

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 3**

**OPAL CARE LLC AND RUBY CARE LLC,  
A SINGLE EMPLOYER, D/B/A EMERALD  
NURSING AND  
REHABILITATION CENTER**

**and**

**Case 03-CA-225611**

**1199 SEIU UNITED HEALTHCARE  
WORKERS EAST**

**MOTION TO TRANSFER PROCEEDINGS TO BOARD  
AND FOR DEFAULT JUDGMENT AND ISSUANCE OF  
BOARD'S DECISION AND ORDER**

**PLEASE TAKE NOTICE** that pursuant to Sections 102.24 and 102.50 of the National Labor Relations Board's Rules and Regulations and Statements of Procedure, Series 8, as amended (Board's Rules and Regulations), the undersigned Counsel for the General Counsel hereby moves that the National Labor Relations Board (Board): (1) transfer this case and continue the proceedings before the Board; (2) deem the allegations set forth in the Complaint Based on Breach of Affirmative Provisions of Settlement Agreement (Complaint) issued in the above-captioned matter on February 8, 2019, as admitted to be true without the taking of evidence supporting the allegations in the Complaint; and (3) issue a Decision and Order granting Default Judgment and ordering Opal Care LLC (Respondent Opal Care) and Ruby Care LLC (Respondent Ruby Care), a single employer, d/b/a Emerald Nursing and Rehabilitation Center (collectively, Respondents) to comply with the terms of the Settlement Agreement. A proposed Order is attached to this motion. In support of this motion, Counsel for the General Counsel shows and alleges that:

1. The charge in this proceeding was filed by 1199 SEIU United Healthcare Workers East (Union) on August 15, 2018, and a copy was served on Respondents by U.S. mail on the same date. Copies of the charge and affidavit of service are attached as Exhibit 1.

2. The amended charge in this proceeding was filed by the Union on October 17, 2018, and a copy was served on Respondents by U.S. mail on the same date. Copies of the amended charge and affidavit of service are attached as Exhibit 2.

3. On January 14, 2019, the Regional Director for Region Three approved an Informal Board Bilateral Settlement Agreement (Settlement Agreement) in this proceeding. The Settlement Agreement required Respondents to (1) post the approved Notice to Employees, (2) provide specified information and payroll documents to Region Three, (3) make all Unit employees whole, with interest, for any financial losses suffered as a result of Respondents' unlawful unilateral changes to Unit employee health insurance, (4) make all required past due and currently due payments, with interest and penalties, to the Union Pension Fund, and (5) make all required past due and currently due payments, with interest and penalties, to the Union Education Fund. The Settlement Agreement also contained a default provision in the event that Respondents failed to comply with its terms. Copies of the Settlement Agreement and Notice to Employees are attached as Exhibit 3.

4. On January 14, 2019, by U.S. mail and e-mail, the Compliance Officer for Region Three (Compliance Officer) set forth the affirmative actions required of Respondents pursuant to the Settlement Agreement. Copies of this letter and e-mail are attached as Exhibit 4.

5. By email dated January 22, 2019, the Compliance Officer requested that Respondents return the signed and dated Notice to Employees and the completed Certificate of

Compliance. Respondents did not respond to this e-mail. A copy of this e-mail is attached as Exhibit 5.

6. On January 24, 2019, by U.S. mail and e-mail, the Compliance Officer advised Respondents that the Region had not received any evidence of compliance with the terms of the Settlement Agreement in any manner and advised that Respondents had until February 7, 2019 to comply, or the Region would consider Respondents to be in default and proceed as set forth in the Settlement Agreement. Respondents did not respond to this letter. Copies of the letter and e-mail are attached as Exhibit 6.

7. On February 5, 2019, the Compliance Officer spoke on the telephone with Respondents' counsel and advised him again of the date set forth in the January 24, 2019 letter by which Respondents were required to comply with the Settlement Agreement to avoid the Region seeking a default judgment. A copy of an e-mail memorializing this conversation is attached as Exhibit 7.

8. On February 7, 2019, the Compliance Officer emailed Respondents to note that the Region had still not received any evidence of Respondents' compliance with the Settlement Agreement. Respondents did not respond to this e-mail. A copy of this e-mail is attached as Exhibit 8.

9. To date, Respondents have not complied with the terms of the Settlement Agreement in any manner.

10. The Complaint issued on February 8, 2019, as a result of Respondents' continued refusal to comply with the terms of the Settlement Agreement. Pursuant to the terms of the Settlement Agreement, all of the allegations contained in the Complaint are deemed admitted. Copies of the Complaint and the affidavit of service are attached as Exhibit 9.

**WHEREFORE**, Counsel for the General Counsel respectfully requests that, in accordance with Sections 102.24 and 102.50 of the Board's Rules and Regulations, the Board deem all matters alleged in the Complaint to be admitted as true, and be so found, and that forthwith, a Board Decision and Order be issued containing findings of fact and conclusions of law and ordering Respondents to comply with the terms of the Settlement Agreement.

**DATED** at Buffalo, New York this 28th day of February, 2019

Respectfully submitted,

\_\_\_\_\_/s/ Eric D. Duryea\_\_\_\_\_

**ERIC D. DURYEYEA**

Counsel for the General Counsel

National Labor Relations Board, Region 3

130 South Elmwood Ave., Suite 630

Buffalo, NY 14202

Tel.: (716) 398-7010

Email: eric.duryea@nlrb.gov

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 3**

**OPAL CARE LLC AND RUBY CARE LLC,  
A SINGLE EMPLOYER, D/B/A EMERALD  
NURSING AND  
REHABILITATION CENTER**

**and**

**Case 03-CA-225611**

**1199 SEIU UNITED HEALTHCARE  
WORKERS EAST**

**PROPOSED ORDER**

The National Labor Relations Board orders that the Respondents, Opal Care LLC and Ruby Care LLC, a single employer, d/b/a Emerald Nursing and Rehabilitation Center, their officers, agents, successors, and assigns shall

1. Cease and desist from:
  - a. Unilaterally and without the consent of the Union modifying the terms of the parties' collective-bargaining agreement during the life of the agreement.
  - b. Unilaterally changing Unit employees' health insurance.
  - c. Failing to make contractually required payments to the Union Pension Fund.
  - d. Failing to make contractually required payments to the Union Education Fund.
  - e. In any like or related manner interfering with employees' rights under Section 7 of the Act.
2. Take the following affirmative actions necessary to effectuate the policies of the Act:
  - a. Make whole all Unit employees, with interest, for any financial losses they suffered because of the modifications Respondents made to the health

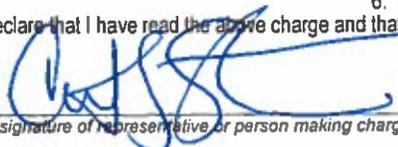
insurance provisions of the parties' collective-bargaining agreement without the Union's consent.

- b. Make all required past due and currently due payments, with interest and penalties, to the Union Pension Fund.
- c. Make all required past due and currently due payments, with interest and penalties, to the Union Education Fund.
- d. Provide a list of all bargaining unit employees for the period from June 1, 2018 through October 31, 2018, including which of those employees were enrolled in health insurance provided through Respondents during that period, including the dates of enrollment and the payroll records of those employees for that period.
- e. Preserve and, within 14 days of a request, provide at the office designated by the Board or its agents, a copy of all payroll records, social security payroll records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of such Order. If requested, the originals of such records shall be provided to the Board or its agents in the same manner.
- f. Post an appropriate notice.

