

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

**THC-SEATTLE, LLC D/B/A KINDRED
HOSPITAL SEATTLE – FIRST HILL**

and

Case 19-CA-227218

SEIU HEALTHCARE 1199NW

**GENERAL COUNSEL’S MOTION TO TRANSFER CASE
TO THE BOARD FOR DEFAULT JUDGMENT**

Pursuant to §§ 102.20 and 102.24 of the amended Rules and Regulations of the National Labor Relations Board (the “Board”), Counsel for General Counsel respectfully moves that the Board: (1) transfer the above-captioned matter and continue the proceedings before the Board; (2) deem the allegations in the outstanding complaint in this matter, issued on December 28, 2018, as admitted to be true without taking substantive evidence supporting the allegations; and (3) issue a Decision and Order granting default judgment. In support of this Motion, the General Counsel submits the following:

1. On September 11, 2018, SEIU Healthcare 1199NW (“Union”), filed an unfair labor practice charge in Case 19-CA-227218 against THC-Seattle, LLC d/b/a Kindred Hospital Seattle – First Hill (“Respondent”), alleging violations of §§ 8(a)(1) and (5) of the National Labor Relations Act (the “Act”), 29 U.S.C. §§ 158(a)(1) and (5). The charge in Case 19-CA-227218 was served on Respondent by U.S. mail on or about September 13, 2018. A copy of the charge and the affidavit of service are attached as Exhibits 1(a) and 1(b). The charge in Case 19-CA-227218 was amended on September

28, 2018, and was served on Respondent by U.S. mail on or about October 1, 2018. A copy of the amended charge and the affidavit of service are attached as Exhibits 2(a) and 2(b). The charge in Case 19-CA-227218 was amended for the second time on November 21, 2018, and was served on Respondent by U.S. mail on or about November 28, 2018. A copy of the second amended charge and the affidavit of service are attached as Exhibits 3(a) and 3(b).

2. Following an investigation of the charge, as amended, the Regional Director for Region 19 issued a Complaint and Notice of Hearing on December 28, 2018 ("Complaint"), alleging Respondent violated §§ 8(a)(1) and (5) of the Act. On December 28, 2018, the Complaint was served by U.S. certified mail on Respondent. Copies of the Complaint and affidavit of service are attached as Exhibits 4(a) and 4(b), respectively.

3. As set forth in the Complaint, Respondent's Answer to the Complaint was due to be received in the Regional Office on or before January 11, 2019. No Answer was received.

4. The Region sent a letter to Respondent on January 17, 2019, by U.S. certified mail, U.S. regular mail, and electronic mail. This letter notified Respondent that it had failed to submit an Answer in response to the Complaint and the significance of that failure. The letter provided Respondent with additional time until January 24, 2019, to file an Answer. A copy of the January 17, 2019, letter and affidavit of service are attached as Exhibits 5(a) and 5(b), respectively.

5. Respondent has failed and/or refused to file an Answer to the Complaint by January 24, 2019, the extended Answer date.

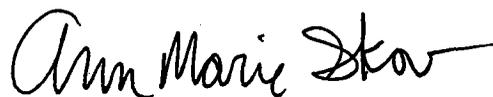
6. To date, Respondent has failed and/or refused to file an Answer to the Complaint.

On the basis of the foregoing and the exhibits attached hereto, it is respectfully submitted that the pleadings in the instant case raise no material issues of fact, that Respondent submitted no Answer or defense for the acts alleged in the Complaint, that no hearing is necessary in this matter, and that it is appropriate for the Board to issue a Decision and Order without further proceedings. Thus, it is respectfully requested that the Board make findings of fact and conclusions of law, finding that the conduct of Respondent violated §§ 8(a)(1) and (5) of the Act as alleged in the Complaint.

WHEREFORE, as the remedy for Respondent's unfair labor practices as alleged in the Complaint, Counsel for the General Counsel further requests that the Board issue the proposed Order and Notice to Employees, which are attached as Exhibits 6(a) and 6(b), respectively, and/or that the Board issue any other order and/or remedy deemed appropriate.

DATED at Seattle, Washington, this 5th day of February, 2019.

