

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

DHSC, LLC d/b/a AFFINITY MEDICAL CENTER, COMMUNITY HEALTH SYSTEMS, INC., and / or COMMUNITY HEALTH SYSTEMS PROFESSIONAL SERVICES CORPORATION, LLC, a single employer and / or joint employers, <i>et al.</i> and CALIFORNIA NURSES ASSOCIATION / NATIONAL NURSES ORGANIZING COMMITTEE (CNA / NNOC)	08-CA-117890, <i>et al.</i>
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**RESPONDENT DHSC, LLC D/B/A AFFINITY MEDICAL CENTER’S
AND RESPONDENT FALLBROOK HOSPITAL CORPORATION
D/B/A FALLBROOK HOSPITAL’S OPPOSITION TO COUNSEL
FOR THE GENERAL COUNSEL’S MOTION FOR
CLARIFICATION**

As Respondents in the above-captioned cases, DHSC, LLC d/b/a Affinity Medical Center (hereafter, “Affinity” or the “Hospital”) and Fallbrook Hospital Corporation d/b/a Fallbrook Hospital (hereafter, “Fallbrook”) hereby oppose, by and through the Undersigned Counsel, the Motion for Clarification of Revised Order Partially Granting Respondent Affinity’s and Respondent Fallbrook’s Revised Motion for Partial Consent Order, which was filed by the General Counsel on July 5, 2018 (hereafter, the “Motion”).

BACKGROUND

On June 7, 2018, counsel for Affinity received from Region 8 Compliance Officer, Megan Sobczak, a letter providing, in part, instructions for Affinity concerning those steps the Region believed were required in order to comply with Your Honor's May 24, 2018, Revised Order Granting Affinity and Fallbrook's Revised Motion for a Partial Consent Order (hereafter, the "Letter"). Enclosed with the Letter was a copy of the notice that a "responsible officer" of Affinity was to sign, date, and thereafter, copy and mail to all individuals formerly employed by Affinity at any time since January 1, 2014.

At the conclusion of Affinity's notice, specifically on the fourth and last page, the document contains a description of the signatory "Employer," which reads: "DHSC, LLC d/b/a AFFINITY MEDICAL CENTER, COMMUNITY HEALTH SYSTEMS, INC. and/or COMMUNITY HEALTH SYSTEMS PROFESSIONAL SERVICES CORPORATION, LLC, a single and/or joint employers, et. al. (Employer)." The above-mentioned description was not contained in Your Honor's May 24, 2018, Revised Order Granting Affinity and Fallbrook's Revised Motion for a Partial Consent Order (hereafter, the "Revised Order").

On June 27, 2018, counsel for Affinity contacted Region 8, informing Region 8 of the Hospital's objection to the description of the signatory "Employer" as drafted in its notice. Despite Affinity's objections, Region 8 refused to modify the disputed language, and asked counsel whether Fallbrook would have similar objections should Region 21's letter contain an identical description of the signatory "Employer."¹ Counsel represented that it would similarly object should Region 21 incorporate an identical description of the signatory "Employer."² The General Counsel thereafter filed the Motion.

ARGUMENT

The General Counsel's intent in filing the Motion could not be clearer. In effect, the Motion is not one that looks to clarify the Revised Order, but a motion that openly seeks to amend the Revised Order with misleading language that legally implicates CHSPSC and CHSI without Your Honor's finding of single and / or joint employer status between the relevant parties. In other words, the General Counsel is asking Your Honor to retroactively

¹ Conversations between counsel for Affinity and Region 8 consisted of two separate phone calls, the first of which was a conversation with Ms. Sobczak about the Hospital's objections to the "Employer" description. Ms. Sobczak represented to counsel for Affinity that she personally drafted the description of the signatory "Employer" as presented in the notice, and did so by referencing Affinity's "party description" contained in the matter's formal case caption.

² As of the date of this filing, Region 21 has not sent Fallbrook a compliance letter, or a copy of its notice, which Fallbrook is required to distribute in order to comply with the Revised Order.

assign single and / or joint employer status to Affinity even though the allegation may never be litigated before Your Honor, or in the event the allegation is litigated, Your Honor may find that such statuses did not exist. Even so, at no point in time has Affinity, or any other Respondent Hospital to these consolidated proceedings, executed any legally binding document (e.g., stipulations of fact) that posits a single and / or joint employer status, nor has the General Counsel ever taken a position that Affinity, or any other Respondent Hospital, must execute those filings as a single and / or joint employer with CHSPSC and / or CHSI.

Even assuming, solely for the sake of argument, that the General Counsel had a basis to request such a description of the signatory “Employer,” the General Counsel had multiple opportunities to make such a request but wholly failed to pursue that action, thus waiving its right to incorporate the disputed description into Affinity and Fallbrook’s notice.³ The General Counsel has already had two bites at the apple – the first when it filed a lengthy and comprehensive opposition to Affinity’s and Fallbrook’s motion, and the second when it filed its May 15, 2018, Motion for

³ The General Counsel’s attempt to place the burden on Affinity and Fallbrook to specify how its legal status as the “Employer” would be described in its notice posting is simply misplaced as they were the only two Respondent Hospitals to move for a partial consent order; moreover, neither CHSPSC or CHSI ever joined Affinity or Fallbrook’s revised motions.

Clarification. Despite these filings, the General Counsel failed to raise any argument that CHSPSC and / or CHSI should be styled as parties to the Revised Order or to Affinity or Fallbrook's notice posting. The General Counsel's now arbitrary, belated insistence on the disputed signatory "Employer" description is perplexing, especially when Ms. Sobczak represented to counsel for Affinity that the signatory "Employer" description was erroneously drafted based upon the party descriptions contained in the matter's formal case caption. Consequently, the General Counsel's third bite at the apple must fail.

Most importantly, by virtue of the Revised Order, Your Honor dismissed the allegations that form the basis of Affinity and Fallbrook's notice. As theories of vicarious liability, it would be legally and logically unsound to attach any single and / or joint employer status to allegations that had been previously dismissed. In this regard, Your Honor's attachment of single and / or joint employer status to these dismissed allegations would effectively penalize Affinity and Fallbrook for offering Your Honor a reasonable settlement offer that otherwise promotes swift resolution of the Union's disputes with the Hospital under the Act.

Therefore, Affinity respectfully requests that Your Honor Order Region 8 to remove its current description of the signatory "Employer" on

Affinity's notice, and to replace such description with the following language: "DHSC, LLC d/b/a Affinity Medical Center." Similarly, Fallbrook respectfully requests that Your Honor Order Region 21 to incorporate the following description of the signatory "Employer" contained in Fallbrook's notice: "Fallbrook Hospital Corporation d/b/a Fallbrook Hospital."⁴

CONCLUSION

For all the reasons set forth above, Affinity and Fallbrook respectfully request that Your Honor deny the Motion.

Dated: Mount Pleasant, SC
 July 16, 2018

Respectfully submitted,

/s/ _____

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⁴ The General Counsel's alternative request that the entities be named in the notice postings without the single / joint employer moniker must similarly fail for all of the reasons set forth above. Affinity and Fallbrook maintain that the General Counsel's alternative request is a distinction without a difference, as it still clearly indicates some type of binding relationship between the Respondent Hospitals and the corporate parties.

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CERTIFICATE OF SERVICE

The Undersigned, Andrew J. Lammers, being an Attorney duly admitted to the practice of law, does hereby certify, pursuant to 28 U.S.C. § 1746, that, on July 16, 2018, the document above was served upon the following *via* email:

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Dated: Mount Pleasant, SC
July 16, 2018

Respectfully submitted,

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