

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

ALAMEDA CENTER FOR REHABILITATION AND
HEALTHCARE, INC.

Cases: 22-CA-180564
22-CA-188462

and

1199 SERVICE EMPLOYEES INTERNATIONAL
UNION, UNITED HEALTHCARE WORKERS EAST,
NEW JERSEY

**RESPONDENT'S EXCEPTIONS THE PROCEEDINGS AND DECISION OF THE
ADMINISTRATIVE LAW JUDGE**

Respondent Alameda Center for Rehabilitation, pursuant to Section 102.46 of the Board's Rules and Regulations, as amended, hereby excepts to the following rulings, findings, conclusions and recommendations made by the Administrative Law Judge Benjamin W. Green (hereinafter the "ALJ"), in his decision dated March 20, 2020, and other aspects of the proceedings in the above-captioned case. Specifically, the Respondent excepts as follows:

1. The ALJ improperly accepted the evidentiary standard proposed by the General Counsel of "reasonable to assume"
2. The ALJ improperly accepted the payroll records offered by General Counsel as only evidence in support of its damages position.
3. The ALJ improperly concluded that Maribel Gonzales would have continued to participate in the 401(k) plan at the identical rate had the new plan been implemented in May 2016.
4. The ALJ improperly concluded that Faimy Louis Jean would have continued to participate in the 401(k) plan at the identical rate had the new plan been implemented in May 2016.
5. The ALJ improperly concluded that Guernelle Mondesire would have continued to participate in the 401(k) plan at the identical rate had the new plan been implemented in May 2016.

6. The ALJ improperly concluded that Nidhi Patel would have continued to participate in the 401(k) plan at the identical rate had the new plan been implemented in May 2016.

7. The ALJ improperly concluded that Gilma Rivera would have continued to participate in the 401(k) plan at the identical rate had the new plan been implemented in May 2016.

8. The ALJ improperly concluded that Alucienne Sainte would have continued to participate in the 401(k) plan at the identical rate had the new plan been implemented in May 2016.

9. The ALJ improperly concluded that Lamerchie St. Juste would have continued to participate in the 401(k) plan at the identical rate had the new plan been implemented in May 2016.

10. The ALJ improperly concluded that Margaret Ogandare would have continued to participate in the 401(k) plan at the identical rate had the new plan been implemented in May 2016.

11. The ALJ improperly concluded that Neha Patel would have continued to participate in the 401(k) plan at the identical rate had the new plan been implemented in May 2016.

12. The ALJ improperly concluded that Enid Rivera would have begun to participate in May 2016 in the 401(k) plan at the identical rate had the new plan been implemented in May 2016.

13. The ALJ improperly accepted the General Counsel's criteria that employees who were contributing to the 201(k) program when the facility was sold were automatically eligible for a remedy.

14. The ALJ improperly accepted the General Counsel's criteria that employees who had not previously contributed to the 401(k) but began contributing in January 2017 were automatically eligible for a remedy.

15. The ALJ improperly accepted the General Counsel's position that percentage of contribution by the employees would have remained at the pre-sale rate of contribution.

16. The ALJ improperly ignored the fact that Maribel Gonzalez decreased her contribution rate in when Respondent's 401(k) plan was implemented.

17. The ALJ improperly ignored the fact that Faimy Louis Jean decreased her contribution rate in when Respondent's 401(k) plan was implemented.

18. The ALJ improperly ignored the fact that Gilma Rivera decreased her contribution rate in when Respondent's 401(k) plan was implemented.

19. The ALJ improperly ignored the fact that Alucienne Sainte decreased her contribution rate in when Respondent's 401(k) plan was implemented.

20. The ALJ improperly ignored the fact that 401(k) contributions were completely voluntary on the part of the employee.

21. The ALJ improperly ignored the fact that there was no testimony to establish that the employees would have automatically continued to participate in May 2016 at the identical rate of contribution.

22. The ALJ improperly ignored the fact that there was no testimony to establish that Enid Rivera would have begun contributing in the 401(k) plan in May 2016 instead of January 2017.

23. The ALJ improperly ignored the fact that Guernelle Mondesire chose not to participate in the new 401(k) plan starting January 2017.

24. The ALJ improperly ignored the fact that Margaret Ogondare choose not to resume contributing to the 401(k) plan until July 2017.

25. The ALJ improperly ignored the fact that Neha Patel chose not to resume contributing to the 401(k) plan until April 2018.

26. The ALJ improperly ignored the fact that pursuant to the CBA, the employer is only responsible for matching 50% of the employee's contribution.

27. The ALJ improperly concluded that the employer was responsible for making both the contribution on behalf of all the employees General Counsel sought a remedy for as well as the matching portion.

28. The ALJ improperly concluded that the General Counsel's proposed remedy was not punitive in nature.

29. The ALJ improperly modified the plain and unambiguous terms of the CBA by requiring the Respondent to make both the contributions General Counsel sought for the employees as well the matching portion.

30. The ALJ improperly relied on speculation with regard whether or not contributions would be made by the employees.

31. The ALJ improperly relied on speculation with regard to what percentage of salary would be made by the employees.

Dated: April 17, 2020

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