# **Exhibit 1**

INTERNET  
FORM NLRB-501  
(2-08)UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST EMPLOYER**DO NOT WRITE IN THIS SPACE**Case  
03-CA-225611Date Filed  
8/15/2018**INSTRUCTIONS:**

File an original 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 Emerald Nursing and Rehabilitation Center	b. Tel. No. 716-885-6733
	c. Cell No.
	f. Fax No.
d. Address (Street, city, state, and ZIP code) 1175 Delaware Avenue Buffalo NY 14209	e. Employer Representative Darrel Sokol
	g. e-Mail
	h. Number of workers employed 200
i. Type of Establishment (factory, mine, wholesaler, etc.) Health Care	j. Identify principal product or service Nursing Home
k. 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) (5) _____ 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)  See Attached	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) 1199 United Health Care Workers East, SEIU	
4a. Address (Street and number, city, state, and ZIP code) 2421 Main St - #100 Buffalo NY 14214	4b. Tel. No. 716-982-0540
	4c. Cell No.
	4d. Fax No. 716-876-0930
	4e. e-Mail
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)	Catherine Creighton, Attorney (Print/type name and title or office, if any)
	Tel. No. 716-854-0007
	Office, if any, Cell No.
	Fax No. 716-854-0004
	e-Mail ccreighton@cpjglaborlaw.com
Address 1103 Delaware Avenue, Buffalo NY 14209	08/14/2018 (date)

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

## PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

## 2. Basis for the Charge

Since on or about a date six months before the filing of this charge, the above-named employer, by its officers, agents and/or representatives has, without notice or an opportunity to bargain with the union, engaged in the following unilateral activities: the employer unilaterally cancelled the bargaining unit employees' contractually provided health insurance and thereafter replaced it with a health insurance plan which has a significantly higher deductible that may prevent employees from utilizing their health insurance; the employer has unilaterally decided and failed to pay intermittently dental and vision contributions to the contractually agreed upon Taft-Hartley funds; the employer has unilaterally stopped or intermittently paid its contractual contributions to the employees' pension fund; the employer has unilaterally stopped or intermittently paid its contractual contributions to the employees' training fund; the employer has repeatedly had insufficient funds to make its payroll obligations and employees' paychecks have bounced; the employer has deducted union dues from employees' paychecks and failed to remit the deducted dues to the Union but has instead kept the money for itself; the employer has deducted political action monies from employees' paychecks and failed to remit the political action monies to the political action fund but has instead kept the money for itself; the employer has taken voluntary deductions from employees' paychecks to pay for insurances such as AFLAC, life insurance, and disability insurance and the employer has failed to remit the money to the insurance companies whereupon employees' insurance has been cancelled, and even when such voluntary insurance has been cancelled, the employer has continued to deduct insurance premiums from employees' paychecks and kept the money for itself.

The employer has transferred bargaining unit work to non-bargaining unit employees.

The employer has unilaterally changed its employees terms and conditions of employment by requiring them to work in unsafe and unsanitary conditions: by grossly understaffing the nursing home; by failing to provide telephone service in the nursing home so that no one make 911 emergency calls or otherwise; by failing to provide *running water* in the nursing home, and, therefore, requiring housekeeping employees to take soiled laundry which is hazardous to employees because, upon information and belief, such laundry contains extremely contagious bacteria, such as C. difficile, to local public laundromats for cleaning by employees in coin operated laundromats; and by requiring its employees to potentially harm the public by such actions. The employer's unilateral changes in terms and conditions of employment have, upon information and belief, resulted in unsafe conditions for not only employees, but also for the residents that the employees care for, and poor care of residents harms employees' terms and conditions of employment.

By the above actions, the employer has repudiated its contract with the Union. The employer's actions have undermined the union as the bargaining representative by its unlawful unilateral change to every aspect of the employees' work life. **The Union respectfully requests the Board issue an injunction under 10(j) of the Act.**

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

**EMERALD NURSING AND REHABILITATION  
CENTER**

Charged Party

and

**1199 SEIU HEALTHCARE WORKERS EAST**

Charging Party

**Case 03-CA-225611**

**AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER**

I, the undersigned employee of the National Labor Relations Board, state under oath that on August 15, 2018, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Darrel Sokol  
Emerald Nursing and Rehabilitation Center  
1175 Delaware Ave  
Buffalo, NY 14209-1495

August 15, 2018

\_\_\_\_\_  
Date

LOUIS F. PORTO, Designated Agent of  
NLRB

\_\_\_\_\_  
Name

/s/LOUIS F. PORTO

\_\_\_\_\_  
Signature

# **Exhibit 2**

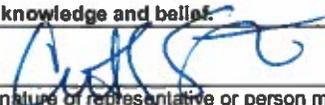
UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**FIRST AMENDED CHARGE AGAINST EMPLOYER**  
INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
03-CA-225611	10/17/2018

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT		
a. Name of Employer Emerald Nursing and Rehabilitation Center		b. Tel. No. (716) 885-6733 c. Cell No.
d. Address (street, city, state ZIP code) 1175 Delaware Ave, Buffalo, NY 14209-1495	e. Employer Representative Scott Wheeler	f. Fax No. g. e-Mail swheeler@sapphirecaregroup.com h. Dispute Location (City and State)
i. Type of Establishment (factory, nursing home, hotel) Health Care	j. Principal Product or Service Nursing Home	k. Number of workers at dispute location 200
l. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a)(1) and (5) 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)		

See Attached

3. Full name of party filing charge (if labor organization, give full name, including local name and number) 1199 Healthcare Workers East, SEIU		
4a. Address (street and number, city, state, and ZIP code) 2421 Main St, Suite 100, Buffalo, NY 14214-2393		4b. Tel. No. (716) 982-0540 4c. Cell No. 4d. Fax No. (716) 876-0930 4e. e-Mail
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.		Tel. No. (716) 854-0007 Office, if any, Cell No.
By:  (signature of representative or person making charge)	Catherine Creighton, Attorney Print Name and Title	Fax No. (716) 854-0004 e-Mail
Address: 1103 Delaware Avenue, Buffalo NY 14209	Date:	

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

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

## 2. Basis for the Charge

Since on or about a date six months before the filing of this charge, the above-named employer, by its officers, agents and/or representatives has, without notice or an opportunity to bargain with the union, engaged in the following unilateral activities: the employer unilaterally cancelled the bargaining unit employees' contractually provided health insurance and thereafter replaced it with a health insurance plan which has a significantly higher deductible that may prevent employees from utilizing their health insurance; the employer has unilaterally stopped or intermittently paid its contractual contributions to the employees' pension fund; the employer has unilaterally stopped or intermittently paid its contractual contributions to the employees' training fund; the employer has repeatedly had insufficient funds to make its payroll obligations and employees' paychecks have bounced; the employer has deducted union dues from employees' paychecks and failed to remit the deducted dues to the Union but has instead kept the money for itself; the employer has deducted political action monies from employees' paychecks and failed to remit the political action monies to the political action fund but has instead kept the money for itself; the employer has taken voluntary deductions from employees' paychecks to pay for insurances such as AFLAC, life insurance, and disability insurance and the employer has failed to remit the money to the insurance companies whereupon employees' insurance has been cancelled, and even when such voluntary insurance has been cancelled, the employer has continued to deduct insurance premiums from employees' paychecks and kept the money for itself.

