

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
NEW YORK DIVISION OF JUDGES

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BARTLE BOGLE HEGARTY, INC., :
:
:
AND : Case No. 02-CA-220370
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SCREEN ACTORS GUILD - AMERICAN :
FEDERATION OF TELEVISION AND RADIO :
ARTISTS, :
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**POST-HEARING BRIEF OF CHARGING PARTY
SCREEN ACTORS GUILD - AMERICAN FEDERATION
OF TELEVISION AND RADIO ARTISTS**

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PRELIMINARY STATEMENT

Charging Party Screen Actors Guild - American Federation of Television and Radio Artists (“SAG-AFTRA” or the “Union”) submits this post-hearing brief in support of the General Counsel’s complaint alleging that respondent Bartle Bogle Hegarty, Inc. (“BBH”) unlawfully withdrew recognition and refused to bargain with SAG-AFTRA in violation of the Act.

This is a straightforward case where the vast majority of facts are not in dispute. BBH is an on-going, stable enterprise -- an advertising agency that is consistently employing performers on commercials that it produces for its clients. BBH was signatory to collective bargaining agreements (“CBAs”) with the Union for approximately seventeen years, and those CBAs designated SAG-AFTRA as the performers’ exclusive bargaining representative. BBH concedes, in fact, that the Union was the performers’ Section 9(a) representative. Hearing Transcript (“Hr’g Tr.”) at 21. Nevertheless, on November 21, 2017, without attempting to show a loss of majority support, BBH withdrew recognition from SAG-AFTRA, repudiated those CBAs, and refused to bargain with the Union. Absent an affirmative defense, these actions were in plain violation of Sections 8(a)(1) and 8(a)(5) of the Act. *See* Part I (citing cases).

BBH’s primary defense is that it had the right to unilaterally repudiate its collective bargaining relationship at any time due to the purported absence of a “permanent bargaining unit.” BBH Answer, Defenses ¶4. In other words, BBH contends that because the bargaining unit consists solely of so-called temporary employees that are hired on a production-by-production basis, it had the right to tear up the contract at any time it wished. This is an attack on long-established Board law, *see* Part II.B (citing cases dating back to 1951, including in the entertainment industry, including for employees working on television commercials), holding that units comprised solely of temporary employees are appropriate under the Act. The cases

BBH relies upon to support its defense are so-called “one man unit” cases which are based on the principle that the Board will not order an employer to bargain with a unit of only one employee. But not only are those cases inapplicable to units of solely temporary employees, but BBH employs dozens and dozens and dozens of actors every year, including on average more than one on *every* commercial it produces. *See* Part II.C. There is thus no “one man” unit here.

BBH’s second defense is that, because BBH hires employees on a production-by-production basis, the Commercial Contracts are somehow illegal “prehire” agreements. BBH Answer, Defenses ¶5. But, significantly, it concedes that it is *not* challenging the Union’s initial recognition, Hr’g Tr. 24-25, because it would be clearly time-barred in doing so, *see* Part II.A.1. So its argument is that the CBAs, even *now* almost twenty years later, are “prehire” agreements. This argument makes little sense and fundamentally misunderstands the operation of the Act. As we explain below in Part II.D, once a union becomes the exclusive representative in production-by-production industries, whether through an election or voluntary recognition, all employees on future productions are covered by the CBA without the need for a new election or recognition. The Board has so held in a series of cases dating back decades.

Moreover, and in any event, for reasons we explain below in Part II.A, BBH’s defenses are time-barred and estopped because BBH acknowledges that no facts have changed in all the years in which it benefited from its relationship with the Union. For this reason also, BBH’s arguments are highly disingenuous -- BBH never once complained to the Union about the temporary nature of the unit or the issue of a purported prehire agreement until it abruptly decided to withdraw recognition. BBH’s desire to hire inexpensive non-union labor does not justify its illegal decision.

It is even more disingenuous that BBH seeks to position itself as the champion of workers' rights. BBH's arguments are all premised on the notion that *it* is the protector of employee rights, and that, by "terminating the bargaining relationship" it has "actually restored for those performers that have yet to be hired their fundamental right of self-determination under the Act." Hr'g Tr. at 28; *see id.* at 22, 24, 27. In similar contexts, the Supreme Court has noted that to "allow employers to rely on employees' rights in refusing to bargain" is "inimical" to industrial peace, and that the Board is "entitled to suspicion when faced with an employer's benevolence as its workers' champion against" their union. *Auciello Iron Workers v. NLRB*, 517 U.S. 781, 790 (1996). BBH's hollow arguments should be taken for what they are worth: a desperate attempt to avoid its legal and contractual obligations to the performers on its commercials.

BBH should be ordered to recognize and bargain with the Union, post a notice, and make all employees whole, including all contractually-required contributions to the Union's benefit funds, as well as interest compounded daily on all monetary awards.

FACTS

SAG-AFTRA and the Commercials Industry

SAG-AFTRA is a labor organization that represents more than 160,000 actors, broadcasters, recording artists and other media professionals, including actors that perform in television and radio commercials. Joint Ex. 1 (Stipulation of Facts ("SOF")) ¶¶ 5, 7, 9 & Joint Exs. 2-E, 2-L (CBAs). In the commercials (or advertising) industry, the Union negotiates multi-employer agreements with the Joint Policy Committee ("JPC") of the Association of National Advertisers - American Association of Advertising Agencies (the "ANA-4As"). SOF ¶5. The JPC is authorized to bargain by about 100 advertisers and about 200 advertising agencies. Hr'g Tr. at 85. The Union's relationship with the advertising industry dates back about 65 years,

when the first multi-employer commercials agreements were reached in the mid-1950s. Hr’g Tr. at 92. The negotiated agreements -- one covering television commercials and one covering radio commercials (together, the “Commercials Contracts”) -- govern the terms and conditions of employment for performers on commercials. Jt. Exs. 2-E, 2-L.

Other advertising agencies do not authorize the JPC to negotiate on their behalf, but instead are direct signatories to the Commercials Contracts. SOF ¶12; Hr’g Tr. at 92. After the Union completes the multi-employer negotiations with the JPC and the Union’s members ratify the agreement, the Union sends each direct signatory a “Letter of Adherence” to the terms of the Commercials Contracts that constitutes an offer for the signatory to agree to the identical Commercials Contracts or to bargain separately. SOF ¶¶ 12, 15. Approximately another 200 advertising agencies are direct signatories that have signed the Letter of Adherence. Hrg’ Tr. at 92.

Bartle Bogle Hegarty, Inc.

BBH is an advertising agency that has been engaged in the production of commercials since 1998.¹ SOF ¶1. BBH employs the actors on the commercials it produces for its clients, and those employees are hired on a production-by-production basis. *Id.* ¶3. It is an ongoing, stable enterprise that is consistently producing commercials and consistently employing actors on those commercials. *See* Jt. Ex. 5(A); GC Ex. 2; *see* Hr’g Tr. at 18 (BBH Counsel: “BBH makes a lot of commercials and hires a lot of actors to do that”). BBH does not authorize

¹ We note that the Board has jurisdiction here. BBH has an office and place of business located at 32 Avenue of the Americas, New York, NY 10013, and at all material times, BBH provided services valued in excess of \$50,000 from its facility directly to points outside the State of New York. SOF ¶¶ 1, 2. As such, BBH is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act. At all material times, the SAG-AFTRA has been a labor organization within the meaning of Section 2(5) of the Act. SOF ¶¶ 5, 7, 9 & Jt. Exs. 2-E, 2-L (CBAs).

the JPC to bargain on its behalf, but instead has been a direct signatory through letters of adherence since about 2000. SOF ¶12.

In 1999/2000, BBH voluntarily recognized SAG and AFTRA (the two unions merged in 2012) as the exclusive bargaining representatives for the bargaining units of performers on television and radio commercials. SOF ¶11. It first signed a Letter of Adherence to the television commercials contract on November 15, 2000, Jt. Ex. 2-A, and to the radio commercials contract on or about September 18, 1999, SOF ¶10. BBH then continued to recognize the Union as the exclusive bargaining representative of its performers until November 21, 2017. SOF ¶¶ 8, 10. In that time, BBH signed CBAs with the Union approximately every three years. *See* Jt. Exs. 2-A to 2-T (Letters of Adherence and CBAs). At all material times the CBAs generally defined the appropriate bargaining unit as that of “all” performers employed in the production of commercials. SOF ¶¶ 7, 9 (more detailed descriptions of units). All of the relevant CBAs have language designating the Union as the “exclusive bargaining agent” for those employees within the unit. *See, e.g.*, Jt. Ex. 2-E (2013 Commercials Contract, §§ I(1)(A), I(1)(B); Jt. Ex. 2-L (2013 Radio Commercials Contract, p. 2).

BBH Repudiates the CBA and Withdraws Recognition

On November 18, 2013, BBH signed letters of adherence to the 2013 Commercials Contracts, both of which expired on March 31, 2016. SOF ¶14 & Jt. Exs. 2-Q, 2-T. On April 3, 2016, the Union and JPC agreed to terms for successor Commercials Contracts, which the union membership subsequently ratified and which extended to March 31, 2019. SOF ¶15. On June 17, 2016, the Union sent the 2016 Commercial Contracts along with a letter of adherence to all past signatories, including BBH. SOF ¶16 & Jt. Ex. 2-V. On August 11, 2016, the Union sent a second letter to BBH inviting it to sign the letter of adherence or to bargain.

SOF ¶16 & Jt. Ex. 2-W. When BBH still did not sign, the Union reached out again to inquire on November 3, 7, 22 and 30, 2016. SOF ¶¶ 16-19 & Jt. Exs. 2-X, 2-Y.

