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Attorneys for Cohen Ophthalmology & Consulting, Inc.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

**COHEN OPHTHALMOLOGY &
CONSULTING, INC.**

and

MARINA Z. SANCHEZ, an Individual **Case 28-CA-086143**

and

GABRIELA ARIAS FIMBRES, an Individual **Case 28-CA-091631**

MOTION TO EXTEND HEARING DATE

Respondent, Cohen Ophthalmology & Consulting, Inc. ("Cohen"), by its undersigned attorneys, hereby moves for the five-day hearing currently scheduled from January 7, 2013 through January 11, 2013 (the "Hearing") on the claims in the above Consolidated Complaint (the "Complaint") to be extended pursuant to 29 CFR

§ 102.16(a)(3), based on negotiations which are likely to lead to settlement of the Consolidated Complaint in its entirety, and pursuant to the NLRB Notice provided with the NLRB "Order Consolidating Cases, Consolidated Complaint and Notice of Hearing," dated November 23, 2012 (the "Notice") as follows.

I. WRITTEN REQUEST TO REGIONAL DIRECTOR

Pursuant to the Notice, an original and two copies of this Motion were sent to the Regional Director issuing the Complaint, Michael J. Karlson, Acting Regional Director of NLRB Region 28, via U.S. Mail. An electronic copy was provided to Mr. Karlson this day as well.

II. GROUNDS FOR EXTENSION

Prior to the matter being consolidated, Cohen and Marina Z. Sanchez ("Sanchez") were negotiating a settlement. Before Cohen and Sanchez could reach a settlement, the Sanchez Case was consolidated with the case involving the Charge brought by Gabriela Arias Fimbres ("Fimbres"), and the NLRB proposed a global settlement for Cohen, Sanchez and Fimbres (collectively the "Parties") on November 21, 2012. In response, Cohen provided his First Revised Consolidated Settlement Agreement on November 23, 2012, in an effort to settle the matter before the NLRB issued the Consolidated Complaint. Regardless, the NLRB issued the Consolidated Complaint that same day. Since that time, the Parties have been sending proposed settlement terms and revised agreements back and forth nearly non-stop, taking considerable time and preparation by counsel.

Cohen's good faith efforts to settle have been constant and incredibly time consuming for his legal team. A summary outline capturing some of his counsel's efforts at finalizing settlement are outlined below:

- 11/21/12 Review initial Settlement Agreement;
- 11/23/12 Prepare First Revised Settlement Agreement for Region 28 counsel;
- 11/26/12 Upon request, send First Revised Settlement Agreement to D. C. counsel due to regional counsel work-share;
- 11/28/12 Parties propose Non-Board Settlement;
- 12/7/12 Cohen counsel requests direct contact with Charging Parties, and sends them the First Revised Settlement Agreement directly;
- 12/12/12 Charging Parties propose counteroffer;
- 12/14/12 Fimbres and Cohen reach settlement, but NLRB demands global settlement;
- 12/18/12 Prepare response to Charging Parties' counteroffer; preparation of the Parties' Second Revised Settlement Agreement; Parties reach global settlement;
- 12/20/12 Cohen counsel requests status of Settlement Agreement finalization;
- 12/26/12 NLRB sends additional revisions to Parties' Settlement Agreement changing terms of the 12/18/12 settlement;
- 12/26/12 Cohen counsel requests Settlement Judge involvement;
- 12/27/12 Cohen counsel prepares a Response addressing each post-settlement revision by the NLRB, and prepares a Third Revised Settlement Agreement;
- 12/27/12 NLRB General Counsel Ms. Brazeal and Cohen counsel attend a telephonic settlement conference with assigned Settlement Judge Clifford H. Anderson.

During these continued negotiations, the Parties have been sending many drafts and suggested text back and forth to arrive at particular terms to which each was agreeable. It was not until yesterday, six business days before the scheduled hearing, that the Parties' agreed upon settlement terms were revised by the NLRB. Ms. Brazeal, the Charging Parties and Cohen are still interested in settling the Consolidated Complaint in its entirety, but based on the past six weeks and non-stop efforts at reaching final settlement, believe that concluding negotiations of language and finalizing the Settlement Agreement in five business days is unrealistic.