The employer has unilaterally changed its employees terms and conditions of employment by requiring them to work in unsafe and unsanitary conditions: by grossly understaffing the nursing home; by failing to provide telephone service in the nursing home so that no one make 911 emergency calls or otherwise; by failing to provide functioning washing machines in the facility and, therefore, requiring housekeeping employees to take soiled laundry which is hazardous to employees because, upon information and belief, such laundry contains extremely contagious bacteria, such as C. difficile, to local public laundromats for cleaning by employees in coin operated laundromats; and by requiring its employees to potentially harm the public by such actions. The employer's unilateral changes in terms and conditions of employment have, upon information and belief, resulted in unsafe conditions for not only employees, but also for the residents that the employees care for, and poor care of residents harms employees' terms and conditions of employment.

By the above actions, the employer has repudiated its contract with the Union. The employer's actions have undermined the union as the bargaining representative by its unlawful unilateral change to every aspect of the employees' work life. The Union respectfully requests the Board issue an injunction under 10(j) of the Act.

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

**EMERALD NURSING AND REHABILITATION  
CENTER**

Charged Party

and

**1199 SEIU HEALTHCARE WORKERS EAST**

Charging Party

**Case 03-CA-225611**

**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 17, 2018, I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

Scott Wheeler  
Emerald Nursing and Rehabilitation Center  
1175 Delaware Ave  
Buffalo, NY 14209-1495

Edward A. Trevvett, ESQ., Partner  
Harris Beach PLLC  
99 Garnsey Road  
Pittsford, NY 14534-4565

October 17, 2018

Date

Jerry T. Tidd, Designated Agent of NLRB

Name

/s/Jerry T. Tidd

Signature

# **Exhibit 3**

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
SETTLEMENT AGREEMENT

**IN THE MATTER OF**

**Opal Care LLC and**

**Ruby Care LLC d/b/a Emerald Nursing and Rehabilitation Center**

**Case 03-CA-225611**

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

**POSTING OF NOTICE** — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them in the locations at which employee notices are customarily posted at the Charged Party's facilities at 1175 Delaware Avenue, Buffalo, New York, and 1205 Delaware Avenue, Buffalo, New York. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

**COMPLIANCE WITH NOTICE** — The Charged Party will comply with all the terms and provisions of said Notice.

**BACKPAY** — The Charged Party will make whole the bargaining unit employees affected by the Charged Party's unilateral changes to health insurance for health insurance premiums deducted from their paychecks and not remitted to the insurance provider and unpaid medical expenses incurred in the amount to be determined by the Regional Director, plus interest in accordance with the standard Board formulae, using the procedure set forth below. *New Horizons for the Retarded*, 283 NLRB 1173 (1987); *Kentucky River Medical Center*, 356 NLRB 6 (2010).

The Charged Party will within 14 days of signing this Agreement provide the Region with a list of all bargaining unit employees for the period from June 1, 2018 through October 31, 2018, records reflecting which of those employees were enrolled in health insurance provided through the Charged Party during that period and the dates of that enrollment, and payroll records for those employees during that period. Also within 14 days of signing this Agreement, the Union will provide the Region with the names of those bargaining unit employees who should have received medical coverage and copies of billing records reflecting any unpaid medical expenses incurred during the period June 1, 2018 through October 31, 2018.

Within 14 days of receipt of this information from the Charged Party and the Union, the Regional Director will make a final determination of the amount due to each employee, including interest as calculated in accordance with standard Board formulae, as a result of the Charged Party's unilateral changes to health insurance. Interest will be calculated at a rate of 5% per annum. Within 14 days of receiving notice from the Regional Director of the amounts owed, the Charged Party will pay each employee the amount due. Withholdings should be made from the amount due for reimbursement of insurance premiums. No withholdings should be made from the reimbursement for unpaid medical expense.

**PAYMENT TO UNION PENSION FUND** — Upon approval of this Agreement, the Charged Party will make payment to the 1199 SEIU Regional Pension Fund in the amount of \$52,957.41.<sup>1</sup>

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<sup>1</sup> This payment includes interest and penalties calculated to December 31, 2018. Interest and penalties on this payment due will continue to accrue past that date until the Charged Party complies with this provision of the Agreement, in accordance with *Merryweather Optical Company*, 240 NLRB 1213 (1979).

**PAYMENT TO UNION EDUCATION FUND** – Upon approval of this Agreement, the Charged Party will make payment to the 1199 SEIU/Greater New York Education Fund in the amount of \$12,857.79.<sup>2</sup>

**SCOPE OF THE AGREEMENT** — This Agreement settles only the allegations in the above-captioned case(s), including all allegations covered by the attached Notice to Employees made part of this agreement, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

**PARTIES TO THE AGREEMENT** — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

**AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY** — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes \_\_\_\_\_ No \_\_\_\_\_  
          Initials                      Initials

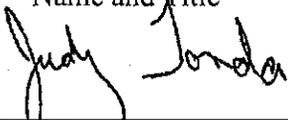
**PERFORMANCE** — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director. The Charged Party agrees that in case of non-compliance by the Charged Party with any of the terms of this Settlement Agreement which require it to (a) post the approved Notice, (b) provide the specified information and payroll documents to the Region, (c) make all Unit employees whole, with interest, for any financial losses suffered as a result of the unlawful unilateral changes to Unit employee health insurance, (d) make all required past due and currently due payments, with interest and penalties, to the Union Pension Fund, and (e) make all required past due and currently due payments, with interest and penalties, to the Union Education Fund, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it

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<sup>2</sup> This payment includes interest and penalties calculated to January 9, 2019. Interest and penalties on this payment due will continue to accrue past that date until the Charged Party complies with this provision of the Agreement, in accordance with *Merryweather Optical Company*, 240 NLRB 1213 (1979).

defaulted on the terms of this Settlement Agreement described above. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

**NOTIFICATION OF COMPLIANCE** — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

<b>Charged Party</b> <b>Opal Care LLC and</b> <b>Ruby Care LLC d/b/a Emerald Nursing and</b> <b>Rehabilitation Center</b>	<b>Charging Party</b> <b>1199 SEIU Healthcare Workers East</b>
By:      Name and Title      Date 	By:      Name and Title      Date /s/CATHERINE CREIGHTON      1/11/2019
Print Name and Title below <b>Judy Landa</b> <b>Managing Member</b>	Print Name and Title below  
Recommended By:      Date /s/ERIC DURYEYEA      1/14/2019 Eric Duryea Field Attorney	Approved By:      Date /s/PAUL J. MURPHY      1/14/2019 PAUL J. MURPHY Regional Director, Region 3

(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.

1199 SEIU United Healthcare Workers East (the Union) is the employees' representative in dealing with us regarding wages, hours and other working conditions of the employees in the following unit (the Unit):

All full-time and regular part-time licensed practical nurse staff, service and maintenance employees (including activity aides, laundry aides, van drivers, unit clerks, certified nurses' aides including ambulatory aides, range of motion aides, physical therapy aides, housekeeping aides, cooks, dietary aides, maintenance aides and floor technicians) employed at our facilities at 1205 Delaware Avenue, Buffalo, New York 14209 and 1175 Delaware Avenue, Buffalo, New York 14209, excluding all office clerical employees, technical employees, resident care coordinators, wound care nurses, guards and supervisors as defined in the Act.

**WE WILL NOT** unilaterally change Unit employee health insurance without giving the Union notice and a meaningful opportunity to bargain.

**WE WILL NOT** fail to make contractually required payments to the Union Pension Fund.

**WE WILL NOT** fail to make contractually required payments to the Union Education Fund.

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

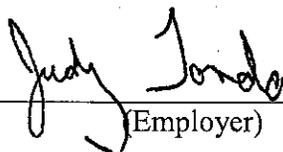
**WE WILL** make all Unit employees whole, with interest, for any financial losses suffered as a result of our unlawful unilateral changes to Unit employee health insurance.

