

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

NATIONAL LABOR RELATIONS BOARD,	:	
	:	
Applicant,	:	
	:	
v.	:	Civil No. _____
	:	
ALARIS HEALTH AT HAMILTON PARK,	:	
	:	
Respondent.	:	Motion Day: April 6, 2020

**NOTICE OF MOTION OF THE NATIONAL LABOR  
RELATIONS BOARD FOR ORDER  
ENFORCING ADMINISTRATIVE SUBPOENAS**

**PLEASE TAKE NOTICE** that on April 6, 2020, or as soon thereafter as counsel may be heard, counsel for applicant National Labor Relations Board (the Board) shall move before the United States District Court for the District of New Jersey at the Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07101, for the entry of an Order: (1) enforcing two administrative subpoenas against Respondent Alaris Health at Hamilton Park (Alaris Hamilton); (2) granting the Board’s request for an award of attorneys’ fees and costs incurred by the Board in connection with this motion, and (3) granting such other relief as may be just and proper.

**PLEASE TAKE FURTHER NOTICE** that opposition, if any, to the relief sought herein shall be in writing, filed with the Clerk of the District Court and served upon the undersigned no later than fourteen (14) days prior to the return date of this motion pursuant to L. Civ. R. 78.1(a).

The Board's motion, which is verified under oath as set forth below and accompanied by a supporting brief and a proposed order, is made under Section 11(2) of the National Labor Relations Act (Act), as amended, 29 U.S.C. § 161(2). In support of this motion, the Board states as follows:

1. The Board is an administrative agency of the United States Government created by the Act, and empowered to administer the provisions of the Act, including the issuance of subpoenas in furtherance of its investigation of matters within its jurisdiction.

Section 11(2) of the Act, *supra*, confers jurisdiction upon the United States district courts, upon application of the Board, to order compliance with those subpoenas.

2. Alaris Hamilton operates a nursing home and rehabilitation center in Jersey City, New Jersey, which is within this judicial district.

(**Exhibit A, p. 2.**) The following employees of Alaris Hamilton (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

(Id.).

All employees excluding Licensed Practical Nurses, Registered Nurses, office and clerical employees, supervisors, watchmen and guards as defined in the Act.

3. At all material times, Alaris Hamilton has recognized 1199 SEIU United Healthcare Workers East (the Union) as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from March 1, 2012, to June 30, 2016. (Id.).

4. This motion arises from the Board's investigation into whether Alaris Hamilton has complied with a judgment entered by the United States Court of Appeals for the Third Circuit in Case No. 18-3009 (**Exhibit B**) on May 8, 2019. That judgment enforced a May 14, 2018 Decision and Order issued by the Board (attached above as Exhibit A and reported at 366 NLRB No. 90) finding that Alaris Hamilton committed unfair labor practices in violation of the Act, by failing and refusing to provide requested information necessary for, and relevant

to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit. To remedy its unlawful conduct, the Board's court-enforced order requires Alaris Hamilton to, in pertinent part, "[f]urnish the Union in a timely manner [] information requested by the Union on April 28, 2016, that is not already provided, specifically the information set forth above in paragraph 1 of this Decision." (Id., pp. 2-3).

5. On September 25, 2019, the Board's Contempt, Compliance and Special Litigation Branch (CCSLB) emailed a letter to David S. Jasinski, counsel for Alaris Hamilton, requesting evidence of his client's compliance with the Third Circuit's judgment. (**Exhibit C.**) CCSLB's letter requested a response by October 7, 2019. No response was received.

6. Having determined that further investigation was warranted into Alaris Hamilton's compliance efforts, on January 31, 2020, the Board issued Subpoena *Duces Tecum* A-1-180SE2N to Alaris Hamilton (**Exhibit D**). That subpoena requested:

1. Copies of all correspondence among Alaris agents regarding compliance with the Third Circuit's judgment. Privileged legal advice shall be withheld as set forth above.

