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March 5, 2018

Molly C. Dwyer, Clerk
United States Court of Appeals for the Ninth Circuit
The James R. Browning Courthouse
95 Seventh Street
San Francisco, CA 94103

**Re: *Jill Coffman v. Queen of the Valley Medical Center*
No. 17-17413, Response to Rule 28(j) Citation of Supplemental Authorities**

Dear Ms. Dwyer:

Pursuant to Federal Rule of Appellate Procedure 28(j), Appellant Queen of the Valley Medical Center ("QVMC") hereby responds to Appellee Jill Coffman's ("Appellee") Citation of Supplemental Authorities. Appellee has submitted the Administrative Law Judge's ("ALJ") decision in the underlying proceedings for consideration by the Court. The Court should not give weight to the ALJ's decision because it is not part of the record below as it was issued after the district court's opinion.

Moreover, the ALJ's decision is not an accurate bellwether of the ultimate determination of liability. Under the National Labor Relations Board's ("Board") regulations, the ALJ's decision contains "*recommendations* for the proper disposition of the case," and upon the filing of the decision, the case is transferred to the Board for further proceedings. 29 C.F.R. § 102.45 (citation). QVMC has 28 days from the filing of the ALJ's decision to file exceptions to the decision, *id.* § 102.46(a), and then the Board decides the matter. *Id.* § 102.48(b)(1). QVMC intends to file exceptions to the ALJ's decision.

As this Court has noted, "[w]e have no means of determining what the Board will decide in this case. That the General Counsel issued a complaint and an ALJ ruled in favor of the General Counsel by no means foreordains the Board's decision." *Overstreet ex rel. N.L.R.B. v. United Bros. of Carpenters & Joiners of Am., Local Union No. 1506*, 409 F.3d 1199, 1208 n.7 (9th Cir. 2005) (citation omitted). This is because "it is not uncommon for the Board to overturn an ALJ decision that found in favor of the General Counsel." *Id.* (quoting Richard B. Lapp, *A Call for a Simpler Approach: Examining the NLRA's Section 10(j) Standard*, 3 U.Pa. J. Lab. & Emp. L. 251, 291 (2001)). And the ALJ's decision has minimal, if any, predictive value in this particular instance given the radical change in the Board's composition. See Dkt. Entry 18, at 52-53 [Opening Brief].

Sincerely,

/s/ Ellen M. Bronchetti

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9th Circuit Case Number(s) 17-17413

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I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Marta Isabel Novoa
Region 20, NLRB
Suite 400
901 Market Street
San Francisco, CA 94103

Signature (use "s/" format)

s/ Ellen M. Bronchetti