**WE WILL** make all required past due and currently due payments, with interest and penalties, to the Union Pension Fund.

**WE WILL** make all required past due and currently due payments, with interest and penalties, to the Union Education Fund.

**Opal Care LLC and Ruby Care LLC d/b/a Emerald  
Nursing and Rehabilitation Center**

---

  
\_\_\_\_\_  
(Employer)

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
(Representative) (Title)

---

*The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at <https://www.federalrelay.us/tty> (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.*

130 S Elmwood Ave Ste 630  
Buffalo, NY 14202-2465

Telephone: (716)551-4931  
Hours of Operation: 8:30 a.m. to 5 p.m.

---

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**  
This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
SETTLEMENT AGREEMENT

**IN THE MATTER OF**

**Opal Care LLC and  
Ruby Care LLC d/b/a Emerald Nursing and Rehabilitation Center**

**Case 03-CA-225611**

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

**POSTING OF NOTICE** — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them in the locations at which employee notices are customarily posted at the Charged Party's facilities at 1175 Delaware Avenue, Buffalo, New York, and 1205 Delaware Avenue, Buffalo, New York. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

**COMPLIANCE WITH NOTICE** — The Charged Party will comply with all the terms and provisions of said Notice.

**BACKPAY** – The Charged Party will make whole the bargaining unit employees affected by the Charged Party's unilateral changes to health insurance for health insurance premiums deducted from their paychecks and not remitted to the insurance provider and unpaid medical expenses incurred in the amount to be determined by the Regional Director, plus interest in accordance with the standard Board formulae, using the procedure set forth below. *New Horizons for the Retarded*, 283 NLRB 1173 (1987); *Kentucky River Medical Center*, 356 NLRB 6 (2010).

The Charged Party will within 14 days of signing this Agreement provide the Region with a list of all bargaining unit employees for the period from June 1, 2018 through October 31, 2018, records reflecting which of those employees were enrolled in health insurance provided through the Charged Party during that period and the dates of that enrollment, and payroll records for those employees during that period. Also within 14 days of signing this Agreement, the Union will provide the Region with the names of those bargaining unit employees who should have received medical coverage and copies of billing records reflecting any unpaid medical expenses incurred during the period June 1, 2018 through October 31, 2018.

Within 14 days of receipt of this information from the Charged Party and the Union, the Regional Director will make a final determination of the amount due to each employee, including interest as calculated in accordance with standard Board formulae, as a result of the Charged Party's unilateral changes to health insurance. Interest will be calculated at a rate of 5% per annum. Within 14 days of receiving notice from the Regional Director of the amounts owed, the Charged Party will pay each employee the amount due. Withholdings should be made from the amount due for reimbursement of insurance premiums. No withholdings should be made from the reimbursement for unpaid medical expense.

**PAYMENT TO UNION PENSION FUND** – Upon approval of this Agreement, the Charged Party will make payment to the 1199 SEIU Regional Pension Fund in the amount of \$52,957.41.<sup>1</sup>

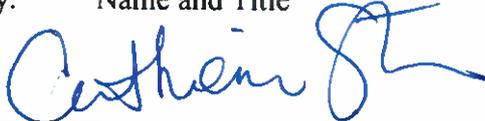
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<sup>1</sup> This payment includes interest and penalties calculated to December 31, 2018. Interest and penalties on this payment due will continue to accrue past that date until the Charged Party complies with this provision of the Agreement, in accordance with *Merryweather Optical Company*, 240 NLRB 1213 (1979).



defaulted on the terms of this Settlement Agreement described above. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

**NOTIFICATION OF COMPLIANCE** — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director’s approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

<b>Charged Party</b> Opal Care LLC and Ruby Care LLC d/b/a Emerald Nursing and Rehabilitation Center		<b>Charging Party</b> 1199 SEIU Healthcare Workers East	
By: Name and Title	Date	By: Name and Title	Date
/s/JUDY LANDA	1/14/2019		1/11/19
Print Name and Title below		Print Name and Title below	
		Catherine Creighton, Attorney	
Recommended By:	Date	Approved By:	Date
/s/ERIC DURYEA	1/14/2019	/s/PAUL J. MURPHY	1/14/2019
Eric Duryea Field Attorney		PAUL J. MURPHY Regional Director, Region 3	

**(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.

1199 SEIU United Healthcare Workers East (the Union) is the employees' representative in dealing with us regarding wages, hours and other working conditions of the employees in the following unit (the Unit):

All full-time and regular part-time licensed practical nurse staff, service and maintenance employees (including activity aides, laundry aides, van drivers, unit clerks, certified nurses' aides including ambulatory aides, range of motion aides, physical therapy aides, housekeeping aides, cooks, dietary aides, maintenance aides and floor technicians) employed at our facilities at 1205 Delaware Avenue, Buffalo, New York 14209 and 1175 Delaware Avenue, Buffalo, New York 14209, excluding all office clerical employees, technical employees, resident care coordinators, wound care nurses, guards and supervisors as defined in the Act.

**WE WILL NOT** unilaterally change Unit employee health insurance without giving the Union notice and a meaningful opportunity to bargain.

**WE WILL NOT** fail to make contractually required payments to the Union Pension Fund.

**WE WILL NOT** fail to make contractually required payments to the Union Education Fund.

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

**WE WILL** make all Unit employees whole, with interest, for any financial losses suffered as a result of our unlawful unilateral changes to Unit employee health insurance.

**WE WILL** make all required past due and currently due payments, with interest and penalties, to the Union Pension Fund.

**WE WILL** make all required past due and currently due payments, with interest and penalties, to the Union Education Fund.

**Opal Care LLC and Ruby Care LLC d/b/a Emerald  
Nursing and Rehabilitation Center**

---

---

(Employer)

Dated: \_\_\_\_\_

By: \_\_\_\_\_

(Representative)

(Title)

---

*The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at <https://www.federalrelay.us/tty> (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.*

130 S Elmwood Ave Ste 630  
Buffalo, NY 14202-2465

**Telephone:** (716)551-4931  
**Hours of Operation:** 8:30 a.m. to 5 p.m.

---

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

# **Exhibit 4**



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 3  
11A Clinton Ave  
STE 342  
ALBANY, NY 12207-2366

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (518)431-4155  
Fax: (518)431-4157

Agent's Direct Dial: (518)419-6669

January 14, 2019

Edward A. Trevvett, Partner  
Harris Beach PLLC  
99 Garnsey Road  
Pittsford, NY 14534-4565

Re: Opal Care LLC and Ruby Care LLC d/b/a  
Emerald Nursing and Rehabilitation Center  
Case 03-CA-225611

Dear Mr. Wheeler:

Enclosed is a conformed copy of the Settlement Agreement in the above matter which was approved on January 14, 2019. This letter discusses what the Employer needs to do to comply with the Agreement.

**Post Notice:** Enclosed are 30 copies of the Notice to Employees. In compliance with the Agreement, a responsible official of the Employer, not the Employer's attorney, must sign and date the Notices before posting them. The Notices should be posted in locations where notices are customarily posted for 60 consecutive days at the Employer's places of business located at 1175 Delaware Avenue and 1205 Delaware Avenue in Buffalo, New York. The Employer must take reasonable steps to ensure that the Notices are not altered, defaced or covered by other material. If additional Notices are required, please let me know. During the posting period, a member of the Regional Office staff may visit the Employer's facility to inspect the Notices.

