

In the Matter of:

HEARST MAGAZINES MEDIA, INC. AND ITS
SUBSIDIARIES

Employer

and

WRITERS GUILD OF AMERICA, EAST, INC.

Petitioner

Case 02-RC-252592

DECISION AND DIRECTION OF ELECTION

On November 27, 2019, the Writers Guild of America, East, Inc. (the “Petitioner” or the “Union”) filed a representation petition under Section 9(c) of the National Labor Relations Act (the “Act”) seeking to represent a unit of all full-time and regular part-time editorial, video, design, photo, and social staff employed at the brands of Hearst Magazines Media, Inc. and its subsidiaries (the “Employer”).¹ As amended at hearing, those brands include *Autoweek*, *Best Products*, *Bicycling*, *Car and Driver*, *Cosmopolitan*, *Country Living*, *Delish*, *ELLE*, *ELLE Decor*, *Esquire*, *Food Network Magazine*, *Good Housekeeping Magazine*, *Harper’s Bazaar*, *HGTV Magazine*, *House Beautiful*, *Marie Claire*, *Men’s Health*, *O The Oprah Magazine*, *The Pioneer Woman Magazine*, *Popular Mechanics*, *Prevention*, *Redbook*, *Road & Track*, *Runner’s World*, *Seventeen*, *Town & Country*, *Veranda*, *Woman’s Day*, and *Women’s Health*.

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board (the “Board”) has delegated its authority in this proceeding to the Regional Director of Region 2. A hearing was held before Joseph Luhrs, a hearing officer of the Board, on December 12-13, 16-20, and 23, 2019; and on January 2-3, 6-10, 13-17, 21-22, and 24, 2020.

Based upon the entire record in this matter and in accordance with the discussion below, I conclude and find as follows:

1. The Hearing Officer's rulings are free from prejudicial error and hereby are affirmed.
2. The parties stipulated, and I find, that the Employer, Hearst Magazine Media Inc. and its subsidiaries, herein collectively the Employer, is a New York corporation with an office and place of business located at 300 West 57th Street, New York, NY 10019, with additional places of

¹ The Union’s Petition identified the Employer as “Hearst Magazines Media.” The parties stipulated to the correct Employer name as “Hearst Magazines Media, Inc. and its subsidiaries.” Hearst Autos is the only subsidiary identified in the record where petitioned-for unit employees work.

business located at 2901 Second Avenue South, Birmingham, AL 35233, 1585 Eisenhower Place, Ann Arbor, MI 48108, and 3939 West Drive, Center Valley, PA 18034,² engages in the publication of magazines which advertise nationally sold products. Annually in the course and conduct of its business operations, the Employer derives gross revenues in excess of \$200,000 and purchases and receives at its New York facility goods, services, and materials valued in excess of \$5,000 from providers located outside the State of New York. Accordingly, I find the Employer is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Union petitions to represent, in a single collective-bargaining unit, the petitioned-for employee classifications working at or out of all the Employer's facilities listed above. Although the petitioned-for unit encompasses a large number of job titles,³ the parties have agreed that the classifications identified in the petition – “editorial, video, design, photo, and social staff” -- accurately describe the work of the employees within the Employer's operations. That work may broadly be defined as performing the work involved in the creation of written and visual content for the Employer's brands.⁴

The Union argues that the following community-of-interest factors support a finding that its petitioned-for unit is appropriate. First, the Union contends that all employees in the petitioned-for unit perform the function of creating content for the Employer's brands, and that these employees' primary duties, skills and qualifications are identical across the brands. Second, the proposed unit is functionally integrated based on various forms of collaboration among employees working at different brands, and among brand employees and “hub” employees who perform work

² The record reveals that petitioned-for unit employees work at an additional office and place of business in a building named The Sheffield, whose address is 322 West 57th Street, and is adjacent to the 300 West 57th Street facility (which is also referred to in the record at Hearst Tower). Because the record does not include the stipulated address of The Sheffield, I take official notice of its address based on Google Maps. *See Bud Antle, Inc.*, 359 NLRB 1257 n.3 (2013) (Board may properly taking judicial notice of distances between locations based on Google Maps.)

³ The Employer's position statement identifies nearly 70 distinct job titles within the petitioned-for unit and the units proposed by the Employer.

⁴ The record indicates that the Employer's business operations are generally categorized as either the “editorial side,” which creates content for the magazine brands identified in the Petition, or the “publishing side,” which, among other things, includes advertising initiatives to create, for non-Employer brands, magazine content known as “branded content.” The parties have stipulated that the petitioned-for employees do not share a community of interest with certain employees who are involved in these “branded content” businesses because those employees are primarily engaged in the creation of advertising at the behest of an advertiser's brand, rather than the creation of editorial content for the Employer's brands.

for several brands. Third, employees from different brands and teams are in frequent contact with each other in performing essential job functions. Fourth, there is interchange between employees across brands in the form of cross-brand hiring and employees who are “shared” by different brands. Fifth, the supervisory structure of each brand and hub is similar, with the heads of each brand reporting up to a small group of executive officers, who are ultimately responsible for editorial content and brand budgets, and who directly communicate with all petitioned-for employees as a group. Sixth, the proposed unit employees have common terms and conditions of employment, including initial salaries, work hours, leave and various benefits and personnel policies promulgated by the Employer’s centralized human resources department. Finally, the majority of the petitioned-for employees work at the Employer’s New York facilities, including some employees performing work for brands who have offices in the Employer’s other geographic locations.

The Employer contends that the petitioned-for unit fails to account for material distinctions among employees based on geography, terms and conditions of employment, job duties, employee skills and qualifications, and supervisory/managerial structures. The Employer further argues there is no significant interaction or interchange among employees in the petitioned-for unit, nor is there relevant functional integration within the Petitioner’s proposed unit. As a result of these contended distinctions, the Employer proposes that the petitioned-for employees be included in six distinct bargaining units, which the Employer labels: (1) Health & Lifestyle; (2) Home & Family; (3) The Enthusiast Group;⁵ (4) Alabama Employees; (5) Hearst Autos; and (6) Editorial Operations. The Employer supports its position regarding the six units as follows.

The Employer argues that the Hearst Auto group of brands⁶ is separated geographically from the Employer’s other brands and has a unique business model, and its focus on cars requires employees to have specific skills, qualifications, job duties and training distinct from other brands. Furthermore, the employees in the three brands collaborate with each other, have no material interaction with employees in other brands, and are subject to personnel policies and procedures separate from other brands.

Similar to Hearst Autos, the Employer contends that the Enthusiast Group of brands⁷ is geographically separate, and operates within a business model that creates a unique supervisory structure. Furthermore, the unit employees in those brands have skills, qualifications and job functions distinct from other brands based on the unique business model and topics covered by the brands. The group’s employees also have no material interaction with petitioned-for employees from other brands.

The Employer argues that the two brands in Employer’s Alabama facilities⁸ are geographically separate from other brands, share some employees between them, and have facilities and policies unique to those two brands. The Employer further argues that employees in Alabama have no

⁵ The Employer’s position statement labels this group the “Pennsylvania Employees,” but primarily used the term Enthusiast Group at hearing.

⁶ *Autoweek*, *Car & Driver* and *Road & Track*.

⁷ *Bicycling*, *Popular Mechanics* and *Runner’s World*.

⁸ *Country Living* (print edition) and *Veranda*.

relevant contact with employees in other brands, including employees of the digital component of the *Country Living* brand located in New York.

The Employer contends that the job duties of employees working in the three “hubs” within the Editorial Operations group are distinct from those in other brands. The Entertainment Group employees require skills and qualifications necessary to work with multiple brands, and perform work that no employee within a brand performs. The employees in the Visual Group work in facilities unique to that group. The Fashion Group employees have unique qualifications and skills related generally to fashion rather than a particular brand’s content, and the hub’s workflow is distinct from those within brands.

The Employer argues that employees in its proposed Home & Family unit of brands⁹ should be a distinct unit because the content of the brands is “service journalism.”¹⁰ Furthermore, certain of the Home & Family brands share supervisory personnel, unit employee staff and facilities. There is also some interchange of employees within the group, but no interchange or material interaction with employees in brands outside the group.

The Employer argues that its proposed Health & Lifestyle unit of brands¹¹ should be a separate unit because certain brands are located on the same floor in Hearst Tower, share unit and supervisory staff, and have similar facilities related to fashion content. The Employer also contends that employee skills, qualifications, job duties and some training are unique to the fashion or health focus of the group’s brands.

With regard to unit scope, the Employer additionally argues that employees of *Best Products* should not be included in any unit because the brand’s unique revenue model requires employees to produce content that generates affiliate revenue, and employee performance is judged on that basis.

The Employer also argues that a number of petitioned-for employees are supervisors under Section 2(11) of the Act. The Employer’s position statement sets forth 201 names of putative supervisors. The parties subsequently entered into a written stipulation agreeing to the supervisory status of 119 individuals. I have declined to hear evidence regarding the remaining individuals about which the parties could not reach agreement, except for six of them: Julie Kosin, Bridget Clegg, Patricia Camerota, Rachel Lieberman, Spencer Dukoff, and Evan Romano.¹² With regard to these

⁹ *Country Living* (digital edition), *Delish*, *ELLE Decor*, *Food Network*, *Good Housekeeping*, *HGTV*, *House Beautiful*, *The Oprah Magazine*, *The Pioneer Woman*, *Prevention* and *Woman’s Day*.

¹⁰ “Service journalism” was defined in by several witnesses at hearing. Broadly, content that is service journalism focuses on “essentially how-to, advice-giving [and] recommendations” and “stories that help people choose something in their everyday life.”

¹¹ *Cosmopolitan*, *ELLE*, *Esquire*, *Harper’s Bazaar*, *Marie Claire*, *Men’s Health*, *Seventeen*, *Town & Country*, and *Women’s Health*

¹² The estimated size of the petitioned-for unit (excluding agreed-upon supervisors) is 550 or 552. The number of disputed individuals therefore compose less than 17% of the proposed unit and their eligibility to vote is therefore appropriately deferred until after any election conducted in this

individuals, the Employer argues: (1) that each of them regularly performs at least one of the functions recognized by statute as required for supervisory status; and (2) that these individuals are properly excluded from the unit because their work is fundamentally “managerial.” In contrast, the Petitioner argues the evidence fails to establish that the putative supervisory employees have the authority to perform any of the supervisory functions required by statute. As set forth below, I conclude that each of these individuals is an employee under the Act and not a statutory supervisor.

I have carefully considered the record evidence and arguments presented by the parties. As discussed below, I find the petitioned-for unit is appropriate for the purposes of collective-bargaining.¹³ Accordingly, I am directing an election in the Union's petitioned-for unit, as described more fully below.

This Decision and Direction of Election is organized in two parts. Part One sets forth the facts and analysis regarding the unit-scope issues, and Part Two addresses the issues of supervisory status under Section 2(11) of the Act.

PART ONE: UNIT SCOPE

I. OVERVIEW OF EMPLOYER OPERATIONS

The Employer publishes magazines, which are often referred to as the Employer’s brands. In addition to the publication of traditional print editions of most of its brands, brand content also appears digitally on a variety of online platforms, including the brand’s website, YouTube, Facebook, Twitter and Snapchat, among others. Brand content also appears in newsletters sent to subscribers by email. The content created for the brands may be in the form of written pieces (such as product reviews and news stories), photography (such as celebrity or product photographs), videography (such as YouTube videos) or graphic design (such as artwork accompanying an article). Design work also includes the overall appearance and layout of brand content in print and digital form.

A. The Work of Content Creation

The Employer publishes brand content in print and various digital formats under 29 brand names. The record reflects certain general commonalities among the petitioned-for employees¹⁴ in terms of their titles and job functions.

matter. Rules and Regulations of the National Labor Relations Board (“Rules & Regs.”), Sec. 102.64(a) (“Disputes concerning individuals’ eligibility to vote or inclusion in an appropriate unit ordinarily need not be litigated or resolved before an election is conducted”).

¹³ As set forth below, I have modified the petitioned-for unit description to better comport with the evidence adduced at hearing.

¹⁴ “Petitioned-for employees” herein shall mean the entirety of the bargaining unit petitioned-for by the Union. Because there are a number of petitioned-for employees who the Employer contends are non-employee supervisors under the Act, the term “agreed-upon unit employees” shall be used to describe those petitioned-for employees who are included, based on the Employer’s position

1. Editing and Writing¹⁵

Writers and editors who write content either produce original content, or review and/or edit the content of others at various stages of completion. They regularly conceive and “pitch” content ideas either collaboratively with other editors and content directors, or directly to the editor-in-chief of the brand. The written content broadly comprises news, feature stories, product reviews and interviews. Product reviews often require that the writer or editor test the product. The writer or editor must be guided by brand’s voice and sensibility when producing written work.

Editors performing work for the digital platforms have duties related to editing, publishing, curating and updating content on the brand’s website, social media accounts and other online platforms. When performing this work, those editors may write their own stories, as well as edit stories from one platform for use on another, or update a story that has already appeared in print. Editors working on digital platforms use the Employer’s proprietary content management system -- called MSO2 and nicknamed Patty -- to write and place content on the brand’s website. Editors for digital platforms may also be tasked with increasing the traffic to the brand’s website and other platforms by employing search engine optimization (“SEO”) techniques, and editing online content to increase affiliate revenue (described further below).

2. Copy Editing and Research¹⁶

Copy editor titles are responsible for proofreading the written content at different stages of review, and may also be tasked with, along with researchers, fact-checking print and digital content (written material and photographs) by using public information sources, contacting sources of an article, or locating content in the Employer-owned photo archive known as Atlas. Researchers and/or copy editors may also be responsible for making sure that photography and product content appear with the proper credits ascribed to manufacturers, designers or retailers.¹⁷

statement, in both the Union’s petitioned-for unit and the Employer’s proposed units. “Disputed supervisor” shall be used to describe those individuals who the Employer, but not the Petitioner, contend are supervisors; and “stipulated supervisor” shall be used to describe those individuals about whom there is no dispute as to their supervisory status pursuant to the parties’ written stipulation in the record.

¹⁵ Writer and editor titles include, but are not limited to, senior editors, associate editors, assistant editors, staff writers, and editors and writers whose titles include their focus of coverage, such as beauty editor, news editor and health editor. Employees who have duties specifically related to social media sites have titles such as social media editor and social editor.

¹⁶ These titles include, but are not limited to, copy chief, copy editor, senior copy editor, senior research editor, assistant research editor and research chief

¹⁷ This task may also be performed by a dedicated credits editor.

3. Photography and Videography¹⁸

Both the brands and the visual hub have photo editors who oversee the creation of photographic content, be they products, interiors, exteriors or people. Staff photographers at the brands and in the visual hub take photographs of the people, products and other subjects of written content, and will manipulate the result using specialized software tools. Videographers shoot and edit content appearing on the various online platforms.

In the area of fashion photography, brands and the fashion hub have market editors¹⁹ who are responsible for obtaining the clothes and accessories that will be photographed, as well as stylists who select and arrange the photoshoot elements to effectuate the brand's intentions regarding the "look" of the photography. Fashion assistants may also have responsibilities for maintaining and selecting clothes and accessories. Furthermore, apart from fashion content, brands who create product and food photography also require editorial employees to obtain products from the relevant markets, and style the product for the shoot.

4. Art and Design²⁰

Various art and designer positions work with the photographers and editors to conceive the overall visual layout of a story by choosing design elements, such as the type of photography and typography. Just as editors and writers follow their brand's voice, designers are guided by the unique "look" of the brand.

B. Terms and Conditions of Employment Common to All Petitioned-For Employees

The Employer's department titled People and Culture, based on the 14th floor in Hearst Tower, performs the human resources function for all the petitioned-for employees.²¹ New employees are onboarded centrally by that department, where offer letters are issued and starting salaries are determined.

The Employer provides a significant number of benefits to all petitioned-for employees, including: medical, dental and vision insurance coverage; a 401(k) retirement plan; Roth IRA after-tax contributions; a flexible spending account; a health savings account; life, accident and disability insurance; a commuter benefits program; a student loan refinancing program; fertility services benefits; baby bonding leave; adoption and surrogacy expense benefits; a program (called Back Up Care) for child and adult/elder care; caregiving support services; a lifestyle rewards program;

¹⁸ Titles include photographer, staff photographer, video producer and video editor.

¹⁹ The record reflects that market editor functions may be performed by employees with editor titles, such as associate fashion editor.

²⁰ Art director (and senior, deputy, assistant or associate art director), design director (or deputy design director) and design editor (or senior or deputy design editor), designer and digital designer.

²¹ The record indicates that the terms and conditions set by the Employer's centralized human resources department extend beyond petitioned-for employees to cover all personnel employed by the Employer.

and a program (called Live and Work Well) offering free counseling and referral services on a variety of personal issues.

All petitioned-for employees may access information on employee benefits through an online portal at myhearst.com. Employees can also use that portal to access their time and attendance and payroll information, to make time off requests, to ask for IT help, and to do expense reporting. Employees can also use myhearst.com to view the entirety of the Employer's policies and procedures, including those in the Employer's 52-page employee handbook, which applies to all the petitioned-for employees. All petitioned-for employees are also subject to the same yearly holiday schedule and procedure. The People and Culture department has recently implemented programs that cover all petitioned-for employees, including a standardized performance review process, an "annual merit process," a "diversity, inclusion and equity strategy," and a "quarterly engagement survey." The Employer also maintains standardized forms for job offers, separations and discipline.

All petitioned-for employees,²² regardless of geographic location, use one common email system, telephone system, wi-fi network, and expense reimbursement system. All employees are supported by an information technology department located in the New York facilities. The record further reflects that the petitioned-for employees' regular workdays are Monday through Friday,²³ typically from 9:00 a.m. to 6:00 p.m., although some may start their day at 10:00 a.m. and end at 7:00 p.m.²⁴ The petitioned-for employees at the New York facilities have access to a café, nurse's office and a gym where the membership fee is paid by the employee.

Although "[e]very magazine's workflow is different [because it is] geared towards that team and that editor in chief," the record reflects certain commonalities in workflow. Content creation among the brands, and in the entertainment hub, often begins with a staff member's "pitch," although, in some cases, stories may be determined by brand management and assigned without a pitch from a writer or editor. Content production is outlined and scheduled for publication by the use of lineups. The scheduling pace of the print editions generally matches the printing of the magazine (usually monthly), whereas digital content scheduling is weekly or daily. Furthermore, a much larger number of written articles are created for digital publication, with digital editors writing smaller articles on a more frequent basis.

The record testimony reflects that all petitioned-for employees who work within a brand (as distinct from hubs) receive the perk of access to free unused merchandise sent to the brand by

²² These common working conditions also apply to the Employer's personnel other than petitioned-for employees.

²³ In the Alabama facilities, there are two agreed-upon unit employees (one at *Country Living* and one at *Veranda*) who work four days a week due to brand budget constraints. Employer's organizational charts indicate that there are a handful of agreed-upon unit employees at other brands who work less than a full week (two at *The Oprah Magazine*; one at the *Food Network Magazine/The Pioneer Woman*; one at *Harper's Bazaar*; and one at *Good Housekeeping/Prevention/Woman's Day*).

²⁴ All the Employer's facilities at issue herein are in the same Eastern time zone, except for the Birmingham offices, which are in the Central time zone.

manufacturers for an upcoming review or for the brand to consider as review-worthy. Editors whose job it is to review products may keep products that they use for review, except in the case of very expensive merchandise such as luxury fashion items, bicycles and cars.

The record also contains evidence that the Employer's President & Group Head of Hearst Magazine Division Troy Young and Senior Vice President & Chief Content Officer Kate Lewis regularly communicate with all petitioned-for employees through Employer-wide announcements. Furthermore, Young conducts a meeting series called "Breakfast Connections" where employees can "[l]earn more about Troy's vision for Hearst Magazines, share [their] thoughts and meet colleagues from across the company." Lewis hosts a chat series for employees called "Ask Kate Anything," which takes place in her office.