On November 21, 2017, BBH sent a letter to the Union repudiating the 2013 Commercials Contracts. SOF ¶ 20 & Jt. Ex. 2-Z. The letter noted that although “BBH has continued to operate under the 2013 Commercials Contracts,” that “effective immediately, BBH hereby terminates and repudiates the 2013 Commercials Contracts and any asserted obligation to bargain successor agreements with SAG-AFTRA, due to the absence of a permanent bargaining unit.” Jt. Ex. 2-Z; *see also* SOF ¶20 (BBH states it abided by the terms of the 2013 CBAs until November 21, 2017). The Union responded on December 20, 2017, with a demand for bargaining, but BBH responded on January 8, 2018 raising certain defenses and maintaining it had no bargaining obligation. SOF ¶¶ 21-22 & Jt. Exs. 2-AA, 2-BB.

On April 19, 2018, the Union discovered that BBH would produce a commercial in which actors would need to perform with a live bear. SOF ¶23. The Union emailed BBH requesting bargaining and stating that it was “extremely concerned that performers we represent are being placed in a dangerous position” by having to work with a bear. Jt. Ex. 2-CC. BBH responded that the commercial was being shot non-union, and the Union responded that BBH remained bound by the CBA. SOF ¶23 & Jt. Ex. 2-CC.

BBH Continually Employs Performers

Based on data reported to the Union’s affiliated pension and health plans, BBH has since 2013 paid session wages of more than \$3 million, to more than 500 performers, on more than 250 commercials.² GC Exs. 2 and 3 (Columns 2, 6, and 7). The average cast size for

² The data reported to the Plans (directly by BBH) is partial in the sense that it does not capture *all* BBH work due to BBH’s utilization of payroll entities on some commercials. The data reflected in GC Exhibits 2 and 3 *only* captures when BBH reported directly to the Plans (and not when the payroll entities made the report on behalf of BBH). *See* Hr’g Tr. at 34 Ins. 7-9.

each commercial in that time frame ranged from 2.1 performers per commercial to 5.5 performers per commercial. GC Ex. 3 (Column 8). In 2016, the average cast size was 2.6 performers, and in 2017, it was 3.9 performers. *Id.* In every year since 2001, a majority of performers employed by BBH were SAG-AFTRA members. *Id.* (Column 9). In 2016 and 2017, that figure was more than 90%. *Id.*

Based solely on the data produced by BBH in this proceeding pursuant to subpoena -- *see* Joint Exhibits 3, 4, 5(A) -- BBH employed 152 performers in 2016 and 102 performers from January 1, 2017 through November 21, 2017 (when it repudiated the CBA). *See* Jt. Ex. 5(A). Of those performers, in calendar year 2016, 57 performers worked on more than one day for BBH (including if the second day was for a makeup/fitting issue; excluding those performers, 18 performers worked on more than one day). *See* Appendix 1 (summarizing Jt. Ex. 5(A)). In 2017, 41 performers worked on more than one day (including if the second day was for a makeup/fitting issue; excluding those performers, 9 performers worked on more than one day). *Id.* Moreover, in 2016, six performers worked on more than one commercial production for BBH on more than one date in that year, and in 2017 (through November 21), two performers worked on more than one commercial production on more than one date. *See* Appendix 2 (summarizing Jt. Exs. 3 and 4).³

Pursuant to subpoena, BBH reported more complete data (Joint Exs. 3 and 4) for the time period March 1, 2016 through November 21, 2017, which is summarized in Joint Exhibit 5(A).

³ These figures are based exclusively on Joint Exhibits 3, 4, and 5. The Union attempted to capture the same figures in Column 4 of GC Exhibit 3. After subsequent review of the underlying payroll records produced by BBH (after the hearing), the Union determined that some of the performers included in Column 4 of GC Exhibit 3 should not have been included because they received payments smaller than a session payment on certain dates and therefore were unlikely to have worked on that day. After correcting for this issue, and only including performers that received a full session payment for each day of work on different commercials,

Even after BBH repudiated the CBA, in 2018, BBH apparently continued to perform some of its commercials under the CBA and reported to the Union's Plans at least four performers that worked on more than one commercial on more than one date. GC Exhibit 2 at 97-98; Appendix 3 (summary).⁴

Finally, when examining the performers that BBH hired over the span of many years, the data demonstrates that BBH frequently turned to the same actors to perform in its commercials as many, many actors worked on commercials in multiple years. *See* Appendix 4. For example, since 2001, 107 performers worked on BBH commercials during three or more years, 284 performers worked on BBH commercials in two different years, and thus a total of 391 performers worked on BBH commercials in two or more years. *Id.* (listing the performers that worked in at least three different years); GC Ex. 2.

ARGUMENT

It is textbook law that at the conclusion of a collective bargaining agreement an employer is obligated to negotiate a successor agreement. It is also textbook law that an employer may not unilaterally withdraw recognition from a Section 9(a) representative absent a showing of loss of majority support. BBH was a party to the Commercial Contracts with the Union for almost twenty years, but then abruptly repudiated the agreements and refused to bargain without even attempting to show a loss of majority support. It has therefore violated the

the corrected figures in Column 4, based solely on the (partial) pension and health fund data, are 2013 -- 2; 2014 -- 7; 2015 -- 9; 2016 -- 5; 2017 -- 0; 2018 -- 4.

⁴ The four performers who worked on more than one commercial on more than one date in 2018 are J.J. (GC Ex. 2 at 97), Chelsea V. (GC Ex. 2 at 97), Jensen R. (GC Ex. 2 at 97), Sean R. (GC Ex. 2 at 98). *See* Appendix 3. We note that the Union could not rely upon subpoenaed-documents for 2018 data because the General Counsel's subpoena only requested records from March 1, 2016 to November 21, 2017, and thus BBH produced no records for 2018.

Act. As we explain below, the defenses BBH has asserted have no merit, and are additionally time-barred and estopped.

I. BBH UNLAWFULLY WITHDREW RECOGNITION AND REFUSED TO BARGAIN

Section 8(a)(5) of the Act provides that it is an unfair labor practice for an employer “to refuse to bargain collectively with the representatives of his employees.” 29 U.S.C. § 158(a)(5). Section 8(d) further requires that the employer “meet at reasonable times and confer in good faith with respect to . . . the negotiation of an agreement,” and includes requirements with respect to “negotiating a new contract.” *Id.* § 158(d). It is firmly-established law that the duty to bargain encompasses the duty to negotiate a successor collective bargaining agreement. *E.g., ADT, LLC*, 363 NLRB No. 36, at 2 (2015); *Dominion Sprinkler Servs., Inc.*, 319 NLRB 624, 634 (1995); *Scully-Walton, Inc.*, 306 NLRB No. 129, at 2 (1992). BBH does not contest this point. *See* Hr’g Tr. at 22 (BBH counsel recognizing this law as “fundamental” because it “promotes stability in labor relations”). It is similarly black letter labor law that an employer may only withdraw recognition from a Section 9(a) union when it makes a showing that the union has lost majority support. *E.g., Levitz Furniture*, 333 NLRB 717, 723 (2001).

Here, from approximately 2000 through the date it repudiated them, BBH was bound to the Commercials Contracts. SOF ¶¶ 8, 10, 11, 13 & Jt. Exs. 2-A to 2-T. Each of those contracts designated the Union as the “exclusive bargaining agent” for the employees within the unit. *See, e.g.,* Jt. Exs. 2-A (2000 Commercials Contract) §§ I(1)(A), I(1)(B); 2-E (2013 Commercials Contract) §§ I(1)(A), I(1)(B); 2-G (1997 Radio Commercials Contract) p. 2 (Recognition and Coverage); 2-L (2013 Radio Commercials Contract) p. 2 (Recognition and Coverage). SAG-AFTRA is therefore the Section 9(a) representative of BBH’s performers, *e.g., Raymond F. Kravis Center for the Performing Arts*, 351 NLRB 143, 144, 144 n.9 (2007),

enforced 550 F.3d 1183, 1188 (D.C. Cir. 2008); *Strand Theatre*, 346 NLRB 523, 523 n.1 (2006), *enforced* 493 F.3d 515, 519 (5th Cir. 2007), another point which BBH -- critically -- concedes, *see* Hr'g Tr. at 21 (BBH counsel: "yes, there has been a Section 9 representative recognition here").

BBH therefore had a duty to bargain with the Union concerning a successor agreement, and could not withdraw recognition absent a showing of a loss of majority support. BBH has not even argued that there was a loss of majority support, let alone attempted to show such a loss. Thus, in refusing to bargain and withdrawing recognition, BBH has violated Sections 8(a)(1) and 8(a)(5) of the Act absent an affirmative defense.

II. BBH'S AFFIRMATIVE DEFENSES LACK MERIT, AND ARE TIMED-BARRED AND ESTOPPED

We explain below in Parts II.B to II.E why BBH's affirmatives defenses fail on the merits. First, however, in Part II.A we show that these defenses -- which at their core challenge the appropriateness of a bargaining unit of temporary employees -- are in any event time barred and estopped.

A. BBH Can No Longer Challenge the Appropriateness of the Bargaining Unit After Its Almost 20-Year Collective Bargaining Relationship with SAG-AFTRA

As noted above, because SAG-AFTRA and BBH have been parties to a series of collective bargaining agreements with exclusive representation language, SAG-AFTRA is the Section 9(a) representative of BBH's employees. This is true regardless of whether BBH's initial voluntary recognition was based on a showing (such as a card check) of majority status. *Kravis*, 351 NLRB at 144, 144 n.9; *Kravis*, 550 F.3d at 1189; *Strand*, 493 F.3d at 519; *Strand*, 346 NLRB at 523 n.1; *Colorado Symphony Ass'n*, 366 NLRB No. 122, at 30 (2018). Absent an employer showing of loss of majority support, *see supra* Part I, and once an employer has

voluntarily recognized a particular bargaining unit, it may not years later withdraw recognition or repudiate the contract based on either an absence of proof of majority status (i.e., a purported “prehire” agreement) or the alleged inappropriateness of a recognized unit. *Alpha Assocs.*, 344 NLRB 782, 783 (2005); *Red Coats*, 328 NLRB 205, 206-207 (1999); *Strand*, 346 NLRB at 537; *Kravis*, 351 NLRB at 144-45; *Morse Shoe, Inc.*, 227 NLRB 391, 394 (1976).