**Certification of Compliance:** Certification of Compliance forms are also enclosed. Certification of Compliance Part One should be completed and returned by not later than **January 21, 2019 with one signed and dated original Notice.** The Certification of Compliance Part Two should be completed and returned by not later than **January 24, 2019.** If the Certifications of Compliance and signed Notice are returned via e-file or e-mail, no hard copies of the Certifications of Compliance or Notice are required. You are encouraged to email everything to me at [david.turner@nlrb.gov](mailto:david.turner@nlrb.gov).

**Production of Records:** The agreement sets forth the Employer's obligations to produce the records set forth therein. Please produce those records to me by close of business **January 24, 2019** by email at [david.turner@nlrb.gov](mailto:david.turner@nlrb.gov).

**Making Funds Whole:** The agreement provides that the Employer will make the Pension and Education Funds whole the amounts set forth therein. I will advise if any additional

January 14, 2019

interest and/or delinquencies are owing per footnotes 1 and 2 of the agreement. Please provide evidence by **January 24, 2018** that the funds have been made whole the amounts set forth in the agreement.

**Remedial Actions:**

Please read all the terms of the Settlement Agreement and Notice carefully, as the Employer will be expected to comply with all such provisions. If you have any questions or if I can assist you, please let me know.

**Closing the Case:** When all the affirmative terms of the Settlement Agreement have been fully complied with and there are no reported violations of its negative terms, you will be notified that the case has been closed on compliance. Timely receipt of the signed and dated Notice to Employees and the Certifications of Compliance will assist the Region in closing the case in a timely manner.

Very truly yours,

/s/ David M. Turner

DAVID M. TURNER  
Acting Resident Officer

Enclosures: Copy of Conformed Settlement Agreement  
Notices to Employees  
Certification of Compliance

cc: Scott Wheeler  
Opal Care LLC and Ruby Care LLC  
d/b/a Emerald Nursing and Rehabilitation  
Center  
1175 Delaware Ave  
Buffalo, NY 14209-1495

Catherine Creighton, ESQ.  
Creighton Johnsen & Giroux  
1103 Delaware Avenue  
Buffalo, NY 14209

**CERTIFICATION OF COMPLIANCE**  
**(PART ONE)**

**RE: Opal Care LLC and Ruby Care LLC d/b/a Emerald Nursing and Rehabilitation Center  
Case 03-CA-225611**

**(If additional space is needed to provide a full response, attach a sheet(s) with the necessary information.)**

**Physical Posting**

The signed and dated Notice to Employees in the above matter was posted on

(date)\_\_\_\_\_ at the following locations: (List specific places of posting)

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---

I have completed this Certification of Compliance and state under penalty of perjury that it is true and correct.

**CHARGED PARTY/RESPONDENT**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

This form should be returned to the Regional Office/Compliance Officer, together with **ONE** original Notice, dated and signed in the same manner as those posted. If the Certification of Compliance Part One and signed Notice is returned via e-file or e-mail, no hard copies of the Certification of Compliance Part One or Notice are required.

**CERTIFICATION OF COMPLIANCE**  
**(PART TWO)**

**RE: Opal Care LLC and Ruby Care LLC d/b/a Emerald Nursing and Rehabilitation Center  
Case 03-CA-225611**

**Funds**

On (date) \_\_\_\_\_, the Employer made payment to the Funds named in the Settlement Agreement and/or Notice to Employees in the amounts set forth therein. Proof of payment is attached.

I have completed this Certification of Compliance and state under penalty of perjury that it is true and correct.

**CHARGED PARTY/RESPONDENT**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

This form should be returned to the Regional Office/Compliance Officer. If the Certification of Compliance Part Two and signed Notice is returned via e-file or e-mail, no hard copy of the Certification of Compliance Part Two is required.

**From:** Turner Jr., David M.  
**To:** ["Edward A. Trevett"](#)  
**Subject:** Opal Care 3-CA-225611  
**Date:** Monday, January 14, 2019 12:22:00 PM  
**Attachments:** [Turner letter.pdf](#)

---

Ed,

Please see the attached letter. We are sending the notices to your attention today. Dave

David Turner  
Acting Resident Officer/Compliance Officer  
National Labor Relations Board, Region 3  
Leo W. O'Brien Federal Building  
11A Clinton Ave - Room 342  
Albany, NY 12207-2350  
518.419.6669 (phone)  
518.431.4157 (fax)  
[david.turner@nlrb.gov](mailto:david.turner@nlrb.gov)

# **Exhibit 5**

**From:** Turner Jr., David M.  
**To:** ["Edward A. Trevvett"](#)  
**Subject:** Opal Care 3-CA-225611  
**Date:** Tuesday, January 22, 2019 7:37:00 AM  
**Attachments:** [Turner letter.pdf](#)

---

Ed,

Please send the signed and dated Notice to Employees along with the Certification of Compliance form. Thank you.

David Turner  
Acting Resident Officer/Compliance Officer  
National Labor Relations Board, Region 3  
Leo W. O'Brien Federal Building  
11A Clinton Ave - Room 342  
Albany, NY 12207-2350  
518.419.6669 (phone)  
518.431.4157 (fax)  
[david.turner@nlrb.gov](mailto:david.turner@nlrb.gov)

---

**From:** Turner Jr., David M.  
**Sent:** Monday, January 14, 2019 12:23 PM  
**To:** 'Edward A. Trevvett' <ETrevvett@HarrisBeach.com>  
**Subject:** Opal Care 3-CA-225611

Ed,

Please see the attached letter. We are sending the notices to your attention today. Dave

David Turner  
Acting Resident Officer/Compliance Officer  
National Labor Relations Board, Region 3  
Leo W. O'Brien Federal Building  
11A Clinton Ave - Room 342  
Albany, NY 12207-2350  
518.419.6669 (phone)  
518.431.4157 (fax)  
[david.turner@nlrb.gov](mailto:david.turner@nlrb.gov)

# **Exhibit 6**



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 3  
11A Clinton Ave  
STE 342  
ALBANY, NY 12207-2366

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (518)431-4155  
Fax: (518)431-4157

Agent's Direct Dial: (518)419-6669

January 24, 2019

Edward A. Trevvett, ESQ., Partner  
Harris Beach PLLC  
99 Garnsey Road  
Pittsford, NY 14534-4565

Re: Opal Care LLC and Ruby Care LLC d/b/a  
Emerald Nursing and Rehabilitation Center  
Case 03-CA-225611

Dear Mr. Trevvett:

I am writing to further my attached January 14 letter in which I set forth dates by which we asked you to demonstrate compliance with certain terms of the Settlement Agreement. I inquired about these same issues by email of January 22. Please be advised that we have not received any evidence from you that Respondent has complied with the terms of the Settlement Agreement in any manner. Per the terms of the Settlement Agreement, please consider this your 14 day notice per the terms of the Performance section of the Settlement Agreement. Please provide a signed and dated copy of the Notice to Employees, the completed Confirmation of Posting form, the sum total of the payroll records discussed in the Backpay section of the agreement, and evidence that the funds have been paid by the close of business February 7, 2019 or the Region will consider Respondent to be in default and proceed as set forth therein. Please phone to discuss if needed.

Very truly yours,

/s/ David M. Turner

DAVID M. TURNER  
Acting Resident Officer

cc: Catherine Creighton, ESQ.  
Creighton Johnsen & Giroux  
1103 Delaware Avenue  
Buffalo, NY 14209

**From:** Turner Jr., David M.  
**To:** ["Edward A. Trevett"](#)  
**Cc:** ["Catherine Creighton"](#)  
**Subject:** Opal Care 3-CA-225611  
**Date:** Thursday, January 24, 2019 9:03:00 AM  
**Attachments:** [Turner letter January 24 2019.pdf](#)  
[Turner letter.pdf](#)  
[SET.03-CA-225611.Conformed Settlement Agreement.pdf](#)

---

Please see the attached letter dated 1/24/19 and related attachments.