II. THE BRANDS AND HUBS

The brands and hubs for which employees perform work are located in four geographic locations. The offices of the hubs, and the majority of the brands, are located in the Employer's New York facilities.²⁵ The offices for *Veranda* are located in the Employer's Birmingham, Alabama facilities, and the employees creating content for the Employer's *Country Living* brand work at both the Employer's Alabama and New York facilities. The offices for *Autoweek* and *Car & Driver* are located at the Employer's facilities in Ann Arbor, Michigan, and the employees creating content for *Road & Track* work in the New York facilities. The offices for *Bicycling*, *Popular Mechanics* and *Runner's World* are located in Center Valley, Pennsylvania.

The descriptions of the brands and hubs are found in the record primarily in the testimony of the Employer's witnesses, who were, with few exceptions, editors-in-chief, site directors, and managing editors. The following summary of the brands and hubs are organized by geographic location, except *Road & Track* will be included in the description of Hearst Autos, and the digital component of *Country Living* will be included in the description of the *Country Living* brand in Alabama.

A. Brands Located in New York

1. *Best Products*

Best Products is a digital-only brand that focuses exclusively on product reviews covering a variety of consumer markets, including home decor, fitness, beauty, parenting, and food and drink

²⁵ Those brands are *Best Products*, *Cosmopolitan*, *Delish*, *ELLE*, *ELLE Decor*, *Esquire*, *Food Network Magazine*, *Good Housekeeping Magazine*, *Harper's Bazaar*, *HGTV Magazine*, *House Beautiful*, *Marie Claire*, *Men's Health*, *The Oprah Magazine*, *The Pioneer Woman Magazine*, *Prevention*, *Road & Track*, *Seventeen*, *Town & Country*, *Woman's Day*, and *Women's Health*. The hubs are referred to in the record as the Entertainment Group, the Fashion Group and the Visual Group; the record alternately refers to these teams as "hubs," *i.e.*, entertainment hub, fashion hub and visual hub. The record does not reflect where the offices of *Redbook* are located because that brand, which appears in digital format only, currently has no employees assigned to it.

products, as well as home appliances. The types of reviews are either product comparisons or reviews of one product. *Best Products* publishes a subscriber newsletter three times a week. The brand is led by an executive director of SEO, who reports to Brian Madden, whose title is Senior Vice President of Consumer Revenue and Development; Madden in turn reports to Employer's President Troy Young.

The brand "was built on the foundation of" search engine optimization (SEO) such that the "main goal is to get search traffic into the website and then convert users to make affiliate revenue off those users." Affiliate revenue is created when an online reader uses product hyperlinks, or a "buy" button, in an article to potentially purchase the linked product on another website. The brand obtains revenue from a manufacturer or retailer – known as an "affiliate" -- on a percentage of the purchase resulting from the reader's use of the referral link. Thus, *Best Products'* primary focus on affiliate commissions distinguishes it from other brands whose revenue is largely based on a manufacturer's purchase of advertisements placed among the brand's content. However, *Best Products* does use such "programmatic advertising" and is partly measured by the Employer based on that type of revenue.

To maximize affiliate revenue, about 80% of products reviewed in *Best Products* is restricted to products sold by companies with affiliate agreements, where the remaining 20% are products sold by non-affiliates, but who may be persuaded to enter into such an agreement at a later time. At brands where revenue is mostly obtained through advertisements, affiliate revenue is proportionately less of a consideration. Although *Best Products* management may readily approve an editor's pitch for reviewing a product covered by an affiliate agreement, an editor must make a stronger pitch to review a product not under such an agreement. Employee performance is reviewed by the ability to generate affiliate revenue through their product reviews.

2. *Cosmopolitan*

The editor-in-chief of *Cosmopolitan*, who reports to the Employer's Chief Content Officer Kate Lewis, described the audience of *Cosmopolitan* as "millennial and Gen Z women." The brand's voice is "irreverent," "very humorous," "fun" "cheeky" and "savvy." The brand's coverage is "female empowerment," covering topics such as "sex trends, sexual health, dating culture, relationships," as well as television, music, books, news and politics. The digital content appears on numerous platforms, where Snapchat represents the largest audience.

Cosmopolitan and *Marie Claire* have similar coverage areas. For example, "the celebrities that perform well for Cosmo are the celebrities that perform well for *Marie Claire* and *ELLE* and *Harper's Bazaar*" and "*ELLE*, *Marie Claire*, *Harper's Bazaar*, *Women's Health* . . . sort of cover the same events and work on a similar general calendar." However, *Cosmopolitan's* editor-in-chief emphasized that "no other brand," such as *ELLE* and *Marie Claire*, "necessarily speaks in [*Cosmopolitan's*] voice" because *Cosmopolitan's* "tone is really different."

3. *Delish, House Beautiful*

Delish and *House Beautiful* share an editorial director, Joana Saltz, who reports to Chief Content Officer Kate Lewis; the organizational charts reveal that neither brand has an editor-in-chief.²⁶

The coverage of *House Beautiful* is interior design and advising readers how to create the design; the brand's journalistic style is service journalism. Saltz described *House Beautiful* primarily by comparing it to other Employer brands. *House Beautiful* is different from *ELLE Decor* in that the brand does not cover expensive high-end interiors. Although *House Beautiful's* coverage sometimes overlaps with the "utilitarian" focus of *Good Housekeeping*, *House Beautiful* focuses on the design elements of interiors (color, light, fabric and furniture). Although *HGTV Magazine* and *House Beautiful* share a similar "approach," the former focuses on "budget conscious" products; however, the home news coverage in *House Beautiful* often concerns HGTV celebrities.

Delish is a digital-only brand that also produces bookazines²⁷ and cookbooks. The brand covers food from the perspective of someone who is not a culinary professional, and produces 20-30 recipes per week, in addition to features, culture and news, restaurant reviews and new product launches. The brand also produces video content, such as filming cooking in the brand's test kitchen. The style of journalism is service journalism.

Saltz described *Food Network Magazine's* coverage as similar to *Delish* both brands produce recipes, and *Delish's* food news is often about Food Network TV celebrities. Compared to *Esquire*, which also covers food and wine, the voice of *Delish* is "fun and lively," and *Delish's* content is "much more geared towards a totally different audience."

4. *ELLE Decor*

The Employer's witness describing *ELLE Decor* is its executive managing editor Jeff Bauman; he reports to the brand's editor-in-chief, who in turn reports to Chief Content Officer Kate Lewis. The digital components of *ELLE Decor* and *Town & Country* share the same site director, who reports to Vice President of Content Brooke Siegel.

According to Bauman, *ELLE Decor* "is first and foremost a shelter magazine," covering high-end interior design and associated luxury goods. The average audience demographic is female in her 40s and 50s, and is "very discerning." The products featured in *ELLE Decor* are "a lot of things that 99 percent of people cannot even afford, or . . . have in their homes," although a small portion of the brand's content focuses on the less affluent reader. *ELLE Decor* also does some brief coverage of "general culture, . . . art, museum exhibitions, movies, that kind of thing." The style of journalism is service journalism, which the witness described as "giv[ing] the reader some take

²⁶ The brands share one stipulated supervisor who oversees video post-production work, as well as director of content operations, who does not appear anywhere in the Employer's position statement and whose work is described "oversee[ing] budget and general sort of operational organization."

²⁷ A bookazine is a special-topic collection of content in a print format that is heavier than a magazine and lighter than a book.

away that they can then put into action in their own lives” in the form of showing readers where they can find the products featured in the content. *ELLE Decor* sometimes features celebrities in connection with their homes, where the photographic focus is not on the celebrity.

Bauman opined, without elaboration, that Employer brand content most similar to *ELLE Decor* is found in *House Beautiful*, *Veranda*, and *HGTV Magazine*, yet also specified in her testimony that *ELLE Decor*’s “content is not much like any of the other Hearst titles.”

5. *Esquire*

The Employer’s witness is the editor-in-chief of *Esquire*, Michael Sebastian, who reports to Kate Lewis. He described the brand’s audience has predominantly men, and the brand’s coverage includes longform, narrative journalism (or literary non-fiction), men’s fashion, politics and culture, as well as sex, relationships, food and drink. The magazine strives for a particular voice that is “accessible,” “authoritative,” “cheeky” and “punchy.”

Sebastian identified *ELLE* as the only other magazine doing the unique combination of longform journalism in the coverages areas of *Esquire*. *Esquire* shows a lot of luxury brands, as do *ELLE* and *Harper’s Bazaar*. Although *Men’s Health* focuses on men as *Esquire* does, it does not do the longform journalism of *Esquire* and the coverage overlap between the two brands is “pretty slim,” because they cover health and wellness from opposite perspectives. Like *Delish* and *Good Housekeeping*, *Esquire* does cover food, but in areas not covered by those brands, such as bar reviews and cocktail recipes.

6. *Food Network Magazine, The Pioneer Woman Magazine*

The Employer has one editor-in-chief responsible for the *Food Network Magazine* and *The Pioneer Woman Magazine*, and she reports directly to Kate Lewis.²⁸ Neither brand has a digital component.

Food Network Magazine is a joint venture partnership with the Food Network cable television channel, owned by the Discovery network. About 70% of the brand’s content is recipes, with the remaining content covering the food-lover lifestyle, described as “trend coverage[,] a little bit of home” and “some travel.” The coverage also includes Food Network TV celebrities and “chef’s homes.”

The Pioneer Woman is based on the celebrity Ree Drummond. The coverage relates to her home, lifestyle and food creation: “primarily, food and travel and sort of ranch life,” with “very small amount” of fashion and beauty coverage. The Employer testified the style of journalism is service journalism because of the focus on recipes and “instructional” content.

The brands’ editor-in-chief testified that “*Country Living* and [*The Pioneer Woman*] are very close in feel and in content, ” and that *Food Network Magazine* and *The Pioneer Woman* are similar to

²⁸ The two brands share a creative director, who is additionally the creative director for *HGTV Magazine*.

Good Housekeeping because of the food and home coverage. Because *HGTV Magazine* is also a partnership with Discovery's HGTV cable channel, *Food Network Magazine* obtains some kitchen and home content from *HGTV Magazine*, and shares recipes with that Employer brand.

7. *HGTV Magazine*

As is *Food Network Magazine*, *HGTV Magazine* is a joint venture between the Employer and the HGTV cable network, and there is no digital component to the brand. The brand has an editor-in-chief – Employer witness Sara Peterson --- who reports to Chief Content Officer Kate Lewis.

Peterson testified that, because the brand functions as “the print extension of [the] network,” the brand “has the personality” of the network and covers home improvement as does the network. The brand’s audience is mostly homeowners, three-quarters of whom are women. Its readers “love affordable, easy decorating ideas,” and are fans of the network and its shows. As a result, “the magazine tries its best to replicate the content that they see on the network.” The brand has a focus on “service stories,” which are “stories that help people choose something in their everyday life.”

Peterson testified to “some similarities” between *HGTV Magazine* and other Employer brands. *Good Housekeeping* “also covers decorating and homes.” Peterson identified other Employer brands that do service stories as does her brand: *Food Network Magazine*, *Good Housekeeping*, *Country Living*, *House Beautiful*, *Prevention*, *The Oprah Magazine*, *Men’s Health*, *Women’s Health*, *Car & Driver* and *Marie Claire*. However, Peterson testified that the *Food Network Magazine* and *The Pioneer Woman* are distinct from *HGTV Magazine* because those brands cover “primarily food” whereas *HGTV Magazine* covers “primarily home and garden, and decorating.”²⁹

8. *Good Housekeeping, Prevention, Woman’s Day*

The Employer establishes one budget for *Good Housekeeping*, *Prevention* and *Woman’s Day* under the label “The Lifestyle Group.”³⁰ The Employer’s witness, Jane Francisco, holds the position of editorial director for The Lifestyle Group as well editor-in-chief of *Good Housekeeping*. The organizational charts reveal that *Woman’s Day* has an editor-in-chief, and *Prevention* has a content director, who both report to Francisco. In turn, Francisco reports to Kate Lewis.

The Employer’s witness testified that combining of the brands under one label and budget was due in part to each magazine’s wide and overlapping coverage area, as well as the three brands’ appeal to an audience of “women at different life stages [to] talk to them about almost everything that’s important to them centering around . . . their family and their home, [such as] health, beauty,

²⁹ Peterson did not testify to the job skills and qualifications of her brand’s employees.

³⁰ The Employer places The Lifestyle Group of brands in its proposed bargaining unit labeled “Home & Family;” thus, although specifically having the term “Lifestyle” in the title of this group of brands, the Employer does not include those three brands in its proposed “Health & Lifestyle” unit. The record does not contain evidence explaining this apparent contradiction between these proposed bargaining units, which creates uncertainty over the Employer’s purported differences, discussed in the Analysis below..

fashion, food, organizing, home design, decor, cleaning [and] organizing,” in addition to entertainment news and books. The witness also testified that the Employer combined the brands to effectuate a financial efficiency through an economy of scale. For example, each brand obtains its food content from the use of one common test kitchen, and the health-focused content created for *Prevention* can be an “engine in terms of ideation and story” for the two other brands.

The style of coverage of all three brands is predominantly service journalism, with some content that provides “inspiration.” *Prevention*’s health coverage is focused on the “average person’s health needs,” “not necessarily targeting a health enthusiast or a fitness enthusiast,” although “every one of [the] brands has enthusiasts in certain areas.”

Part of the *Good Housekeeping* brand is The *Good Housekeeping Institute*, which the Employer’s witness described as “a set of labs . . . backed by scientists who test products and services” as well as engage in “consumer advocacy around product and services and safety.”³¹ There are agreed-upon unit employees working in the lab, whose job is “do all the testing and create all the data,” provide expert interviews to other editors, and to “cocreate the content for any number of stories for both print and digital.”

9. *Harper’s Bazaar*

Harper’s Bazaar’s editor-in-chief Ellen Payne reports directly to chief content officer Lewis; the brand’s editorial director for the digital component, Joyann King, reports directly to the Employer’s content vice president Siegel, who in turn reports directly to Lewis.

Harper’s Bazaar is a fashion brand with an audience who are “insider-types” who closely follow fashion and designers. The editorial director described the typical reader as a “fashion-obsessed, affluent, influential woman.” Celebrities feature heavily in the content, as well as high-end luxury clothes, jewelry, accessories and beauty products. The content is predominantly visual rather than written, of uniquely high caliber and expensively produced. The photographic content in particular requires costly domestic and international travel and shipping. Although the journalist style is visual, coverage includes celebrity profiles and written work from famous writers.

The digital component of the brand, which skews to a younger demographic, creates content related to culture, entertainment, travel, weddings and interiors (such as the home of a famous designer), in addition to fashion and beauty. It also includes longform features “mostly about women’s issues and motherhood.” *Harper’s Bazaar*’s digital component also creates content identifying the best fashion and beauty products. The Employer’s witness described the voice of the digital component to be “a little bit” similar to *ELLE.com*, but the brand’s voice “is pretty much owned by Bazaar.” The senior culture editor at *ELLE.com* testified that she regularly meets with her counterpart at HarperBazaar.com “to discuss the . . . things in pop culture that we’ll be targeting” and “if anything cross-pollinates, we will sort of discover it in these meetings, and figure out how to deal with them.”

³¹ The labs include: a beauty lab, textile lab, kitchen/appliance/technology lab, cleaning lab, wellness lab, and home technology and media lab.

The Employer's print witness testified that *Harper's Bazaar* is unlike shelter and food brands in that fashion requires seasonal planning and the photography requires high travel and shipping costs. Furthermore, unlike the women-focused service magazines, *Harper's Bazaar* "do[es not] do a lot of health" coverage. *Good Housekeeping*, *Woman's Day* and *Prevention* also cover beauty products, but those products are for the average consumer and not luxury brands. Although there is some overlap in coverage with *ELLE*, *Town & Country* and *Marie Claire* in the area of high-end fashion and beauty, *Harper's Bazaar* does no social or political coverage like at *ELLE*. The overlap with *Town & Country* is coverage of beauty products for a high-end audience, and *Veranda* does photography of high-end jewelry as does *Harper's Bazaar*.

10. *Marie Claire*

The Employer's witness regarding *Marie Claire* is the site director of the brand's website, who, along with the brand's editor-in-chief, report to Brooke Siegel. The audience for *Marie Claire* are "women probably in their 30s who are interested in politics, in luxury fashion, who are kind of power women, CEOs." The type of journalism includes investigative "high-brow" pieces, and profiles of powerful women. The print magazine also has a culture section.

In the realm of the Employer's sales and marketing operations, the Employer promotes *Marie Claire*, *ELLE* and *Harper's Bazaar* as "sister brands" within "the Fashion Group." The Employer's witness described this concept has a way to involve two other brands in a sales deal when an advertiser is interested in one of them. The site director stated that *Marie Claire* has similar luxury-level fashion content to *ELLE*, *Harper's Bazaar* and *Esquire*, and *Esquire* is "kind of like the brother [to *Marie Claire*] in terms of politics." Both *Marie Claire* and *Town & Country* cover royalty.

11. *Men's Health*

The editor-in-chief of *Men's Health* reports directly to Brooke Siegel. *Men's Health* focuses on "physical wellbeing and fitness, but also mental health, lifestyle issues [and] anything that informs mental and physical health." The editor-in-chief considers *ELLE*, *Harper's Bazaar* and *Esquire* to be "similar brands" with "a similar sensibility." In particular, his brand and *ELLE* "really prioritize having a sense of what's happening in the culture; what younger people are looking for; what's 'cool' and emerging."

12. *The Oprah Magazine*

The Employer presented two witness to testify regarding *The Oprah Magazine* brand: print managing editor Abigail Greene, and the site director Arianna Davis. Both witnesses report to the brand's editor-in-chief, who in turn reports to chief content officer Lewis.³²

³² Although the site director testified that she reports directly to the brand's editor-in-chief, the Employer's chart showing Kate Lewis's direct reports indicates that the site director reports directly to Lewis.

The Oprah Magazine brand “is all about Oprah Winfrey,” “self-empowerment” and “living your best life.” The audience is “anywhere from 18 to 80.” The brand’s coverage is “health, fashion and beauty,” whereas books coverage is a “very, very critical and specialized part” of the brand. Coverage also includes “[a] lot of self-help” and “[s]ome food” and recipes. Greene described the style of content as “75%” service journalism, with the remaining portion being “self-help” and “reporter pieces” focused on “inspirational stories.” The beauty content of the brand emphasizes racial diversity and older women. The digital side of the brand -- *Oprahmag.com* – covers, from a “positive perspective,” “everything from entertainment and celebrity news to beauty, style, [and] obviously the latest Oprah news.” The style of coverage is “lifestyle” and service journalism, helping readers to “live their best lives.”

The site director identified *Good Housekeeping* as sharing “home and lifestyle perspective” with the Oprah brand. There is also an overlap in coverage of health with *Prevention*, and of food coverage with *Delish*. She also noted the similarity with *The Pioneer Woman* because one woman is the face of the magazine.

13. Town & Country, ELLE

ELLE and *Town & Country* share an executive managing editor, Erin Hobday, who gave testimony regarding both brands. Each brand has its own editor-in-chief, who both report directly to Kate Lewis. The Employer’s witness regarding the digital-side of the *ELLE* brand is its site director Katie Connor, who reports to Brooke Siegel. As stated above, the digital sides of *Town & Country* and *ELLE Decor* have the same site director, who reports to content vice president Brooke Siegel.

Hobday described *ELLE* as “a high-end luxury fashion magazine,” focused on an “urban young female audience” who is “cool, hip.” “very trend-focused,” “very culturally aware,” and “obsessed with fashion and beauty.” The coverage includes “culture, entertainment, fashion, and beauty” as well as some politics. *Town & Country* is a luxury magazine, covering “culture, travel, fashion, jewelry, beauty for a really high-end audience” who are older and of both sexes.

Hobday further described *ELLE* as “visually driven,” and both *ELLE* and *Town & Country* emphasize photography. The photographic subjects in both *Town & Country* and *ELLE* are often celebrities, for whom the photography staff is “high-end.” Photoshoots take “weeks of planning” and involve “a tremendous amount of energy . . . and resources.” The photoshoots are therefore costly, and include location and security expenses. The clothes for the shoots may be difficult to procure because they must be on the cutting edge of fashion. Site Director Connor testified that *ELLE.com* is “an extension of the print magazine” and “operate[s] independently.” *ELLE.com* engages in “lifestyle journalism,” and is “not service-based,” covering “the breaking news, the exciting launches that are coming out of fashion and beauty,” as well as skincare, makeup, hair care, and books.

