nos. 21-CA-39328  
21-CA-39403

NATIONAL UNION OF HEALTHCARE  
WORKERS

**NOTICE OF FILING OF ADMINISTRATIVE RECORD,**

LINDA VAN WINKLE DEACON (State Bar No. 60133)  
1107 Fair Oaks Avenue #356  
South Pasadena, California 90017  
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Attorney for Respondent  
Keck Hospital of USC, formerly known as  
USC UNIVERSITY HOSPITAL

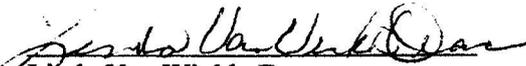
Please take notice that on November 28, 2012 the National Labor Relations Board (the “Board”) filed its certified index to the record with the United States Court of Appeals for the District of Columbia Circuit in connection with the Petitions for Review of Administrative Decision, filed by Keck Hospital of USC, formerly known as USC University Hospital, and Sodexo America LLC, Case Nos. 12-1413 and 12-1426. On November 28, 2012, the Board also filed its Cross-Application for Order of Enforcement, Case No. 12-1467, pertaining to the same Decision, and specified that the certified index to the record should apply to all three actions. The Decision at issue in these three matters is the Decision in USC University Hospital and Sodexo America, LLC, 358 NLRB No. 79 (July 3, 2012), the Decision that serves as the basis for the hearing that is currently set for December 5, 2012.

The filing of the administrative record places the matter exclusively within the jurisdiction of the D.C. Circuit. 29 U.S.C. Section 160 (d) provides that the Board retains concurrent jurisdiction [with the Court] until the record is filed. Indeed the Board had the power to continue to process this case, and to modify, amend, revise, add to or even set aside the Decision until the record was filed with the Court. While the Board had some concurrent jurisdiction to continue to process this case when the Petitions for Review were initially filed, the filing of the record on appeal means that the D.C. Circuit now has exclusive jurisdiction over this action. (NLRB v. Legacy Health System, 662 F.3d 1124, 1127 (9th Cir. 2011), New York Presbyterian Hospital v. NLRB, 649 F.3d 723, 733 (D.C. Cir. 2011)) What, if any, further action will be taken in this matter, and when, is now solely for the D.C. Circuit to decide.

Therefore, the Board has no jurisdiction to proceed with the hearing now set for December 5, 2012, and the hearing date must be vacated.

Dated: November 29, 2012

Respectfully submitted,

By:   
Linda Van Winkle Deacon  
Attorney for Respondent  
Keck Hospital of USC, formerly  
known as USC University Hospital  
E-mail: lindaedeacon@gmail.com

**CERTIFICATE OF SERVICE**

21-CA-39086 - 21-CA-39109 - 21-CA-39328 - 21-CA-39403

I, hereby certify that on November 29, 2012, I electronically filed the foregoing document with the National Labor Relations Board using its e-filing system and served a copy of the forgoing document by electronic service to the following the persons as in below.



Zelda Davis

**VIA ELECTRONIC MAIL**

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National Union of Healthcare Workers  
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# **EXHIBIT 7**



United States Government

**NATIONAL LABOR RELATIONS BOARD**

**Division of Judges  
901 Market Street – Suite 300  
San Francisco, CA 94103-1779  
Phone (415) 356-5255 Fax (415) 356-5254**

Friday, November 30, 2012

To:

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Ms. Patricia Ortega,	<a href="mailto:opatricia491@gmail.com">opatricia491@gmail.com</a>

Re: Sodexo America, LLC 21-CA-39086

Counsel,

The hearing set for December 5, 2012, will go forward as scheduled per  
Administrative Law Judge William G. Kocol.

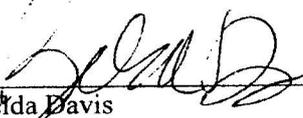
Regards,

*/s/  
Vanise J. Lee, Legal Tech.  
NLRB Division of Judges  
San Francisco Branch*

**CERTIFICATE OF SERVICE**

21-CA-39086 - 21-CA-39109 - 21-CA-39328 - 21-CA-39403

I, hereby certify that on December 3, 2012, I electronically filed RESPONDENT USC UNIVERSITY HOSPITAL'S REQUEST FOR SPECIAL PERMISSION TO APPEAL AND APPEAL FROM THE NOVEMBER 30, 2012 ORDER OF THE ADMINISTRATIVE LAW JUDGE SETTING THE CASE FOR HEARING with the National Labor Relations Board using its e-filing system and served a copy of the RESPONDENT USC UNIVERSITY HOSPITAL'S REQUEST FOR SPECIAL PERMISSION TO APPEAL AND APPEAL FROM THE NOVEMBER 30, 2012 ORDER OF THE ADMINISTRATIVE LAW JUDGE SETTING THE CASE FOR HEARING by electronic service to the following the persons as in below.

  
Zelda Davis

**VIA ELECTRONIC MAIL**

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