David Turner  
Acting Resident Officer/Compliance Officer  
National Labor Relations Board, Region 3  
Leo W. O'Brien Federal Building  
11A Clinton Ave - Room 342  
Albany, NY 12207-2350  
518.419.6669 (phone)  
518.431.4157 (fax)  
[david.turner@nlrb.gov](mailto:david.turner@nlrb.gov)

# **Exhibit 7**

**From:** [Turner Jr., David M.](#)  
**To:** [Turner Jr., David M.](#)  
**Subject:** Trevvett called  
**Date:** Tuesday, February 05, 2019 11:08:05 AM

---

He said his client is unresponsive in many ways and he will implore them to give the records by the end of the day today. I advised him of the date set forth in the summary judgment threat letter and he said they will either have to do it or not and he asked my permission to send the summary judgment letter to them. I said of course he could send it to them.

David Turner  
Acting Resident Officer/Compliance Officer  
National Labor Relations Board, Region 3  
Leo W. O'Brien Federal Building  
11A Clinton Ave - Room 342  
Albany, NY 12207-2350  
518.419.6669 (phone)  
518.431.4157 (fax)  
[david.turner@nlrb.gov](mailto:david.turner@nlrb.gov)

# **Exhibit 8**

**From:** [Turner Jr., David M.](#)  
**To:** [Edward A. Trevvett](#)  
**Cc:** [Turner Jr., David M.](#)  
**Subject:** Opal Care 3-CA-225611  
**Date:** Thursday, February 07, 2019 4:51:26 AM  
**Attachments:** [Turner letter January 24 2019.pdf](#)  
[Turner letter.pdf](#)  
[SET.03-CA-225611.Conformed Settlement Agreement.pdf](#)

---

Ed

We still haven't received any evidence of compliance with the settlement agreement.

Get [Outlook for iOS](#)

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**From:** Turner Jr., David M.  
**Sent:** Thursday, January 24, 2019 9:04:35 AM  
**To:** Edward A. Trevvett  
**Cc:** Catherine Creighton  
**Subject:** Opal Care 3-CA-225611

Please see the attached letter dated 1/24/19 and related attachments.

David Turner  
Acting Resident Officer/Compliance Officer  
National Labor Relations Board, Region 3  
Leo W. O'Brien Federal Building  
11A Clinton Ave - Room 342  
Albany, NY 12207-2350  
518.419.6669 (phone)  
518.431.4157 (fax)  
[david.turner@nrlb.gov](mailto:david.turner@nrlb.gov)

# **Exhibit 9**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 3**

**OPAL CARE LLC AND RUBY CARE LLC,  
A SINGLE EMPLOYER, D/B/A EMERALD  
NURSING AND  
REHABILITATION CENTER**

**and**

**Case 03-CA-225611**

**1199 SEIU UNITED HEALTHCARE  
WORKERS EAST**

**COMPLAINT BASED ON BREACH OF AFFIRMATIVE PROVISIONS OF  
SETTLEMENT AGREEMENT**

Based upon a charge filed by 1199 SEIU United Healthcare Workers East (Union) against Opal Care LLC (Respondent Opal Care) and Ruby Care LLC (Respondent Ruby Care), a single employer, d/b/a Emerald Nursing and Rehabilitation Center (collectively, Respondents) alleging that they violated the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., by engaging in unfair labor practices, a Settlement Agreement and Notice to Employees (the Settlement) was approved on January 14, 2019, a copy of which is attached as Exhibit A. Pursuant to the Settlement, and pursuant to which Respondents agreed to take certain actions to remedy the unfair labor practices specified in the Settlement. Respondents have failed and refused to comply with the terms of the Settlement. Accordingly, pursuant to the terms of the Settlement and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board), the following complaint is issued.

**1.**

(a) The charge in this proceeding was filed by the Union on August 15, 2018, and a copy was served on Respondent Opal Care by U.S. mail on the same date.

(b) The amended charge in this proceeding was filed by the Union on October 17, 2018, and a copy was served on Respondent Opal Care by U.S. mail on the same date.

## 2.

(a) At all material times, Respondent Opal Care has been a limited liability company with an office and place of business located at 1175 Delaware Avenue, Buffalo, New York (Respondent Opal Care's facility), and has been operating a nursing home providing inpatient medical care.

(b) At all material times, Respondent Ruby Care has been a limited liability company with an office and place of business located at 1205 Delaware Avenue, Buffalo, New York (Respondent Ruby Care's facility), and has been operating a nursing home providing inpatient medical care.

(c) Annually, Respondents, in conducting their business operations described above in paragraph 2(a) and (b), derive gross revenues in excess of \$100,000 and purchases and receives at their facilities goods valued in excess of \$5,000 directly from points outside the State of New York.

## 3.

(a) At all material times, Respondents have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have interrelated operations with common payroll and employee health benefits; and have held themselves out to the public as a single-integrated business enterprise.

(b) Based on its operations described above in paragraph 3(a), Respondents constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

**4.**

At all material times, Respondents have been employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and have been health care institutions within the meaning of Section 2(14) of the Act.

**5.**

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

**6.**

(a) At all material times until about September 21, 2018, Darell Sokol held the position of Respondents' Regional Administrator and was a supervisor of Respondents within the meaning of Section 2(11) of the Act and an agent of Respondents within the meaning of Section 2(13) of the Act.

(b) At all material times since about September 22, 2018, Scott Wheeler has held the position of Respondents' Regional Administrator and has been a supervisor of Respondents within the meaning of Section 2(11) of the Act and an agent of Respondents within the meaning of Section 2(13) of the Act.

(c) At all material times, Heather Edwards has held the position of Respondent Opal Care's Administrator and has been a supervisor of Respondent Opal Care within the meaning of Section 2(11) of the Act and an agent of Respondent Opal Care within the meaning of Section 2(13) of the Act.

(d) At all material times, David Goldman has held the position of Respondent Ruby Care's Administrator and has been a supervisor of Respondent Ruby Care within the meaning of Section 2(11) of the Act and an agent of Respondent Ruby Care within the meaning of Section 2(13) of the Act.

**7.**

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

All full-time and regular part-time licensed practical nurse staff, service and maintenance employees (including activity aides, laundry aides, van drivers, unit clerks, certified nurses' aides including ambulatory aides, range of motion aides, physical therapy aides, housekeeping aides, cooks, dietary aides, maintenance aides and floor technicians) employed at Respondents' facilities at 1205 Delaware Avenue, Buffalo, New York 14209 and 1175 Delaware Avenue, Buffalo, New York 14209, excluding all office clerical employees, technical employees, resident care coordinators, wound care nurses, guards and supervisors as defined in the Act.

(b) At all material times, Respondents have recognized the Union as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in a collective-bargaining agreement which is effective from August 1, 2016 to August 1, 2019.

(c) At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

**8.**

(a) About June 20, 2018, Respondents cancelled Unit employees' health insurance through Nova.

(b) About August 1, 2018, Respondents implemented new Unit employee health insurance through Blue Cross Blue Shield.

(c) The subjects set forth above in paragraph 8(a) and (b) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(d) Respondents engaged in the conduct described above in paragraph 8(a) and (b) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondents with respect to this conduct or the effects of this conduct.

## **9.**

(a) Since about April 10, 2018, Respondents failed to continue in effect all the terms and conditions of the agreement described in paragraph 7(b) by failing to make required payments to the Union Education Fund.