According to Hobday, compared to the work of the editor at non-visually-driven brand, *ELLE* editors must be able to pitch ideas that focus on the look of the content rather than the quality of the writing. Hobday identified *Harper’s Bazaar*, *Marie Claire*, and *Esquire* as most similar to *ELLE*. Connor described *Harper’s Bazaar* and *Marie Claire* to be “sister sites” because they cover

the luxury fashion and beauty brands; she also testified, without elaboration, that *ELLE.com* had “some crossover” with *Cosmopolitan*, *Town & Country* and *Seventeen*.

14. *Seventeen*

The Employer’s witness describing *Seventeen* is its executive (or site) director Kristin Koch, who reports to Brooke Siegel. *Seventeen* is a digital brand that also publishes specially-themed print editions about four times a year. The brand’s audience is composed of teens and young adults, mostly female, between the ages of 14 and 24.

Compared to other brands, the constant social media engagement of *Seventeen*’s audience dictates a faster pace for publishing content on digital platforms, demanding content creation in “real-time” and “on-the-fly.” For that reason, compared to other brands, much of *Seventeen*’s video content, including celebrity interviews (which appear on YouTube and Snapchat) is unpolished, with little-to-no pre-production planning and post-production editing. Live social media feeds are also a part of *Seventeen*’s content creation.

Koch identified *Cosmopolitan* as the Hearst brand most similar to *Seventeen* because it captures the same audience once they age out of the *Seventeen* demographic. However, she emphasized that *Seventeen* is “really unique” because it “cater[s] to a very specific, very young, a much younger demographic than other brands and the type of content and platforms we’re on is very unique to teens.” As a result, although some content is “occasionally” syndicated from *Cosmopolitan* or *ELLE*, the content of those brands, and celebrities covered by them, are mostly “too old” for the target *Seventeen* audience. For similar reasons, there would be no syndication of Oprah Magazine content because “a lot of the content that might . . . work for other brands, just really won’t work for this very young kind of niche audience.”

15. *Women’s Health*

The editor-in-chief of *Women’s Health*, Elizabeth Plosser, reports to content vice president Siegel. The brand creates content “to help women make positive healthy changes in their lives,” focusing primarily on “straight up health, fitness, nutrition, mental health, sexual health, and then healthy relationships.” The style of the content is service-based journalism. Plosser, who had previously worked at *Cosmopolitan*, described *Cosmopolitan* as a *Women’s Health*’s “sibling brand” because they “are both service brands” that “tend to reach a woman of a certain age; 20, 30, 40-something, with health being a “core content pillar.” Although the audience of *Men’s Health* is a different gender, the “mission and ethos” of *Men’s Health* is “very similar” to *Women’s Health* with “virtually the same” coverage categories, and “the same types of science-backed, expert-based service stories, revolving in some way, shape, or form around health.”

16. *Redbook*

The *Redbook* brand is currently a digital-only property and not staffed with employees within petitioned-for classifications. Because Lifestyle Group head Jane Francisco stated that it used to be part of that Group of brands (*Good Housekeeping*, *Prevention* and *Woman’s Day*), it may be

assumed that the audience, focus and voice of the brand is similar to that described by Francisco with respect to those brands.

B. The Hubs Located in New York

1. The Entertainment Group

The Entertainment Group, also referred to as the Entertainment Hub or the “talent team,” is responsible for booking the celebrities who are photographed, interviewed, and/or otherwise featured in brand print and digital content. The Employer’s witness, Randi Peck, is the team’s Executive Director of Entertainment and reports to Vice President of Content Brooke Siegel.

The record contains evidence that the talent team has performed their work for content appearing in *Cosmopolitan*, *ELLE*, *Esquire*, *Harper’s Bazaar*, *Marie Claire*, *Men’s Health*, *Town & Country*, and *Women’s Health*, although the talent team is available to work with any other brand. The team is populated by “bookers; entertainment experts; pop culture fanatics; people who, sort of, live and breathe all things film, television, music, and Broadway.”

In addition to arranging the appearance of celebrities in brand content, the team serves to “advise all of the Hearst Magazine brands -- both for print, digital, and video -- as to who they should be covering; what they should be covering them for; why [and] when.” To that end, a principle part of the team’s work is previewing entertainment products (movies, television shows, plays, musicals, music) before their release to identify “what’s going to be the story six months from now,” what “people are going to talk about” and if it will “make a splash.” Such predictive work is based on “experience” and “gut” feeling, as well as relationships with entertainment industry contacts. Examples of the talent team’s advisory role is an email in which a talent team member assigned to *Women’s Health* pitched ideas for cover celebrities for the May 2020 issue; the email was sent to *Women’s Health*’s editor-in-chief, digital director and design director, as well as to an executive visual director in the visual hub and the fashion hub’s executive director. Email evidence also shows a talent team member providing input and feedback to the brand’s editorial staff regarding the selection of cover celebrities.

In some instances, a celebrity appearance is also initiated by the brand by making a request to the talent team. For example, through a Slack channel called “celeb video sheets,” the talent team can receive a brand’s request to shoot video of celebrities when they make themselves available for interviews during press junkets. Brands who have made these requests include *Cosmopolitan*, *Delish*, *Seventeen* and *Harper’s Bazaar*.

Once the decision is made to seek the appearance of a celebrity -- which may be based on the recommendation presented to the brand by a member of the talent team -- the process of booking talent involves contacting the celebrity’s publicist, or the publicist for the producer of the entertainment product an actor appears in, and then negotiating terms of the celebrity’s appearance in brand content. The ultimate goal of the negotiation is “to ensure that we have everything that we need to produce that photoshoot and inside interview.”

The talent team member therefore plays the role of point-person for the brand, and conduit of information between the brand and the celebrity's representatives for the purpose of communicating the needs, requests and demands of both the celebrity representatives and of the brand's editorial staff. The talent team member's initial conversations with the celebrity's representative serve to discern the celebrity's level of interest in appearing in brand content, and to persuade the celebrity to be involved in the project. The talent team member thereafter shares with the editor at the brand the results of that contact with the celebrity's representative or publicist for the purpose of determining whether the celebrities' needs are feasible. If not feasible, the talent team member engages in more communications and negotiations with the publicist. The information collected by the talent team member is transmitted to the brand staff "to help prepare a writer or whomever it may be," and may include, for example, "confidential information on [a film] project" in which the celebrity is starring.

Once certain terms are agreed upon verbally, the talent team sends an offer letter to the celebrity representing the initial agreed-upon terms, which may cover terms such as number of hours necessary for the celebrity's time, dates, location, transportation, exclusivity, stylist, make-up artist, photographer and a brand's request to shoot video. The letter also includes requests from the celebrity with regard to clothing brands and sizes, and information on food allergies. In setting these initial terms, the talent team member, using his/her expert judgment, may also amend the needs of the brand by, for example, increasing the amount of time requested by the brand for the interview.

Once the initial terms are obtained, the talent team member passes that information to "the people who are directly working on [the] story," including the photo director or "the editor who is assigning a writer, or an editor, or writer" In addition, the offer letter can be revised and shared when more information comes in, and some terms can be open to later inclusion, such as the brand's request for the celebrity to appear in a video promoting a magazine cover appearance.

Because the offer letter includes terms initially agreed to, after the offer letter is sent, the talent continues the process by communicating with the publicist in order to transmit additional information to the brand, such as the celebrity's time constraints and the celebrity's desire to do his/her own makeup. The talent team also strives to "keep the visuals team in the loop throughout [the] process . . . just so they can plan accordingly . . . because their process is also quite tricky."

A talent team entertainment director testified that, among the things communicated to the publicist by the talent team member would be requests from the visual and fashion hubs, as well as brand editorial employees. For example:

that the fashion hub wants to style them in a certain way. The visual hub wants them to come to a certain location and shoot with a certain photographer. The editor of the piece from the magazine wants . . . them to do a certain activity with the writer. You're sort of relaying these things and then, when needed, you may group those people and to coordinate directly as well.

The email evidence in the record also reveals the communication of the myriad details of the photoshoot between the talent team and the brand editorial staff.

Once all the initial terms are fully finalized, the talent team member prepares a “shoot sheet” that contains information necessary for the visual and fashion hubs to perform their work, such as date, location, clothing sizes and other restrictions, while also including past images of the celebrity “to ensure that the photo department has the research done and they can see how this person has been shot before” and by whom. The shoot sheet also includes the publicist contact information which, among other things, is for the benefit of the brand’s fact checker. According to Peck, the shoot sheet is “share[d] with the editorial staff for the brand as well as the other specialty groups to ensure that everyone has the tools they need to do their job properly . . . in the weeks to come.”

The talent team members attend the photoshoot in order to monitor and manage behavior of the publicist to prevent interference with the work of the photographer and stylist. The talent team member also plays the role of lightening the mood if the celebrity is nervous. The talent team member will also communicate last-minute changes to the terms of the shoot. According to Peck, “we are on-set to help . . . get the . . . brand every single thing that they need within the time that we have and the resources.”

The talent team is “involved with the story until it is revealed and on stands because we . . . help whoever’s doing interviews.” Peck gave the example of getting access for the interviewing editor to an advance screening of the celebrity’s film, or biographical information of the celebrity. “If there are any further questions or needs, it all goes through the talent team, then the story goes to print.” After publication, the talent team member, as the primary contact to the publicist, is responsible for sending copies of brand content to the publicists for the celebrity’s use. The talent team also transmits between the brand and publicist best-practices for the celebrity’s own social media posting of content from the magazine before the print edition is issued.

Peck explained that members of the talent team are assigned to particular brands based on volume of entertainment the brand covers, but the team members share information with each other to see if some of the content would be better suited for one brand versus another. One brand-assigned employee might attend an event on behalf of another and report back the information. Although the assignments to team members are permanent, “[w]ith certain people, we’ve made some tweaks here and there.”

Peck also described the difference between working in the hub and working for a single brand as having to be aware of the needs, operations and audience of multiple brands. It requires the team to discern which celebrity would fit best with which brand. According to Peck:

I do ask people to be alert for all of our team brands as well just because I think that we are a little bit of a unit and I like to make sure that we are helping each other and fostering a really good relationships and great work -- you know working environment. So people are helpful and not just hoarding information, hiding it from each other. We really -- we bring it together, and we talk about it. . . . [T]he term I use for this, I call it, I just say, Hearst first. That we

all you know, whenever we're sort of, they're going out, who's going to get who for the cover of something, I say, remember, Hearst first. What's the best decision for Hearst Magazines, not just for the brand, but what's the best decision for Hearst Magazines? So that's important for you to know about our group.

In performing their job, talent team members are “constantly moving about throughout [Hearst Tower], . . . whether it's for meetings like a lunch meeting . . . or a breakfast meeting at the café,” and [s]ometimes we have scheduled meetings with certain brands.” Agreed-upon unit entertainment director Nojan Aminosharei testified to regular contact with brand editorial employees, including attending weekly all-staff production meetings at *Men's Health* and *Women's Health*; he also attends an additional weekly meeting at *Women's Health* when his schedule permits. The executive managing editor of *Harper's Bazaar* described that the entertainment team member assigned to her brand is a “dotted-line” report to the brand’s editor-in-chief.

2. The Visual Group

The Visual Group, or visual hub, is “responsible for creating all of the visual content” appearing in certain of Employer’s brands in every part of the magazine editions and throughout the digital platforms. The type of visual content produced may be celebrity photoshoots and “tabletop” photography for products and other items. The group also produces video content specifically related to the photoshoot. Alix Campbell is the group’s Chief Visual Content Director and reports to Chief Content Officer Kate Lewis.

The Visual Group obtains visual content by creating its own photography or using its group’s photo research employees to obtain pre-existing photography from Atlas and non-Employer sources. The group includes visual editors and assistants, producers and production assistants, visual researchers, as well as employees who manage and maintain the thirteen in-house photo studios (collectively called “Studio D”) on the 16th floor of Hearst Tower.

The Visual Group was created in May 2017. According to Campbell, who had previously worked for in-brand photo teams at *Cosmopolitan* and *Marie Claire*, when the group was created, the Employer “took all of the photo editors or visual editors out of all the different magazines and brought them under the umbrella of the Visual Group,” and “many of the people that I have working on the specific brands, when they came to the group in May of 2017, if they were already working on that brand then more or less, I kept them on that brand and then possibly added something else.” Thus, “when people are assigned to the certain brands, that's what they stick to unless” Campbell decides otherwise after careful deliberation, including discussion with the employee involved “to make sure that he or she wanted to make that switch.”

The record shows that only three photographers (two of whom coming from *Good Housekeeping* and one from *Cosmopolitan*) are not assigned to a particular brand. Otherwise, the chart shows that a visual editor who worked at *Harper's Bazaar* was assigned to that brand and *ELLE*; a visual production coordinator from *Woman's Day* was assigned to that brand and *Good Housekeeping*; an associate visual editor from *Men's Health* was assigned that brand and *Prevention*; a visual

editor from *ELLE Decor* was assigned that brand and *Town & Country*; a deputy visual editor from *Women's Health* was assigned to that brand and *Cosmopolitan*; a visual editor from *Cosmopolitan* was assigned to that brand and *Women's Health*; a senior visual editor from *The Oprah Magazine* was assigned to that brand and *Women's Health*; a senior visual researcher from *The Oprah Magazine* was assigned to that brand and *Esquire*.

According to Campbell, once the shoot sheet is sent from the talent team, it is “a signal [to] get a meeting on the books [because w]e know this shoot is confirmed.” That meeting would include: the visual hub member who serves as the “lead;” a member of the talent team, the brand’s creative or art director; and a member of either fashion hub or the brand’s fashion department. The purpose of this first meeting is to “basically sit down and brainstorm what we want to do for the photo shoot.” In the case of a celebrity shoot, the topics of the first meeting may include the location of the shoot, and what activity the celebrity would be engaged in for the photos.

When *Esquire*’s editor-in-chief described from his perspective how his brands uses the visual hub, he testified that planning the story would require a meeting with the group’s visual directors assigned to *Esquire*, one of *Esquire*’s own photo editors, and “those members of the staff[.]. . . whether it was the editor on that piece or the fashion editor.” The meeting topics would be “the general direction . . . of those photos,” and “what photographer we want to assign to those photos.” It would then typically be the group’s visual director’s responsibility to obtain the agreed-upon photographer. *ELLE Decor*’s executive managing editor testified to using the Visual Group to help obtain an appropriate photographer because that brand has no in-house photographers. The site director of *The Oprah Magazine*’s digital component testified that “if we need visuals for like a bigger picture story, . . . we’ll work with Alix and her team to get the photo shoots coordinated.”

According to Campbell, after the initial meeting, the visual team will begin producing the photo shoot. During pre-shoot activities, the visual team will decide whether to use freelance or in-house photographers and stylists, and will consult with the talent team about the needs developed from the talent team’s contact with the celebrity, such as who will be doing hair and makeup. The visual team will also procure catering (based in part on the dietary restrictions in the shoot sheet), will obtain permits for location shooting, and will determine the logistics of transporting people and equipment to the shoot.

The visual team members are responsible for styling the shoot with members of the fashion hub or the in-brand fashion department. According to Campbell:

Harper's Bazaar, Marie Claire, ELLE, Town [&] Country, Esquire, Men's Health, they have their own fashion teams that consist of market editors, which are the people who call in the clothing, get them loaned. Certain other brands have stylist[s] that actually go and style the photo shoots. But a magazine like *ELLE* for example, we work with the market editors there who are calling in the clothes but then we, the visual group, hires freelance stylists to actually dress the celebrities or the models the day of the shoot because *ELLE* doesn't have people on staff who do that.

A few days before the shoot begins, the producer or visual editor prepares a call sheet on the brand's letterhead. The sheet includes date of shoot, shoot location, timing of certain tasks between start and finish of the shoot, and list of personnel and contacts. The call sheets in evidence reveal that numerous brand editorial employees receive the call sheet because they are connected to the photoshoot, including beauty directors, lifestyle directors, fashion news editors, market editors, associate editors, associate culture editors, associate style editors, associate lifestyle editors, audience editors, staff writers, associate accessories directors, designers, senior designers, design directors, deputy art directors, editor assistants, fashion assistant, and design assistants. The call sheets also indicate the participation of photographers, editor and directors from the visual hub, videographers from the Employer's in-house video team, and editors from the fashion hub.

The shoot's talent team producer nearly always attends the shoot to make sure that the shoot proceeds smoothly with the aid of a production kit. Also present during the shoot would be stylists from the brands (if they use their own), and, depending on certain factors, a member of the brand's editorial department. *Esquire* associate lifestyle editor testified that she attends product photoshoots with visual hub staff about once every five weeks, spending the entire day with them on the shoot.

The visual team finalizes the photos in the editing process. Thereafter, the photos are delivered to the brand. Once the photographs are made, they are edited by the visual team using specialized software, and thereafter are delivered to the brand for their editing. The visual team may do a final inspection "to make sure that crop on the images is right and that the photo credits is right," but the team would "not necessarily [be] telling them how to build their stories."

Visual team members interact with each other to the extent that they are aware of what each other are doing through "hear[ing] each other talking," especially in order to coordinate trips. Campbell described the difference between working for a brand and working in the Visual Group. Group employees do not stay in the brand's office to perform their work, rather, "we spend a lot of time, . . . the various different photo editors . . . moving around the building and going to the various floors." Because chief visual content director Campbell envisions the Group as an agency servicing client brands, "we may go to the 36th floor where Oprah is, have a meeting, get the information that we need, and then come back to 16, which is our home base, and do all of our work from there."

Agreed-upon unit production assistant Sameet Sharma performs visual producer work for *ELLE*, *Marie Claire* and *Harper's Bazaar* at a rate of about two to four photoshoots per week. With regard to *ELLE*, Sharma attends one production meeting and one culture meeting per week with *ELLE* editorial staff at *ELLE*'s offices. The production meeting is an all-editorial staff meeting "where we go through all the stories and the outline of the issues and see where we are as far as copy and as far as like visuals in photos, just a check up to see how we're doing for the issue." The culture meeting is devoted to *ELLE*'s culture coverage, and includes the visual hub's visual director and visual research assigned to *ELLE* (both disputed supervisory positions), as well as *ELLE*'s executive editor, design director, entertainment director, and four unit employees at *ELLE* (deputy managing editor, director, culture editor and staff writer). Sharma also attends staff production meetings at *Marie Claire* when asked to attend by the visual hub's director or deputy visual editor for *Marie Claire*. When Sharma previously was assigned the *Esquire*, he attended

weekly production meetings at *Esquire*'s offices along with the editorial staff. In addition to meetings, Sharma visits brand offices from one to five times a week if there are "specific things I need to talk about for a shoot or pre-production."

Woman's Day/Good Housekeeping/Prevention staff writer Lizz Schumer testified that she speaks "on monthly or biweekly basis" with the visual hub's Visual Production Coordinator for *Good Housekeeping* and *Woman's Day*:

I work with Sara to gather images for stories that I work on. She does the photo research for stories that are not being shot. . . . [S]he'll help me gather book covers from the publishers and also do research on either internal photo servers or external photo programs for stock images."

For example, after obtaining an image from a product's public relations representative:

I would send those to Sara so that she could ensure they are the right quality that we need, that we have permission to use them, that they look good enough, basically, to put in the magazine. And then she would put those on the servers and liaise with the designers to get those into the layout.

In addition to the meetings described above, Sharma and brand employees regularly discuss, through email and Slack, the numerous details involved in creating brand content. One email chain shows an agreed-upon unit deputy art director at *ELLE* providing to Sharma and a Visual Group director (disputed supervisor) "a mockup of how I want the product shot, so you and Sameet can think about photog/stylist;" the suggested which photographer to use and that they "chat about it tomorrow after the meeting." Slack communications show agreed-upon unit employees at *ELLE* and *Esquire* discussing with Sharma their needs and directives for how products should be posed for a photoshoot.