In an attempt to finalize settlement, per the Parties December 18, 2012 agreed terms, Cohen's counsel requested that assigned Settlement Judge Clifford H. Anderson become involved, and an urgent settlement teleconference was scheduled for today, December 27, 2012. During the teleconference it was determined that the Parties would keep working towards resolving the Board's revised terms post-settlement, in an effort to finalize the Settlement Agreement. Cohen believes that additional time is necessary to address the post-settlement terms and finalize the Settlement Agreement reached on December 18, 2012.

III. ALTERNATIVE DATES FOR ANY RESCHEDULED HEARING

Dr. Steve Cohen, as well as counsel for Cohen, Magdalena Osborn (Fimbres matter) and David O'Daniel (Sanchez matter) are available for the five-day hearing on the following future dates:

- February 4 – 8; 11 – 15; and 25 – March 1.

Cohen's undersigned counsel requested Ms. Brazeal's availability, citing the Notice, to which Ms. Brazeal replied that she "cannot provide a position on the postponement request until I [Ms. Brazeal] confer with both Charging Parties and have an agreement with both." (*E-mail from NLRB counsel Brazeal to Cohen counsel Osborn, dated December 26, 2012.*)

IV. ACERTAINED POSITIONS OF ALL OTHER PARTIES

Pursuant to Ms. Brazeal, she has not yet heard back from Fimbres. Pursuant to Ms. Brazeal, Sanchez "opposes the postponement due to scheduling conflicts in the near future." And, again, Ms. Brazeal stated that she, as "General Counsel, cannot provide a position on the postponement request until [she] confer[s] with both Charging Parties and [has] an agreement with both." (*Id.*)

V. CONCLUSION

Based on the NLRB's policy to encourage voluntary settlement, the extraordinary efforts of all Parties to reach their December 18, 2012 Settlement Agreement, the proposed changes by the NLRB post-settlement, and other reasons set forth herein, Cohen requests that the Regional Director issuing the Complaint extend the five-day hearing date of January 7, 2013 through January 11, 2013 to a later date, so that the Parties may pursue finalizing their agreement based on their terms of settlement.

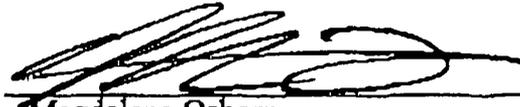
VI. CERTIFICATE OF SERVICE TO PARTIES

Pursuant to the Notice, copies of this Motion were simultaneously served on Sanchez and Fimbres at the U.S. Mail addresses provided in the Notice. This Motion was also simultaneously electronically copied via e-mail to: Sanchez, Fimbres, NLRB counsel

Ms. Brazeal, assigned Settlement Judge Clifford H. Anderson, and the Associate Chief

Administrative Law Judge Mary Miller Cracraft.

RESPECTFULLY SUBMITTED this 27th day of December, 2012.



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Attorneys for Cohen Ophthalmology &
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**Copy filed with the Regional Director
via U.S. Mail and e-mail**

this 27th day of December, 2012 to:

Michael J. Karlson
Acting Regional Director
National Labor Relations Board
Region 28 -- Phoenix Regional Office
2600 North Central Ave., Suite 1400
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michael.karlson@nrb.gov

**Copy mailed and e-mailed
this 27th day of December, 2012 to:**

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**Courtesy copy e-mailed
this 27th day of December, 2012 to:**
Jennifer Y. Brazeal
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Clifford H. Anderson
Settlement Judge
NLRB Division of Judges
San Francisco Office
Clifford.Anderson@nrlb.gov

**Courtesy copy faxed
this 27th day of December, 2012 to:**
Mary Miller Cracraft
Associate Chief Administrative Law Judge
901 Market Street, Suite 300
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By: 