(b) Since about August 1, 2018, Respondents failed to continue in effect all the terms and conditions of the agreement described in paragraph 7(b) by failing to make required payments to the Union Pension Fund.

(c) The terms and conditions of employment described above in paragraph 9(a) and (b) are mandatory subjects for the purposes of collective bargaining.

(d) Respondents engaged in the conduct described above in paragraph 9(a) and (b) without the Union's consent.

## **10.**

By the conduct described above in paragraph 8(a), (b), and (d), Respondents have been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of their employees in violation of Section 8(a)(1) and (5) of the Act.

**11.**

By the conduct described above in paragraph 9(a), (b), and (d), Respondents have been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of their employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

**12.**

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

**WHEREFORE**, as part of the remedy for the unfair labor practices alleged above in paragraphs 8, 9, 10, and 11, the General Counsel seeks an order requiring Respondents to:

1. Cease and desist from:
  - a. Unilaterally and without the consent of the Union modifying the terms of the parties' collective-bargaining agreement during the life of the agreement.
  - b. Unilaterally changing Unit employees' health insurance.
  - c. Failing to make contractually required payments to the Union Pension Fund.
  - d. Failing to make contractually required payments to the Union Education Fund.
  - e. In any like or related manner interfering with employees' rights under Section 7 of the Act.
2. Take the following affirmative actions:
  - a. Make whole all Unit employees, with interest, for any financial losses they suffered because of the modifications Respondents made to the health

insurance provisions of the parties' collective-bargaining agreement without the Union's consent.

- b. Make all required past due and currently due payments, with interest and penalties, to the Union Pension Fund.
- c. Make all required past due and currently due payments, with interest and penalties, to the Union Education Fund.
- d. Provide a list of all bargaining unit employees for the period from June 1, 2018 through October 31, 2018, including which of those employees were enrolled in health insurance provided through Respondents during that period, including the dates of enrollment and the payroll records of those employees for that period.
- e. Preserve and, within 14 days of a request, provide at the office designated by the Board or its agents, a copy of all payroll records, social security payroll records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of such Order. If requested, the originals of such records shall be provided to the Board or its agents in the same manner.
- f. Post an appropriate notice.

**WHEREFORE**, the General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

**NO HEARING OR ANSWER**

Because Respondents have previously agreed that all of the allegations of the Complaint will be deemed admitted and that they will have waived their right to file an Answer to the Complaint, no Answer is required and no hearing is necessary.

Dated: February 8<sup>th</sup>, 2019.

/S/PAUL J. MURPHY

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**PAUL J. MURPHY**  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 03  
130 S Elmwood Ave Ste 630  
Buffalo, NY 14202-2465

Attachments

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
SETTLEMENT AGREEMENT

**IN THE MATTER OF**

**Opal Care LLC and**

**Ruby Care LLC d/b/a Emerald Nursing and Rehabilitation Center**

**Case 03-CA-225611**

Subject to the approval of the Regional Director for the National Labor Relations Board; the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

**POSTING OF NOTICE** — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them in the locations at which employee notices are customarily posted at the Charged Party's facilities at 1175 Delaware Avenue, Buffalo, New York, and 1205 Delaware Avenue, Buffalo, New York. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

**COMPLIANCE WITH NOTICE** — The Charged Party will comply with all the terms and provisions of said Notice.

**BACKPAY** — The Charged Party will make whole the bargaining unit employees affected by the Charged Party's unilateral changes to health insurance for health insurance premiums deducted from their paychecks and not remitted to the insurance provider and unpaid medical expenses incurred in the amount to be determined by the Regional Director, plus interest in accordance with the standard Board formulae, using the procedure set forth below. *New Horizons for the Retarded*, 283 NLRB 1173 (1987); *Kentucky River Medical Center*, 356 NLRB 6 (2010).

The Charged Party will within 14 days of signing this Agreement provide the Region with a list of all bargaining unit employees for the period from June 1, 2018 through October 31, 2018, records reflecting which of those employees were enrolled in health insurance provided through the Charged Party during that period and the dates of that enrollment, and payroll records for those employees during that period. Also within 14 days of signing this Agreement, the Union will provide the Region with the names of those bargaining unit employees who should have received medical coverage and copies of billing records reflecting any unpaid medical expenses incurred during the period June 1, 2018 through October 31, 2018.

Within 14 days of receipt of this information from the Charged Party and the Union, the Regional Director will make a final determination of the amount due to each employee, including interest as calculated in accordance with standard Board formulae, as a result of the Charged Party's unilateral changes to health insurance. Interest will be calculated at a rate of 5% per annum. Within 14 days of receiving notice from the Regional Director of the amounts owed, the Charged Party will pay each employee the amount due. Withholdings should be made from the amount due for reimbursement of insurance premiums. No withholdings should be made from the reimbursement for unpaid medical expense.

**PAYMENT TO UNION PENSION FUND** — Upon approval of this Agreement, the Charged Party will make payment to the 1199 SEIU Regional Pension Fund in the amount of \$52,957.41.<sup>1</sup>

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<sup>1</sup> This payment includes interest and penalties calculated to December 31, 2018. Interest and penalties on this payment due will continue to accrue past that date until the Charged Party complies with this provision of the Agreement, in accordance with *Merryweather Optical Company*, 240 NLRB 1213 (1979).

**PAYMENT TO UNION EDUCATION FUND** – Upon approval of this Agreement, the Charged Party will make payment to the 1199 SEIU/Greater New York Education Fund in the amount of \$12,857.79.<sup>2</sup>

**SCOPE OF THE AGREEMENT** — This Agreement settles only the allegations in the above-captioned case(s), including all allegations covered by the attached Notice to Employees made part of this agreement, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

**PARTIES TO THE AGREEMENT** — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

**AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY** — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes \_\_\_\_\_ No \_\_\_\_\_  
          Initials                      Initials

**PERFORMANCE** — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director. The Charged Party agrees that in case of non-compliance by the Charged Party with any of the terms of this Settlement Agreement which require it to (a) post the approved Notice, (b) provide the specified information and payroll documents to the Region, (c) make all Unit employees whole, with interest, for any financial losses suffered as a result of the unlawful unilateral changes to Unit employee health insurance, (d) make all required past due and currently due payments, with interest and penalties, to the Union Pension Fund, and (e) make all required past due and currently due payments, with interest and penalties, to the Union Education Fund, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it

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<sup>2</sup> This payment includes interest and penalties calculated to January 9, 2019. Interest and penalties on this payment due will continue to accrue past that date until the Charged Party complies with this provision of the Agreement, in accordance with *Merryweather Optical Company*, 240 NLRB 1213 (1979).



(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.

1199 SEIU United Healthcare Workers East (the Union) is the employees' representative in dealing with us regarding wages, hours and other working conditions of the employees in the following unit (the Unit):

All full-time and regular part-time licensed practical nurse staff, service and maintenance employees (including activity aides, laundry aides, van drivers, unit clerks, certified nurses' aides including ambulatory aides, range of motion aides, physical therapy aides, housekeeping aides, cooks, dietary aides, maintenance aides and floor technicians) employed at our facilities at 1205 Delaware Avenue, Buffalo, New York 14209 and 1175 Delaware Avenue, Buffalo, New York 14209, excluding all office clerical employees, technical employees, resident care coordinators, wound care nurses, guards and supervisors as defined in the Act.

**WE WILL NOT** unilaterally change Unit employee health insurance without giving the Union notice and a meaningful opportunity to bargain.