3. The Fashion Group

The head of the Fashion Group, Aya Kanai, is titled Chief Fashion Director, and reports to Chief Content Officer Kate Lewis. The group formed as an "organizational efficiency" in that it could perform its function for several brands without a brand's audience knowing that the brand's fashion content was produced by a team performing the same function for other brands. The brands for which the group performs work are: *Cosmopolitan*, *Women's Health*, *Seventeen*, *Good Housekeeping*, *Woman's Day*, *Prevention*, *Esquire*³³ and the digital sides of *Harper's Bazaar* and *The Oprah Magazine*.

³³ Kanai stated that the work done for the print edition of *Esquire* – a primarily men's magazine - would occur only when there's the presence of women's fashion in the photoshoot. The record evidence shows that *Esquire* has its own fashion editors. These facts, in addition to Kanai's self-description of her title as "[c]hief fashion director, Hearst women's group," suggests that the fashion hub works exclusively with women's fashion.

Once the details of a celebrity shoot is confirmed in the Entertainment Group’s shoot sheet, the fashion team strategizes about how to meet the needs of the celebrity, as well as the brand’s voice and audience. The process includes “gather[ing] the clothes that are appropriate and in that person's size . . . and . . . to their liking,” and, in discussion with the Visual Group, deciding on “the outfit appropriate to the location.” A member of the fashion group always attends a photoshoot involving clothes that are styled for the shoot by the Fashion Group.

In contrast to the Visual and Entertainment Groups, where the team members are assigned to one or more of the Employer’s brands, Kanai “make[s] each person on [her] team a category expert on a part of the fashion marketplace rather than an individual Hearst brand.” For example, one team member (an associate fashion editor) is responsible for obtaining from designers “denim, swimwear, and lingerie” whenever such items appear in a brand’s photoshoot. This requires the team member to be “out in the marketplace all the time meeting with, previewing all of the different denim brands, swimwear, lingerie, so that she can know” which clothing brands are appropriate for which Employer brands. In addition, the team has an accessories director who “is the expert in . . . shoes, handbags, and watches and fine jewelry;” a fashion editor who handles mass market fashion items; and a senior editor who handles mid-level market products. The team also has a dedicated associate fashion editor who handles the function of checking credits (designer, retailer, price) for each fashion item,³⁴ as well as a “bookings director” who performs a similar function for hiring fashion models by communicating with model agencies as the Entertainment Group employees perform for celebrities vis-à-vis celebrity publicists.

Kanai described the differences between working for an in-brand fashion team and for her group: “when you work for one brand, you have a knowledge about . . . regular features that are always on your docket for that month that you are planning for,” however, “[o]n my team, we have so many different assignments coming in . . . there's a lot of sort of ebb and flow of what we are doing.”

C. Brands Located in Alabama/New York

As stated above, *Veranda* and *County Living*’s print edition have offices in the Employer’s Alabama facilities.³⁵ *Country Living*’s digital component maintains its offices in New York. *Veranda* and the print edition of *Country Living* each have an editor-in-chief in Alabama; the *Country Living* digital team is headed by a site director in New York. All three report directly to the Chief Content Officer Kate Lewis in New York.

The two brands share a managing editor, Amy Mitchell, who testified that *Veranda* is a “luxury title,” covering “high end home interiors,” “gardens,” “luxury travel,” jewelry and “a little bit of fashion.” The target audience for the brand is “[v]ery rich people.” *Country Living*’s audience is “more of a mainstream demographic,” and the brand focuses on “a more relaxed lifestyle, primarily

³⁴ The record includes evidence that the fashion hub’s credits editor performs that work by communicating directly with a brand’s editor.

³⁵ *Veranda*’s senior style & market editor – an agreed-upon supervisor under the Act – works in the Employer’s New York facilities.

home,” including gardening, food and home products. Both magazines do product reviews and recommendations, including advice on how to recreate interior looks found in the magazine content.

According to *Country Living*'s site director Michelle Profis, the digital side of the *Country Living* brand – countryliving.com – has a median audience age of 55, and its voice is “very positive.” The coverage focuses on the home, and includes “decor, do-it-yourself, home maintenance, gardening, food and recipes,” as well as news about family-friendly television and country music. Employer’s witness described the style of journalism as “conversational” and “PG.” Profis also stated that the website’s coverage is so “niched to the *Country Living* audience” that there is “not a lot of overlap” with any of the Hearst brands.

Some *Country Living* recipes are developed in Alabama by the agreed-upon unit food & crafts director, some by freelancers and others by the chief food director in the Lifestyle Group (*Good Housekeeping/Prevention/Woman’s Day*) in New York. The employee occupying chief food director position is not listed in the Employer’s position statement as either in a petitioned-for unit or as a supervisor. However, the Lifestyle Group’s editorial director Jane Francisco testified that the chief food director’s “team” – which includes agreed-upon unit employees -- works with her in performing this function for *Country Living*, as well as other brands, including *Women’s Health* and *The Oprah Magazine*. As described by Francisco, the other brand “would contact her or someone on her team and say, hey, this is what we would like to do, and she would create the story and [the brand] would execute it.”

D. Brands Located In Michigan/New York

Hearst Autos -- which is also referred to in the record as the Auto Group -- is a wholly-owned subsidiary of the Employer. The brands *Autoweek*, *Car & Driver* and *Road & Track* sit organizationally within Hearst Autos, which operates other businesses in addition to the three brands: an online shopping calculator tool sold to manufactures and dealers; a business that sells consulting and data services to manufacturers related to car testing, consumer behavior and market trends; and a business that sells display advertising space to manufacturers that appear in the three Hearst Auto brands as well as ten other non-Hearst brands. The latter enterprise represents two-thirds of the Hearst Autos’ business.

Hearst Autos has a chief executive officer, Matt Sanchez, who works in the Employer’s New York facilities, and travels to the Michigan facilities about once a month. The editors-in-chief of *Car & Driver* and *Road & Track* report directly to Sanchez, whereas the editorial director of *Autoweek* reports to Hearst Auto’s chief marketing officer overseeing the brand strategy for all three brands, and who herself reports to Sanchez. Sanchez directly reports to the Employer’s president Troy Young. However, the Employer’s chief content officer, Kate Lewis, as with other of the Employer’s brands, reviews the three auto brands’ covers,³⁶ and conducts best-practices meetings that include the auto brands’ editorial heads. She has also visited the Michigan facilities “from time to time.” The agreed-upon unit employee paystub evidence identifies “Hearst Magazines Media, Inc.” as the Employer.

³⁶ Print covers for the brands are ultimately approved by both Lewis and Young.

1. *Car & Driver*

The *Car & Driver* brand is principally “for car shoppers” who want to discern which car to buy; to that end, the brand provides its audience with “the expertise and . . . independent review” of the cars. *Car & Driver* “predominantly” does car testing, and the results of that testing – technical data and driver impressions – is integrated into the primary content created by the brand: car reviews and comparisons. In addition, the brand also covers news related to car culture and the car industry (such as new technologies and product developments), a newsletter distributed three times a week, a holiday gift guide, as well as a buyer’s guide containing reviews of about 450 different car models. The brand also creates affiliate commerce stories and content alerting readers to retailer offerings of car-related merchandise.

There are three kinds of testing performed at *Car & Driver*: “static” testing, “instrumented” testing, and driving a car as an average consumer would.

Static testing -- or “pre-testing” -- is performed in a garage attached to the Michigan facilities.³⁷ Although all employees have access to the garage, there are a group of employees working in the garage, titled “road warriors,” whose job it is to maintain and pre-test the cars featured in the brand’s content.³⁸ The pre-testing involves weighing the car and taking other measurements; the maintenance involves tire changing/inflation and light repair work.

After the cars are pre-tested, they are brought to the Chrysler proving grounds located near the Employer’s Michigan facilities for the “instrumented testing,” which is *Car & Driver*’s “primary numbers-based evaluation of the vehicles.” Of the 27 current agreed-upon unit employees at *Car & Driver*,³⁹ there are four employees whose primary job is performing instrumented testing, which requires the test editor to drive cars “at the limits of [the car’s] capabilities,” with an instrument attached to it that collects data such as “speed, braking [and] grip.” The Employer’s witness Edward Alterman⁴⁰ identified those four employees: one technical editor, one deputy testing

³⁷ There is another garage at the Michigan facilities which had been used by *Road & Track* before the Employer moved that brand’s operations to New York. (The record is not clear when this occurred.) It appears from the testimony that only one of the garages is used for pre-testing.

³⁸ According to chief brand officer Alterman, the road warriors “will measure cargo areas inside the vehicle,” “whether or not, say a stroller[] fits inside the vehicle,” “outside visibility,” “does . . . the vehicle fit inside a garage with the doors open,” and “entertainment response time,” as well as find “where the USB ports [and] the power outlets are in the vehicle.” There is no evidence in the record that road warriors have mechanic’s licenses; in fact, the Employer’s witness emphasized that the maintenance work does not include “oil changes, but if a small piece needs to be fixed, we’ll do it in there.”

³⁹ This employee total excludes two disputed supervisory positions and three unfilled job positions identified on Employer’s organizational chart.

⁴⁰ Until April 2019, Alterman was the editor-in-chief of *Car & Driver* for ten years and the editorial director of *Autoweek* for five years. Currently, he is the “chief brand officer” of Hearst Autos, who job he described as “standing up a new business to market the test data that *Car & Driver* generates to carmakers for their use and marketing, communication, and dealer operations.”

director, one assistant technical editor and one road test editor; he also identified an agreed-upon unit senior editor who does some testing at the proving grounds.⁴¹ To use the proving grounds, Chrysler requires that a driver pass a test to drive the cars at high speeds.⁴² Of the five agreed-upon unit employees identified by the Employer, two of them “do a lot of writing,” specifically reviews, car comparisons tests, and “road tests” which involve “a deeper dive into an individual vehicle that includes the full complement of numbers.”

Therefore, the remaining 22 agreed-upon unit employees at *Car & Driver* do not perform instrumented testing; rather, they do the third type of testing that includes “a mix of . . . first impressions, or initial test drives at [a product] launch,” as well [as] tests where editors would drive a car for either a short two-to-three period,⁴³ or for a long-term 40,000-mile test. To perform the long-term test, editors use the cars as if they were personal cars used for commuting and other typical car-owner activities, both during the week and on weekends. At any given time, there are between 16 and 25 cars at the Michigan facilities which are tested in this fashion, and there is a rotation procedure for the assignment of a car for a commuter-style test.⁴⁴ It is not necessarily the editor writing the car review who tests a particular car at any given time. The commuter test requires whoever is driving the car to write in a paper logbook information such as the driver’s impressions, gas tank fill-ups, and service information. Some the impressions may be quoted in the car review of the editor who is writing the review. One editor testified that the road warriors assist him in writing his review by updating and maintaining a computer spreadsheet of fuel-economy information from the logbook. The drivers do not pay for gas used in testing vehicles.

2. *Road & Track*

Road & Track’s audience is the “aficionado car lover,” “car collector type” and “car enthusiast that’s going to have a couple of cars in their garage, and really want to talk about collector’s items and those kinds of things.” Like *Car & Driver*, *Road & Track* covers new car launches, does car

Although “Eddie Alterman,” and the title chief brand officer, appears in the Employer’s position statement as a petitioned-for employee, that name does not appear on any organizational chart submitted by the Employer and the work address associated with that name in the statement is different from the Michigan facilities. I therefore conclude that Alterman’s inclusion in the Employer’s position statement is an oversight, and he is not a petitioned-for unit employee in either the Petitioner’s or any of the Employer’s proposed units.

⁴¹ The technical editors also do “some work” in the garage: “[e]valuating, like visual inspection of a vehicle, . . . seeing what tires it has on it [and,] for example, what’s underneath it, [such as] where the catalysts are; [t]hings like that that are . . . highly specific to their job.”

⁴² *Car & Driver*’s photographers also have access to the proving grounds but there is no testimony whether they have to take the proving ground’s test for access. However, because the testimony is that the technical editors drive the cars, the editors, not the photographers, would logically be the ones who take the speed test.

⁴³ The content resulting from two-to-three week tests will usually appear on the brand’s website.

⁴⁴ The procedure involves weekly sign-out lists of editors with car privileges divided into “tiers:” top-level personnel, senior employees and junior employees. The names of the list within the tier are rotated, with the editor at the top of the list choosing the car and days of the week of the week. However, the editor who is reviewing a particular car usually gets a priority choice of that car.

reviews, but it reports developments in the “more the enthusiast side of the market.” As a result, the events and types of cars covered would be “[s]uper cars, really high-end luxury cars.”

Road & Track editors, who work in the New York facilities, do not do instrumented testing, but “need to know how to drive a performance car on track and understand how it handles.”⁴⁵ The brand’s “anchor franchise” is “performance car of the year,” which involve editors driving these cars “for a week in both road and track conditions,” and then decide which is the best.⁴⁶

3. Autoweek

Autoweek is published only in digital form, but also distributes newsletters to its audience. The content of *Autoweek* is “racing . . . and then some car culture,” as well as “automotive news” that “stays on top of the pulse of the automotive industry.” The editorial staff at *Autoweek* do car reviews and cover industry events.

4. Interaction and Collaboration Among the Three Brands

Sanchez testified that the employees of the three brands are “reasonably connected[. . .]they all know each other [and o]ften are on car trips together.” He specified that “they’re not necessarily in day-to-day contact, but . . . definitely work collaboratively.” However, Sanchez specified that the auto brands would only coordinate coverage on a “very big event,” and only one such event was offered as an example, for which the two brands discussed how they were going to cover it from each brand’s perspective. When asked whether there are “industry events on which employees [of the three brands] cooperate,” Sanchez responded with listing certain events (such as auto shows) where employees of the three brands attend but only interact socially.

E. Brands Located in Pennsylvania/New York

Bicycling, *Popular Mechanics* and *Runner’s World* comprise the Employer’s Enthusiast Group. Editorial Director of the Group (Bill Strickland) reports to senior consumer revenue vice president Madden.⁴⁷ The Enthusiast Group was developed after the Employer acquired the brands *Bicycling*

⁴⁵ According to Sanchez, “there are technical elements of what we’re doing at Car and Driver that are I’d say more engineering and measurement focused than what *Road & Track* does.”

⁴⁶ The record does not reflect whether the *Road & Track* employees use the Chrysler proving grounds in Michigan for this yearly feature. The record is also not clear regarding the extent to which *Road & Track* employees, who work in New York City, drive cars for review. When the Employer asked its witness Alterman to provide the average amount of time that “a typical *Car & Driver*, *Road & Track* employee spends operating a car,” he answered only with respect to employees working at the Michigan facilities. There is also no evidence that *Road & Track* employees in New York do commuter testing; however, this is unlikely because of the non-average nature of the cars covered in *Road & Track*.

⁴⁷ Chief Content Officer Kate Lewis is not involved in reviewing covers for the brands as she is for certain other brands. According to Strickland, “Kate and I are roughly parallel. She has a much bigger job than I do, but she’ll share opinions with me, so . . . it’s not like there’s no interaction, but no supervisory or official.” However, the Employer’s organizational chart showing those

and *Runner's World* in the purchase of a publisher named Rodale about two years prior to the hearing. Sometime around January 2019, the Employer decided to move its *Popular Mechanics* brand from New York to join the two brands in the Pennsylvania facilities.

As the brand names imply, *Bicycling* covers bicycles and related gear, whereas *Runner's World* cover's fitness running and gear. There is little testimony regarding the topics covered by *Popular Mechanics*; however, the available evidence shows that the coverage includes power tools, "maker" culture and, do-it-yourself home and automotive mechanical repair. The content of the brands include product reviews, news, health stories, and people profiles.

Madden and Strickland testified that the Group, because of its consumer-revenue model, strives to cover topics of interest to the audience rather than of interest to, or in support of, advertisers. The topics covered by the brands are "largely service content and gear reviews," with "some cultural content," and "inspirational stories." The content appears in written, photographic and video forms. The particular duties performed by the staff are "surveying the market to understand" and "particularly to test what is there." Staff then "call in" products in order to do a "very qualitative and comprehensive[,] . . . thorough test." Compared to some other brands, "[f]or [the Enthusiast Group] there's a big difference between a piece of fashion and a bicycle that you're going to use to go 50 miles per hour down a hill on, . . . [a]nd so our testing needs to be rigorous and robust" and "takes a lot of our time."

Strickland stated the Enthusiast Group is "very data driven" and "everything we do starts with the data . . . or involves . . . trying to create another data place," sometimes requiring testing for which there is no data. Work is assigned to staff who "will work with their team leaders[,] . . . [their] director levels and decide what those stories are." The data collected by the brands is not sold to third parties, but rather used to "to hone [sic] in on . . . what is going to make the audience happy or what the audience doesn't like." Testing is done primarily in Pennsylvania, but also at events, such as the Boston Marathon.

Due to the small scale and scope of the topics covered by the brands, the group was created with the "primary strategy" of "develop[ing] a publishing model that is based on consumer revenue" rather than the traditional revenue strategy – employed at other brands – where 60-70 percent of the revenue comes from advertising. For example, *Popular Mechanics* joined the other two brands because the Employer saw "very strong signals that there was a lot of consumer demand for this brand and not as much advertising demand." As a result of the revenue strategy, Enthusiast Group revenue from advertising is goaled to about one-third of the total, with an additional one-third coming from the audience in the form of "subscriptions or membership[,] selling the merchandise or books" and similar content.⁴⁸ Therefore, more emphasis is placed on audience loyalty, such as memberships, rather than advertising and affiliate revenue.

reporting directly to Troy Young include Madden and Lewis, but not Strickland, and therefore I conclude that Strickland and Lewis are not parallel for the purposes of establishing Employer's organizational structure.

⁴⁸ For example, *Runner's World* has a program requiring that reader become a member of *Runner's World* in order to read more than five articles.

When the Employer counsel asked Madden whether the consumer revenue focus result[s] in creating different types of content, Madden replied “yes” without elaboration. However, elsewhere in Madden’s testimony, he stated that the revenue model allows for “creating the longer form content that may not get as many views but would create a loyal audience that comes back multiple times.” Madden also cited *Runner’s World’s* membership program as resultant from the consumer-revenue-focused strategy.

The “secondary strategy” in creating the Enthusiast Group was to experiment with new ways of operating the brands. For example, the “structure” of the group is not based on “hierarchy,” but rather is “divided into teams which are functional teams.” Strickland testified that “[i]t is really a hive” because “[t]here’s no single person who makes editorial decisions in our group.” Although “[e]veryone should work for everything:”

[t]here are, you know, primary responsibility. There will be people who spend most of their time testing shoes, for instance, but will also test rain jackets, . . . for two brands or for all three brands. So it is intended to be, and in large part in execution is, completely cross-brand. So you -- the idea is you work for the Enthusiast Group, not necessarily the brands.

For example, service, news & gear editor Andrew Dawson testified that he “handle[s] mostly running news . . . and then also gear news,” in addition to one-page people profiles for all three magazines. He also tests “[p]retty much anything running gear,” such as running clothes, running shoes and fitness watches.

Although Strickland testified to “hive” decision-making, Assistant Editor Dawson testified that he posts one or two stories a day, and the decision regarding content topic is made by either the deputy editor for *Runner’s World* and *Bicycling* (currently vacant) or the director of content operations, each of whom also reviews his work. Furthermore, Dawson’s profile work will be reviewed by senior features editor, the director of content operations, director of editorial operations or Strickland. However, health stories created by Dawson would be reviewed by the Director of Health, Fitness & Training, as well as the director of content operations in Pennsylvania. If Dawson’s content was testing, the work would be reviewed by the Senior Test Editor of *Runner’s World* or one of the test editors. Furthermore, agreed-upon unit employee Daniel Roe testified that the approval of articles is fluid, but his content, when he worked as a Test Editor,⁴⁹ would typically be reviewed by either one of the two associate test directors or the test director.

