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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91187481
Party	Defendant Take Care Health Systems, LLC
Correspondence Address	FRANCIS C. KOWALIK WALGREEN CO. 104 WILMOT ROAD MS 1425 DEERFIELD, IL 60015-5121 UNITED STATES
Submission	Motion to Consolidate
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Date	12/22/2008
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

WageWorks, Inc.	)	
	)	
v.	)	Opposition No. 91187481
	)	
Take Care Health Systems, LLC	)	
	)	
Applicant.	)	

**MOTION TO CONSOLIDATE**

**A. Introduction**

Applicant Take Care Health Systems, LLC (“TCHS” or “Applicant”) hereby requests that the Board consolidate the two groups of proceedings described below, in order to save time and expense for the parties and conserve the Board’s resources. As discussed below, the proceedings involve the same parties and similar issues of fact or law, such that consolidation is appropriate.

For the Board’s reference, the two groups of proceedings requested to be consolidated are as follows:

**Group 1 (Already Consolidated)**

Opposition No. 91167509 (parent case)  
Opposition No. 91167533  
Opposition No. 91167571  
Opposition No. 91174378

**Group 2 (Recently-Filed)**

Opposition No. 91187476  
Opposition No. 91187484  
Opposition No. 91187475  
Opposition No. 91187481  
Opposition No. 91187450  
Cancellation No. 92050197

**B. Background**

The parties are currently involved in four opposition proceedings that have already been consolidated. These proceedings, referred to as the "Group 1" proceedings, are listed below:

**GROUP 1 (Previously-Consolidated Opposition Proceedings)**

- Opposition No. 91167509 (parent case)
- Opposition No. 91167533
- Opposition No. 91167571
- Opposition No. 91174378

The particulars of the Group 1 proceedings are summarized below:

Opposition No. 91167509, the parent case, involves an application for registration of the mark TAKE CARE HEALTH SYSTEMS and Design covering the following services:

MANAGED HEALTH CARE SERVICES, NAMELY, PROVIDING MEDICAL AND PHARMACEUTICAL CONSULTATION, PERFORMING DIAGNOSIS AND TREATMENT OF DISEASES, MEDICAL TESTING, AND PROVIDING HEALTH CARE INFORMATION BY PHONE AND THE INTERNET; MEDICAL CLINICS; HOME HEALTH CARE SERVICES; AND MOBILE HEALTHCARE CENTERS

Opposition No. 91167533 involves an application for registration of the mark TAKE CARE HEALTH CENTER covering the following services:

MANAGED HEALTH CARE SERVICES, NAMELY, PROVIDING MEDICAL AND PHARMACEUTICAL CONSULTATION, PERFORMING DIAGNOSIS AND TREATMENT OF DISEASES, MEDICAL TESTING, AND PROVIDING HEALTH CARE INFORMATION BY PHONE AND THE INTERNET; MEDICAL CLINICS; HOME HEALTH CARE SERVICES; AND MOBILE HEALTHCARE CENTERS

Opposition No. 91167571 involves an application for registration of the mark TAKE CARE HEALTH SYSTEMS covering the following services:

MANAGED HEALTH CARE SERVICES, NAMELY, PROVIDING MEDICAL AND PHARMACEUTICAL CONSULTATION, PERFORMING DIAGNOSIS AND TREATMENT OF DISEASES, MEDICAL TESTING, AND PROVIDING HEALTH CARE INFORMATION BY PHONE AND THE INTERNET; MEDICAL CLINICS; HOME HEALTH CARE SERVICES; AND MOBILE HEALTH CARE CENTERS

Opposition No. 91174378 involves an application for registration of the mark TAKE CARE NURSE PRACTITIONER covering the following services:

MANAGED HEALTH CARE SERVICES, NAMELY, PROVIDING MEDICAL AND PHARMACEUTICAL CONSULTATION, PERFORMING DIAGNOSIS AND TREATMENT OF DISEASES, MEDICAL TESTING, AND PROVIDING HEALTH CARE INFORMATION BY PHONE AND THE INTERNET; MEDICAL CLINICS; HOME HEALTH CARE SERVICES; AND MOBILE HEALTHCARE CENTERS

Just recently, the Board instituted a second group of proceedings which involve the same parties and similar issues of fact or law. These proceedings, referred to as the "Group 2" proceedings, are listed below:

**GROUP 2 (Recently-Filed Opposition Proceedings and Recently-Filed Cancellation Proceeding)**

Opposition No. 91187476  
Opposition No. 91187484  
Opposition No. 91187475  
Opposition No. 91187481  
Opposition No. 91187450  
Cancellation No. 92050197

The particulars of the Group 2 proceedings are summarized below:

Opposition No. 91187476 involves an application for registration of the mark TAKE CARE HEALTH PROVIDERS covering the following services:

MANAGED HEALTH CARE SERVICES, NAMELY, PROVIDING MEDICAL AND PHARMACEUTICAL CONSULTATION, PERFORMING DIAGNOSIS AND TREATMENT OF DISEASES, MEDICAL TESTING, AND PROVIDING HEALTH CARE INFORMATION BY PHONE AND THE INTERNET; MEDICAL CLINICS; HOME HEALTH CARE SERVICES; AND MOBILE MEDICAL CLINICS

Opposition No. 91187484 involves an application for registration of the mark TAKE CARE HEALTH covering the following services:

MANAGED HEALTH CARE SERVICES, NAMELY, PROVIDING MEDICAL AND PHARMACEUTICAL CONSULTATION, PERFORMING DIAGNOSIS AND TREATMENT OF DISEASES, MEDICAL TESTING, AND PROVIDING HEALTH CARE INFORMATION BY PHONE AND THE INTERNET; MEDICAL CLINICS; HOME HEALTH CARE SERVICES; AND MOBILE MEDICAL CLINICS

Opposition No. 91187475 involves an application for registration of the mark TAKE CARE NURSE PRACTITIONER covering the following services:

MANAGED HEALTH CARE SERVICES, NAMELY, PROVIDING MEDICAL AND

PHARMACEUTICAL CONSULTATION, PERFORMING DIAGNOSIS AND TREATMENT OF COMMON ILLNESSES, MEDICAL TESTING, AND PROVIDING HEALTH CARE INFORMATION; MEDICAL CLINICS

Opposition No. 91187481 involves an application for registration of the mark TAKE CARE HEALTH SERVICES covering the following services:

MANAGED HEALTH CARE SERVICES, NAMELY, PROVIDING MEDICAL AND PHARMACEUTICAL CONSULTATION, PERFORMING DIAGNOSIS AND TREATMENT OF DISEASES, MEDICAL TESTING, AND PROVIDING HEALTH CARE INFORMATION BY PHONE AND THE INTERNET; MEDICAL CLINICS; HOME HEALTH CARE SERVICES; AND MOBILE MEDICAL CLINICS

Opposition No. 91187450 involves an application for registration of the mark TAKE CARE PHYSICIAN ASSISTANT covering the following services:

MANAGED HEALTH CARE SERVICES, NAMELY, PROVIDING MEDICAL AND PHARMACEUTICAL CONSULTATION, PERFORMING DIAGNOSIS AND TREATMENT OF DISEASES, MEDICAL TESTING, AND PROVIDING HEALTH CARE INFORMATION BY PHONE AND THE INTERNET; MEDICAL CLINICS; HOME HEALTH CARE SERVICES; AND MOBILE MEDICAL CLINICS

Cancellation No. 92050197 involves a petition to cancel Registration No. 3,522,698, covering the mark TAKE CARE HEALTH CLINIC and Design for the following services (as amended):

MANAGED HEALTH CARE SERVICES, NAMELY, PROVIDING MEDICAL AND PHARMACEUTICAL CONSULTATION, PERFORMING DIAGNOSIS AND TREATMENT OF DISEASES, MEDICAL TESTING, PROVIDING HEALTH CARE INFORMATION BY PHONE; AND MEDICAL CLINICS.

As mentioned, the Board previously consolidated the Group 1 proceedings identified above. Those proceedings are currently suspended based on settlement discussions in which the parties had been engaged. The suspension order, dated September 11, 2008, states that proceedings in the Group 1 cases are suspended until March 10, 2009, subject to the right of either party to request resumption at any time. The suspension order also states that, in the event that there is no word from either party concerning the progress of their negotiations, upon conclusion of the suspension period, proceedings shall be resumed without further notice or order from the Board, upon the schedule set out in the order. Under the schedule set forth, proceedings are set to resume on March 10, 2009 and the

discovery period is scheduled to close on June 8, 2009. Subsequent dates are provided as well.

Opposer filed a motion for summary judgment in one of the opposition proceedings in Group 1, namely, Opposition No. 91174378. Applicant will be given an opportunity to respond to the summary judgment motion in that case once the consolidated proceedings are resumed. If summary judgment is granted in Opposition No. 91174378, then proceedings will be resumed in the remaining consolidated cases; if summary judgment is denied, then proceedings will be resumed in all of the consolidated cases.

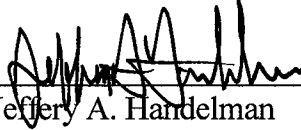
Just recently, the Group 2 proceedings were instituted. Individual scheduling orders were issued for each of the Group 2 proceedings. These scheduling orders are not identical for every case, but they generally provide that the Answer in each proceeding is due on or around December 23, 2008 and that the deadline for the discovery conference and the opening of discovery is on or around January 22, 2009. Applicant is filing Answers in each of the Group 2 proceedings concurrently with the filing of this motion to consolidate.

### **C. Discussion**

The Board has the authority to order the consolidation of cases under Rule 42(a) of the Federal Rules of Civil Procedure, made applicable to Board proceedings by Trademark Rule 2.116(a). As discussed above, the Group 1 proceedings and the Group 2 proceedings involve the same parties and similar issues of fact or law. Under the circumstances, the proceedings should be consolidated to promote administrative efficiency and save time and expense for the parties. Fed.R.Civ.P. 42(a).

For all of the foregoing reasons, TCHS hereby requests that the Board grant the present motion for consolidation with respect to the above-referenced proceedings.

Respectfully submitted,



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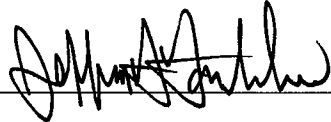
Attorneys for Take Care Health Systems, LLC

Dated: December 22, 2008

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 22<sup>nd</sup> day of December, 2008, a true and correct copy of the foregoing Motion to Consolidate was served upon counsel for opposer by United States Mail, First Class Mail, sufficient postage prepaid, in an envelope addressed as follows:

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Baker & Hostetler LLP  
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Cleveland, OH 44114



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