1. Any Allegation that the CBA is an Alleged “Prehire” Agreement is Time-Barred

With respect to lack of majority support at time of recognition⁵ or that the Commercial Contracts somehow otherwise constitute unlawful “prehire” agreements, that claim *must have* been raised within six months of recognition or otherwise is time-barred (under Section 10(b) of the Act). *E.g.*, *Kravis*, 351 NLRB at 144, 160 (argument that CBA was a “classic prehire agreement” time-barred if not raised within six months of recognition); *Kravis*, 550 F.3d at 1189; *Bryan Mfg. Co. v. NLRB*, 362 U.S. 411 (1960); *Strand*, 346 NLRB at 535-37. If not so challenged, the Union through the CBA language becomes the Section 9(a) representative and any claim that the Commercial Contracts are unlawful prehire agreements necessarily fails. *E.g.*, *Kravis*, 351 NLRB at 144, 160; *Kravis*, 550 F.3d at 1189; *Strand*, 493 F.3d at 519; *Strand*, 346 at 523 n.1, 535-37; *Colorado Symphony*, 366 NLRB at 30. This policy is based on the importance of the need to ensure stability in bargaining relationships, *North Bros. Ford*, 220 NLRB 1021, 1021 (1975); *Kravis*, 550 F.3d at 1188, and to foreclose an indirect attack on the voluntary recognition, which should have occurred promptly, *Alpha*, 344 NLRB at 782 n.4.

⁵ Recognizing that the argument of lack of majority support at time of recognition is so obviously time-barred, BBH conceded at the hearing that it was *not* challenging the Union’s initial recognition. Hr’g Tr. at 24-25.

For example, in *Kravis*, the employer, a performing arts center, argued that its recognition of its stagehands was made without an election or any showing of majority support, and the CBA was therefore a “classic prehire” agreement, privileging it to withdraw recognition without having to show a loss of majority support. *Kravis*, 351 NLRB at 144, 160. The Board (Battista, Liebman, Kirsanow) rejected that rationale as time-barred, and that, due to a years-long bargaining relationship, the union was the Section 9(a) representative. *Id.* at 144 & n.9. The D.C. Circuit, in an opinion by now-Justice Kavanaugh, enforced the Board’s order. *Kravis*, 550 F.3d at 1189. It rejected the employer’s argument that the CBA was really a Section 8(f) agreement without the sanction of that provision of the Act, *id.*, and held that the employer’s argument regarding the initial recognition was time-barred. *Id.* *Kravis* (and other cases like it) are controlling here. *E.g.*, *Alpha.*, 344 NLRB at 783; *Strand*, 346 NLRB at 53; *Morse Shoe*, 227 NLRB at 394.

2. BBH is Estopped From Challenging the Appropriateness of the Unit

Similarly, a “long established bargaining relationship evidenced by successive contracts will not be disturbed by the Board unless repugnant to the Act’s policies.” *BASF-Wyandotte Corp.*, 276 NLRB 498, 500-01 (1985). In other words, because the Act gives “the parties the broadest permissible latitude to mutually define the context in which collective bargaining should take place,” unless the unit is “prohibited by the statute,” then it is “appropriate under the Act, regardless of whether the Board would have certified such a unit *ab initio*.” *Red Coats*, 328 NLRB at 207. Thus, an employer is estopped from withdrawing recognition based on the inappropriateness of the unit unless the recognized unit is “*prohibited by the statute*.” *Id.*; *see Alpha*, 344 NLRB at 784 (emphasis added).

Here, almost twenty years ago, BBH voluntarily recognized a unit of all performers employed by it on its commercials. The parties have had a long and successful

collective bargaining relationship. *See* Jt. Ex. 2-Z (BBH CFO: we “enjoyed our partnership with SAG-AFTRA over the years”). As BBH concedes, there have been no changed circumstances to BBH’s operations since that time: it hires performers for its commercials on a production-by-production basis. SOF ¶3; Hr’g Tr. at 26 (BBH “recognize[s] that in fact nothing has changed factually” in this respect). As we will explain below in Part II.B, a unit of solely temporary performers not only is not one that is “prohibited by the statute,” *Alpha*, 344 NLRB at 784, but rather is one that is *explicitly permitted* by the Act. The challenge to the unit as being composed of temporary employees is therefore estopped. *Alpha*, 344 NLRB at 783; *Red Coats*, 328 NLRB at 207; *Strand*, 346 NLRB at 537; *Kravis*, 351 NLRB at 144-45.

More specifically, the estoppel rationale is premised on the notion that an employer may not obtain benefits from conduct based on certain facts on which a union relies only to later use those facts to prejudice the union. *Alpha*, 344 NLRB at 783. Thus, the Board has repeatedly determined that an employer may not bargain with a union over a long period of time with a particular agreed-upon bargaining unit, accept the benefits of unionization, and then only later try to repudiate the agreement or withdraw recognition by challenging the “propriety of the unit.” *Id.*; *Strand*, 346 NLRB at 537; *Red Coats*, 328 NLRB at 207 (the “policies of the Act are not served by allowing” the employer to “use the process of voluntary recognition to gain [a] benefit, only to cast off this process when” it no longer desires to negotiate). In other words, by “voluntarily recognizing the Union,” and then bargaining with an agreed-upon unit, the employer “induced” the union to believe that the employer “would forgo any challenge to the Union’s status based on a unit appropriateness argument.” *Red Coats*, 328 NLRB at 206.

Here, the Union meets all of the elements of estoppel: BBH voluntarily recognized a unit of temporary employees, did not challenge that recognition within six months,

bargained with the union under multiple CBAs during the course of seventeen years, leading the Union to believe that BBH accepted the propriety of the unit, and thus obtained the benefit of years of labor peace and the avoidance of costly litigation. *Alpha*, 344 NLRB at 783; *Red Coats*, 328 NLRB at 206-07. BBH is therefore estopped from challenging the appropriateness of the unit now.⁶

B. Long-Established Board Law Holds that a Unit of Temporary Employees is an Appropriate Unit

In any event, even if BBH's defenses were not time-barred and estopped (which they are), BBH's argument at its core is that a unit of temporary employees is inappropriate and therefore it can withdraw recognition at any time. *See* Hr'g Tr. at 23 (BBH Counsel: "if you have no bargaining unit . . . you have no shared community of interest, because you have no permanent employees," then you have the "absolute right to terminate the bargaining relationship"). BBH is wrong. Under venerable Board law, the bargaining unit of all performers employed on BBH's commercials is an appropriate bargaining unit.

⁶ The cases which hold that an employer is not estopped from challenging a recognized unit that is actually in contravention of the Act, *see Oakland Press*, 266 NLRB 107 (1983) (not estopped from challenging unit of supervisors); *Children's Miracle Network*, Case 31-CA-25115, 2001 WL 1782093, at *5 (Div. of Advice Memo Dec. 12, 2001) (unit had no employees, only independent contractors), do not support BBH here since a unit of temporary employees is supported by the Act, *see* Part II.B, and the CBA is not otherwise an unlawful prehire agreement, *see infra* Part II.D. Moreover, the *Oakland Press* (1983) decision was decided prior to the development of the key estoppel Board law in *Alpha Associates* (2005) and *Red Coats* (1999), and the Division of Advice, for its reasoning in *Children's Miracle Network*, relied heavily on cases holding that an employer could withdraw recognition from a mixed-guard unit without a showing of loss of majority support, *id.* at *4-5 nn. 26-27, decisions that have since been overruled by the Board in *Loomis Armored US, Inc.*, 364 NLRB No. 23, at 1-2, 6 (2016) (due to the "fundamental policy of fostering stable labor management relationship, including those established by voluntary recognition," holding that an employer must show actual loss of majority support before withdrawing recognition from mixed-guard unit). It is unclear to what extent *Oakland Press* and *Children's Miracle Network* even survive *Loomis*.

It is a bargaining unit that has existed in the commercials industry, where actors are employed for short amounts of time by numerous employers, since the mid-1950s. *See Hr'g Tr.* at 92. Some of these performers are hired for multiple, different commercials (*see* Appendix 2 and 3, calculating the numbers of employees hired for multiple, different commercials in 2016, 2017, and 2018, and Appendix 4, showing that more than a hundred performers have worked for BBH in at least three years); some are not. Many work for multiple days shooting the same commercial. Appendix 1. The fact that the performers are temporary or intermittent does not mean that the unit is not an appropriate one. To the contrary, that a unit of solely temporary employees is an appropriate one is a bedrock principle of labor law in the entertainment industry context, where the Board has consistently and repeatedly approved such units dating back to the early 1950s. *E.g., American Zoetrope Prods., Inc.*, 207 NLRB 621, 622 (1973) (editors on television commercials with no expectation of rehire); *Medion, Inc.*, 200 NLRB 1013, 1013-14 (1972) (crews in the film industry that are hired for a particular production and “sometimes only for a day’s work and then laid off without any promise of reemployment”); *American Broadcasting Co.*, 96 NLRB 815, 819 (1951) (actors on live television and motion picture productions); *Television Film Producers Ass’n*, 93 NLRB 929, 933–34 (1951) (actors in the motion picture industry where work “is occasional and temporary”); *Society of Independent Motion Picture Producers*, 94 NLRB 110, 112 (1951) (carpenters and set erectors employed for brief periods with frequent interchange); *McCann Erickson Corp.*, 107 NLRB 1492, 1493 (1954) (unit including actors employed by advertising agency on radio advertising spots); *Independent Motion Picture Producers Ass’n*, 123 NLRB 1942, 1950 (1959) (rejecting employer’s argument that there could be no appropriate unit of motion picture musicians with “casual and irregular nature of employment” that enjoy “no stability in employment” and move from “employer to

employer” with no expectation of rehire with particular employer); *Blockbuster Pavilion*, 314 NLRB 129, 142 (1994), *modified on other grounds*, 331 NLRB 1274 (2000) (stagehands at venue that “sometimes worked only for a day” then laid off without promise of reemployment); *DIC Entertainment*, 328 NLRB 660, 660 (1999) (freelance production employees; noting “the unique conditions in the different entertainment industries, where employees are often hired to help on a day-by-day or production-by-production basis”); *Kansas City Rep. Theatre*, 356 NLRB 147, 147 (2010) (holding that a unit of solely temporary employees is appropriate and stating that “in many industries employees with little or no expectation of continued employment with a particular employer engage in stable and successful collective bargaining--for example, actors”); *see Columbia Univ.*, 364 NLRB No. 90, at 20-21 (2016) (Board does not deny bargaining rights to temporary employees).

