Pursuant to Section 102.24(c) of the Board’s Rules and Regulations, Counsel for the General Counsel files this Reply to Respondent’s Opposition to the General Counsel’s October 10, 2018 Motion for Summary Judgment and submits that Respondent’s Opposition should be rejected, as it fails state any valid reason why the General Counsel’s Motion for Summary Judgment should not be granted.

Respondent argues that the records in cases 31-RM-209424 and 31-RM-209388 (the representation cases) show that the Regional Director erred in issuing the Certifications of Representative in those cases (the Certifications). The Board on July 25 and July 26, 2018, rejected Respondent’s arguments about the propriety of the Certifications by denying Respondent’s requests for review on the grounds that Respondent “raises no substantial issues warranting review.” Accordingly the record in the representation cases establishes that the Regional Director did not err in issuing the Certifications.
Respondent additionally urges the Board to rely on Sub-Zero Freezer Co., 271 NLRB 47 (1984), St. Francis Hospital, 271 NLRB No. 160 (1984), and two other 1984 cases, to deny the General Counsel’s Motion. Recently the Board characterized Sub-Zero Freezer and St. Francis Hospital as representing “two of a limited number of cases in which the Board has departed from its longstanding rule against relitigation of representation matters in subsequent unfair labor practice proceedings” and found no basis to depart from the established rule. Dycora Transitional Health & Living d/b/a Kaweah Manor, 367 NLRB No. 22, slip op. at 5 (2018) (citations omitted). The same is true here; there is no reason to depart from the settled rule and the cases Respondent cites have no application as they involved facts and considerations that are not present here. What applies instead is the legal authority cited in Counsel for the General Counsel’s October 10, 2018 Motion for Summary Judgment, as well as Board Rule 102.67(g), providing as follows (bold added):

The Regional Director’s actions are final unless a request for review is granted. . . . Failure to request review shall preclude such parties from relitigating, in any related subsequent unfair labor practice proceeding, any issue which was, or could have been, raised in the representation proceeding. Denial of a request for review shall constitute an affirmance of the Regional Director’s action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding.

See also Board Rule 102.69(c)(2) (“The decision of the Regional Director may include a certification of the results of the election, including certification of representative where appropriate, and shall be final unless a request for review is granted). As the Board denied Respondent’s requests for review, Respondent is precluded from relitigating issues that were or could have been litigated in the representation cases, and summary judgment against Respondent is appropriate.1

1 Regarding Respondent’s misleading contention that it “was deprived of an opportunity to pursue and present all evidence that would be probative of Objection No. (2) [in the representation cases],” Respondent already litigated this issue in the representation cases. In denying review of those cases, the Board observed that Regional Directors
Finally, Respondent’s Opposition refers to its First Amended Answers, filed simultaneously with its Opposition on November 5, 2018, in which it asserts for the first time affirmative defenses. Each defense asserted is a clear attempt by Respondent to relitigate issues from the representation cases for the purpose of testing the Certifications, all the while evading its statutory obligation to recognize and bargain with the certified representative of its employees. As such, Respondent’s First Amended Answer does not raise any genuine issues of material fact or warrant denying summary judgment.

Accordingly, based on the facts and law presented in the General Counsel’s Motion for Summary Judgment and for the reasons set forth above, Counsel for the General Counsel requests that the Board grant the motion for summary judgment, find that the Respondent has violated and is violating Section 8(a)(5) and (1), and award the relief requested in the Consolidated Complaint and all other relief that the Board deems just and proper.

Dated at Los Angeles, California, this 9th day of November 2018.

Respectfully submitted,

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have discretion with respect to refusing enforcement of subpoenas “where, as here, the subpoenas constitute a mere ‘fishing expedition.’” See fn. 1 of the Board’s Orders denying review in the representation cases.
Re: RadNet Management Inc. d/b/a San Fernando Valley Interventional Radiology and Imaging Center and RadNet Management Inc. d/b/a San Fernando Valley Advanced Imaging Center
Cases 31-CA-222587, 31-CA-225390

CERTIFICATE OF SERVICE

I hereby certify that a copy of the COUNSEL FOR THE GENERAL COUNSEL’S REPLY TO THE RESPONDENT’S OPPOSITION TO THE GENERAL COUNSEL’S MOTION FOR SUMMARY JUDGMENT was served on the 9th day of November, 2018:

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