**WE WILL NOT** fail to make contractually required payments to the Union Pension Fund.

**WE WILL NOT** fail to make contractually required payments to the Union Education Fund.

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

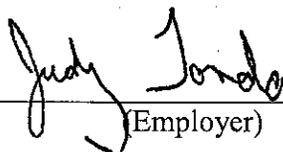
**WE WILL** make all Unit employees whole, with interest, for any financial losses suffered as a result of our unlawful unilateral changes to Unit employee health insurance.

**WE WILL** make all required past due and currently due payments, with interest and penalties, to the Union Pension Fund.

**WE WILL** make all required past due and currently due payments, with interest and penalties, to the Union Education Fund.

**Opal Care LLC and Ruby Care LLC d/b/a Emerald  
Nursing and Rehabilitation Center**

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\_\_\_\_\_  
(Employer)

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
(Representative) (Title)

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*The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at <https://www.federalrelay.us/tty> (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.*

130 S Elmwood Ave Ste 630  
Buffalo, NY 14202-2465

Telephone: (716)551-4931  
Hours of Operation: 8:30 a.m. to 5 p.m.

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**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**  
This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
SETTLEMENT AGREEMENT

**IN THE MATTER OF**

**Opal Care LLC and  
Ruby Care LLC d/b/a Emerald Nursing and Rehabilitation Center**

**Case 03-CA-225611**

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

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**COMPLIANCE WITH NOTICE** — The Charged Party will comply with all the terms and provisions of said Notice.

**BACKPAY** – The Charged Party will make whole the bargaining unit employees affected by the Charged Party's unilateral changes to health insurance for health insurance premiums deducted from their paychecks and not remitted to the insurance provider and unpaid medical expenses incurred in the amount to be determined by the Regional Director, plus interest in accordance with the standard Board formulae, using the procedure set forth below. *New Horizons for the Retarded*, 283 NLRB 1173 (1987); *Kentucky River Medical Center*, 356 NLRB 6 (2010).

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Within 14 days of receipt of this information from the Charged Party and the Union, the Regional Director will make a final determination of the amount due to each employee, including interest as calculated in accordance with standard Board formulae, as a result of the Charged Party's unilateral changes to health insurance. Interest will be calculated at a rate of 5% per annum. Within 14 days of receiving notice from the Regional Director of the amounts owed, the Charged Party will pay each employee the amount due. Withholdings should be made from the amount due for reimbursement of insurance premiums. No withholdings should be made from the reimbursement for unpaid medical expense.

**PAYMENT TO UNION PENSION FUND** – Upon approval of this Agreement, the Charged Party will make payment to the 1199 SEIU Regional Pension Fund in the amount of \$52,957.41.<sup>1</sup>

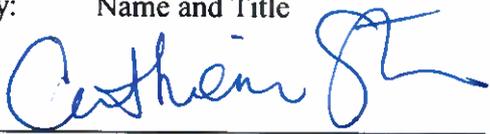
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<sup>1</sup> This payment includes interest and penalties calculated to December 31, 2018. Interest and penalties on this payment due will continue to accrue past that date until the Charged Party complies with this provision of the Agreement, in accordance with *Merryweather Optical Company*, 240 NLRB 1213 (1979).



defaulted on the terms of this Settlement Agreement described above. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

**NOTIFICATION OF COMPLIANCE** — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director’s approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

<b>Charged Party</b> Opal Care LLC and Ruby Care LLC d/b/a Emerald Nursing and Rehabilitation Center			<b>Charging Party</b> 1199 SEIU Healthcare Workers East		
By:	Name and Title	Date	By:	Name and Title	Date
/s/JUDY LANDA		1/14/2019			1/11/19
Print Name and Title below			Print Name and Title below		
			Catherine Creighton, Attorney		
<b>Recommended By:</b>		<b>Date</b>	<b>Approved By:</b>		<b>Date</b>
/s/ERIC DURYEA		1/14/2019	/s/PAUL J. MURPHY		1/14/2019
Eric Duryea Field Attorney			PAUL J. MURPHY Regional Director, Region 3		

**(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.

1199 SEIU United Healthcare Workers East (the Union) is the employees' representative in dealing with us regarding wages, hours and other working conditions of the employees in the following unit (the Unit):

All full-time and regular part-time licensed practical nurse staff, service and maintenance employees (including activity aides, laundry aides, van drivers, unit clerks, certified nurses' aides including ambulatory aides, range of motion aides, physical therapy aides, housekeeping aides, cooks, dietary aides, maintenance aides and floor technicians) employed at our facilities at 1205 Delaware Avenue, Buffalo, New York 14209 and 1175 Delaware Avenue, Buffalo, New York 14209, excluding all office clerical employees, technical employees, resident care coordinators, wound care nurses, guards and supervisors as defined in the Act.

**WE WILL NOT** unilaterally change Unit employee health insurance without giving the Union notice and a meaningful opportunity to bargain.

**WE WILL NOT** fail to make contractually required payments to the Union Pension Fund.

**WE WILL NOT** fail to make contractually required payments to the Union Education Fund.

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

**WE WILL** make all Unit employees whole, with interest, for any financial losses suffered as a result of our unlawful unilateral changes to Unit employee health insurance.

**WE WILL** make all required past due and currently due payments, with interest and penalties, to the Union Pension Fund.

**WE WILL** make all required past due and currently due payments, with interest and penalties, to the Union Education Fund.

**Opal Care LLC and Ruby Care LLC d/b/a Emerald  
Nursing and Rehabilitation Center**

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(Employer)

Dated: \_\_\_\_\_

By: \_\_\_\_\_

(Representative)

(Title)

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*The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at <https://www.federalrelay.us/tty> (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.*

130 S Elmwood Ave Ste 630  
Buffalo, NY 14202-2465

**Telephone:** (716)551-4931  
**Hours of Operation:** 8:30 a.m. to 5 p.m.

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This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 3**

**OPAL CARE LLC AND RUBY CARE LLC,  
A SINGLE EMPLOYER, D/B/A EMERALD  
NURSING AND  
REHABILITATION CENTER**

**and**

**Case 03-CA-225611**

**1199 SEIU UNITED HEALTHCARE WORKERS  
EAST**

**AFFIDAVIT OF SERVICE OF COMPLAINT ON BREACH OF AFFIRMATIVE  
PROVISIONS OF SETTLEMENT AGREEMENT**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **February 8, 2019**, I served the above-entitled document(s) by **regular mail** upon the following persons, addressed to them at the following addresses:

Edward A. Trevvett , ESQ., Partner  
Harris Beach PLLC  
99 Garnsey Road  
Pittsford, NY 14534-4565

**CERTIFIED MAIL  
7014-1820-0000-6579-6646  
RETURN RECEIPT REQUESTED**

Catherine Creighton , ESQ.  
Creighton Johnsen & Giroux  
1103 Delaware Avenue  
Buffalo, NY 14209

**CERTIFIED MAIL  
7014-1820-0000-6579-6653  
RETURN RECEIPT REQUESTED**

Scott Wheeler  
Opal Care LLC and Ruby Care LLC d/b/a  
Emerald Nursing and Rehabilitation Center  
1175 Delaware Ave  
Buffalo, NY 14209-1495

**FIRST CLASS MAIL**

1199 SEIU Healthcare Workers East  
2421 Main St Suite 100  
Buffalo, NY 14214-2393

**FIRST CLASS MAIL**

Jeremy B. Strauss  
The Grand Healthcare System  
1720 Whitestone Expressway  
Suite 500  
Whitestone, NY 11357

February 8, 2019

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Date

JULIO GONZALEZ, Designated Agent of  
NLRB

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Name

/S/JULIO GONZALEZ

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Signature