For example, in 1951, the Board found appropriate a unit of actors/performers in motion pictures, who, like here, were hired on a production-by-production basis out of a “pool” of available performers. *Television Film Producers Ass’n*, 93 NLRB at 930. The performers moved from one employer in the industry to another, their work was “occasional and temporary,” and “yet the actor may get enough work in the industry throughout the year to give him a vital interest in the selection of” a representative. *Id.* at 933. As long as the performer worked at least 2 days in the prior 9 months in the single employer unit, he/she was eligible to vote in the election. *Id.* at 934; *see American Zoetrope*, 207 NLRB at 622 (approving as appropriate a unit of editors that worked for a company that produced “television commercials” where the editors were employed only for “1 or 2 days” and then laid off “without any promise of reemployment”).

What the Board recognized in these cases was that while employees in the entertainment industry might only work for short periods of time for any particular employer, those employees may at any time be reemployed by that same employer and therefore have ongoing concerns with the terms and conditions of employment of that employer. Thus, while Board law is clear that a unit of temporary employees can be appropriate in any industry, these cases all illustrate that such a unit is particularly appropriate in an industry like the entertainment industry where most of these “temporary” employees are permanently in the employment pool, constantly seeking work with the same group of employers, and therefore have a continued connection to, and interest in, the employment terms and conditions of each employer in the industry. As the factual record in this case shows, the reemployment of any particular employee is more than theoretical. It was not uncommon for an actor hired by BBH on one commercial to be rehired on another commercial in the same or subsequent year. *See* Appendix 2 (6 performers in 2016; 2 in 2017); Appendix 3 (4 in the first half of 2018), Appendix 4 (since 2001, 107 performers worked on BBH commercials during three or more years).⁷

Thus, contrary to BBH’s suggestions, the Board has long held that a unit of temporary employees is appropriate, and therefore, even if not time-barred or estopped, any argument based on the premise that the unit is not an appropriate one because it lacks permanent

⁷ Record evidence also shows various instances where BBH acknowledges repeatedly using performers. For example, on a production report for a commercial prepared for advertiser Brighthouse, BBH Director of Business Affairs Librado Sanchez notes that “Tracy is a previous performer (been used for past 2 years) so Team [the payroll company] should have all her W9 and other related documents.” Joint Exhibit 3(L) at BBH004376. In an exchange regarding session payments for a Netflix advertisement, BBH Studio Production Manager AJ Gutierrez notes that an employee “came back in last week to do another VO for the House of Cards Case Study.” Joint Exhibit 4(O) at BBH00536. And performer J.J. Jurgens has performed on six different commercials shot over six different days in 2017 and 2018. *See* Appendix 2 and 3.

employees (or is somehow a pre-hire agreement because these employees are hired on a production-by-production basis, *see infra* Part II.D), lacks any merit.

C. The “One Man Unit” Cases are Not Applicable Here

Despite the long-standing Board precedent holding that units of solely temporary employees in production-by-production industries are appropriate, BBH attempts to latch on to a line of cases -- the “one man unit” cases -- that it claims establish that if BBH “employs one or fewer unit employees on a permanent basis,” it may withdraw recognition and repudiate the CBA. *See* Jt. Ex. 2-BB (citing *D&B Masonry*, 275 NLRB 1403, 1408 (1985)); Hr’g Tr. at 23. Of course, BBH clearly does not only employ one performer -- it concedes, as it must, that it employs dozens and dozens and dozens of actors every year (152 in 2016 and 102 in 2017, *see* Jt. Ex. 5(A)), including an average of 3-4 actors on *each* commercial it produces (*see* GC Ex. 3 (Column 8)). So BBH’s argument boils down to the contention that an employer may withdraw recognition from a unit of solely temporary employees at any time. As we will explain, however, the “one man unit” line of cases has no application to bargaining units that consist *only* of temporary employees.

In the ALJ decision adopted by the Board in *D&B Masonry*, the employer was permitted to repudiate the contract where it employed only one permanent employee. *D&B Masonry*, 275 NLRB at 1408. The decision there relied on a principle from a 1960 Board decision, *Foreign Car*, 129 NLRB 319, 320 (1960), in which this “one man unit” rule was applied on the theory that the “principle of collective bargaining presupposes that there is more than one eligible person who desires to bargain.” *Id.* In other words, where the “employee complement at issue has no ‘collective’ character,” there cannot be “meaningful” collective bargaining. *McDaniel Electric*, 313 NLRB 126, 127 (1993). The ALJ found that temporary employees that the employer hired on an ad hoc basis did not count towards the total number of

employees because they lacked a “community of interest with” the one permanent employee. *D&B Masonry*, 275 NLRB at 1408.

The *D&B Masonry* and other “one man unit” cases have no application where the *entire* bargaining unit is made up of temporary or intermittent employees.⁸ These employees share a community of interest with each other, *e.g.*, *Kansas City Rep.*, 356 NLRB at 147, and there are no permanent employees. If this line of cases applied to a unit of solely temporary employees, it would eliminate temporary employees’ protections under the Act and would mean that temporary employees could not form an appropriate bargaining unit. But that is contrary to the long-established law cited above. *Supra* Part II.B (citing cases). The “temporary” employees here have engaged in meaningful and stable collective bargaining with commercial employers since the 1950s, and with BBH since about 2000. The rationale behind the “one man unit” cases makes no sense here, and those cases are inapplicable.

Moreover, even if this line of cases were applicable here, the Board has determined that *D&B Masonry* requires proof that the “single employee unit is a stable one,” not a “temporary occurrence.”⁹ *McDaniel Electric*, 313 NLRB at 127. Thus, even if there is a 9-

⁸ The Circuit Court cases that BBH cites in its position statement on this point are all distinguishable because not only did they not apply to units of solely temporary employees, but involved employers (all covered by Section 8(f), not 9(a)), that had *no employees* (or only one employee) over a period of years. *See Baker Concrete Const., Inc. v. Reinforced Concrete Contractors*, 820 F.3d 827, 829 (2016) (no employees at all for “several years” prior to repudiation); *Laborers Health & Welfare Trust Fund v. Westlake Dev.*, 53 F.3d 979, 981 (9th Cir. 1995) (one employee only for three years with no plan to hire); *J.W. Peters, Inc. v. Iron Workers, Local 1*, 398 F.3d 967 (7th Cir. 2005) (no employees employed since prior year and no intention to hire in the future); *see also Hass Garage Door*, 308 NLRB 1186, 1186 (1992) (cited by BBH in position statement) (construction employer had “no employees doing unit work”).

⁹ BBH is thus wrong when it contends the measurement period is the singular “moment in time” of repudiation, Hr’g Tr. at 25 (“at that moment in time, there was no permanent bargaining unit of performers”), which would obviously be a highly manipulatable and destabilizing standard.

month period where there is only one employee, if at other times the employer employs more than one employee, the employer is not permitted to repudiate the agreement. *Id.* (denying repudiation where two or more employees worked in five of thirteen weeks preceding the hearing); *Strand*, 346 NLRB at 537 (rejecting application of only “one permanent employee” argument where it was “shown that there was more than one employee performing unit work at all material times” even though there was only one permanent employee and the additional work was done by “many different employees”); *Galicks, Inc.*, 354 NLRB 295, 299 (2009) (same even where there was only one employee for fifteen months prior to withdrawing recognition where prior to that employer had at times employed two or three employees). This is especially true in industries where there are “employment fluctuations” in the number of employees employed. *McDaniel Electric*, 313 NLRB at 127.

Here, BBH is consistently producing commercials that employ performers, and most of the commercials it produces employ more than one performer, with the average cast size of 2.6 performers in 2016 and 3.9 in 2017. GC Exs. 2 and 3. This alone defeats any argument under the “one man unit” line of cases. Moreover, many of these performers, have a reasonable expectation of being rehired because they *have* been rehired in the past by BBH. Thus, for example, in 2016 (the last full year BBH produced under the CBAs), six performers were hired for multiple commercials for BBH that were shot on different days, *see* Appendix 2, this figure was two performers for 2017, *id.*, and, *even after* it purportedly repudiated the CBA, in the first few months of 2018, it employed four different actors on different commercials shot on different dates, *see* Appendix 3 & *supra* n. 4; *McDaniel Electric*, 313 NLRB at 127 (examining period after repudiation for purposes of “one man unit” analysis); *see also* Appendix 4 (since 2001, 107 performers worked on BBH commercials during three or more years).

