KAUFMAN DOLOWICH & VOLUCK LLP
135 CROSSWAYS PARK DRIVE
SUITE 201
WOODBURY, NY 11797
TEL: (516) 681-1100
FAX: (516) 681-1101

TO: Valerie Hardy-Mahoney

FAX NO.: 510-637-3315

FROM: Matthew Capobianco

DATE: 2-20-18 TIME

RE: 32-RC-135779 – Constellation Brands v. Teamsters

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MESSAGE:

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UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 32

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CONSTELLATION BRANDS, U.S. OPERATIONS, INC. D/B/A WOODBRIDGE WINERY

Respondent Employer,

vs.

CANNERY, WAREHOUSEMEN, FOOD PROCESSORS, DRIVERS AND HELPERS, LOCAL UNION NO. 601, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Petitioner.

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Case No.: 32-RC-135779

RESPONDENT EMPLOYER'S MOTION TO DISMISS THE CASE IN LIGHT OF NEW BOARD PRECEDENT

KAUFMAN DOLOWICH & VOLUCK, LLP
MICHAEL A. KAUFMAN
ARTHUR R. KAUFMAN
MATTHEW R. CAPOBIANCO
Attorneys for Respondent Employer
CONSTELLATION BRANDS, WOODBRIDGE WINERY
135 Crossways Park Drive, Suite 201
Woodbury, New York 11797
Telephone: (516) 681-1100
Facsimile: (516) 681-1101

Dated: February 20, 2018

INTRODUCTION

Constellation Brands, U.S. Operations, Inc. d/b/a Woodbridge Winery ("Constellation"), through its attorneys Kaufman Dolowich & Voluck, LLP, respectfully moves the National Labor Relations Board (the "Board" or "the NLRB"), to dismiss the current action in light of the Board's recent decision in *PCC Structurals Inc.*, 365 NLRB No. 160 (Dec. 15, 2017).

As the Board is aware, *PCC Structurals* overruled the standard set out in *Specialty Healthcare*, and "clarif[ied] the correct standard for determining whether a proposed bargaining unit constitutes an appropriate unit for collective bargaining when the employer contends that the smallest appropriate unit must include additional employees." *PCC Structurals Inc.*, 365 NLRB, Slip op. at 1. The Board in *PCC Structurals* further stated:

> "In so doing, and for the reasons explained below, we overrule the Board's decision in *Specialty Healthcare & Rehabilitation Center of* Mobile . . . and we reinstate the traditional community-of interest standard as articulated in . . . *United Operations, Inc.* 338 NLRB 123 (2002)."

As a result of the Board's explicit overruling of *Specialty Healthcare*, the Board must dismiss this case in its entirety. Since the basis of the underlying ULP – Constellation's refusal to bargain with Local Union No. 601 (the "Union") – was founded upon overruled precedent, the Board must reconsider this case in accordance with the new precedent articulated in *PCC Structurals*, and dismiss this action.

PROCEDURAL HISTORY/SUMMARY OF THE CASE

On September 2, 2014, the Union filed a Petition for Representation seeking to represent a unit of "all full-time and regular part-time General Operators, Master Operators, Senior

Operators, and Working Foremen employed in Woodbridge's Cellar Operation in Acampo, California."[1] *See*, Petition for Representation.

On September 10, 11, 15, 16, and 17, 2014, a Hearing Officer in the Board's Region 32 office conducted a hearing and the parties filed post-hearing briefs. The Union contended that the petitioned-for unit of Cellar employees is an appropriate unit (consisting of approximately 46 employees). Conversely, Constellation vigorously asserted that the petitioned-for unit is inappropriate and unlawfully fractures its operations. Throughout this action, Constellation contended that the "appropriate unit" must be a wall-to-wall unit compromised of all production and maintenance employees in the facility.

On January 8, 2015, the Regional Director ("RD") issued the Decision and Direction of Election ("Decision"). As a result of the RD's Decision, Constellation, on January 29, 2015, filed a Request for Review with the Board. On February 26, 2015, the Board denied Constellation's Request for Review. As a result of the Board's denial, the Board ordered an election, and the inappropriate fractured unit voted to unionize. The RD certified the Union as the collective-bargaining representative of those employees. Thereafter, Constellation refused to bargain with the Union, which ultimately led to the Union filing an unfair-labor-practice charge.

On June 4, 2015, the General Counsel moved for summary judgment. On July 29, 2015, the Board granted the General Counsel's motion for summary judgment and concluded that Constellation had violated the Act by refusing to bargain with the Union. On July 31, 2015, Constellation filed a Petition for Review with The United States Court of Appeals for the Second Circuit (the "Second Circuit"). On November 21, 2016, the Second Circuit issued a decision and order granting Constellation's petition for review, denying the Board's cross-petition for

[1] A full recitation of the procedural history and facts in this proceeding may be found in Respondent Employer's Brief in Opposition to the Union's Petition for Representation, as well as in other prior submissions.

enforcement, and remanding the case back to the Board for further proceedings because the Board and the RD failed to apply step-one of the *Specialty Healthcare* analysis.

On March 28, 2017, Constellation submitted their Statement of Position requesting that the Board remand the case back to the RD and order that the record be re-opened for further review and clarification.

On December 15, 2017, the Board issued it Decision and Order in *PCC Structurals Inc.*, overruling the standard set out in *Specialty Healthcare* for determining an appropriate unit for collective bargaining and being applied in our case.[2] As a result, Constellation submits the instant motion to respectfully request that the Board dismiss this action, as *PCC Structurals* has caused the issue on remand to become moot.

