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, et al. and CALIFORNIA NURSES ASSOCIATION/NATIONAL NURSES ORGANIZING COMMITTEE (CNA/NNOC)	Cases 08-CA-117890 et al.

RESPONSE OF CHSPSC, LLC AND COMMUNITY HEALTH SYSTEMS, INC. TO COUNSEL FOR GENERAL COUNSEL'S MOTION FOR CLARIFICATION OF REVISED ORDER PARTIALLY GRANTING RESPONDENT AFFINITY'S AND RESPONDENT FALLBROOK'S REVISED MOTION FOR PARTIAL CONSENT ORDER

I. INTRODUCTION

CHSPSC, LLC ("CHSPSC") and Community Health Systems, Inc. ("CHSI") (collectively, the "Corporate Respondents") present their Response to Counsel for General Counsel ("CGC's") Motion for Clarification of Revised Order Partially Granting Respondent Affinity's and Respondent Fallbrook's Revised Motion for Partial Consent Order ("CGC's Motion"). As a threshold matter, the Corporate Respondents join in the responses filed by Respondents Affinity and Fallbrook. The Corporate Respondents present their supplemental points in opposition to CGC's Motion, addressing CGC's arguments, *seriatim*, below.

II. ARGUMENT

CGC first admits that the June 6, 2018 letter from Region 8's Compliance Officer identifies the Corporate Respondents as single/joint parties to the remedial notice posting resulting from the policy-related Revised Order Partially Granting Respondent Affinity and Respondent Fallbrook's

Revised Motion for Partial Consent Order ("Revised Order"). (CGC's Motion at p. 1 and its Ex. B). However, the Corporate Respondents never moved for the Revised Order or weighed in on its efficacy. Neither were the Corporate Respondents included within the offer of the Revised Order, nor did Your Honor include the Corporate Respondents within its terms. In fact, Your Honor specifically excluded Complaint Paragraph 73 from the Revised Order because "this allegation includes both Affinity and CHSPSC." (Revised Order at pp. 10-11). The Corporate Respondents are not therefore bound by or to it, via notice posting or otherwise. The proposed notice posting should not be countenanced because it would mislead any reader by inaccurately indicating the Corporate Respondents are parties to it; by suggesting that "a responsible official of the Respondent Affinity" enjoys the actual or apparent authority to execute the notice on behalf of the Corporate Respondents (CGC's Motion Ex. B, p 2.); and by ultimately mischaracterizing the status of the litigation.

CGC next claims that the Corporate Respondents should be bound to the Revised Order because Your Honor failed to "specify" the names of Respondents. (CGC's Motion at p. 2). No such specification was remotely necessary, as the Revised Order entered via moving respondents' consent/offer, with obvious applicability to only the moving parties, not to the non-moving Corporate Respondents. Respectfully, as a matter of standard motion practice and due process, a consent order cannot be entered against a non-moving respondent where such application has not been sought, argued, opposed, or supported by the non-moving respondent. CGC's Motion therefore does not seek clarification; rather, it seeks to re-write the parties' motion practice (or lack thereof with respect to the Corporate Respondents) as well as the law of the case. Such efforts should be rejected.

CGC correctly notes that the "parties have yet to litigate the single/joint employer phase of this proceeding . . . ," (CGC's Motion at p. 2), as if bi-furcation somehow supports CGC's Motion. Quite to the contrary, bifurcation precludes the Corporate Respondents from being named in a remedial notice. If bi-furcated phase two occurs, and if the Corporate Respondents were to ever be named as single or joint employers, then and only then could the Corporate Respondents be bound to an order. Any ruling to the contrary would violate fundamental due process.

Put differently, CGC alleges the Corporate Respondents should be subjected to vicarious liability with respect to the 8(a)(1) policy allegations. In the event of a vicarious liability finding, the parties will at that time debate the necessity or appropriateness of a supplemental notice with respect to the previously resolved and dismissed 8(a)(1) policy allegations. It is not, as claimed, "premature to exclude any reference to single/joint employer status . . . ;" rather, it would have been improper to have done so at this time in these bi-furcated proceedings. (CGC's Motion at p. 2). With its notice transmittal, CGC unilaterally seeks relief he failed to secure, or even pursue, in contravention of the parties' motion practice and the Revised Order. Your Honor should reject CGC's disingenuous, surreptitious attempt to circumvent bi-furcated phase two findings by transmitting a notice drafted as if the Corporate Respondents had fully litigated and lost.