In sum, in this circumstance, even if the “one man unit” cases were applicable to a unit only of temporary employees (which they are not), BBH could not prove here that there always has been only one or fewer employees in the unit as it employs more than one hundred actors per year and is consistently producing commercials throughout the course of the year with more than one employee. *See* Jt. Ex. 5(A) and Appendix 2-3.

D. The CBA is Not a “Pre-Hire” Agreement

As noted above, BBH concedes that it is not challenging SAG-AFTRA’s initial recognition in this case. Hr’g Tr. at 24, 25. BBH is therefore stuck with the argument that the Commercials Contracts *now* (as opposed to at the time of initial recognition) somehow constitutes a pre-hire agreement -- merely because BBH hires different performers on each commercial production. This assertion not only makes little sense, but it fundamentally misunderstands the operation of the Act. Once a union wins an election (through an eligibility formula suited to the temporary/intermittent nature of the employees in question) or is voluntarily recognized, *all* employees later hired for all productions of the employer (here, BBH) are covered by the agreement, just as any new employees hired into a unionized factory are covered by the contract. *E.g., Bi-Craft Litho, Inc.*, 316 NLRB 302 (1995) (employee turnover not sufficient to support showing of loss of majority support); *cf. El Torito-La Fiesta Restaurants*, 295 NLRB 493 (1989) (temporary closure of restaurant that resulted in only 8 out of the 200 employees at re-opened restaurant having been employed at pre-closure restaurant did not negate majority status); *Kravis*, 550 F.3d at 1188-89 (even with stagehand hiring hall arrangement where employees sent from hall on as-needed basis, union entitled to continued presumption of majority support); *Strand*, 346 NLRB at 536 (same).

BBH is conflating the voter eligibility formula in an election (which limits those voting to those with a reasonable expectation of continued employment) from the description of

the bargaining unit (which includes all employees). Thus, in industries with irregular employment, such as the entertainment industry, the Board seeks to limit the *voting group* to employees who have demonstrated a substantial interest in choosing their representatives by working a particular number of days or productions. *E.g., DIC Entertainment*, 328 NLRB 660 (1999).¹⁰ The Board has made clear, however, that because of the particular work patterns in the production-by-production entertainment industry, the voter eligibility limitations are inapplicable to a determination of the appropriate collective bargaining unit.

Indeed, virtually every Board decision in the entertainment industry concludes that the unit should include, and collective bargaining should proceed on behalf of, *all* of the employees in the appropriate job classifications, on all future productions, without the limitations contained in the voter eligibility formula.¹¹ Once the union wins the election, or is voluntarily recognized, the fact that there is turnover in the temporary/intermittent employees does not transform the agreement into an unlawful prehire agreement; if it did, this would mean that temporary employees would lose their protections under the Act and industries that have been

¹⁰ For example of formulas used for temporary employees in production-by-production industries, see discussion *infra* pp. 25-26 (citing cases).

¹¹ See, *e.g. Oregon Shakespeare Festival Ass'n*, 19-RC-150979, *slip op.* at 28, 29 (2015) (voter eligibility formula included 15-day limit but unit definition did not), *rehearing denied*, 2015 WL 4980475 (2015); *DIC Entertainment*, 328 NLRB at 661-62 (applying *Juilliard* voter eligibility formula but defining unit without such limitation); *Juilliard Sch.*, 208 NLRB 153, 155 (1974) (in case establishing *Juilliard* eligibility formula, defining unit as “all stage department employees”); *American Zoetrope*, 207 NLRB at 622-23 (voter eligibility formula limited by number of productions but unit defined as “all editorial employees”); *Medion, Inc.*, 200 NLRB 1013, 1013-14 (1972) (voter eligibility formula limited by productions / working days but unit defined as “All preproduction, production, and post-production employees”); *American Broadcasting Co.*, 96 NLRB 815, 819 (1951) (voter eligibility formula for television actors based on working days / productions, but unit included all actors); *Television Film Producers Ass'n*, 93 NLRB 929, 933-34 (1951) (voter eligibility formula applying limitation but unit defined as employee classifications without limitation).

successfully and stably bargaining for decades would be upended, contrary to the Board precedent cited above.¹²

Moreover, the argument also does not square with the reality of the unionized commercials industry in which a clear majority of performers working under the CBA are members of SAG-AFTRA (as opposed to non-members or financial core fee paying non-members).¹³ Membership in the Union supports majority status, *see King Telpro, Inc.*, 1997 WL 34824453, at 8-9 (Advice Mem. Mar. 7, 1997) (citing cases), and so, in addition to the continued presumption of majority support, *e.g., Kravis*, 550 F.3d at 1188-89; *Strand*, 346 NLRB at 536, the Union *does* have actual majority support on BBH's productions. For example, in every year since 2001, a majority of performers employed by BBH were SAG-AFTRA members. *Id.* In

¹² BBH relies heavily (Jt. Ex. 2-BB at 2) upon Member Miscimarra's dissent in *David Saxe Productions*, 364 NLRB No. 100 (2016), in which he comments that it is "common industry practice" in the entertainment industry for "many" productions to be mounted as a "union show" before the performers are hired even though the NLRA does not permit "pre-hire" union agreements. *Id.* at 8. But this case provides no support here. First, the majority in the case pointed out that there was "no support in the record" for Miscimarra's claims, which were merely "based on his understanding of employment practices in the entertainment industry." *Id.* at 2 n.7. Importantly, this "understanding" is incorrect in this case as BBH was producing commercials for at least a year at the time it recognized SAG-AFTRA, *see* SOF ¶¶ 1, 8, 10, and thus was employing actors at that time, and moreover is an ongoing enterprise consistently producing commercials and employing actors -- unlike other sectors of the entertainment industry where employers may exist for one production only. Second, as discussed in further detail in Part II.D, any pre-hire inquiry is relevant only at the time of recognition since a union through successive CBAs becomes the Section 9(a) representative. BBH has explicitly acknowledged that it is not challenging SAG-AFTRA's initial recognition, Hr'g Tr. 24-25, and any attempt to do so would be time-barred, *see* Part II.A.1. Third, putting aside that the comment is in a dissent, it is also *dicta* since the facts of the case did not even address the "pre-hire" issue but involved only whether the employer violated Section 8(a)(1) by putting in the employment contracts that the show was "non-union." Finally, even Miscimarra suggests that the practice as he described it is useful in the entertainment industry. *Saxe*, 364 NLRB at 8 (noting that "pragmatically," this structure makes sense).

¹³ To the extent that BBH argues that the SAG-AFTRA's membership rules somehow prevent BBH from hiring non-union actors, *see* Hr'g Tr. at 24, BBH is mistaken. Membership in SAG-AFTRA is not a requirement to perform in commercials under a SAG-AFTRA collective bargaining agreement and BBH may hire whatever performer it prefers. *See* Hr'g Tr. at 77.

2016 and 2017, that figure was more than 90%. *Id.* The Union has clear majority support of the performers that work on its commercials.¹⁴

E. BBH’s Argument That It Is Bound in “Perpetuity” to the CBA is a Strawman

BBH nevertheless argues that the “employer in fact never waives the right to object to an arrangement that contravenes the fundamental principles of the Act,” to “impose a pre-hire scheme in perpetuity on groups of workers who have no say.” Hr’g Tr. at 26. Putting aside that the agreement is not an unlawful prehire agreement, *see supra* Parts II.A.1 and II.D, the notion that BBH somehow is locked into its relationship with SAG-AFTRA in “perpetuity,” Hr’g Tr. at 24, 26-27, is a strawman because it is false. As with any other employer, BBH had the right to withdraw recognition after expiration of the agreement if it presented evidence that SAG-AFTRA no longer possessed majority support. *E.g., Levitz*, 333 NLRB at 723. For example, if it had a good-faith doubt¹⁵ as to the union’s majority status, it could have polled the performers that worked on its commercials over the prior year. *Id.*; *see Wisconsin Porcelain Co.*, 349 NLRB 151, 151 (2007). Such a showing would have supported its withdrawal of recognition if more than half the performers affirmatively stated they no longer wanted SAG-AFTRA to represent them. *See Wurtland Nursing & Rehab Center*, 351 NLRB 817 (2007). But it made no attempt to do this.

¹⁴ To the extent that BBH is arguing that the Commercials Contracts are really Section 8(f) agreements “without the statutory sanction of Section 8(f),” Hr’g Tr. at 21, this argument has been explicitly rejected because Section 8(f) and its corresponding exception to the presumption of majority status only apply in the construction industry. *E.g., Kravis*, 550 F.3d at 1189 (citing cases); *Strand*, 493 F.3d at 520; *Strand*, 346 NLRB at 536.

¹⁵ Based on, for example, “firsthand statements by employees concerning personal opposition” to the union. *Levitz*, 333 NLRB at 728.