(Id. p. 5.)

7. On the same date, the Board also issued Subpoena *Ad Testificandum* B-1-180SDXD to Alaris Hamilton (**Exhibit E**). That subpoena sought the testimony of the company regarding a number of topics related to the company's compliance with the court judgment, to wit:

1. Alaris Hamilton's receipt of the judgment of the United States Court of Appeals for the Third Circuit in *NLRB v. Alaris Health at Hamilton Park*, Case No. 18-3009;
2. Each of the specific steps taken to comply with that judgment, and the dates and details of what was done;
3. The nature of the organization of Alaris Hamilton, including its management structure;
4. The nature of particular individuals' responsibilities in regard to compliance with the Third Circuit's judgment, i.e. which individual was responsible for completing which task;
5. The manner in which those tasks were completed, including obstacles to completion, if any; and
6. Correspondence among Alaris Hamilton's agents regarding compliance with the Third Circuit's judgment.

(Id., p. 3).

8. Consistent with Section 102.4(b) of the Board's Rules and Regulations, 29 C.F.R. § 102.4, Alaris Hamilton was served with the

subpoenas by certified mail, which was received on February 3, 2020.

(**Exhibit F.**) Copies of the subpoenas were also emailed to Jasinski, with a reminder that the responsive documents were due to be produced by February 21, 2020 and the deposition was scheduled for February 28, 2020. (**Exhibit G.**)

9. Section 11(1) of the Act allows any person served with a subpoena to petition the Board to revoke the subpoena within five days of service. The faces of the subpoenas served on Alaris Hamilton explain this procedure. Alaris Hamilton has filed no such petition.

10. On February 19, Alaris Hamilton, through Jasinski, contacted the Board by telephone, but provided no specifics as to when compliance would be achieved. On February 21, the parties again discussed the subpoena, with Jasinski indicating that he would contact the Board during the ensuing week. No such contact was received.

11. On March 5, the Board emailed Jasinski indicating that an application to enforce the subpoenas would issue unless Alaris Hamilton fully complied with the request for production of documents and scheduled the deposition by March 12. (**Exhibit H.**) Alaris Hamilton did not respond.

12. Alaris Hamilton has not produced any documents, or agreed to appear for depositions on any date certain, in response to the subpoenas.

13. As noted previously, Section 11(2) of the Act specifically authorizes the Board to make an “application” to an appropriate district court for a summary disposition of the Board’s request for subpoena enforcement.

14. Alaris Hamilton’s failure and refusal to produce any of the subpoenaed documents or agree to appear for a deposition has impeded and continues to impede the Board in its investigation of the matters before it and has prevented the Board from carrying out its duties and functions under the Act.

The undersigned verifies under penalty of perjury that the facts set forth above are true and correct to the best of his knowledge, information and belief.

**WHEREFORE** the Applicant, National Labor Relations Board, respectfully requests that this Court:

(A) Issue an order requiring Alaris Hamilton to, within fourteen calendar days, provide to the Board the documents requested in Subpoena *Duces Tecum* A-1-180SE2N;

(B) Issue an order requiring Alaris Hamilton to, on a date to be determined by the Board, appear and be deposed pursuant to Subpoena *Ad Testificandum* B-1-180SDXD;

(C) Award the Board its costs and attorneys fees incurred in preparing the instant application, by the procedure set forth in the proposed order; and

(D) Provide the Board such other and further relief as may be necessary and appropriate.

Respectfully submitted,

/s/Paul Thomas

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Contempt, Compliance, and  
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National Labor Relations Board

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Dated: March 13, 2020  
Washington, D.C.

## CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of March, 2020, copies of the foregoing Notice of Motion of the National Labor Relations Board for Order Enforcing Administrative Subpoenas, including exhibits, the Brief in Support, and the [Proposed] Order Enforcing Subpoena, were filed electronically with the Court's CM/ECF system and served upon counsel for the Respondent through that system.

/s/Paul Thomas

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