Respectfully submitted,



Ann Marie Skov, Counsel for General Counsel
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER**DO NOT WRITE IN THIS SPACE**Case
19-CA-227218Date Filed
9-11-2018**INSTRUCTIONS:**

File an original together with four copies and a copy for each additional charged party named in item 1 with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Kindred Hospital		b. Number of workers employed 164
c. Address (Street, city, state, and ZIP code) 400 S 43,d St Renton, WA 98055	d. Employer Representative Doug McCoy/CEO Doug.McCoy@kindred.com	e. Telephone No. 253-395-5133 Fax No.
f. Type of Establishment (factory, mine, wholesaler, etc.) Healthcare	g. Identify principal product or service Healthcare	
h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), -subsections (1) and (list subsections) <u>5</u> of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within the past six months, the Employer has refused to respond to information requests or process a grievance related to sexual harassment in the workplace.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
SEIU Healthcare 1199NW

4a. Address (Street and number, city, state, and ZIP code) 15 S. Grady Way, Ste. 200 Renton, WA 98057	4b. Telephone No. 425-306-2802 Fax No. 425-917-9707
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5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) Service Employees International Union

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By 
(signature of representative or person making charge)Trey Smiley/Legal Assistant
(Print type name and title or office, if any)

Address 15 S. Grady Way, Ste. 200, Renton, WA 98057

(fax) 425-917-9707

425-306-2802
(Telephone No.)9/11/2018
(date)WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
EXHIBIT 1(a)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

KINDRED HOSPITAL

Charged Party

and

SEIU HEALTHCARE 1199 NW

Charging Party

Case 19-CA-227218

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on September 13, 2018, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Doug McCoy, CEO
Kindred Hospital
400 S 43rd St
Renton, WA 98055-5714

September 13, 2018
Date

Dennis Snook, Designated Agent of NLRB
Name

/s/Gabriel Lyengard
Signature

EXHIBIT 1(b)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

AMENDED

DO NOT WRITE IN THIS SPACE	
Case 19-CA-227218	Date Filed 9/11/2018 Amd: 9/28/2018

INSTRUCTIONS:

File an original together with four copies and a copy for each additional charged party named in item 1 with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT		
a. Name of Employer Kindred Hospital	b. Number of workers employed 164	
c. Address (Street, city, state, and ZIP code) 1334 Terry Ave Seattle, WA 98101	d. Employer Representative Doug McCoy/CEO Doug.McCoy@kindred.com	e. Telephone No. 253-395-5133 Fax No.
f. Type of Establishment (factory, mine, wholesaler, etc.) Healthcare	g. Identify principal product or service Healthcare	
h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) <u>5</u> of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Within the past six months, the Employer has refused to respond to information requests or process a grievance related to sexual harassment in the workplace.		
3. Full name of party filing charge (if labor organization, give full name, including local name and number) SEIU Healthcare 1199NW		
4a. Address (Street and number, city, state, and ZIP code) 15 S. Grady Way, Ste. 200 Renton, WA 98057	4b. Telephone No. 425-306-2802 Fax No. 425-917-9707	
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) Service Employees International Union		
6. DECLARATION		
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.		
By <u>[Signature]</u> (signature of representative or person making charge)	Trey Smiley/Legal Assistant (Print/type name and title or office, if any)	
Address <u>15 S. Grady Way, Ste. 200, Renton, WA 98057</u>	(fax) <u>425-917-9707</u> <u>425-306-2802</u> (Telephone No.)	<u>9/11/2018</u> (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

EXHIBIT 2(a)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

KINDRED HOSPITAL
Charged Party
and
SEIU HEALTHCARE 1199 NW
Charging Party

Case 19-CA-227218

AFFIDAVIT OF SERVICE OF FIRST AMENDED CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on October 1, 2018, I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

DOUG MCCOY, CEO
KINDRED HOSPITAL
1334 TERRY AVE
SEATTLE, WA 98101-2747

October 1, 2018

Date

Dennis Snook, Designated Agent of NLRB

Name

/s/Leila Uomoto

Signature

EXHIBIT 2(b)

INTERNET
FORM NLRB-501
(6-07)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

SECOND AMENDED

DO NOT WRITE IN THIS SPACE	
Case 19-CA-227218	Date Filed 9/11/2018 2nd Amd: 11/21/2018