BBH alternatively could have filed for an RM election by demonstrating good-faith reasonable uncertainty as to SAG-AFTRA's continuing majority status. *Levitz*, 333 NLRB at 723. BBH now claims that if it did this "no performer that BBH employs" would be able to vote in the election. Hr'g Tr. at 27.¹⁶ Voting eligibility formulas have no place in this failure to bargain case, *see infra* Part II.D, but here too BBH is in any event wrong -- in the entertainment industry in particular, the Board is flexible in providing voting eligibility formulas that take into account the unique context of the particular employer, including in similar situations involving temporary employees in production-by-production contexts. One such formula used for similar circumstances, *including for productions of commercials*, is 2 days of employment within the prior 9-12 month period. *E.g.*, *Alliance of Television Film Producers*, 126 NLRB 54, 56 (1960) (given the "irregular nature of the musicians' employment in the television film industry and the peculiar characteristics of this industry," the formula for eligibility was employment for "2 or more days during the year preceding" the direction of election); *Independent Motion Picture Producers Ass'n*, 123 NLRB at 1950 (2 days in one year period for motion picture musicians in multiemployer unit); *Transfilm, Inc.*, 100 NLRB 78 (1952) (2 days in 9-month period for production employees for television commercials; noting that a television commercial is shot over a 1-2 day period); *Television Film Producers Ass'n*, 93 NLRB at 933 (2 days in nine-month period for actors in motion pictures in single-employer unit); *American Broadcasting*, 96 NLRB

¹⁶ BBH also tries to bolster this argument by claiming that BBH employees do not ratify their contract, Hr'g Tr. at 21, as if this somehow explains that there is no appropriate bargaining unit. Putting aside that there is no NLRA-right to ratification of a CBA, *see New Process Steel, LP*, 353 NLRB 111, 113 n.7 (2008), *incorporated by reference*, 355 NLRB 586 (2010) (citing *North Country Motors Ltd.*, 146 NLRB 671, 674 (1964) ("The Act imposes no obligation upon a bargaining agent to obtain employee ratification of a contract it negotiates in their behalf"), this claim makes no sense because the Commercials Contracts were ratified by the membership, *see* Hr'g Tr. at 85-86; SOF ¶15, and BBH agreed to Letters of Adherence to the terms of those contracts for each year it was a signatory, SOF ¶13.

at 819 (2 or more days in nine-month period for actors on live television and motion picture productions). This formula would be appropriate here in light of the short-term nature of commercial production, and even only taking 2017 into account, would have yielded 41 voters (if the makeup/fitting day counts as days; if not there would have been 9 voters). *See* Jt. Exs. 3, 4, and 5(A); Appendix 1 (summary).¹⁷

In sum, the commercials industry provides a bedrock example of successful collective bargaining, with SAG-AFTRA and its predecessor unions, SAG and AFTRA, representing more than 160,000 actors who, like those at issue here, do not necessarily work a fixed number of days or productions every year. To eviscerate the commercials bargaining unit merely because employees are hired on a production-by-production basis would be contrary to the Act and would not serve a critical goal of the Act of fostering stability in bargaining relationships.

CONCLUSION

For the foregoing reasons, BBH has violated Section 8(a)(1) and 8(a)(5) of the Act.

¹⁷ Even if the formulas utilized in *American Zoetrope* (more than one production during the prior year) applied (as BBH suggested it might in its position statement), that formula would yield a sufficient number of eligible voters. For example, if the election were held in June 2018, it would have yielded four voters, *see* Appendix 3; on November 21, 2017, two voters, Appendix 2; if it were held on January 1, 2017, six voters, *id.*

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Respectfully submitted,

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APPENDIX 1

Performers that Worked for BBH on More than One Date in 2016 and 2017
 (data derived from Joint Exhibit 5(A) and page numbers refer to Joint Exhibit 5(A))

2016	2017
1. Alek Cole (p. 1)*	1. Abraham Makany (p. 1)*
2. Amir Aboulela (p. 1)*	2. Akram Basuni (p. 1)*
3. Ana Parsons (p. 1)*	3. Alexa Vallejo (p. 1)
4. Anthony Deviot (p. 2)*	4. Allan McLeod / John Allan McLeod (p. 1)*
5. Brad MacDonald (p. 2)*	5. Brian LaFontaine (p. 2)
6. Cece Paige (p. 3)*	6. Carlos Santos (p. 3)*
7. Chris Chee (p. 3)	7. Caroline E. Christopher (p. 3)*
8. Chris Cole (p. 3)*	8. Chad Jamian (p. 3)*
9. Chris Hill (p. 3)	9. Erwin Jones (p. 5-6)*
10. Clinton Jackson (p. 4)*	10. Grace Marlow (p. 6)*
11. Damon Tolstoy (p. 4)*	11. Isaiah Bowens (p. 6)*
12. Dan Gill (p. 4)	12. J. J. Jurgens / Jami J. Jurgens (p. 7)
13. Dana Powell (p. 4)*	13. Jalyn E. Hall (p. 7)*
14. Dwayne Hill (p. 5)	14. James Frey (p. 7)*
15. Elizabeth Gilbert (p. 5)*	15. Jennie Pierson (p. 7)*
16. Fran Nichols (p. 6)*	16. Jeremy Bakhole (p. 7-8)
17. Fuschia! / Jacqueline Bell (p. 6)*	17. Jerrell Pippens (p. 8)*
18. Gregory Jones (p. 6)*	18. Jessica Jones (p. 8)*
19. Hamilton Clancy (p. 6)*	19. John Elvis Lara (p. 9)*
20. Jake Van Wagoner (p. 7)*	20. Jon Gabrus (p. 9-10)*
21. James Mackay (p. 7)*	21. Kavindar Singh (p. 10)*
22. Jeremy Crutchley (p. 8)	22. Marili K. Mejins (p. 12)
23. Jill De Jong (p. 8)	23. Michael C. Alexander (p. 13)*
24. Jim Burke / James Burke (p. 8)*	24. Minchi Murakami/ Yoshiteru Murakami (p. 13)*
25. John Rue (p. 9)	25. Mohamed El Alfy (p. 13)*
26. Johnny Hopkins (p. 9)*	26. Moises Acevado (p. 13)*
27. Julie M. Mitchell (p. 10)*	27. Nandita Chandra (p. 14)*
28. Jun Naito (p. 10)*	28. Nicholas Locke (p. 14)*
29. Katierose Donohue (p. 10)*	29. Rosa Arrendondo (p. 16)*
30. Kimo Carpenter (p. 10)	30. Rosa C. McKoy (p. 16)
31. Lateefah Holder (p. 11)*	31. Scott Freeburg (p. 16)*
32. Lauren Noble (p. 11)	32. Selina Kaye / Christine C. Green (p. 17)*
33. Leonard Robinson (p. 11)*	33. Sheldon Bailey (p. 17)*
34. Liam Cronin (p. 11)*	34. SJ Son / Soojeong Son (p. 17)*
35. Matt Ballard / Matthew Ballard (p. 12)*	35. Smac McCreanor / Sara McCreanor (p. 17)
36. Matt Walton (p. 12)	36. Steve Agee (p. 17)*
37. Matthew Luret (p. 12-13)*	37. Taylor Orci (p. 18)*
38. Mike Truesdale (p. 13)*	38. Thomas Crawford (p. 18)*
39. Molly Cerne (p. 13-14)	39. Tony Robinette / Anthony S. Robinette (p. 18)
40. Natalie Knepp (p. 14)	40. Tracy Sallows (p. 19)
41. Omar Avila (p. 14)*	41. Vivian Yoon (p. 19)*

2016	2017
42. Ozioma Akagha (p. 15)*	
43. Peter Halpin (p. 15)*	
44. Pisha Warden / Patricia Warden (p. 15)*	
45. Rand Holdren (p. 15)*	
46. Richard Fancy (p. 15)*	
47. Ruben Vernier (p. 16)	
48. Sean Cook (p. 16)*	
49. Shelli Boone (p. 17)*	
50. Sina Amedson / David S. Amedson (p. 17)*	
51. Steven Lamprinos (p. 18)*	
52. Todd Lien (p. 18)	
53. Toni Romano-Cohen/ Antoinette Cohen (p. 18)	
54. Tyler Cook (p. 19)	
55. Tyler Fischer (p. 19)*	
56. William Lex Ham (p. 19)	
57. Winston Francis (p. 19)	

* Second workday was for makeup/fitting issues.

APPENDIX 2

Performers that Worked on More than One BBH Commercial on More than One Date in 2016 and 2017

(data derived from Joint Exhibit 3 and Joint Exhibit 4)

Performer	Client	Projects	Shoot Dates
2016*			
1. Jeremy Crutchley	PlayStation	<ul style="list-style-type: none"> King's Response Video (BBH005970-5971, 5974-5975, 5976-5977) King's Digital Wrap Video (BBH005972-5973, 5984-5985) King's Digital Delivery Video (BBH005982-5983) 	<ul style="list-style-type: none"> 11/2/16 (BBH005974-5975) 11/13/16 (BBH005970-5971) 11/17/16 (BBH005972-5973, 5982-5983) 11/22/16 (BBH005984-5985)
2. Dwayne Hill	Newell	<ul style="list-style-type: none"> Creepy Crawl Space (BBH005699-5700, 5703-5704) Short (BBH005705-5706, 5743) 	<ul style="list-style-type: none"> 5/12/2016 (BBH005703-5706) 5/17/2016 (BBH005699-5700) 8/2/2016 (BBH005743)
3. Natalie Knepp	Newell	<ul style="list-style-type: none"> 50 Fingers (BBH005690) Cat Rub (BBH005694) Inkjoy Stylus- Malaysia (BBH005426-5427) 	<ul style="list-style-type: none"> 3/25/16 (BBH005690, 5694) 4/18/16 (BBH005426-5427)
4. William Lex Ham	Newell	<ul style="list-style-type: none"> 50 Fingers (BBH005626) Cat Rub (BBH005682) 	<ul style="list-style-type: none"> 3/15/16 (BBH005434, 5682) 3/16/16 (BBH005434, 5626)
5. John Rue	Abbott Laboratories	<ul style="list-style-type: none"> Race (BBH003729-3730, 3733-3734, 3738) With You (BBH003729-3730, 3738) 	<ul style="list-style-type: none"> 2/12/16 (BBH003728, 3738) 2/15/16 (BBH003728-3730) 3/9/16 (BBH003733-3734)
6. Matt Walton	Netflix	<ul style="list-style-type: none"> House of Cards Study (BBH005361-5362, 5367-5372, 5374-5375, 5377-5378) House of Cards Study- Rerecord Demo- Award Show Video (BBH005383-5385) 	<ul style="list-style-type: none"> 1/29/2016 (BBH005361-5362) 2/8/16 (BBH005369-70) 2/18/16 (BBH005367-5368) 3/31/16 (BBH005371-5372, 5374-75, 5377-5378), 4/22/16 (BBH005383-5385)
2017			
1. J. J. Jurgens	BrightHouse	<ul style="list-style-type: none"> Drive By (BBH004381-4382) New Day (BBH004393-4394, BBH004399-4400) BrightHouse Origins Video (BBH004483-4484) 	<ul style="list-style-type: none"> 3/16/17 (BBH004399-4400) 3/20/17 (BBH004393-4394) 3/24/17 (BBH004483-4484) 9/27/17 (BBH004381-4382)
2. Tracy Sallows	BrightHouse	<ul style="list-style-type: none"> BrightHouse Category Relevance (BBH004374-4375) BrightHouse Brand Relevance Animatics (BBH004377-4378) 	<ul style="list-style-type: none"> 10/26/2017 (BBH004374-4375) 12/7/2017 (BBH004377-4378)

* The chart above represents the numbers for 2016 based solely on records provided by BBH. Since the General Counsel's subpoena only requested records from March 1, 2016 to November 21, 2017, the first two months of 2016 are not included. Based on SAG-AFTRA data obtained from the Union's pension and health plans, GC Exhibit 2, an additional performer, Caitlin Greer Meister, worked on more than one BBH commercial on more than one date in 2016. See GC Exhibit 2 at 95.