An examination of the organizational charts for the Enthusiast Group reveals the following in terms of organizational structure. There is an open position for a Deputy Editor for *Runner’s World* and *Bicycling*, to whom five agreed-upon unit employees report: four service, news and gear editors; and one fitness training and health editor. There is also a creative director and photo director overseeing four agreed-upon unit positions of photo editor, associate photo editor, senior art director and designer. An agreed-upon unit director of video operations oversees two agreed-upon unit video producers. A director of content creation and a features director (stipulated

⁴⁹ As of about two weeks prior to his testimony, Roe has been in the position of Test Manager.

supervisor) oversees a team including an agreed-upon unit senior features editor and two agreed-upon associate features editors. *Popular Mechanics*, which came late to the Enthusiast Group, has its own editor-in-chief, which Strickland referred to as a “legacy title.” However, the organizational chart shows a separate deputy editor for *Popular Mechanics* (a disputed supervisor) to whom four agreed-upon unit employees report: a how-to editor, a senior news editor, and two news editors. Within the reporting structure there is an open position of auto editor, which the record reflects was occupied by an employee shared with *Car & Driver* who recently became a full-time agreed-upon unit employee at that brand.

Finally, there is a “test team” overseen by a test director. Within that team are thirteen agreed-upon unit employee positions: news editor, commerce editor, seven test editors, an outdoors editor, two photographers, and a logistics manager/mechanic. The test group both tests and creates content, however, “[e]veryone on staff tests at some point or all the time” after the test team “figure[s] out what to test.” Testing “kind of permeates our day-to-day existence.” Dan Roe, when he worked as a Test Editor, wrote gear reviews for both *Bicycling* and *Runner’s World*; in his current position, he is involved in testing products appearing in *Popular Mechanics* as well as in the other two brands.

Although the offices of the Enthusiast Group are in Pennsylvania, there are certain supervisors and agreed-upon unit employees who work in the New York facilities. The agreed-upon unit position of director of health, fitness & training works in New York, but reports to the director of content operations in Pennsylvania. The director of video operations – who reports to Strickland in Pennsylvania – works in New York and oversees two agreed-upon unit video producers: one working in New York and another in Pennsylvania. The Director of Content Creation works in Pennsylvania, but oversees the undisputed supervisor Features Director, who works in New York; however, both associate feature editors who report to the New York Features Director work in Pennsylvania.

Strickland testified that a few people in the group serve as “chief enthusiasts,”⁵⁰ which is distinct from other Employer brands where the chief enthusiast is also the editor-in-chief.⁵¹ For example, the “runner-in-chief” is the agreed-upon unit employee occupying the organizational chart position of senior test editor for *Runner’s World*. Strickland himself is the chief bicycling enthusiast. According to Strickland, the chief enthusiast position explains the group’s culture of “how deeply important our passions are, not only for what we produce, but for connecting with the audience.” When asked how the “need or desire to be an enthusiast play out in the staff who are writing the content or editing it,” Strickland responded that “there is a demand to be someone who lives the life.”

As a test editor, Dan Roe produced about three to four content pieces per week mostly for the online platforms, some of which may later be placed in the print edition. In terms of the testing process, Roe explained:

⁵⁰ That title is not reflected in the organizational chart.

⁵¹ As stated above, *Popular Mechanics* has a traditional editor-in-chief.

For instance as a test editor . . . I would get in 20 pairs of headphones to the office. I would give them out to our runners and then, I would have a form and they would give that form back to me and I would ask specific questions about the fit, whether they stayed in your ears, whether you could hear traffic with them. We would get sort of a uniform feedback and then, I would compile that into a guide of the best wireless headphones for runners.

The testing time depends on the product and the requirements of the publication calendar. Bicycles, for example, would usually take two months to test, whereas other products would be tested for a month or less.

III. SKILLS AND QUALIFICATIONS

Based primarily on the testimony of the Employer's witnesses, each brand and hub seek employees who: (a) have general qualifications that can be applied to a brand's content creation; (b) have relevant experience in and knowledge of a brand's coverage and content; (c) have professional contacts in the industry covered by a brand; (d) have an innate feel and passion for the unique content created by a brand; and (e) have specialized knowledge related to the content covered by the brand.

A. General Qualifications

The Oprah Magazine's managing editor testified that her brand "look[s] for probably a lot of the same things that a lot of magazines look for which are smart, energetic, hardworking people." *HGTV Magazine* seeks an employee who is "highly organized, resourceful, enthusiastic, a creative thinker, and have excellent communication skills."

In particular, brands look for job candidates with strong writing skills for editor/writer positions. *Country Living* seeks "strong writers" and "experience interviewing expert sources or professionals and knowing when a piece of content might benefit from that." *Esquire* seeks "first and foremost," "a good writer." At *Veranda*, "if someone was a good enough writer that would be enough." To work at *The Oprah Magazine*, an employee must have "strong writing" and "reporting experience." Hearst Autos' chief brand officer testified that, in addition to knowledge the brand's subject matter, primary skills include "all the right brain stuff; how well does a person write, are they effective at communicating those ideas to both an enthusiast audience and a mass shopper audience."

For non-writing positions, brands and hubs seek aesthetic qualities. A stylist at *Country Living* must have "a good eye", as does an editor at *ELLE Decor* and a fashion editor at *Harper's Bazaar*. *Harper's Bazaar* also seeks employees who are visually creative, as does *House Beautiful*. *House Beautiful* also seeks employees with a "keen sense of style," and the Visual Group seeks employees "who have a good creative vision" and "good taste." The head of the Fashion Group testified that she hires stylists "who obviously know how to create beautiful photographs and style the clothes in the best possible way."

B. Experience in and Knowledge of a Brand's Audience, Coverage and Content

Brands seek candidates with experience in the general category of its brand content. *Country Living* seeks employees with “lifestyle brand experience” or “at least [have] ideas and a writing style that would mimic a . . . lifestyle brand, because they're . . . unique in their topics that they cover.” *Cosmopolitan* looks for “people who have been in . . . the young women's media space.” At *Veranda*, the preference is for an employee possessing luxury magazine experience and “[i]deally, experience working for a lifestyle brand or knowledge in writing for the brand’s age group. *Car & Driver* and *Road & Track* look for employees with “experience working at other automotive magazines.” At *HGTV Magazine*, the candidate “[m]ust have had at least one internship at a national decor or lifestyle magazine” as well as “home and lifestyle-related” “writing experience.” At *Women’s Health*, an employee should be “comfortable working in both digital [and] print systems” and have a “journalism media background.” For digital-side work at *Veranda*, the brand simply looks for experience in digital work.

Brands also look for experience in the particular topics that will be covered by the brand, a fact emphasized by *Marie Claire*’s site director. To work at *Car & Driver* and *Road & Track*, editors should have “a deep background or experience in automotive.” At *Harper’s Bazaar*, [f]ashion editors [must have] experience in the fashion industry and trend forecasting.” The head of the Entertainment Group seeks candidates having prior, preferably editorial, booking experience because such experiences tells the Group’s head that the employee “understands the trends six months out at least.” At *Men’s Health*, the brand looks for “background and experience that would suit [the candidate] to the types of content that [the brand] creates.” At *Esquire*, a politics editor must have “experience in that field.” At *Town & Country/ELLE*, “[e]ditors become sort of experts in their field and steeped in the topics that they cover,” and in The Lifestyle Group, the group employs “a lot of experts in a lot of different areas.” Finally, most of the employees filling the positions of Visual Group each have the specific experience at the brands to which they are assigned because they were taken from those brands when the Group formed, and they are also generally paired with another brand that does content similar to the brand from which they came.

C. Industry Contacts

Having industry contacts is a common qualification sought in an employee. At *Veranda*, there is a preference for a candidate who has professional connections to the luxury product markets; *ELLE Decor* seeks employees with professional contacts within the “insular” community of top interior designers or manufacturers. At *Marie Claire*, candidates should have contacts in the fashion and beauty world if working on fashion and beauty coverage. At *Esquire*, a politics editor candidate should be “well sourced;” and fashion editors should be well “connected” in the fashion market. At *Town & Country/ELLE*, features editors “build a stable of writers” from whom the editor can select depending on the content’s topic; beauty editors have “relationships that they have hone[d] over many years,” and “fashion editors have very deep relationships with brands, with PR people, with fashion houses, with stylists and photographers that they build over time.” At *Harper’s Bazaar*, fashion editors must have professional relationships in the fashion world as well as luxury brands appearing in the magazine, and its editors must have relationships with writers; moreover, beauty editors should have relationships with important people in that community; and culture and entertainment editors should have contacts in the entertainment business. Finally, in the

Entertainment Group, a job candidate must have “some very strong relationships with everyone or at least every kind . . . of person who could be in this industry,” such as “publicists, managers, agents, studios, streamers, all of it, labels, everything;” however, the Group’s director would not expect a recent college graduate applying for assistant’s job to have such industry contacts.

D. Passion and Feel for Brand Content

Many of the Employer’s witnesses described the need that a job candidate be passionate about the brand’s unique voice and content. *Cosmopolitan*’s editor-in-chief is looking “for people who have their finger on the pulse of . . . young women’s culture, so the celebrities we care about; the issues we care about, reproductive rights, sexual assault; the lifestyle service that we care about, meaning fashion and beauty, and sex and relationships.” *Delish* desires an employee passion for and understanding of food, including “what people are eating and what people enjoy.” At *Town & Country/ELLE*, an employee “need[s] to speak the language of the beat that they’re covering” and must also demonstrate a passion for the topics they cover. At *Women’s Health*, an employee must show “a passion for wellness and health in whatever shape or form that might mean for them.” *Harper’s Bazaar* looks for beauty editors who are interested in the “science of beauty” and culture and entertainment editors should be able to edit for the target audience with a passion for the subject. An employee at *The Oprah Magazine* must possess a knowledge and a passion for the world of Oprah Winfrey, “embrace the brand that is Orpah Winfrey” and “the things that Oprah stands for,” such as “sensitiv[ity] to the nuances of gender and race and just a general empowerment,” while also being comfortable writing the positive message of the brand. The head of the Visual Group testified that she is “looking for people who love photography, who love visuals,” “who can really pivot quickly between two or three different brands” and who “understand[s] the vision of what that brand is basically hiring us to do.”

The editorial director of the Enthusiast Group Bill Strickland testified that “to be good at your job and to excel, I think you absolutely . . . need to be really living the life” and “if you work at *Runner’s World* and you’re a runner, you have more value than if you don’t.” When asked how the “need or desire to be an enthusiast play out in the staff who are writing the content or editing it,” Strickland responded that “there is a demand to be someone who lives the life.” However, Strickland added that he was “hesitant to say we would never hire anyone who doesn’t run, but we fully expect that people are going to live their passion and that’s going to come out in the work they produce.”

Men’s Health’s editor-in-chief looks for an employee with “an editorial sensibility” who must also be able to “speak to” the male audience “in the way that men speak amongst themselves,” while using “independent judgment that reflects” the editor-in-chief’s own. *Veranda* looks for an employee who “gets [the brand’s] aesthetic,” as does *Harper’s Bazaar*. *Esquire* seeks an editor who “can . . . capture the *Esquire* voice” and fashion editors who “either share the kind of taste of the editors that . . . are currently there or . . . have kind of a new and unique taste that would complement what’s already there.” Although not a necessary qualification to work at *Country Living*, it is preferred that a *Country Living* art department employee “ha[ve] a love for the kind of content that we produce,” and that a brand stylist must “understand the brand” including a focus on vintage items.

E. Specialized Knowledge

The evidence revealed that employees working at the brands have certain expertise associated with the topics covered by the brands. These were expressed in terms of either having extensive knowledge of a particular subject or subjects, or it was the product of specific training and experience. For example, to work at *Seventeen*, “you have to be very knowledgeable about teen culture,” and the social platforms exclusively used by *Seventeen*’s young audience. Therefore, “anyone who works at *Seventeen* needs to have a very deep understanding of not only those platforms, but also the newest trends that are happening on them,” in addition to the “strategy behind” those platforms. The Hearst Autos’ brand officer testified that employees must have the ability to evaluate a car for a product review, and “knowledge of the industry[,] and vehicles[,] vehicle dynamics behavior” as well as “the vehicle landscape.” At *Harper’s Bazaar*, a digital fashion editor’s deep knowledge of the fashion gives her the requisite ability to be a social media influencer in consumer fashion buying. *ELLE* digital editors must have a strong knowledge of designers, the models and beauty brands of the moment. At *Town & Country/ELLE*, beauty editors also “have very specialized skill sets.” and “know a lot about their specific subject area.” At *Country Living*, the current agreed-upon unit homes editor has “a deep knowledge of antiques.” In the Entertainment Hub, Peck described the skills and qualifications of a team member as having a “keen understanding of the entertainment industry” and more of a strategic thought process when it comes to” that industry. Although not a prerequisite for hiring at *House Beautiful*, some employees at that brand have an “extreme knowledge of the design community” and design brands.

For food content creators at the *Food Network Magazine* and *The Pioneer Woman*, the brands seek employees with a “deep knowledge of food and recipe content,” with the “ability to edit recipes,” “build recipe line-ups” and “work with the [Food Network TV] test kitchen to resolve issues with recipes.” This requires a job candidate to have “a culinary degree or at least . . . a strong knowledge of food and recipes.” Moreover, the brands’ lifestyle content creator positions “require a working knowledge of the chef world and the restaurant world and the players involved, [and] the talent at Food Network.” However, at entry level positions, the brands may hire “someone with no experience in food coverage. At *Delish*, a culinary background, such as prior restaurant experience, is required for working in the test kitchen.

Because the voice of *Women’s Health* is “science-backed, expert-based,” an editor there must “be able to read a scientific study and then conduct an interview with an academic researcher and ask smart probing questions to really get at the meat of what that study is all about.” At *Car & Driver*, an editor’s knowledge of cars gives them the ability “to know the right questions to ask of the executives, designers, and engineers.”

The staff at the Enthusiast Group also need to be experts: “whether it’s how to come back from an injury or how much mileage to do, or with *Popular Mechanics*, how to use a cordless drill, we have to be experts there and we have to use it.” However, according the Group’s executive director Strickland, there is no formal training to work at the Enthusiast Group:

depending on someone's knowledge that they come to us with or experience, start out with sort of the simplest things. Maybe a rain jacket before you, like, try to give an opinion on a bike. And then as

you would ride more bikes or use more shoes or more cordless drills for *Popular Mechanics*, as you gain experience, you get to do more and more complex tests.

Similarly, *Cosmopolitan* provides its editors with informal “learning . . . on the job training: “voice is something that we work on a lot because it is so unique to our brand.”

Some brands require more formal training. For the position of fitness editor at *Women’s Health*, the brand “make[s] sure that individuals who we hire into that team either already have their personal training certification or that they . . . confirm that they will work toward it upon joining our team.” The purpose of the certification is so that the content displayed or described is accurate and safe for the reader. Although not required for certain positions, the brand will encourage taking nutrition classes and cooking class because it “makes you a better health and wellness editor overall.” Similarly, *Men’s Health* has provided funds for editorial employees to obtain fitness certifications because Google’s search engine gives a higher ranking to articles written by someone with a certification. However, he stated, without providing specifics, that for “most staffers,” obtaining a certification is not a job requirement.

Science-backed expertise is also a vital aspect of the *Good Housekeeping Institute*, which, along with the other brands in the Lifestyle Group, hires “a lot of experts in a lot of areas.” In addition to testing products, the lab’s agreed-upon unit employees -- senior chemist, chemist, senior testing editor/producer, product analyst, senior editor and editorial assistant – not only create test data for brand content, but provide the expert sources for brand content.

Indeed, because creating brand data content is also the job of the vehicle testing positions at *Car & Driver*, certain specialized knowledge is required of its employees. “Road warriors” at *Car & Driver* create pre-testing data in the brand’s garage; and the five agree-upon unit employees must have training to drive cars at high speeds at the Chrysler proving grounds in order to collect instrumented-testing data. However, unlike the *Good Housekeeping Institute*’s lab scientists, there is no formal training required for these technical positions. Brand officer Alterman testified that “a couple . . . are self-taught, but are sort of physics and engineering minded,” while providing an example of a road warrior who became an assistant technical editor based on learning the processes and equipment of instrumented testing. In particular, a testing editor:

need[s] to be conversant in vehicle dynamics, vehicle physics[;]
needs to know all the pieces of the vehicle and how they work[;]
need[s] to be able to manipulate the data that's coming out of the
[data-collection instrument attached to the car] and understand what
all of that means[; and] need[s] to be able to devise and execute new
tests. Anything related to testing the vehicles, including all sort of
new technologies, is something that the testing directors is well
abreast of.”

Similarly to instrumented testing editors, editors at *Road & Track* “need to know how to drive a performance car on track and understand how it handles,” and have “some technical understanding

of what's going on with the cars themselves.”⁵² However, to work at the three Hearst Autos brands, an engineering degree is not required for a petitioned-for unit position, and the Employer identified no petitioned-for unit employees with such degrees.⁵³

IV. JOB TITLES

The record reveals that, regardless of a brand’s unique focus of coverage, style, voice and audience, there is a wide distribution of the same and nearly-identical job titles across the Employer’s brands. The following are a representative sample.

A. General Editor Positions

There are agreed-upon unit **senior editors** at *Car & Driver*, *ELLE Decor*, *Esquire*, the *Fashion Group*, *House Beautiful*, the *Lifestyle Group*, *Men’s Health*, *The Oprah Magazine* and *Road & Track*; **associate editors** at *Autoweek*, *Car & Driver*, *Cosmopolitan*, *ELLE*, *The Food Network Magazine/The Pioneer Woman*, *Marie Claire*, *Prevention*, *Road & Track*, *Town & Country* and *Women’s Health*; and **deputy editors** at HGTV Magazine, *Road & Track* and *Veranda*.

B. Specific Editor Positions

Although the Employer’s brands cover specific topics with a different emphasis and focus depending on the audience, there exist across brands same or nearly-identical positions related to particular types of content. For example, there are agreed-upon unit:

- * **news-related editors** (news editor, senior news editor, associate news editor, news writer, service, news & gear editor, deputy fashion news editor, assistant news editor, news/entertainment editor) at *Car & Driver*, *Cosmopolitan*, *Delish*, The Enthusiast Group, *Good Housekeeping*, *Harper’s Bazaar*, and *Town & Country*.
- * **culture/entertainment editors** (culture editor, culture writer news/entertainment, assistant entertainment editor) *Esquire*, *Good Housekeeping*, *The Oprah Magazine*, and *Seventeen*.
- * **features editors** (features editor, senior features editor, associate features editor) at *Autoweek*, *Cosmopolitan*, *ELLE*, the Enthusiast Group, and *Food Network Magazine/The Pioneer Woman*.

⁵² The Employer’s witnesses gave no testimony regarding how *Road & Track* editors acquire that skill. Although one petitioned-for *Car & Driver* employee – who does not perform instrumented testing -- testified to having taken a professional driving course, reimbursed by the Employer, there is no evidence that such a course is required.

⁵³ When testifying about the skills and qualifications of employees at both *Car & Driver* and *Road & Track*, Sanchez testified, “It's not a requirement, but they often have an engineering degree, and have some technical understanding of what's going on with the cars themselves.” This testimony is not supported by Edward Alterman’s more specific testimony, in which the only persons having engineering degrees identified by Alterman were two individuals whom the parties agree are supervisors under the Act.

- * **test editors** (senior test editor, test editor, senior testing editor/producer, road test editor, deputy testing director) at *Autoweek*, *Car & Driver*, The Enthusiast Group, and *Good Housekeeping*.
- * **lifestyle editor/writers** (lifestyle editor, lifestyle writer, associate lifestyle editor) at *Country Living*, *Esquire*, *Good Housekeeping* and *The Oprah Magazine*.
- * **social editor positions** at (social media editor, social editor, associate audience editor, content strategy editor, social media editor, content strategy manager, audience engagement manager) at *Car & Driver*, *ELLE*, the Enthusiast Group, *Esquire*, *Good Housekeeping*, *Marie Claire*, and *The Oprah Magazine*, *Seventeen* and *Women's Health*.
- * **health-related editors** (fitness, training & health editor, health editor, health director, health & nutrition writer, health editor) at The Enthusiast Group, *Prevention*, *Men's Health*, *The Oprah Magazine*, and *Women's Health*.
- * **fashion-related editors** (fashion editor, associate fashion editor, senior fashion editor, fashion director, fashion assistant) at *ELLE*, the Fashion Group, *Marie Claire*, *Harper's Bazaar*, and *The Oprah Magazine*.
- * **beauty-related editors** (senior beauty editor, beauty editor, assistant beauty editor, associate beauty editor, beauty assistant) at *Cosmopolitan*, *Harper's Bazaar*, the Lifestyle Group, *Marie Claire*, and *The Oprah Magazine*.
- * **market editors positions** at *Country Living* (market editor, associate market editor, market assistant, style and market editor) at *ELLE*, *Harper's Bazaar*, *House Beautiful*, and *Veranda*.