ARGUMENT

The Board Must Dismiss This Case: *Specialty Healthcare* Has Been Overruled and the ULP (Refusal to Bargain) is Now Moot

In overruling *Specialty Healthcare*, and consistent with Constellation's arguments before the Board and the Second Circuit, the Board in *PCC Structurals* ruled that the "traditional community of interests" standard, rather than the *Specialty Healthcare* two-step analysis, should apply to questions of unit appropriateness.[3] Moreover, where there are issues over whether employees excluded from a unit should be included, the burden is on the petitioner – not the

[2] The decision in *PCC Structurals* cited to the instant case, stating in relevant part, "[t]hus, it appears that – in *Constellation Brands* and other cases – the Board has applied *Specialty Healthcare* precisely the way the *Specialty Healthcare* majority intended, which means the standard itself is a problem." *PCC Structurals Inc.*, 365 NLRB at Slip 10, n45. (*citing, DTG Operations, Inc.* 357 NLRB at 2126).

[3] The Second Circuit ruled that the RD misapplied the standard articulated in *Specialty Healthcare*, and remanded the case back to the Board. However, due to the fact that the Board recently overruled *Specialty Healthcare*, the issue on remand is now moot. As stated in *PCC Structurals*, "[i]n weighing both the shared *and* the distinct interests of petitioned-for and excluded employees, we take guidance from the Second Circuit's decision in *Constellation Brands*. *Id.* at 11. Thus, we agree with the Second Circuit that the Board must determine whether "excluded employees have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with the unit members." *Id.* In sum, the long-standing precedent that a wall-to-wall unit is presumptively appropriate, which was erroneously set aside in *Specialty Healthcare,* has been restored by the Board. Thus, the case must be dismissed.

employer – and the proper standard is not "overwhelming community of interests" as was applied by the RD, but instead whether the included employees are sufficiently distinct from the excluded employees to warrant a separate unit. *See*, *PCC Structurals*, 365 NLRB at Slip 5.

In our case, the *Specialty Healthcare* standard was applied, and once the Union carved out what they believed to be an appropriate unit, the burden was then placed on Constellation to prove that excluded employees shared an overwhelming community of interest with the outside cellar employees. This new standard and burden reversal has been corrected and changed back to the long-standing prior precedent as detailed below:

> "Throughout nearly all of its history, when making this determination, the Board applied a multi-factor test that requires the Board to assess whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the [e]mployer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised." Slip op. at 1. "The required assessment of whether the sough-after employees' interests are sufficiently distinct from those of employees excluded from the petitioned-for group provides some assurance that extent of organizing will not be determinative, consistent with Section 9(c)(5); it ensures that bargaining units will not be arbitrary, irrational, or "fractured." *Id.* "Consistent with our return to the traditional community-of-interest standard that the Board applied prior to *Specialty Healthcare*, the Board will continue to apply existing principles regarding bargaining units that the Board deems presumptively appropriate." *Id.* at 9, n.44.

Because the RD analyzed the underlying ULP under the now debunk *Specialty Healthcare* framework, the case should be dismissed.

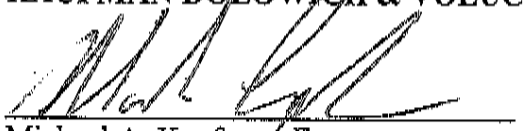
Lastly, on December 22, 2017, the Office of the General Counsel released a memorandum ("Memorandum") regarding case procedures in light of the decision in *PCC Structurals* (OM 18-05). According to the Memorandum, "Regions are to consistently apply the

Board's new analysis at all stages of case processing in currently active case." In addition, "Regions should routinely afford the parties to an R case an opportunity to argue that the *PCC* decision has now rendered a recently consented, stipulated or directed bargaining unit inappropriate in a current case." Therefore, in light of the new standard articulated in *PCC Structurals*, and the fact that Constellation put forth sufficient evidence establishing that the petitioned-for group does not share a "community of interest" sufficiently distinct from the interest of employees excluded from the petitioned-for group, the Union's ULP is inherently moot, and the case must be dismissed.

CONCLUSION

For the foregoing reasons, Constellation respectfully requests that the Board dismiss this action in its entirety.

Respectfully submitted,
KAUFMAN DOLOWICH & VOLUCK, LLP



Michael A. Kaufman, Esq.
Arthur R. Kaufman, Esq.
Matthew R. Capobianco, Esq.
Attorneys for Respondent Employer
CONSTELLATION BRANDS U.S. OPERATIONS, INC.
d/b/a WOODBRIDGE WINERY

DATED: February 20, 2018

STATEMENT OF SERVICE

I hereby certify and declare under penalty of perjury, under the laws of the United States of America and the State of California, that a copy of the RESPONDENT EMPLOYER'S MOTION TO DISMISS THE CASE IN LIGHT OF NEW BOARD PRECEDENT was served today, February 20, 2018, on the following parties or persons via facsimile and Federal Express:

Robert Bonsall, Esq.
Beeson Tayer & Bodine, APC
520 Capitol Mall, Suite 300
Sacramento, CA 95814
Phone: (916) 325-2100
Fax: (916) 325-2120
Counsel of Record for Petitioner

Valerie Hardy-Mahoney, Regional Director
National Labor Relations Board
Region 32
1301 Clay Street
Room 300-N
Oakland, CA 94612
Phone: (510) 637-3300
Fax: (510) 637-3315
Regional Direction for Region 32

KAUFMAN DOLOWICH & VOLUCK, LLP

By: _____

Michael A. Kaufman, Esq.
Arthur A. Kaufman, Esq.
Matthew R. Capobianco, Esq.
135 Crossways Park Drive, Suite 201
Woodbury, NY 11797
Phone: (516) 681-1100
Fax: (516) 681-1101
Attorneys for Employer

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