CGC next suggests that the existence of unresolved 8(a)(5) unilateral implementation direct participation allegations against CHSPSC with respect to some of the policies of Respondent Affinity somehow justifies immediately adding CHSPSC and CHSI to remedial notices resolving all 8(a)(1) policy allegations against Respondent Affinity and Respondent Fallbrook. (CGC's Motion at 2). CGC's approach evinces a complete disconnect from appropriate process and disregards the necessary legal and factual predicates to support such a request. If CHSPSC loses on the 8(a)(5) allegations, a notice mentioning CHSPSC will follow and suffice. The need for a

separate 8(a)(5) notice following litigation has nothing to do with an 8(a)(1) notice via consent order. CGC has essentially asked Your Honor to violate due process by entering a remedial notice against the Corporate Respondents based on the mere existence of unresolved 8(a)(5) allegations in this case.

Finally, CGC argues in the alternative that Your Honor should amend the Revised Order to require the remedial notices at least to state the respective Respondent Hospital's names, along with "and/or Community Health Systems Professional Services Corporation, LLC." (CGC's Motion at p. 3). CGC argues this modification would "put employees on notice of the parties to the litigation." Once again, CGC petitions for a violation of due process. CGC's proposed "and/or" usage clearly applies the remedy to CHSPSC, as "and/or" means either or both. CHSPSC may be subjected to a remedial order in only two ways: (1) per the terms of an order to which it has consented; or (2) involuntarily following the litigation of its status, neither of which apply. For this reason also, CGC's fall-back argument should be rejected.

III. CONCLUSION

The parties pursue different approaches to resolving Corporate Respondent issues. The Corporate Respondents offered a motion for consent order with Board-approved, guarantee-type single/joint relief, which remains pending. Meanwhile, CGC seeks an order which would violate the Corporate Respondents' rights to due process. CGC filed the Motion only after having displayed the temerity to attempt to force an improper, unlawful notice upon Respondent Affinity. Respondents rightly objected because no Board procedural vehicle exists to impose a pre-hearing consent order against a respondent over the objections of that respondent. Very simply, the Corporate Respondents do not and never have consented to the remedy sought by CGC. Hence, CGC's Motion should be denied.

Respectfully submitted,

/s/ Robert D. Hudson
Robert D. Hudson, Esq.
FROST BROWN TODD LLC
7310 Turfway Road, Suite 210
Florence, KY 41042
(859) 817-5909
rhudson@fbtlaw.com

/s/ Leonard W. Sachs
Leonard W. Sachs, Esq.
Howard & Howard Attorneys PLLC
211 Fulton Street, Suite 600
Peoria, IL 61602
(309) 672-1483
lsachs@howardandhoward.com

CERTIFICATE OF SERVICE

The undersigned attorney, Leonard W. Sachs, hereby certifies that on July 16, 2018, the foregoing was filed and served via e-mail upon:

Stephen M. Pincus, Esq. (Stephen.Pincus@nlrb.gov)

Aaron Sukert, Esq. (Aaron.Sukert@nlrb.gov)

Daniel Goode, Esq. (daniel.Goode@nlrb.gov)

Ashley Banks, Esq. (ashley.banks@nlrb.gov)

Timothy Mearns, Esq. (timothy.mearns@nlrb.gov)

Shannon Meares, Esq. (Shannon.meares@nlrb.gov)

Robert MacKay, Esq. (Robert.mackay@nlrb.gov)

Carlos Gonzalez, Esq. (carlos.gonzalez@nlrb.gov)

Amanda Laufer, Esq. (amanda.laufer@nlrb.gov)

Joelle Mervin, Esq. (joelle.mervin@nlrb.gov)

Noah Garber, Esq. (noah.garber@nlrb.gov)

Jane Lawhon, Esq. (jlawhon@calnurses.org)

Brendan P. White, Esq. (BWhite@nationalnursesunited.org)

Nicole Daro, Esq. (NDaro@CalNurses.org)

Micah Berul, Esq. (MBerul@CalNurses.Org)

Bruce A. Harland, Esq. (bharland@unioncounsel.net)

Jacob J. White, Esq. (jwhite@unioncounsel.net)

Jonathan Harris (JHarris@CalNurses.Org)

David Willhoite, Esq. (DWillhoite@CalNurses.org)

Don Carmody, Esq. (dcarmody@carmodyandcarmody.com)

Bryan Carmody, Esq. bcarmody@carmodyandcarmody.com>

Carmen DiRienzo, Esq. (cdirienzo@carmodyandcarmody.com)

Andrew Lammers, Esq. (alammers@carmodyandcarmody.com)

Robert Hudson, Esq. (rhudson@fbtlawa.com)

Judge Eleanor Laws, attn. Brian DiCrocco (Brian.DiCrocco@nlrb.gov)

/s/ *Leonard W. Sachs*
Howard & Howard Attorneys PLLC
211 Fulton Street, Suite 600
Peoria, IL 61602
(309) 672-1483
lsachs@howardandhoward.com

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