INSTRUCTIONS:

File an original together with four copies and a copy for each additional charged party named in item 1 with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Kindred Hospital	b. Number of workers employed 164
c. Address (Street, city, state, and ZIP code) 1334 Terry Ave Seattle, WA 98101	d. Employer Representative Edward Goddard Edward.Goddard@kindred.com
	e. Telephone No. 781-405-6569 Fax No.
f. Type of Establishment (factory, mine, wholesaler, etc.) Healthcare	g. Identify principal product or service Healthcare
h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) <u>5</u> of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)	
Within the past six months, the Employer has refused to respond to information requests and/or failed to provide requested information.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) SEIU Healthcare 1199NW	
4a. Address (Street and number, city, state, and ZIP code) 15 S. Grady Way, Ste. 200 Renton, WA 98057	4b. Telephone No. 425-917-1199 Fax No. 425-917-9707
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) Service Employees International Union	
6. DECLARATION	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By <u>Carson Flora</u> (signature of representative or person making charge)	<u>Carson Flora, general counsel</u> (Print type name and title or office, if any)
Address <u>15 S. Grady Way, Ste. 200, Renton, WA 98057</u>	(fax) <u>425-917-9707</u> <u>425-917-1199</u> (Telephone No.)
	<u>11/21/2018</u> (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

EXHIBIT 3(a)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

KINDRED HOSPITAL

Charged Party

and

SEIU HEALTHCARE 1199 NW

Charging Party

Case 19-CA-227218

AFFIDAVIT OF SERVICE OF SECOND AMENDED CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on November 28, 2018, I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

DOUG MCCOY, CEO
KINDRED HOSPITAL
1334 TERRY AVE
SEATTLE, WA 98101-2747

November 28, 2018
Date

Dennis Snook, Designated Agent of NLRB
Name

/s/Leila Uomoto
Signature

EXHIBIT 3(b)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

THC-SEATTLE, LLC d/b/a KINDRED
HOSPITAL SEATTLE – FIRST HILL

and

Case 19-CA-227218

SEIU HEALTHCARE 1199 NW

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by SEIU Healthcare 1199 NW ("Union"). It is issued pursuant to §10(b) of the National Labor Relations Act (the "Act"), 29 U.S.C. § 151 *et seq.*, and § 102.15 of the Rules and Regulations of the National Labor Relations Board (the "Board"), and alleges that THC-Seattle, LLC d/b/a Kindred Hospital Seattle – First Hill ("Respondent"), herein referred to by its correct legal name, has violated the Act as described below.

1.

(a) The charge in this proceeding was filed by the Union on September 11, 2018, and a copy was served on Respondent by U.S. mail on or about September 13, 2018.

(b) The first amended charge in this proceeding was filed by the Union on September 28, 2018, and a copy was served on Respondent by U.S. mail on or about October 1, 2018.

(c) The second amended charge in this proceeding was filed by the Union on November 21, 2018, and a copy was served on Respondent by U.S. mail on or about November 28, 2018.

2.

(a) At all material times, Respondent, a State of Washington limited liability company, with an office and place of business in Seattle, Washington, has been engaged in the business of operating an acute care hospital.

(b) In conducting its operations described above in paragraph 2(a) during the past 12 months, which period is representative of all material times, Respondent derived gross revenues valued in excess of \$250,000.

(c) In conducting its operations described above in paragraph 2(a) during the past 12 months, which period is representative of all material times, Respondent purchased and received, at its facility in Seattle, Washington, goods valued in excess of \$50,000 directly from points outside the State of Washington.

(d) At all material times, Respondent has been an employer engaged in commerce within the meaning of §§ 2(2), (6), and (7) of the Act, and a health care institution within the meaning of § 2(14) of the Act.

3.

At all material times, the Union has been a labor organization within the meaning of § 2(5) of the Act.

4.

At all material times, the following individual held the position set forth opposite his respective name and has been a supervisor of Respondent within the meaning of

§ 2(11) of the Act and/or an agent of Respondent within the meaning of § 2(13) of the Act:

Doug McCoy - Chief Executive Officer

5.