C. Copy and Research Positions

Regardless of the of content that is researched and copy-edited, numerous brands have agreed-upon unit:

- * **copy editor positions** (copy chief, copy editor, copy and research editor, senior copy editor) at *Autoweek*, *Car & Driver*, *Cosmopolitan*, *Country Living*, *ELLE*, *Esquire*, *Harper's Bazaar*, *HGTV Magazine*, *House Beautiful*, The Lifestyle Group, *Men's Health*, *Food Network Magazine/The Pioneer Woman*, *The Oprah Magazine*, *Town & Country*, and *Veranda*.
- * **research positions** (research chief, research editor, senior research editor, associate research editor, assistant research editor, copy & research editor, researcher) at *Car & Driver*, *Cosmopolitan*, *Country Living*, *ELLE*, *Esquire*, *Food Network Magazine/The Pioneer Woman*, *Harper's Bazaar*, *HGTV Magazine*, *Men's Health*, *Town & Country*, *Veranda*, and *Women's Health*.

D. Art and Design Positions

Regardless of the look and style of the brands, throughout the petitioned-for unit there are agreed-upon unit:

- * **art-department positions** (art director, associate art director, assistant art director, deputy art director, digital art director) at *Cosmopolitan*, *Country Living*, *Delish*, *ELLE*, The Enthusiast Group, *Food Network Magazine/The Pioneer Woman*, *Good*

Housekeeping, Harper's Bazaar, HGTV Magazine, House Beautiful (associate art director), *Men's Health, Marie Claire, The Oprah Magazine, Road & Track, Town & Country, Veranda,* and *Women's Health*.

- * **design positions** (senior designer, design director, deputy design director, designer, lead motion graphics designer, digital designer, design assistant) at *Car & Driver, Cosmopolitan, ELLE, ELLE Decor, The Enthusiast Group, Esquire, Good Housekeeping, Harper's Bazaar, House Beautiful, Marie Claire, Men's Health, The Oprah Magazine, Prevention, Seventeen, Town & Country,* and *Woman's Day*.

E. Photography/Videography

Not only does the Visual Group have various visual editor and photographer positions, there are agreed-upon unit **photographer positions** (photographer, staff photographer, assistant photographer/videographer) at The Enthusiast Group (photographer), *Country Living, Food Network Magazine/The Pioneer Woman*. Furthermore, *Cosmopolitan, ELLE, Esquire, Good Housekeeping, Harper's Bazaar, Men's Health* and *Seventeen*, each have employees with **video-related positions**, such as video producer, associate video producer, cinematographer and shooter/editor. There are also agreed-upon unit **photo editor positions** (photo editor, associate photo editor, assistant photo editor) at *ELLE, The Enthusiast Group,* and *Food Network Magazine/The Pioneer Woman*.

V. EMPLOYEE TRAVEL

Both Petitioner and the Employer elicited testimony regarding the extent to which employees attend events outside the office and travel for work.

The fashion-focused magazines include a wide range of out-of-office work. *Cosmopolitan's* employees attend “[New York] Fashion Week, beauty industry events, movie premieres, red carpets[, and] parties, dinners, press trips” hosted by the fashion and beauty industry. The brand’s editor-in-chief stated that, because the fashion hub team attends international fashion shows, her own staff does not attend those. Editors covering consumer travel may travel overseas with the accommodations paid by the product covered (such as a hotel); features editors, and editors covering sex and health, may attend medical conferences. Fashion editors at *Harper's Bazaar* attend the fashion shows in New York, London, Paris and Milan, all paid by the Employer. Additionally, beauty department employees “get invited six to eight times a year” to attend luxury brand “press junkets.” Fashion and beauty employees also attend product launches and market appointments where designers and manufacturers will show their new products. Culture editors often attend cultural events, like movie screenings. Members of the fashion and beauty team at *Marie Claire* attend fashion weeks domestically and in Europe, as well as press events hosted by brands during a fashion week. The evidence indicates that the travel to these events would be paid by *Marie Claire* if the brand’s budget permits it. When an event is local, either the brand or *Marie Claire* reimburses for transportation.⁵⁴ At least one social editor went on a Facebook press trip in October 2018.

⁵⁴ Editors from *ELLE* and *Harper's Bazaar* would likely also attend the same press events.

The executive managing editor for *Town & Country* and *ELLE* stated that both the fashion and beauty editors at both brands “get invited to the same events and trips,” such as “market appointments, usually held in New York, or dinners and lunches with fashion and beauty brand executives.” They also “all go to the same shows at [New York] fashion week, and they see each other at industry events.” Both fashion teams travel to the shows in Milan, Paris and London, and “attend press trips overseas, which occur five or six times a year.” Entertainment and culture editors attend “screenings, book parties, book events, or exhibits,” and the *Town & Country* travel editor “tends to spend a good deal . . . of the time outside the office traveling, so she has material to write about.” *ELLE*’s digital director testified that *ELLE* digital staff attend similar events locally because “it’s very important that I can rely on my team to go to all of these events and pinpoint the trends . . . that we can cover on a website and have a real point of view about it.”

Fashion hub employees attend fashion shows within the tri-state area. The hub’s chief fashion director stated that “historically” fashion team members have traveled to the Paris and Milan fashion shows, but “it just totally depends on whether we have the resources [and] bandwidth.” One petitioned-for employee recently attended a trade show in Milan. An agreed-upon unit entertainment director in the Entertainment Group testified that he has attended photoshoots outside New York, including in Los Angeles, Boston and London, all paid for by the Employer. As stated above, a primary function of the Talent Team is to preview entertainment products (movies, television shows, plays, musicals, music) before their release.

Esquire employees also perform a wide range of out-of-office work depending on the coverage area. *Esquire* fashion editors may travel to Europe for the fashion shows or market meetings, which are most often paid by *Esquire*. *Esquire* editorial employees will attend photo shoots usually in the New York City tri-state area or in California, and “occasionally, Europe,” all funded by the brand. *Esquire* also pays for lifestyle or culture editors to travel domestically to cover their stories; for example, politics editors may travel to Washington, D.C. One *Esquire* editor is paid by *Esquire* to “travel[] maybe half a dozen times a year to go to test-drive cars” for the brand’s annual best-car-of-the-year feature. Associate Lifestyle Editor Sarah Rense testified that, for the purpose of writing stories, she has attended press events in California, Philadelphia and Kentucky, and a trade show in New Orleans.⁵⁵ paid for by *Esquire*. She has also traveled to Puerto Rico and will be going to Trinidad for an unspecified “*Esquire* event.” She attends “product reveals” regularly in New York City.

Women’s Health editors attend press events, domestically and overseas, in the health and wellness area. Editors also attend “[l]ots of workouts,” and takes classes such as yoga or meditation. Editors also appear on health-and-wellness focused panels. In addition, employees “are invited often to run races” in locations throughout the U.S.

Attending trade shows are part of the work at both *Country Living* and *ELLE Decor*. *Country Living*’s Alabama employees attend gift shows in Atlanta and New York, as well as the biannual High Point Furniture Fair in North Carolina. The brand also sends three Alabama editors to attend

⁵⁵ The New Orleans trip was paid by *Esquire*, where two of the other trips were paid by a product manufacturer.

Country Living fairs sponsored by the brand, which occur three times a year, and are “basically a huge antique show with a layer of presentations and a layer of food.” The editors’ role at the fairs would include hosting a panel with a designer featured in the magazine, and talking to vendors and shoppers to understand the market and develop story ideas. *Country Living*’s New York employees are not “required to attend events regularly as part of their work.” *ELLE Decor* employees attend three or four annual trade shows where manufacturers will show their latest products to the press. The evidence shows that employees have attended trade shows and other events in the U.S. (such as the High Point Furniture Fair in North Carolina), as well as in London, Milan, Paris, Austria and St. Bart’s. *ELLE Decor* pays for the employee’s attendance at trade shows and events sponsored by the brand.

On average, five or six *Car & Driver* employees travel to auto shows, as well as take press trips and attend car launches, arranged and paid for by car manufacturers. On press trips, editors are introduced to new cars and products lines, which they may drive and write about upon after the trip’s conclusion. Those trips typically last two or three days, and can be in the U.S., Europe, Japan or Korea. *Road & Track* and *Autoweek* employees also attend the auto shows, and take press trip arranged by manufacturers.

House Beautiful employees may attend press events and product launches on their own initiative, but because they are normally sent products from manufacturers, attending press events and launches is not considered by the Employer’s witness to be “part of their job.” Similarly, the chief of the Enthusiast Group testified that his staff attend press events and product launches “as little as possible” because “[w]e would rather have the gear in and be able to do comparative qualitative testing.” However, service, news & gear editor Dawson testified that he and other editors were sent to cover the New York City marathon, and Dawson has also traveled to Massachusetts and Colorado for “classic reporting trips where I report from the ground on whatever the topic or subjects [] I’m reporting on.”

At *The Oprah Magazine*, the brand’s fashion editors attend New York fashion shows, but do not travel to Europe as do fashion-focused brands. The books editor attends book conferences.⁵⁶ Employees working on the digital side do not travel “extensively,” but attend movie screenings and “pop up shops or happy hour events that they’re invited to by publicists and things like that.” The budget for *Seventeen* “usually doesn’t include travel,” but editors travel to events they cover on occasion; for example, the attendance of an editor at an event in Chicago paid for by a television network. International press trips are “rare,” but the Employer’s witness gave one example of an editor traveling on a press trip in London. Editors also attend entertainment screenings locally.

Best Product’s senior home decor editor has attended three press trips since working at *Best Products*, one of which was to California. *Delish* employees occasionally may attend product launches or restaurant openings; the video team members at *Delish* mostly shoot in the test kitchen, but may travel out of town for feature shooting. Employees at *Food Network Magazine* and *The Pioneer Woman* do not travel internationally, but they do attend book events, and product launches and restaurant openings domestically. They may travel out of state if, for example, there is an out-

⁵⁶ The brand’s books editor is not listed in the Employer’s position as either a petitioned-for employee or supervisor. However, the assistant books editor is an agreed-upon unit employee.

of-state talent shoot, or big event sponsored by Food Network TV. A staff writer for the *Good Housekeeping*, *Prevention* and *Woman's Day* testified that she attends press events in the New York area, including book events and product launches. *Men's Health* editors will attend product launches or conferences regarding topics that the editor covers. Travel may include "experiential things," like "a new hotel or a new travel experience that someone wants them to check out."

VI. Cross-Brand Hiring

The Employer elicited from most of its witnesses testimony regarding employees who either previously worked for another Employer brand, or left the witness's brand to work for another Employer brand; some of this testimony was also elicited by the Petitioner. In summary, the record revealed the following.

- * At *ELLE Decor*, an agreed-upon unit copy chief began her career as the deputy copy chief at *Cosmopolitan*; and *ELLE Decor* hired an agreed-upon unit market editor from *HGTV Magazine*.
- * *Delish* hired its deputy editor (stipulated supervisor) from the *Food Network Magazine*; its food director (stipulated supervisor) from the *Food Network Magazine* and its senior features editor (disputed supervisor) from *Cosmopolitan* "because she was dying to get into the food universe."
- * *House Beautiful* has hired an agreed-upon unit style director from *ELLE Decor* (its former interiors editor); and a former unidentified digital editor from *The Oprah Magazine*. Furthermore, an assistant to *Delish/House Beautiful*'s Executive Director left to *Cosmopolitan* "because her real dream job was Cosmo."
- * *Men's Health*'s agreed-upon unit associate fitness editor previously worked as the Snapchat editor at *Popular Mechanics*, and *Men's Health*'s current agreed-upon unit senior style and gear editor previously worked at *Best Products*.
- * At *Women's Health*, the beauty editor (disputed supervisor) had previously been a senior beauty editor at *ELLE.com*.
- * The *Food Network Magazine* has hired a deputy editor (stipulated supervisor) from *HGTV Magazine*, a features editor (agreed-upon unit employee) from *HGTV Magazine*, a research chief (agreed-upon unit employee) from *The Oprah Magazine*, and an unidentified editor from *Marie Claire*, who left after about two months to work at *Cosmopolitan*.
- * The current managing editor of *Harper's Bazaar* had been an assistant editor at *Cosmopolitan*; and the current fashion news editor (disputed supervisor) has worked at *ELLE*.

- * *The Oprah Magazine's* agreed-upon unit art director previously worked at *House Beautiful*, and its agreed-upon unit associate art director had worked at *Town & Country*.
- * At *ELLE*, the Executive Editor (stipulated supervisor) had worked at *Harper's Bazaar*; and it recently hired an unidentified employee from *Marie Claire* to work as a deputy editor.
- * A former freelancer at *Good Housekeeping* was hired by *Seventeen* in November 2019 as a Shooter/Editor specializing in TikTok.
- * At *Marie Claire*, the features and special projects director (stipulated supervisor) and an agreed-upon unit beauty editor have prior work experience at *Cosmopolitan*. Furthermore, two unidentified employees from *Marie Claire* went to work for *Cosmopolitan*.
- * *Country Living's* digital director testified that one unidentified employee hired into the digital side of *Country Living* came from *Good Housekeeping*;
- * During the existence of the Enthusiast Group before the addition of *Popular Mechanics*, one employee transferred into the Group from another Employer brand, although that brand was not identified by the Employer's witness.

VII. DIFFERENCES IN PHYSICAL OFFICE SPACE

The record contains testimonial and documentary evidence regarding certain differences in the physical office space among the brands, and brand-specific policies related to those differences.

As stated above, Hearst Autos has a garage for pre-testing, uses the Chrysler proving ground for instrumented testing, and maintains rotation procedure for signing out cars for short- and long-term testing. As also described above, the *Good Housekeeping Institute* has a number of labs in which a variety of products are tested.

ELLE, *Town & Country*, *Harper's Bazaar* and *Marie Claire* each have "fashion closets" that contain the clothes and accessories called in for from designers for selecting and using in photoshoots. Each brand assigns a fashion assistant, along with temporary employees, to maintain and secure the closets. At *Harper's Bazaar*, the jewelry is housed in a safe, and an assistant accessories editor sits in the closet along with six temporary closet assistants, whose job includes receiving and unpacking the shipped items, organizing them by photoshoot, and repacking them for transport to the shoot. Only the brand's fashion department has access to the closet, and it remains unless the assistant accessories editor is present. *Esquire* and *Men's Health* share a fashion closet, in which *Men's Health's* items take up a quarter to a third of the closet's contents. Fashion department staff have exclusive access to the room, but the room's "door is open, people could certainly come and go." The room is staffed by a fashion assistant who, along with fashion editors, "keep[] tabs on what's going into that closet and what's coming out." The Fashion Group also

maintains a fashion closet containing clothing and accessories accessible to the entire team, and houses a safe for expensive jewelry to which only the accessories director and her assistant have access. The Group has established a procedure of logging the closet's contents in and out to assure that nothing is lost.

The Visual Hub staffs and maintains the thirteen in-house photo studios (collectively called "Studio D") on the 16th floor of Hearst Tower. The group also maintains a photographic equipment room and two prop rooms. *Country Living* and *Veranda* share a photo studio at the Alabama facilities and an associated "craft and prop area where [they] store all the photo props," such as backdrops and surfaces used in the creation of the sets.

At the Alabama facilities, there is a prop closet "that has dishes, furniture, linens[. a]nything that you would see within the pages of the magazine." *ELLE Decor* maintains a "prop closet" which is used for maintaining the products called in from manufacturers and then transported to and from the photo studio for shoots. Some items are kept in the short term, such as furniture and lamps, and sent back to the manufacturer after the shoot. Other times are housed in the long term: wallpaper and fabric samples, as well as "tabletop" items, such as "dishware, flatware, glassware" and "vases for flowers." *House Beautiful* has a "work shop" in which is kept "bolts of fabric, and . . . throw pillows, should [the brand] need them for shoots and whatnot."

A section of the studio in the Alabama facilities is "a working kitchen" in which *Country Living* "develop[s] and test[s] recipes, and cook[s] all the food for the photoshoots."⁵⁷ *Delish* has two test kitchens located on the 29th floor in Hearst Tower, as does the Lifestyle Group of *Good Housekeeping*, *Prevention* and *Woman's Day*.

The staff access card for the Alabama facilities is used to access the studio and kitchen. Staff are subject to specific policies related to studio and kitchen, which cover: labeling and returning props; keeping the studio clean; restricting use of the kitchen sink, utensils, food and refrigerator; using the dishwasher; permission to use the washer/dryer; turning off lights and returning a key to a lockbox. There is also a separate policy for the use of the "crafts closet" applicable to *Country Living*, which "was originally drafted in New York" and updated by the managing editor several years prior to the hearing.

⁵⁷ Although the Employer's witness testified that the kitchen is "primarily used by *Country Living*," the witness specified that "*Veranda* doesn't do food."

VIII. SHARED EMPLOYEES ACROSS BRANDS

The record reveals instances in which two brands “share” employees in the sense that: (1) one budget provides the salary of an employee who works for several brands; (2) two or more brands split the salary of an employee who performs work on more than one brand; or (3) one brand bills another brand for the work performed for the other brand.⁵⁸

A. *Good Housekeeping, Prevention and Woman’s Day*

Based on the Employer’s organizational charts, approximately one-third of the petitioned-for employees performing work for *Good Housekeeping* and the *Good Housekeeping Institute* are shared with *Prevention* and *Woman’s Day*; in particular, eleven of the thirteen petitioned-for employees performing work for *Woman’s Day*, and eleven of the fourteen petitioned-for employees performing work for *Prevention*, are shared among *Good Housekeeping*, *Prevention* and *Woman’s Day*.

B. *Bicycling, Popular Mechanics and Runner’s World*

Bicycling, *Popular Mechanics* and *Runner’s World* share 13 petitioned-for unit employees who perform tests on products appearing in all three brands. Apart from these employees, and based on the testimonial evidence, the remainder of the petitioned-for employees at the three brands are expected to create, and do create, content for the three brands based on their level of knowledge base and expertise. However, the organizational chart for the Enthusiast Group reveals vertical lines of report that are brand-specific. There is an open position for a deputy editor for *Runner’s World* and *Bicycling*, to whom five agreed-upon unit employees report (four service, news and gear editors, and one fitness, training & health editor). There is also a separate deputy editor for *Popular Mechanics* to whom four agreed-upon unit employees report (a how-to editor, a senior news editor, and two news editors.)

C. *Men’s Health and Esquire*

Men’s Health and *Esquire* share a managing editor, who oversees six agreed-upon unit employees shared between the two brands: a deputy managing editor, three copy editors and two research editors. The two brands also share a stipulated supervisor (titled fashion director at *Men’s Health* and style editor at *Esquire*) to whom one shared agreed-upon unit fashion assistant reports. Those shared employees represent approximately one-third of the *Men’s Health* petitioned-for unit, and one-third of the *Esquire* petitioned-for unit.

D. *Veranda and Country Living-Alabama*

Two petitioned-for employees reporting to the shared managing editor of *Veranda* and *Country Living-Alabama* (an assistant managing editor and a copy and research editor) perform work for both brands. Although *Veranda* and *Country Living-Alabama* each have their own art directors, the three petitioned-for employees reporting to them (assistant art director, photograph and photo

⁵⁸ As stated above, hub employees create content appearing in many brands.

assistant) are shared by both brands. Therefore, five of eight petitioned-for *Veranda* employees are shared with *Country Living*-Alabama and 5 of 11 *Country Living* employees are shared with *Veranda*. According to brands' managing editor, the shared employees go to both staff meetings and interact with employees at both brands; however, "if you're exclusively *Veranda* and exclusively *Country Living*, you're pretty much only interacting [with each other] on more of a social level."

