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February 26, 2013

Lester A. Heltzer, Executive Secretary  
Office of the Executive Secretary  
National Labor Relations Board  
1099 14th Street N.W.  
Washington D.C. 20570

**Re: 800 River Road Operating Company, LLC d/b/a/ Woodcrest Health Care  
Center and 1199 SEIU, United Healthcare Workers East  
Case No. 22-RC-073078**

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Dear Mr. Heltzer:

We represent the Employer herein.

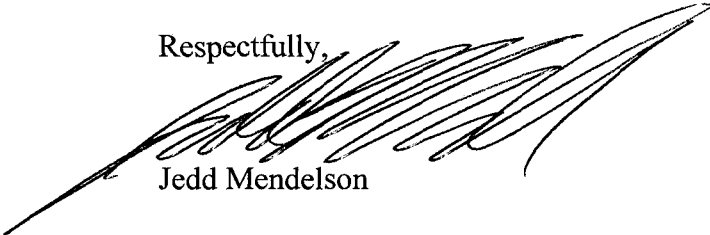
On February 13, 2013, the Employer filed its Motion to Vacate Decision and Certification of Representative (“Motion I”). By letter dated February 20, 2013, the Region responded to Motion I and purported to deny it. Today, the Employer files its Motion to Vacate the Region’s February 20, 2013 Letter Purporting to Deny Employer’s Motion (“Motion II”). Motion II argues that the substance of Motion I, by its terms, was directed toward the Board and not the Region. Accordingly, Motion II requests that unless the Region withdraws its February 20 letter, the Board vacate that letter and address Motion I *de novo*.

I apologize for my failure to have noticed Union counsel on the Certificate of Service appended to Motion I. That error was entirely mine and I take responsibility for it. Hopefully, in view of the fact that this office filed Motion I in Case No. 22-RC-073078, the Board’s electronic filing system showed Union counsel as counsel of record and delivered the document to him. Of course, even if that occurred, I regret my mistake.

Lester A. Heltzer, Executive Secretary  
February 26, 2013  
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For the reasons set forth in Motion II, the Employer respectfully requests that the Board vacate the Region's February 20, 2013 letter (absent withdrawal by the Region) and decide Motion I *de novo*.

Respectfully,

A handwritten signature in black ink, appearing to read "Jedd Mendelson", written over a large, light-colored scribble or background mark.

Jedd Mendelson

JM/jar  
Enclosure

cc: J. Michael Lightner, Regional Director  
Edward Peterson, Acting Regional Director  
William Massey, Esq.

Firmwide:118640281.1 070487.1120

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

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**800 River Road Operating Company LLC  
D/B/A Woodcrest Health Care Center**

Employer,

and

**199 SEIU, UNITED HEALTHCARE  
WORKERS EAST,**

Petitioner

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**Case No. 22-RC-073078**

**EMPLOYER’S MOTION TO VACATE REGION’S FEBRUARY 20,  
2013 LETTER PURPORTING TO DENY EMPLOYER’S MOTION TO  
VACATE DECISION AND CERTIFICATION OF REPRESENTATIVE**

800 River Road Operating Company LLC d/b/a Woodcrest Health Care Center (“Woodcrest” or “Employer”) submits this Motion to Vacate the Region’s February 20, 2013 Letter Purporting to Deny Employer’s Motion to Vacate Decision and Certification of Representative (“Motion II”) in view of the February 20, 2013 letter (“Letter”) forwarded by the Region purporting to deny the Employer’s Motion to Vacate Decision and Certification of Representative (“Motion I”). The Employer respectfully submits that the content of Motion I, filed on February 13, 2013, made clear that it was directed toward the National Labor Relations Board in Washington, D.C. (“Board”), not the Region, and that notwithstanding the absence of a quorum the Board was and is able to engage in the ministerial act of vacating or withdrawing the Decision and Certification of Representative (“Decision”) that it issued on January 9.<sup>1</sup> Accordingly, the Employer requests vacation of the Region’s Letter by the Board (unless the Region withdraws its Letter) and that the Board now address Motion I by engaging in the

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<sup>1</sup> Woodcrest received a copy of the Decision on January 15, 2013.

requested ministerial act of vacating the Decision which is, as a matter of law, void *ab initio*.<sup>2</sup>

Motion I requested that “the Board should engage in the ministerial act of vacating or withdrawing the Decision” or, alternatively, “at this time the Board stay all proceedings in the instant case as well as any case arising out of the void Decision herein.” (Motion I at 3). By its terms, the request for relief set forth in Motion I was directed to the Board, not the Region. The reason is self-evident: the Region did not issue the Decision and, therefore, is not in a position to vacate the Decision as the Employer requested. Despite the absence of a quorum, only the Board can address the Employer’s request. It necessarily follows that the Region should not have addressed Motion I and, at this time, unless the Region withdraws its Letter, the Board should vacate the Region’s Letter and address Motion I by vacating the Decision as the Employer has requested.

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<sup>2</sup> To the extent the Board deems it appropriate, it may treat the instant motion as a motion for reconsideration. However, insofar as the Board did not decide Motion I, neither that appellation nor any other in the Board’s Rules and Regulations seems apt.

## CONCLUSION

For the reasons set forth herein as well as in Motion I, the Region's Letter should be vacated (absent withdrawal by the Region) and the Board should grant Motion I.

Respectfully submitted,

By:     s/ Jedd Mendelson    

Jedd Mendelson

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Attorneys for 800 River Road  
Operating Company, LLC d/b/a  
Woodcrest Health Care Center

Dated: February 26, 2013

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that copies of the aforesaid Motion to Vacate Region's February 20, 2013 Letter Purporting to Deny Employer's Motion to Vacate Decision and Certification of Representative were served on February 26, 2013, in the manner set forth below:

Lester A. Heltzer, Executive Secretary  
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E-filing on Agency Website, E-mail and regular mail

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E-mail and regular mail

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New York, New York 10003-4709

Via E-mail and regular mail

s/ Jedd Mendelson  
Jedd Mendelson