(a) The following employees of Respondent ("Unit") constitute a unit appropriate for purposes of collective bargaining within the meaning of § 9(b) of the Act:

All full-time, regular part-time and per diem service and technical employees in the following classifications: Certified Nursing Assistant, Food Services Aide Handler, Cook, Environmental Services Aide, Licensed Practical Nurse, Materials Management Clerk, Monitor Technician, Phlebotomist, Radiology Technologist, Respiratory Care Practitioner, and Unit Secretary; excluding all other employees, confidential employees, professional employees, employees of the Sub Acute unit, managers, guards, and supervisors as defined by the Act.

(b) At all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in collective-bargaining agreements, the most recent of which is effective by its terms from on or about November 17, 2017, to October 30, 2020.

(c) At all material times, the Union has been the exclusive collective-bargaining representative of the Unit employees within the meaning of § 9(a) of the Act.

6.

(a) Since about August 10, 2018, the Union has requested, via electronic mail, that Respondent furnish it with the following items of information related to a filed grievance concerning sexual harassment:

1) all written communications between management regarding the complaint of sexual harassment and the subsequent investigation;

- 2) all written communications to complainant regarding the complaint and following investigation;
- 3) a list of people interviewed, any and all statements provided, and all notes taken during the interview process, including the identity of who conducted the interviews;
- 4) a copy of all investigation notes regarding the complaint;
- 5) a written conclusion of the investigation and all steps taken following the investigation;
- 6) a copy of policies regarding sexual harassment and workplace violence;
- 7) training dates and outlines of the trainings provided for the management team on how to handle instances of sexual harassment; and
- 8) a list of any and all allegations of sexual harassment in the past 2 years including the steps taken following those investigations.

(b) On August 22, 2018, the Union reiterated, via electronic mail, the request set forth above in paragraph 6(a).

(c) On August 28, 2018, the Union reiterated, via electronic mail, the request set forth above in paragraph 6(a).

(d) On August 28, 2018, the Union requested, via electronic mail, personnel files of two specified employees.

(e) The information requested by the Union set forth above in paragraphs 6(a) and 6(d), is necessary for, and relevant to, the Union's performance of its duties as the exclusive bargaining representative of the Unit.

(f) Since about August 10, 2018, Respondent has failed and/or refused to furnish the information requested by the Union as described above in paragraphs 6(a).

(g) Since about August 28, 2018, Respondent has failed and/or refused to furnish the information requested by the Union as described above in paragraph 6(d).

7.

By the conduct described above in paragraph 6, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of §§ 8(a)(1) and (5) of the Act.

8.

The unfair labor practices of Respondent described above affect commerce within the meaning of §§ 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to §§ 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before January 11, 2019, or postmarked on or before January 10, 2019.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due

date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See § 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT, beginning at 9 a.m. on the **26th day of March, 2019, at the Jackson Federal Building, 915 2nd Ave, Room 2966, Seattle WA, 98174**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure

to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Seattle, Washington, this 28th day of December, 2018.



RONALD K. HOOKS
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 19
915 2nd Ave Ste 2948
Seattle, WA 98174-1006

Attachments

1. Form NLRB-4668
2. Form NLRB-4338

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered

in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 19-CA-227218

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

CERTIFIED MAIL
7018-0680-0002-2060-3119

Doug McCoy, CEO
Kindred Hospital
1334 Terry Ave
Seattle, WA 98101-2747

FIRST CLASS MAIL

Carson Flora, General Counsel
SEIU Healthcare 1199NW
15 S Grady Way, Suite 200
Renton, WA 98057-3239

FIRST CLASS MAIL

Trey Smiley, Legal Assistant
SEIU Healthcare 1199 NW
15 S Grady Way, Suite 200
Renton, WA 98057-3239

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

KINDRED HOSPITAL

and

Case 19-CA-227218

SEIU HEALTHCARE 1199 NW

**AFFIDAVIT OF SERVICE OF: COMPLAINT AND NOTICE OF HEARING (WITH
FORMS NLRB-4338 AND NLRB-4668 ATTACHED)**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **December 28, 2018**, I served the above-entitled document(s) by **certified or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