E. *Food Network Magazine and The Pioneer Woman*

All of the 14 petitioned-for unit employees performing work for the *Food Network Magazine* also perform work for *The Pioneer Woman*. *The Pioneer Woman* has an additional five employees who work exclusively for that brand.

F. Other Brands

As stated above, until recently *Car & Driver* and *Popular Mechanics* shared the salary of one editor who wrote auto-related content at both *Popular Mechanics* and *Car & Driver*. An associate editor on the digital side of *Town & Country* is shared between that brand and the digital component of *ELLE Decor*. One of the research editors shared between *Men's Health* and *Esquire* also performs work for *Women's Health*; *Women's Health* and *Men's Health* also share an assistant editor and recently-hired junior designer. *ELLE & Town & Country* share a credits editor. As stated above, *Good Housekeeping/Prevention/Woman's Day's* chief food director and her team -- which includes two petitioned-for employees -- has created content for *Country Living*, *Women's Health* and *The Oprah Magazine*, which is billed to the brand for which the work is performed.

G. "Business" Job Titles

Editorial business manager Kate Remulla reports to the managing editors of *Harper's Bazaar* and *Oprah*, as well as to the shared managing editor of *ELLE* and *Town & Country*. Editorial business director Carol Luz reports to the managing editor of *Harper's Bazaar*, as well as the shared managing editor of *ELLE* and *Town & Country*. *Cosmopolitan* and *Women's Health* share an editorial business coordinator (Caryn Kanare) and an editorial business associate (Mariah Schlossman).

IX. EMPLOYER-PROVIDED TOOLS AND TRAINING

A. Proprietary Tools

The editors involved in creating digital content at every Employer brand use the Employer's proprietary content management system called MediaOS2 and nicknamed "Patty."⁵⁹ The system is used for both "building" and editing articles, as well as publishing them to the brand's website. The system also allows the editor to connect the article to the brand's other online platforms.

⁵⁹ The record reflects that the print magazines build their content with a non-proprietary content management system called WoodWing.

Atlas is another proprietary tool used by all brands that allows editors to pull the Employer's proprietary images from its archive for use in content at all brands and hubs. Otherwise, editors would pull images from commercial photo archives made available to them by the Employer.

B. Cross-Brand Training

The Employer provides training to employees across brands in the use of Patty. For example, a recently developed feature in Patty is "Custom Feeds" which represents a new method of updating, configuring and displaying website content. Custom Feeds is currently rolled out to certain brands, including *Car & Driver*, *ELLE*, *Cosmopolitan*, *Prevention*, *Marie Claire*, and *Runner's World*.

The training includes monthly meetings regarding content strategy and best practices conducted by the Employer's in-house experts in New York and attended by editors at all brands who have particular related responsibilities for online content. For example, a monthly group meeting is conducted for editors involved in the posting of content on their respective brand's social media platforms. The invitees and attendees to the meeting conducted on January 13, 2020, include the following agreed-upon unit employees:

- Digital Editor, *Road & Track*
- Social media editor, *Car & Driver*
- Editorial assistant, *Good Housekeeping*
- Content strategy manager, *Seventeen*
- Social editor, *Marie Claire*
- Editorial Assistant, *Veranda*
- Content strategy editor, *Good Housekeeping*
- News editor, *Best Products*
- Social editor, *Enthusiast Group*
- Health editor, *Prevention*
- Audience engagement manager, *Women's Health*
- Associate Editor, *Town & Country*
- Assistant editor, *Prevention*
- Content strategy editor, *Country Living* digital
- Assistant editor, *Road and Track*
- Associate audience editor, *Esquire*
- Social media editor, *ELLE* digital
- Social media editor, *The Oprah Magazine*

The Employer also provides training sessions for editors to help with their responsibilities related to search engine optimization (SEO). The invitees/attendees for one of those trainings occurring on December 11, 2019, included the following agreed-upon unit employees:

- Social media editor, *Car & Driver*
- Editorial assistant, *Good Housekeeping*
- Senior Beauty Editor, *Women's Health*
- Associate editor, *Road & Track*
- Editor, *Road & Track*

Video producer, *House Beautiful*
Culture writer, *The Oprah Magazine*
Features editor, *Men's Health*
Assistant editor, *Road & Track*

On October 15, 2019, the Employer conduct a meeting to review best practices for placing content on the Apple News+ content platform. The attendees/invitees included the following agreed-upon unit employees:

Beauty editor, *Marie Claire*
Deputy manager editor, *The Oprah Magazine*
Senior Beauty Editor, *Women's Health*
Social editor, *Marie Claire*
Associate Audience Editor, *Esquire*
Senior Copy Editor, *The Oprah Magazine*
Editorial Assistant, *Veranda*
Associate Editor, *Marie Claire*
Deputy Managing Editor, *HGTV Magazine*
Assistant Editor, *The Oprah Magazine*
Designer, *Marie Claire*
Assistant Managing Editor, *Marie Claire*
Fashion Editor, *Marie Claire*
Senior Editor, Art & Culture, *Town & Country*
Art Director, *Road & Track*
Deputy Editor, *Road & Track*
Assistant Managing Editor, *Country Living*
Copy Chief, *ELLE Decor*
Copy Chief, *Town & Country*

On October 2, 2019, the Employer conducted a TikTok best practices meeting, inviting the following employees:

Deputy Editor, Content Strategy, *Men's Health* (disputed supervisor)
SnapChat Editor, *Cosmopolitan* (agreed-upon unit employee)
Social Editor, *Complication* (disputed supervisor)
Deputy Editor, *Complication* (agreed-upon unit employee)
Senior Content & Video Strategist, *Delish* (agreed-upon unit employee)
Deputy Editor, *Men's Health* (agreed-upon unit employee)
Associate Video Producer, Video Team (agreed-upon unit employee)
Content Strategy Manager, *Seventeen* (agreed-upon unit employee)

On July 31, 2019, the Employer held a Twitter strategy session, described by an invitee as a “fairly informal kind of swapping of information” and “open conversation between brands who use Twitter in innovative ways.” Invitees/attendees included:

Deputy Editor, Content Strategy, *Men's Health* (disputed supervisor)
Associate Audience Editor, *Esquire* (agreed-upon unit employee)
Senior Culture Editor, *ELLE* (disputed supervisor)
Deputy Editor, *Cosmopolitan* (agreed-upon unit employee)
Social Editor, *Cosmopolitan* (disputed supervisor)
Social Media Editor, *ELLE* (agreed-upon unit employee)

X. CROSS-BRAND CONTENT CREATION AND PUBLICATION

The record reveals either that brands at times co-create content, or content is presented to readers as co-created. Furthermore, through various means, one brand's content may appear as the content of another's.

A. Collaborations

1. *Breaking Even*

Petitioned-for employees at *Delish* and *Men's Health* created a video series called "Breaking Even," which was "a cooking and fitness series" in which editors "would cook meals that equated to a certain number of calories, and then [] would demonstrate a workout that would burn off those calories." *Delish* initially pitched the series to Facebook, who stipulated that *Delish* bring in a health and fitness brand to create the content. Thus, beginning in July 2019, *Delish*'s petitioned-for senior content & video strategist, as well as a lead creative video producer (a disputed supervisor) collaborated with *Men's Health*'s petitioned-for fitness director and associate fitness director. In particular, the *Men's Health* employees consulted with *Delish* employees on "whether the concept was feasible, how to present it responsibly [and] what type of workouts would necessitate the actual activity needed." The *Men's Health* fitness editors recommended and had "the final say" on which fitness trainers to use, "served as a contact with" the trainers, and "designed the programs that those trainers used." In addition to the trainers, the two *Men's Health* employees, in addition to an associate visual editor from the Visual Group assigned to *Men's Health*, acted as talent in the series. Shooting of the series took place during a week in September 2019, which work included both the *Delish* and *Men's* employees and a video producer/director of photography from Video Hub who "he has knowledge of how the *Men's Health* brand shoots exercise content." The series ultimately appeared on *Delish*'s Facebook page in December 2019.⁶⁰

2. *Ten Best Cars*

The *Good Housekeeping Institute* created a feature called The Best New Cars of 2019. The first page of the content reads: "Our *Good Housekeeping Institute* experts joined forces with *Car and Driver* to prep this fully loaded guide to the year's best cars, all tested by our engineers." Under the headline "Meet Our Experts" were five individuals found on the *Good Housekeeping Institute* organizational chart (including one petitioned-for employee), together with *Car & Driver*'s chief

⁶⁰ In the job posting for *Delish* food editor, it states that position will "Work with other Hearst brands for on-camera partnerships."

brand officer and one petitioned-for assistant editor from that brand. Two of the *Good Housekeeping* “experts” travelled to Ann Arbor twice to test drive, alongside *Car & Driver* editors, some of the vehicles that *Car & Driver* were evaluating for their Ten Best Awards feature. *Car & Driver* assistant editor Andrew Dorian testified that he “assist[ed the *Good Housekeeping* experts] in naming their best cars.”

3. *Cosmopolitan and Women’s Health*

In about the spring 2018, *Cosmopolitan* and *Women’s Health* “co-published a big feature story about the mental health effects . . . on survivors of gun violence.” An editor from each brand worked on the project, funding for outside reporting was provided by both brands, with “identical content [appearing] in both . . . magazines, down to the design details.”

4. *Men’s Health and Women’s Health*

Editorial employees of *Men’s Health* and *Women’s Health* have worked together on a project developing a fitness app called All Out. The editor-in-chief of *Men’s Health* described the collaboration as requiring regular meetings between staff members of the two brands for the purpose of “[c]oming up with ideas for content, executing the content, offering notes on the iteration process, collaborating as far as promoting across both our editorial channels and our social media channels.” The editor-in-chief testified, without elaborating, that the *Cosmopolitan* and *Prevention* brands are also “nominally” but not substantively involved in the project.

The editor-in-chief further stated that there are currently two “joint editorial initiative[s]” between editorial employees of the two brands – one regarding the Me Too movement and another regarding sexual health. He described these as an “intensively collaborative experience where the editors at *Women’s Health* and *Men’s Health* are working together to create their content.” When published, “[t]he substance of the content is identical,” but “optimize[d] . . . as far as visuals and voice for the respective” brands.

5. *Runner’s Alliance/Run Safe*

In describing the similarities of her brand to *Men’s Health*, the editor-in-chief of *Women’s Health* stated that “throughout the year there are times when we want to collaborate on projects and maybe put out a survey together and then create content for that.” When asked if there were “other brands that you’ve ever worked with in that regard,” she described that her brand “worked recently with *Runner’s World* on a project called Run Safe,” which was also referred to in the record as the “Runner’s Alliance.” According to the content created in *Women’s Health*:

Women’s Health, together with *Runner’s World*, partnered with Hoka One One and Garmin to develop the Runners Alliance, an expert backed movement that outlines how to help runners in dangerous situations, how to make public spaces safer, and how to de-escalate a scary encounter.

In terms of content, each brand created its own content separately; however, both brands debuted their content in the same month and shared the statistical results of a survey conducted by *Runner's World* on the Run Safe topic. Those statistics were cited, referencing *Runner's World* as the source, in a paragraph within the *Women's Health* content, within certain statistics set forth at the bottom of three of the seven *Women's Health* content pages. In *Runner's World*, the online landing page of the content consists of introductory artwork that reads "Runner's Alliance/Safer Together" above the logos of both brands. The project, which began at *Runner's World* about a year prior to the hearing, is continuing with the participation of both brands.

6. *House Beautiful and Marie Claire*

The editorial director of *House Beautiful* testified to a collaboration on a video "feature package" between that brand and *Marie Claire* arising from an article published in *House Beautiful* "about women buying their first homes." According to the editorial director, "[w]e thought it would be interesting if we went to *Marie Claire* to get some young women, and we interviewed them." Furthermore, "[b]ecause *House Beautiful* does not cover financial content, like *Marie Claire* [she] thought it was important in this type of feature to bring in a brand that covers content that we don't normally cover, which is why we thought it would be valuable to partner with a brand like *Marie Claire*." Ultimately, a video "feature package," that includes interviews of several women, appeared on both *House Beautiful's* and *Marie Claire's* websites.

7. *HGTV Magazine and Food Network Magazine*

The testimonial evidence also shows that The Food Network and *HGTV Magazine* has run two or three collaborative pieces in the span of eight years, one of which appeared in both brands and was described as "HGTV . . . provid[ing] the decorating service information, and *Food Network Magazine* provid[ing] the food and recipes."

B. Syndication

The Employer provides a process – called syndication -- by which Employer-proprietary editorial content created by one brand appears in and as content published by other brands. When the content is published by the other brand, it retains the original brand author's byline; and the reader of the syndicating brand may visit the original writer's "author page" followed by the other syndicating brand's content written by the author. The "author page" displays the author's photo, biographical information and brand affiliation.

The record reflects that syndication is used exclusively for digital content, and "as a way to boost page views" at a brand's website. *Esquire* associate lifestyle editor Rense testified that "it is encouraged to take stories that other brands have written under Hearst and, if they're an editorial fit for your website or if they're being very successful on their home websites, to syndicate them and put them . . . on the *Esquire* website in the hopes of driving either revenue or traffic." *ELLE's* site director estimated that about 10-15% of the content posted per week by her brand is syndicated from other brands. A *Car & Driver* staff editor testified that, after starting to syndicate from other brands in March 2019, those stories became about 10% of the page views on the *Car & Driver* website.

Thus, one of the job functions of a digital editor is to find content from other Employer brands by visiting the other brand's website or by searching Patty. An essential criterion in selecting content from another brand is that it fits with the coverage of the digital editor's brand and that it "work[s] for their audience;" as an example, *Car & Driver* assistant editor Dorian testified to syndicating a story from *Harper's Bazaar* about a famous singer performing in car traffic. Once an appropriate article is found, the editor finds the link and posts his or her own brand's website by using Patty. An editor may syndicate from another brand's content without any permission from, or other interaction with, someone from the other brand. The exception is where the syndicating editor sees the need to inquire about photo rights or using brand-exclusive content. Once the syndicating editor obtains the other brand's content from Patty, the editor may make minor changes to the content to fit with the tone and needs of his/her brand.

When *Country Living's* digital director was asked what content her brand syndicates from, she replied, "it could be any of them," but "most frequently it's *Good Housekeeping* and *Delish* and *House Beautiful*," and "we clone across many other websites too," including *Cosmopolitan* and *ELLE*. *Marie Claire's* digital director testified that she and her deputy editor regularly look at content from *Cosmopolitan*, *ELLE* and *Harper's Bazaar* in order to find content to syndicate; does not "usually" look to *House Beautiful* or *Good Housekeeping*; and does not seek content from The Food Network, *Delish*, *The Oprah Magazine* or *Country Living*. The director of *Harper's Bazaar* digital component testified that the brand syndicates celebrity and entertainment content "[m]ostly probably from like an *ELLE.com* or a *MarieClaire.com*, websites that immediately have fashion and beauty also in their DNA and tend to kind of view these things from the same perspective that we do." *Seventeen's* executive director testified that her brand may syndicate content from *Cosmopolitan* because that brands shares . . . the same voice and celebrity," but the content "has to be *Seventeen* appropriate." The only restriction on syndication revealed in the record is that the content created by the joint venture partnerships with the Discovery channel – The *Food Network Magazine* and *HGTV Magazine* – cannot be syndicated among Employer's other brands.⁶¹

However, the documentary evidence regarding syndication reveals the following.

- * *Car & Driver* news editor Andrew Dawson has had his content syndicated in *Cosmopolitan*, *Esquire*, *Men's Health*, *Prevention*, *Woman's Day* and *Women's Health*;
- * *Car & Driver* staff editor Drew Dorian has had is content syndicated in *Popular Mechanics*, *Men's Health*, *House Beautiful* and *Road & Track*;
- * *Car & Driver* senior news editor Joe Capparella has had content syndicated in *Popular Mechanics*.
- * *Men's Health* associate fitness editor Brett Williams has had his content syndicated in *Prevention*, *Bicycling* and *Runner's World*.

⁶¹ Although not a product of syndication, the Union submitted evidence showing that *Esquire* shares on its Facebook page content from other Employer brands, where the source of the content is clearly identified, including *Best Products*, *Car & Driver*, *Country Living*, *Delish* and *Good Housekeeping*, *The Oprah Magazine*, *Popular Mechanics*, *Prevention*, *Road & Track*, *Runner's World*.

- * *Esquire* associate lifestyle editor Sarah Rense has had her content syndicated in *Good Housekeeping*, *Woman's Day*, *ELLE Decor*, *Delish*, *Country Living*, *House Beautiful*, *Popular Mechanics*, *Road & Track*, *Best Products* and *Veranda*.
- * Staff writer for *Good Housekeeping/Woman's Day/Prevention* Lizz Schumer has had her content syndicated in *Women's Health*.
- * Senior culture editor of *ELLE.com* disputed supervisor Julie Kosin⁶² has had her content syndicated in *Woman's Day*, *Veranda*, *The Oprah Magazine*, *House Beautiful*, *Good Housekeeping*, *ELLE Decor*, *Delish* and *Country Living*.
- * An article written by *Town & Country* news writer Chloe Foussaines appeared on *Veranda's* website.
- * The content of *Best Product's* news & trends editor Caitlyn Fitzpatrick has appeared in *Delish*.⁶³

XI. THE USES OF SLACK AND JOB FUNCTIONS SUPPORTED BY CERTAIN SLACK CHANNELS

The record reveals the regular use by petitioned-for employees of the Employer-provided communication platform called Slack. Slack channels are created for various work-related purposes and each channel may include anywhere from a dozen channel members to several hundred.

Some channels are created to make company-wide announcements for both petitioned-for employees and other Employer personnel. There are also general, but editorial-related channels, such as the “edit-sourcing” channel may be used by an editor at one brand to seek information from knowledgeable editors from other brands about a particular subject of content; it may also be used when a brand is looking to hire an editor.⁶⁴ Employees working in content creation also use Slack channels to publicize and seek feedback from other content creators across brands. The record further indicates that each brand and hub has its own brand-or hub-specific Slack channels on which its own staff are members, and may include members of the hubs who are assigned to particular brands.

Some Slack channels are created for specific projects so that those employees across brands and hubs who are involved in that project can communicate essential information about the project.

⁶² As set forth below, I do not find Kosin to be a supervisor under the Act.

⁶³ The executive director of *Best Products* testified that her brand's content has also appeared in *House Beautiful* and *Good Housekeeping*

⁶⁴ Of the 68 members of this channel, 19 are petitioned-for unit employees working at 16 brands; 4 disputed supervisors from 3 brands; as well as 18 supervisors from 11 brands and the talent hub. The brands not represented in this channel's membership are *Autoweek*, *ELLE*, *Decor*, *Harper's Bazaar*, *The Oprah Magazine*, and *Women's Health*.

The project may be one-time content creation, such as a photoshoot⁶⁵ or collaboration between brands,⁶⁶ or a regularly-recurring project.⁶⁷

A Slack channel can also be created as a communication and resource tool used among employees at separate brands who are responsible for the same type of work. On the “photo-editors” channel, “lots of conversations [are] happening here daily between all the photo editors and visual editors,” such as “different prices of stock photos,” “how the different sites are using [newly-released features] and how the photo editors are helping their team use the new feature.” Culture editors across brands use a Slack channel in which conversations take place about “everything from . . . a new movie . . . to how to get a PR contact at like HBO or Showtime, for example.” There are two Slack channels in evidence focused on the work of those editors whose job is to create and manage the social media content of their brands. The channel “social-link-shares” is where social media editors⁶⁸ place links to articles posted on their brand’s social media so that other social media editors may be alerted to them and post them on their brands. The “socialites” channel is used “to talk about different social best practices [and] what people are noticing across platforms,” as well as to flag third-party platform technical problems to learn whether other social editors are having the same problems for the ultimate purpose of resolving the issue.