APPENDIX 3

Performers that Worked on More than One BBH Commercial on More than One Date in 2018
 (data derived from General Counsel Exhibit 2 and page numbers refer to General Counsel Exhibit 2)

Performer	Client	Projects	Shoot Dates
1. J.J. (p. 97)	Brighthouse	<ul style="list-style-type: none"> • Vineyard • Shield Trek • Market 30 	<ul style="list-style-type: none"> • 3/27/18 • 4/2/2018
2. Chelsea V. (p. 97)	Google	<ul style="list-style-type: none"> • Bad Coverage • Four Bills • Wifi Hotspot 	<ul style="list-style-type: none"> • 5/22/18 • 5/23/18 • 5/24/18
3. Jensen R. (p. 97)	Google	<ul style="list-style-type: none"> • Bad Coverage • Four Bills • Wifi Hotspot 	<ul style="list-style-type: none"> • 5/22/18 • 5/23/18 • 5/24/18
4. Sean R. (p. 98)	Google	<ul style="list-style-type: none"> • Hidden Fees • Bad Coverage • Four Bills • Wifi Hotspot 	<ul style="list-style-type: none"> • 5/22/18 • 5/23/18 • 5/24/18 • 6/8/18

APPENDIX 4

Performers that Worked on BBH Commercials During Three or More Years
(data derived from GC Exhibit 2)

Number	SAG-AFTRA IDN	First Name	Last Initial	Production dates	GC Exhibit 2 Page Number
1	10000093	Ezra	K.	2/6/2007	p. 24
				3/1/2007	p. 24
				3/13/2007	p. 24
				12/8/2010	p. 63
				4/3/2012	p. 80
				1/23/2013	p. 85
				4/24/2014	p. 87
2	10027124	Laura	D.	7/19/2002	p. 4
				11/29/2002	p. 4
				11/29/2003	p. 9
				7/23/2004	p. 12
3	10035756	William	G.	7/26/2005	p. 13
				8/3/2006	p. 18
				2/28/2007	P. 24
				4/4/2008	p. 38
4	10040562	Paul	C.	10/7/2002	p. 4
				10/21/2002	p. 4
				3/5/2011	p. 74
				10/6/2015	p. 91
5	10044331	Doug	P.	4/3/2003	p. 10
				4/4/2003	p. 10
				7/1/2014	p. 87
				5/15/2015	p. 91
				6/3/2015	p. 91
				10/6/2015	p. 91
6	10066147	Ron	S.	4/16/2001	p. 1
				11/15/2002	p. 4
				8/29/2007	p. 25
				2/17/2009	p. 52
				11/7/2009	p. 52
7	10074100	Kenneth	G.	1/10/2007	p. 24
				2/23/2007	p. 24
				4/24/2007	p. 24

Number	SAG-AFTRA IDN	First Name	Last Initial	Production dates	GC Exhibit 2 Page Number
				5/2/2007	p. 24
				4/29/2008	p. 38
				4/30/2008	p. 38
				1/13/2009	p. 52
8	10081588	Kavan	R.	5/11/2005	p. 14
				5/3/2006	p. 18
				2/12/2007	p. 25
				4/11/2007	p. 25
				6/11/2008	p. 38
				11/19/2008	p. 52
				10/6/2009	p. 52
				2/19/2010	p. 63
				9/6/2010	p. 63
9	10082614	Susan	M.	5/20/2002	p. 5
				11/14/2002	p. 5
				5/11/2005	p. 14
				2/6/2008	p. 38
10	10083590	Tracy	S.	12/18/2003	p. 10
				4/1/2010	p. 64
				10/26/2017	p. 96
				6/19/2018	p. 97
11	10100510	Jonathan	S.	9/8/2008	p. 52
				9/23/2008	p. 52
				10/4/2008	p. 52
				12/19/2008	p. 52
				1/15/2009	p. 52
				1/23/2009	p. 52
				3/25/2009	p. 52
				3/26/2009	p. 52
				3/27/2009	p. 52
				7/14/2009	p. 52
				12/15/2009	p. 52
				1/6/2010	p. 64
				3/11/2010	p. 64
				5/5/2010	p. 64
				5/11/2010	p. 64

Number	SAG-AFTRA IDN	First Name	Last Initial	Production dates	GC Exhibit 2 Page Number
				5/31/2011	p. 74
				6/28/2011	p. 74
12	10101311	Allelon	R.	10/22/2005	p. 14
				5/3/2006	p. 18
				5/22/2018	p. 97
13	10110407	Colombe	J.	9/29/2010	P. 64
				11/16/2010	p. 64
				11/24/2010	p. 64
				12/3/2010	P. 64
				1/19/2011	p. 74
				2/24/2011	p. 74
				2/25/2011	p. 74
				4/19/2011	p. 74
				1/25/2012	p. 80
				1/26/2012	p. 80
				1/31/2012	p. 80
				6/6/2012	p. 80
				6/7/2012	p. 80
				6/8/2012	p. 80
				8/15/2012	p. 80
				8/25/2014	p. 87
				11/30/2015	p. 91
14	10113833	James	O.	5/1/2003	p. 11
				11/1/2013	p. 87
				11/2/2013	p. 87
				4/1/2014	p. 87
15	10114294	Cissy	S.	5/20/2002	p. 5
				11/17/2002	p. 5
				4/13/2005	p. 14
				11/7/2009	p. 53
				11/22/2009	p. 53
				11/4/2011	p. 75
16	10116538	Michael	S.	11/2/2004	p. 12
				2/6/2006	p. 18
				2/28/2007	p. 24
17	10119177	Chris	F.	8/16/2001	p. 2

Number	SAG-AFTRA IDN	First Name	Last Initial	Production dates	GC Exhibit 2 Page Number
				3/10/2008	p. 39
				11/7/2009	p. 53
18	10121642	Jenny	C.	6/25/2002	p. 6
				4/11/2007	p. 26
				6/11/2008	p. 39
				2/18/2009	p. 53
				10/6/2009	p. 53
				2/19/2010	p. 65
19	10122622	Vera	Y.	5/3/2006	p. 19
				3/6/2008	p. 39
				2/18/2009	p. 53
				2/19/2010	p. 65
20	10123941	Brian	S.	10/7/2002	p. 4
				10/21/2002	p. 4
				12/18/2003	p. 10
				4/6/2004	p. 12
				4/11/2006	p. 18
				4/23/2007	p. 26
21	10129653	Henry	L.	10/7/2002	p. 4
				3/9/2007	p. 26
				9/29/2009	p. 53
				9/30/2009	p. 53
				3/10/2010	p. 65
				2/14/2011	p. 75
				10/24/2011	p. 75
				2/17/2012	p. 80
22	10129868	Raymond	L.	10/28/2004	p. 13
				12/10/2004	p. 13
				1/5/2005	p. 14
				8/17/2010	p. 65
23	10131167	Ashley	A.	6/2/2005	p. 14
				7/7/2005	p. 14
				11/21/2006	p. 26
				12/18/2006	p. 26
				1/22/2007	p. 26
				2/13/2007	p. 26

Number	SAG-AFTRA IDN	First Name	Last Initial	Production dates	GC Exhibit 2 Page Number
				6/20/2007	P. 26
				8/7/2007	p. 26
				11/26/2007	p. 26
				3/20/2008	p. 40
				2/2/2011	p. 75
24	10132382	Todd	C.	10/2/2001	p. 2
				12/18/2003	p. 10
				4/6/2004	p. 12
25	10132625	Graeme	N.	4/16/2001	p. 2
				7/19/2002	p. 4
				7/29/2002	p. 4
				8/14/2002	p. 4
				1/5/2004	p. 13
				7/23/2004	p. 12
				4/4/2005	p. 14
				4/6/2005	p. 14
				10/3/2005	p. 14
				10/19/2005	p. 14
				10/31/2005	p. 14
				9/28/2006	p. 19
				8/29/2007	p. 27
				2/20/2008	p. 40
				2/21/2008	p. 40
26	10135305	Jason	D.	11/16/2006	p. 19
				1/23/2007	p. 27
				4/17/2007	p. 27
				10/16/2007	p. 27
				10/26/2007	p. 27
				11/21/2007	p. 27
				11/26/2007	p. 27
				12/11/2007	p. 27
				1/14/2008	p. 40
				7/29/2008	p. 40
				8/1/2008	p. 40
				10/8/2008	p. 40
				10/10/2008	p. 40