CERTIFIED MAIL

7018-0680-0002-2060-3119

Doug McCoy , CEO
Kindred Hospital
1334 Terry Ave
Seattle, WA 98101-2747

FIRST CLASS MAIL

Trey Smiley , Legal Assistant
SEIU Healthcare 1199 NW
15 S Grady Way, Suite 200
Renton, WA 98057-3239

FIRST CLASS MAIL

Carson Flora , General Counsel
SEIU Healthcare 1199NW
15 S Grady Way, Suite 200
Renton, WA 98057-3239

December 28, 2018

Date

Dennis Snook, Designated Agent of NLRB

Name

/s/Gabriel Lyengard

Signature

EXHIBIT 4(b)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 19-CA-227218

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

CERTIFIED MAIL

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Trey Smiley , Legal Assistant
SEIU Healthcare 1199 NW
15 S Grady Way, Suite 200
Renton, WA 98057-3239

(OVER)

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.

- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.
- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 19
915 2nd Ave Ste 2948
Seattle, WA 98174-1006

Agency Website: www.nlrb.gov
Telephone: (206)220-6300
Fax: (206)220-6305

Agent's Direct Dial: (206)220-6296

January 17, 2019

Doug McCoy, CEO
Kindred Hospital
1334 Terry Ave
Seattle, WA 98101-2747

Re: Kindred Hospital
Case 19-CA-227218

Dear Mr. McCoy:

The Complaint for the above-referenced case issued on December 28, 2018, and your Answer was due on or before January 11, 2019, or postmarked on or before January 10, 2019. To date, we have not received your Answer to the Complaint. Please file your Answer by the close of business on Thursday, January 24, 2019. If you fail to file an Answer that meets the Board's requirements by the deadline, we will have no choice but to file a Motion for Default Judgment.

If you have any questions, please do not hesitate to contact me at (206) 220-6296.

Very truly yours,

Ann Marie Skov
Field Attorney

EXHIBIT 5(a)

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

KINDRED HOSPITAL

and

Case 19-CA-227218

SEIU HEALTHCARE 1199 NW

**AFFIDAVIT OF SERVICE OF: LETTER SEEKING ANSWER TO COMPLAINT
(WITH FORMS NLRB-4338 AND NLRB-4668 ATTACHED)**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **January 17, 2019**, I served the above-entitled document(s) by **certified, regular mail, and electronic mail**, as noted below, upon the following persons, addressed to them at the following addresses:

CERTIFIED MAIL

Doug McCoy , CEO
Kindred Hospital
1334 Terry Ave
Seattle, WA 98101-2747

FIRST CLASS MAIL

Doug McCoy , CEO
Kindred Hospital
1334 Terry Ave
Seattle, WA 98101-2747

ELECTRONIC MAIL

doug.mccoy@kindred.com

January 17, 2019

Date

Dennis Snook, Designated Agent of NLRB

Name

/s/ Patricia Ramirez

Signature

EXHIBIT

5(b)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 19-CA-227218

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(OVER)

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- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby ORDERS that Respondent THC-Seattle, LLC d/b/a Kindred Hospital Seattle – First Hill (“Respondent”), its officers, agents, successors, and assigns, shall:

1. Cease and Desist from:

- (a) Failing and refusing to bargain collectively with SEIU Healthcare 1199NW (“Union”), regarding the following employees in the bargaining unit (“Unit”):

All full-time, part-time and per diem employees certified by the National Labor Relations Board in Case 19-RC-170715, including employees in the following job classifications: CNA, Food Service Aide Handler, Cook, Environmental Services Aide, Licensed Practical Nurse, Materials Management Clerk, Monitor Technician, Phlebotomist, Radiology Technologist, Respiratory Care Practitioner, and Unit Secretary. All other employees are excluded, including confidential employees, professional employees, employees of the Sub-Acute unit, managers, guards and supervisors as defined in the Act.

- (b) Failing and/or refusing to respond to information requests made by the Union as the exclusive representative of the Unit and/or failing to provide requested information to the Union that is relevant and necessary to its role as the bargaining representative of the Unit.

- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

- (a) Furnish to the Union in a timely manner the following information requested and/or re-requested by the Union on August 10, 2018, August 22, 2018, and August 28, 2018:

- 1) all written communications between management regarding the complaint of sexual harassment and the subsequent investigation;
- 2) all written communications to complainant regarding the complaint and following investigation;
- 3) a list of people interviewed, any and all statements provided, and all notes taken during the interview process, including the identity of who conducted the interviews;
- 4) a copy of all investigation notes regarding the complaint;
- 5) a written conclusion of the investigation and all steps taken following the investigation;
- 6) a copy of policies regarding sexual harassment and workplace violence;
- 7) training dates and outlines of the trainings provided for the management team on how to handle instances of sexual harassment;
- 8) a list of any and all allegations of sexual harassment in the past 2 years including the steps taken following those investigations; and
- 9) the personnel files of two specified employees.

(b) Within 14 days after service by the Region, post at its Seattle, Washington facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other

material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 11, 2018.

- (c) Within 21 days after service by the Region, file with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

SEIU Healthcare 1199NW (“Union”) is the collective bargaining representative of our employees in the following Unit (the “Unit”):

All full-time, part-time and per diem employees certified by the National Labor Relations Board in Case 19-RC-170715, including employees in the following job classifications: CNAs, Food Service Aide Handler, Cook, Environmental Services Aide, Licensed Practical Nurse, Materials Management Clerk, Monitor Technician, Phlebotomist, Radiology Technologist, Respiratory Care Practitioner, and Unit Secretary. All other employees are excluded, including confidential employees, professional employees, employees of the Sub Acute unit, managers, guards and supervisors as defined in the Act.

WE WILL NOT refuse to respond to information requests made by the Union as your exclusive representative and/or fail to provide requested information to the Union that is relevant and necessary to its role as your bargaining representative.

WE WILL provide the Union with the following information it requested and/or re-requested on August 10, 2018, August 22, 2018, and August 28, 2018:

All written communications between management regarding the complaint of sexual harassment and the subsequent investigation.

All written communications to complainant regarding the complaint and following investigation.

A list of people interviewed, any and all statements provided, and all notes taken during the interview process, including the identity of who conducted the interviews.

A copy of all investigation notes regarding the complaint.

A written conclusion of the investigation and all steps taken following the investigation.

A copy of policies regarding sexual harassment and workplace violence.

Training dates and outlines of the trainings provided for the management team on how to handle instances of sexual harassment.

A list of any and all allegations of sexual harassment in the past 2 years including the steps taken following those investigations.

The personnel files of two specified employees.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

Kindred Hospital

(Employer)

Dated:

By:

(Representative)

(Title)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

THC-SEATTLE, LLC D/B/A
KINDRED HOSPITAL SEATTLE – FIRST HILL

and

Case 19-CA-227218

SEIU HEALTHCARE 1199 NW

**AFFIDAVIT OF SERVICE OF: GENERAL COUNSEL'S MOTION TO TRANSFER
CASE TO THE BOARD FOR DEFAULT JUDGMENT.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **February 5, 2019**, I served the above-entitled document(s) by E-file and E-mail, as noted below, upon the following persons, addressed to them at the following addresses:

E-FILE

ROXANNE L. ROTHSCHILD
EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS
BOARD, ROOM 5100
1015 HALF STREET SE
WASHINGTON, D.C.20570

TREY SMILEY, LEGAL ASSISTANT
SEIU HEALTHCARE 1199 NW
15 S GRADY WAY, SUITE 200
RENTON, WA 98057-3239
E-mail: treys@seiu1199nw.org

CARSON FLORA, GENERAL COUNSEL
SEIU HEALTHCARE 1199NW
15 S GRADY WAY, SUITE 200
RENTON, WA 98057-3239
E-mail: carsonf@seiu1199nw.org

DOUG MCCOY , CEO
KINDRED HOSPITAL
1334 TERRY AVE
SEATTLE, WA 98101-2747
E-mail: doug.mccoy@kindred.com

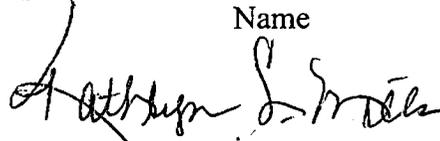
February 5, 2019.

Date

/s/ DENNIS SNOOK

Dennis Snook, Designated Agent of NLRB

Name



Signature

Kathlyn L. Mills, Secretary