Number	SAG-AFTRA IDN	First Name	Last Initial	Production dates	GC Exhibit 2 Page Number
				10/13/2008	p. 40
				10/29/2008	p. 40
				10/31/2008	p. 40
				1/9/2009	p. 53
				9/29/2009	p. 53
				9/30/2009	p. 53
27	10137127	Delilah	A.	11/17/2002	p. 11
				5/3/2006	p. 19
				4/11/2007	p. 27
				2/19/2010	p. 65
28	10139705	Manny	C.	11/14/2002	p. 6
				8/29/2007	p. 27
				2/15/2012	p. 80
29	10139869	Keilan	M.	8/10/2006	p. 19
				8/29/2007	p. 27
				3/10/2008	p. 41
30	10140969	Keith	D.	11/14/2002	p. 6
				11/15/2002	p. 6
				11/16/2002	p. 6
				11/17/2002	p. 6
				8/10/2006	p. 19
				2/15/2012	p. 80
31	10142803	Lisa	C.	8/29/2007	p. 27
				2/17/2009	p. 54
				2/19/2010	p. 65
32	10143022	Paul	S.	11/17/2002	p. 11
				8/29/2007	p. 27
				3/10/2008	p. 41
33	10143799	Jessica	A.	6/19/2003	p. 13
				10/28/2004	p. 13
				11/1/2004	p. 13
				11/23/2004	p. 13
				12/13/2004	p. 13
				1/5/2005	p. 14
				10/20/2005	p. 14
				11/9/2005	p. 14

Number	SAG-AFTRA IDN	First Name	Last Initial	Production dates	GC Exhibit 2 Page Number
				11/17/2005	p. 15
				2/27/2006	p. 19
				10/3/2006	p. 19
				8/1/2007	P. 27
				8/17/2007	P. 27
				11/14/2007	p. 27
				5/20/2008	p. 41
				4/30/2009	p. 54
34	10144891	Vic	S.	6/25/2002	p. 6
				11/17/2002	p. 6
				8/15/2004	p. 13
				10/13/2008	p. 41
35	10146581	Marvin	B.	4/11/2007	p. 28
				8/29/2007	p. 28
				3/6/2008	p. 41
				11/21/2009	p. 54
				2/19/2010	p. 65
36	10149005	Jack	W.	5/20/2002	p. 7
				5/11/2005	p. 15
				3/10/2008	P. 41
37	10150110	Nicole	S.	4/11/2007	p. 28
				6/11/2008	p. 41
				2/17/2009	p. 54
38	10150144	Kirsten	K.	8/7/2007	p. 28
				3/18/2009	p. 54
				5/27/2009	p. 54
				5/17/2011	p. 75
				6/13/2011	p. 75
				9/8/2011	p. 75
39	10150784	Laura	M.	2/6/2008	p. 41
				2/17/2009	p. 54
				2/19/2010	p. 66
40	10151326	Alicia	A.	4/11/2007	p. 28
				3/6/2008	p. 41
				6/11/2008	p. 42
				2/18/2009	p. 54

Number	SAG-AFTRA IDN	First Name	Last Initial	Production dates	GC Exhibit 2 Page Number
				10/6/2009	p. 54
				2/19/2010	p. 66
41	10154517	Valier	M.	5/3/2006	p. 19
				2/12/2007	p. 28
				11/19/2008	p. 42
				11/4/2011	p. 75
42	10156412	Edward	P.	4/16/2001	p. 3
				8/29/2007	p. 28
				3/10/2008	p. 42
43	10156489	Whitney	M.	12/17/2004	p. 15
				2/24/2005	p. 15
				10/21/2005	P. 15
				10/25/2005	p. 15
				6/8/2006	p. 19
44	10158493	Stephan	S.	11/17/2002	p. 11
				2/20/2008	P. 42
				9/29/2008	p. 42
				11/4/2011	p. 75
45	10160328	Nancy	W.	1/13/2005	p. 15
				5/11/2005	p. 15
				6/11/2008	p. 42
				11/19/2008	p. 42
				2/19/2010	p. 66
46	10160397	Tasha	T.	5/3/2006	p. 19
				4/11/2007	p. 28
				3/6/2008	p. 42
				11/19/2008	p. 42
47	10162449	Troy	H.	4/6/2004	p. 12
				3/13/2012	p. 81
				6/2/2016	p. 94
48	10162729	Diego	S.	6/25/2002	p. 7
				4/11/2007	p. 29
				2/6/2008	p. 42
				2/20/2008	p. 42
				6/11/2008	p. 42
				2/19/2010	p. 66

Number	SAG-AFTRA IDN	First Name	Last Initial	Production dates	GC Exhibit 2 Page Number
49	10164474	Harry	H.	8/15/2004	p. 13
				10/22/2005	p. 15
				10/6/2009	p. 55
50	10165502	Richard	G.	6/26/2002	p. 75
				8/20/2002	p. 7
				12/9/2002	p. 7
				4/7/2003	p. 11
				2/19/2004	p. 13
				3/23/2004	p. 13
				2/20/2009	p. 55
				3/23/2009	p. 13
				3/25/2009	p. 55
51	10166146	Ricky	L.	11/16/2002	p. 7
				11/17/2002	p. 7
				8/29/2007	p. 29
				2/6/2008	p. 42
52	10166234	Mirjam	K.	10/22/2005	p. 15
				8/23/2007	p. 29
				3/6/2008	p. 43
				2/17/2009	p. 55
				2/18/2009	p. 55
53	10168062	Susie	D.	12/20/2002	p. 11
				10/16/2006	p. 20
				10/18/2006	p. 20
				11/10/2006	p. 20
				6/25/2007	p. 29
54	10168197	Carolyn	S.	10/22/2005	p. 15
				4/11/2007	p. 29
				2/17/2009	p. 55
55	10168783	Shane	J.	8/15/2004	p. 13
				5/3/2006	p. 20
				4/11/2007	p. 29
				10/6/2009	p. 55
56	10170048	Scott	H.	4/13/2005	p. 15
				10/22/2005	p. 15
				5/3/2006	p. 20

Number	SAG-AFTRA IDN	First Name	Last Initial	Production dates	GC Exhibit 2 Page Number
				6/11/2008	p. 43
				2/17/2009	p. 55
				2/18/2009	p. 55
				2/19/2010	p. 66
57	10171323	Jen	D.	6/25/2002	p. 8
				10/22/2005	p. 15
				5/3/2006	p. 20
				2/12/2007	p. 29
				3/6/2008	p. 43
58	10172200	David	F.	4/13/2005	p. 15
				8/29/2007	p. 30
				11/7/2009	p. 55
59	10172323	Joe	R.	5/3/2006	p. 20
				4/11/2007	p. 30
				3/6/2008	p. 43
				6/11/2008	p. 43
				2/17/2009	p. 55
				2/18/2009	p. 55
				10/6/2009	p. 55
				2/19/2010	p. 66
60	10172792	Alton	D.	5/11/2005	p. 15
				4/11/2007	p. 30
				2/6/2008	p. 44
61	10172938	Jake	R.	7/26/2006	p. 30
				12/19/2006	p. 30
				7/2/2007	p. 30
				10/18/2010	p. 67
				11/9/2010	p. 67
				11/15/2010	p. 67
				11/16/2010	p. 67
				7/23/2014	p. 88
62	10172969	Blaise	F.	6/25/2002	p. 8
				2/12/2007	p. 30
				3/6/2008	p. 44
				6/11/2008	p. 44
				11/19/2008	p. 44

Number	SAG-AFTRA IDN	First Name	Last Initial	Production dates	GC Exhibit 2 Page Number
				2/19/2010	p. 67
63	10175952	Chris	C.	10/22/2005	p. 16
				5/3/2006	p. 20
				4/11/2007	p. 30
				3/6/2008	p. 44
				2/18/2009	p. 55
64	10176002	Jacqui	M.	12/20/2005	p. 20
				5/3/2006	p. 20
				2/12/2007	p. 30
65	10177237	Matthew	M.	1/7/2008	p. 44
				11/20/2013	p. 85
				2/10/2014	p. 88
66	10177501	Donnie	L.	12/20/2005	p. 20
				5/3/2006	p. 20
				4/11/2007	p. 30
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67	10178295	Love	C.	11/17/2002	p. 11
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68	10178466	Frank	B.	11/14/2002	p. 8
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70	10178978	Carlton	F.	11/15/2002	p. 8
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71	10180410	Jerriel	L.	11/14/2002	p. 8
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72	10181010	Lindsey	L.	5/3/2006	p. 20
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73	10185126	Caitlin	G.	4/2/2014	p. 88
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74	10185290	Karen	C.	12/20/2005	p. 21
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75	10185417	Neil	M.	12/8/2005	p. 16
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78	10189746	Nick	S.	12/20/2005	p. 21
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79	10189887	April	C.	6/11/2008	p. 45
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80	10190049	Linus	M.	5/3/2006	p. 21
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81	10190141	Juting	T.	6/11/2008	p. 45
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82	10190719	Mariah	B.	1/13/2005	p. 16
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86	10201522	Tish	W.	4/11/2007	p. 32
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87	10201705	Elaine	R.	5/11/2005	p. 16
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88	10201780	Alexis	L.	5/3/2006	p. 21
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90	10204782	Oksana	O.	5/3/2006	p. 22
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91	10208145	Nathalie	M.	5/3/2006	p. 22
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92	10208775	Jamie	E.	9/7/2006	p. 18
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95	10211233	Kevin	C.	9/19/2006	p. 18
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96	10211516	Lina	E.	5/3/2006	p. 22
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100	10214778	Molly	M.	3/6/2008	p. 48
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105	10261184	Amanda	L.	12/20/2005	p. 23
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106	10332209	Mike	W.	5/3/2006	p. 23
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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April, 2019, a true and correct copy of the Post-Hearing Brief of Charging Party Screen Actors Guild - American Federation of Television and Radio Artists and Appendices was served by United Parcel Service overnight mail and electronic mail on:

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