Those channels dedicated to a particular type of work may also include members of the Employer’s centralized New York-based team who support editors performing the specific type of work. The evidence shows that these types of channels are used to provide a community support forum for technical questions and problems, and to distribute performance reports to the brand editors which they use to inform and improve their work. The channel “custom-feeds-editors” is used for editors at the brands where the Patty feature was introduced,⁶⁹ and the “edit-newsletters” channel is devoted to supporting editors at brands who build newsletters for their brands (using a platform tool called Sailthru), instead of the work being done as it usually is by the Employer’s centralized New York team.⁷⁰

The Employer provides its editorial personnel across all brands information from an app called CrowdTangle, which monitors the social media traffic generated by brand content. Agreed-upon

⁶⁵ The “tandcwhiteshirts” channel created for a *Town & Country* photoshoot, on which both brand and visual hub staff were members, “so it was easier for us to communicate about the shoot.” .

⁶⁶ Slack was also used as a means of communication between the *Delish* and *Men’s Health* editors working on the *Breaking Even* content collaboration.

⁶⁷ Brand and visual hub employees use The Endorsement Slack channel to discuss “who’s going to book the shoot, who the photographer might be, what the products are.” As stated above, the talent team receives booking requests from the brands in a channel called “celeb video sheets.”

⁶⁸ The members evidenced in the record bore titles of social editors, or social media editors, or “content strategy” titles.

⁶⁹ *Car & Driver*, *ELLE*, *Cosmopolitan*, *Prevention*, *Marie Claire*, and *Runner’s World*.

⁷⁰ In addition to the New York-based centralized newsletter team, the channel’s membership includes agreed-upon unit employees at *Car & Driver*, *Delish* and *Best Products*; a disputed supervisor at *Men’s Health*; two stipulated supervisors at *Esquire*, *Marie Claire* and *Good Housekeeping*; the Enthusiast Group’s Director of Content Operations, as well as the *Men’s Health*’s Executive Editor.

unit employees testified that they receive the CrowdTangle information related to Facebook traffic via a Slack channel called “ct_hearst_trending.” Those employees use the channel to see if their own brand’s stories are performing well and to identify high-performing content at other brands to either syndicate, link them to their own brand’s platforms or find high-performing topics which could form the basis for creating their own brand’s content. There are 102 members on the ct_hearst_trending Slack channel; 39 of the members are petitioned-for employees working at 17 brands and the talent hub; 17 stipulated supervisors from 11 brands; and 8 disputed supervisors from 8 brands.⁷¹ The Slack channel in evidence from January 7, 2020, displayed the posting of high-performing stories from 21 of the 29 Employer’s brands.⁷² Similar to ct_hearst_trending is a channel devoted to “Google Analytics,” which, according to the *Men’s Health’s* editor-in-chief, is the “primary” tool “which allows us to track unique visitors to our sites every month.” The Employer has a centralized team in New York responsible for training, advising and supporting the SEO responsibilities of editors across brands who employ techniques, in the choice of topic and editing of content, to make brand content easier to find in Google search engine.

The largest membership of the editorial-focused channels in evidence is titled “edit-ecomm,” devoted to the e-commerce responsibilities of editors. Certain editors working with digital content across all brands have job duties and responsibilities related to e-commerce and affiliate revenue. As described above, an editor may create digital content that includes hyperlinks and “buy” buttons to direct a reader to an entity – such as Amazon.com – which, through an agreement with the Employer, provides a commission to the Employer if the reader ultimately purchases the product identified in the brand content. The evidence reflects that the Employer assigns the revenue generated in this manner to the brand whose content contained the product link.

All digital content that relates to or includes products – such as product reviews – have the potential to create revenue for the Employer as affiliate revenue. As explained by *Good Housekeeping/Prevention/Woman’s Day* Editorial Director Jane Francisco:

any content that we create that has an opportunity for the audience to purchase . . . is part of e-commerce, so anything from our product review lists to a roundup or a slideshow of products, gift guides, any of those kinds of things, but it could also be . . . an article that’s . . . how to clean your washing machine [in which] there might be product . . . that’s referenced.

Although a product review editor would create “a higher percentage of . . . content [having] e-commerce attached to it” in relation to a health editor, “everyone on the team has goals that are in some way related,” and “everybody in the [*Good Housekeeping*] institute to some degree” has a product attached to their content.

⁷¹ The brands not represented in this channel’s membership are: *Autoweek, Bicycling, Car & Driver, Food Network Magazine, Harper’s Bazaar, HGTV Magazine, Marie Claire, Pioneer Woman, The Oprah Magazine, Popular Mechanics, Runner’s World* and *Woman’s Day*.

⁷² Those brands not included on that day were *Autoweek, Food Network Magazine, Marie Claire, Men’s Health, The Oprah Magazine, The Pioneer Woman, Redbook* and *Veranda*.

The work performed by editors with respect to affiliate revenue includes assuring that content is optimally embedded with affiliate links and creating content that maximizes such revenue. As *Car & Driver* news editor Drew Dawson testified, “what I would do daily is look through our various affiliates[,] . . . take the link for that sale, write it up into a quick story, and link to a few products, perhaps.” Senior home editor Melanie Yates testified that her “work on e-commerce consists of putting together stories that are shoppable for readers.”

The number of editors across brands with e-commerce responsibilities is reflected in the membership of the edit-ecomm channel. Of the channel’s 211 members, about 70 are petitioned-for employees working at 21 of the 29 brands set forth in the petition; about 22 disputed supervisors represent 12 brands and the Fashion Hub; and there are additionally about 45 stipulated supervisors from 23 out of the 29 brands in membership.⁷³ Furthermore, as is the case with other types of work, the Employer has a centralized team in New York – called Commerce Partnerships -- tasked with supporting and encouraging e-commerce work at the Employer’s brands, and that team uses the Slack channel as a communication tool to do its work. As stated by *Esquire* Editor Sarah Rense, “It is a centralized team that I or anyone at the other brands can contact for advice about e-commerce, for data, for whatever they need.”

The edit-ecomm Slack channel reveals several work activities related to e-commerce. Editors regularly post their own e-commerce content in order to alert other brand editors to the e-commerce opportunities. “[A]t least a couple times a week,” *Car & Driver* assistant editor Drew Dorian is “in the ecommerce chat room looking to make sure that [he’s] not missing any good deals that [he] could be sharing with . . . readers.”

Another purpose of the channel is to promote cross-brand syndication. *Esquire* editor Rense described that the channel is “active pretty much every day,” but the evidence shows frequent use around certain retail events, such as Black Friday, Cyber Monday, as well as Amazon Prime Day, for which “people from different brands [share] the stories that they have written for Amazon Prime Day with the other brands, so that if other brands want to syndicate them or use them in any way, they can.” For example, the evidence includes the Commerce Partnerships team member in New York placing on the channel content from *Popular Mechanics* about an Apple earbud sale “so that other brands could syndicate it quickly and easily and capitalize on something that seemed pretty applicable to just about every Hearst brand.”

Moreover, the threads accompanying the brand content postings show brand supervisors directing petitioned-for employees to use the content for their own brands. For example, the Woman’s Health digital director told a petitioned-for associate editor at her brand that “we should cover” the Apple earbud deal (to which the response was “oh definitely”). Another thread shows *Best Products’* executive director telling a petitioned-for news editor that a genetic testing deal content from *Prevention* was a “good post to clone;” and several threads reveal the Enthusiast Group’s Test Director telling the group’s petitioned-for commerce editor to use certain Prime Day deals: an instapot deal posted by *Delish* was “good for [*Runner’s World*] syndication; a bug zapper deal posted by *House Beautiful* was “good for [*Popular Mechanics*]” because “we also cover that in

⁷³ Brands not represented in the membership are *Autoweek*, *Food Network Magazine*, *HGTV Magazine*, *Pioneer Woman*, *Redbook*, and *Veranda*.

our best bug zapper piece ;” a *House Beautiful* security alarm deal was “a good one for [*Popular Mechanics*]; and when the commerce editor flagged a DeWalt tool deal for the Test Director, he responded the photo did not show DeWalt tools but it “would be ideal to use a pic with the brands” “[f]or the [*Popular Mechanics*] audience.”

The edit-ecomm evidence, and related testimony, show that the centralized Customer Partnership team – especially its head Emily Silverman -- is an important participant in the edit-ecomm channel, using it as a space where “the e-commerce team shares stories, shares tips, shares data [and] shares progress updates.” Thus, as with other Slack channels in which a centralized team participates, New York’s e-commerce team will make announcements about new Patty features – such as custom tags and buttons -- used for e-commerce; and as with other Slack channels, editors will use the channel to seek help and information for the benefit of editors across brands. The Customer Partnership also provides editors with information on multi-brand affiliate revenue initiatives.

Because editors with e-commerce responsibilities cannot maximize e-commerce revenue without knowing what content is making revenue, editors use the channel to “keep an eye on what is selling across the company” to see if stories of the type that she creates with affiliate links “are making money,” and the centralized e-commerce frequently posts affiliate-revenue opportunities because “across all of the brands,” team member Silverman “has data on . . . the products that our . . . readers are clicking on the most, which usually indicates the products that we're making the most money off over the months that we're most successful, in terms of e-commerce.”⁷⁴

Furthermore, the centralized team also regularly posts and updates, to all edit-ecomm members, charts showing e-commerce performance. At the beginning of the month, Silverman provides a spreadsheet of “pacing numbers,” which give e-commerce-engaged editors at all brands:

an idea of where we're projected to be in revenue by the end of the month. So everyone in the ecommerce chat room can click on this Google link, and it pulls up a ... Google spreadsheet where all the brands are listed side by side, and each one of them has numbers that say how much revenue is being generated from each brand.

The spreadsheet is organized by which brand “is earning the most revenue that month,” and the evidence shows the top ten in December 2019 to be: *Good Housekeeping*, *Best Products*, *Esquire*, *Cosmopolitan*, *The Oprah Magazine*, *Town & Country*, *Country Living*, *Men’s Health*, *Popular Mechanics*, *Runner’s World* and *Women’s Health*. *Car & Driver* editor Drew Dorian testified “that *Good Housekeeping*, *Best Products* and *Esquire* are “frequently at the top” because “[t]hey

⁷⁴ For example, on Black Friday in 2019, Commerce Partnership lead Silverman posted “the top 20-clicked products from Black Friday content so far.” The Employer also provides a bot (called HANS) that acts like a channel member by, every morning, posting updates automatically “that tell us which stories across the brands performed the best and which products across the brands performed the best.”

generate a lot of revenue from this project” and *Car & Driver* and *Road & Track* usually generate the least e-commerce revenue.⁷⁵

In the middle of the month and again at the end of the month, Silverman posts a document titled “Brand E-commerce Performance” which is “all of the brands having their revenue tallied and compared to each other” in order of most to least revenue generated. In this chart, the top ten earning brands are the same in the pacing spreadsheet, except that *The Oprah Magazine* and *Town & Country* switched places. Unlike the spreadsheet of packing numbers, the Brand E-commerce Performance chart includes *Veranda* and *HGTV Magazine*, which appear at the bottom below *Car & Driver* and *Road & Track*.⁷⁶

XII. ANALYSIS

A. Legal Framework

The Board in *The Boeing Co.*, 368 NLRB No. 67 (2019), established a three-step method for analyzing the appropriateness of a proposed bargaining unit. Step one requires considering “whether the petitioned-for unit has an internal community of interest using the traditional criteria.” *Boeing*, 368 NLRB No. 67 slip op. at 3. As identified in *Boeing*, those criteria are:

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 Employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

Boeing, 368 NLRB No. 67, slip op. at 2 (internal quotation marks and citations omitted). *Boeing* further affirmed that “the Board has also long given substantial weight to prior bargaining history” for the purpose of not “disturb[ing] units established by collective bargaining as long as those units are not repugnant to Board policy or so constituted as to hamper employees in fully exercising rights guaranteed by the Act.” *Boeing*, 368 NLRB No. 67, slip op. at 2 (case citations omitted).

Step two, pursuant to *Boeing*, requires considering “whether excluded employees have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit members.” As in step one, step two’s considerations are based on traditional community-of-interest criteria.⁷⁷ If the conclusion is drawn from the second step of the analysis that “those

⁷⁵ *Autoweek*, *Food Network Magazine*, *HGTV Magazine*, *The Pioneer Woman* and *Veranda* do not appear on the spreadsheet.

⁷⁶ *Autoweek*, *Food Network* and *The Pioneer Woman* do not appear on the chart.

⁷⁷ See *Boeing*, 368 NLRB No. 67, slip op. at 5-6 (Board performing step two analysis by considering criteria of functional integration, separate department, supervision, job functions, terms and conditions of employment, skills and training, and interchange).

distinct interests do not outweigh the similarities, then the unit is inappropriate.” *Boeing*, 368 NLRB No. 67, slip op. at 4 (internal quotation marks and citations omitted).

Finally, step three requires “consideration of guidelines that the Board has established for specific industries with regard to appropriate unit configurations.” *Boeing*, 368 NLRB No. 67, slip op. at 4.

B. Step One: Internal Community of Interest

1. Departmental Organization

The record reveals that the organization of employees within the Employer’s operations is primarily based on the brand or hub for which an employee performs work. However, I note the use, throughout the testimonial and documentary record, of the word “editorial” to describe the general organizational division in which the petitioned-for employees work. “Editorial” is often used to distinguish that part of the Employer’s operations from the “publishing side,” which the record indicates includes the marketing, sales and advertising functions, as well as finance and budgeting. Furthermore, the existence of shared employees between brands supports the conclusion that editorial employees are considered a distinct organizational grouping above the narrower brand-based division. Therefore, in a general organizational sense, the petitioned-for employees all work in the Employer’s editorial operations.

Although Hearst Autos is a separate department to the extent that it is a wholly-owned subsidiary, and its CEO Sanchez directly reports to president Troy Young as do chief content officer Lewis and consumer revenue vice president Madden, the Employer, in significant organizational respects, treats the brands within Hearst Autos identically to the other petitioned-for brands. For example, *Car & Driver* agreed-upon unit employee paystubs show the issuing entity as “Hearst Magazine Media, Inc.” and not Hearst Autos. The Employer’s ongoing digital performance reports (Facebook metrics, pacing numbers and brand e-commerce performance) track *Car & Driver* and *Road & Track* separately from each other, as is the case with all other brands, including those in the Lifestyle and Enthusiast Groups. When material is syndicated from *Car & Driver* or *Road & Track*, those brands, not Hearst Autos, are identified as the origin. The brand names are also identified in co-created content between a Hearst Auto brand and another Employer brand. Hearst Auto brands and its employees are also fully integrated into the Employer’s editorial network of tools, such as Patty, as well as the Slack workspace where personnel at Hearst Autos are sometimes identified by their brand, but never by the subsidiary name. The editorial integration is evident in the Hearst Autos job posting for a new writer and editor at Car and Driver, in which the “responsibilities” of the position include “[c]ollaborate with other Hearst properties to stay on top of current content trends, share best practices and be a part of the editorial community.”

I note here the occasional use in the record of the term “group” to describe the Hearst Autos brands, *e.g.*, “Hearst Autos Group.” The Employer refers to the subsidiary as the “Autos Group” in its post-hearing brief. Not only does this alternative description, organizationally, give the three car-focused brands the same level of division as the Enthusiast Group and the Lifestyle Group, the explanation of CEO Sanchez concerning the inception of the subsidiary suggests that Hearst Autos was formed to develop and engage in non-editorial, publishing-side, initiatives, similar to the

“groups” that the Employer establishes for marketing purposes (e.g., the “Men’s & Enthusiast Media Group” and “Lifestyle and Design Group”). When the Employer asked Sanchez why Hearst Autos, Inc. was formed as a “separate entity,” he answered, “Autos is a [--] I’m going to say a very unique advertising category[,] media category.”

Thus, from the foregoing evidence, I conclude that, although Hearst Autos, relative to other brands, exercises a level of autonomy from its parent company on the financial and “publishing side” of its operations, there is little distinction, in terms of the Employer’s editorial operations, between the Hearst Autos brands and the other brands where petitioned-for employees work. I therefore give less weight to Hearst Autos’ unique subsidiary relationship within the Employer’s structure relative to the other traditional community-of-interest criteria which I consider in this Decision.

2. Skills, Training, Job Functions and Type of Work

As noted above, both the Petitioner in its petitioned-for unit, and the Employer in its six proposed units, place in one unit the classifications of “editorial, video, design, photo, and social staff.” Therefore, as a preliminary matter, I note that the parties have agreed that the lack of overlap of job functions between one classification and another – for example, photographers and writers perform different tasks and use different tools -- do not serve to separate the classifications into more than one unit.

Generally, all petitioned-for employees come to their employment with similar levels of skill, training, and general qualifications, such as strong writing and aesthetic competencies. The evidence shows that petitioned-for editors and writers generally have college degrees in English and/or journalism, and that non-writing positions in photography, video and design have the particular skillset, training and experience associated with those positions, especially in the use of specialized camera and lighting equipment, photo/video editing software and design tools. Once employed, all petitioned-for employees perform the work involved in creating written and visual brand content, and the broader similarities in their job functions are set forth above in Section I.A. (The Work of Content Creation).

As also set forth above in Section III (Skills and Qualifications), there is a broad similarity in the employee skills, training and qualifications sought by brands and hubs. The brands and hubs hire employees who have strong core skills related to writing and visual media. They ideally want employees who have general experience in the larger category of content on which a brand focuses, and who have professional contacts in the industry relevant to that content category. Ultimately, each brand and hub hires an employee with a passion and feel for a brand’s unique mixture of voice, look and audience, as well as with certain expert knowledge of a brand’s unique content that is borne of the job candidate’s personal passions and interests.

Nevertheless, the record reflects that, at entry level positions, the brands may hire someone without certain qualifications; for example, the *Food Network Magazine/The Pioneer Woman* “would . . . consider [a job candidate] with no experience in food coverage” for an entry-level position, and the Entertainment Group would not expect a recent college graduate applying for an assistant’s job to have industry contacts. Moreover, the types of content created by the petitioned-for employees in their jobs are similar across brands: product reviews and recommendations, new

product reveals, feature stories, news pieces, culture reviews (television, film, music, art, books), interviews and profiles, and how-to advice.

Although Employer’s witnesses testified regarding the uniqueness of each magazine’s style, voice and audience, they also testified that their employees’ primary duties and skillsets are substantially similar to those of employees at other brands. When the editor-in-chief at *Esquire* was asked whether “the editors at the other brands do editing just like editors at *Esquire*,” he agreed, stating that “we’re all writing; we’re all editing.” When the site director for *The Oprah Magazine* was asked about the “core duties” of her employees compared to other brands, she agreed that they are “substantially similar” across brands. The executive managing editor of *Harper’s Bazaar* agreed that her brand’s copy editor has “general job duties,” with respect to “grammar, punctuation” and “spelling,” “similar to what someone in another magazine would do, just a different topic area.” She also agreed that editors at *Harper’s Bazaar* pitch stories similarly to editors at other brands, with the difference being the unique “level of visual conceptualization.” The head of *Best Products* described her brand’s employee job duties as: “[t]hey write, they create, they edit,” albeit with an eye to how best to generate affiliate revenue.

a. Similarities in Job Titles

I find that, once hired, the vast majority of petitioned-for employees work in job titles that are the same or nearly identical across the brands and hubs in the petitioned-for unit, revealing substantial similarity in job functions across the petitioned-for unit. These job positions indicate that, regardless of the differences in the brands’ focus of coverage, and their diverse target audiences, employees create the common types of content described above (news, features, product reviews, lifestyle stories, and social media postings), as well as culture-, health-, fashion- and beauty-related pieces. The same and nearly-identical titles also show that petitioned-for employees across many brands, regardless of a brand’s particular style and focus, perform the essential work of copy editing, research, art creation, design, photography and videography. *See, supra*, Section IV (Job Titles).

b. Training, E-commerce and Slack

The evidence showing that the Employer trains and supports employees in performing certain types of work across brands reveals substantial similarities in job functions, especially among editors who are responsible for digital content. As discussed above, the Employer trains, gathers together and otherwise supports employees across many brands to improve their work in SEO, social media, and creating other content on the numerous online platforms where brand content exists. The large membership of the e-commerce Slack channel demonstrates the same and substantially similar job functions of generating affiliate revenue across all but a few brands. The position-specific Slack channels reveal the similarity of job functions in the communication between and among employees across brands undertaken to improve and trouble-shoot their work.

c. Similarities in Job Functions Between Hubs and Brands

The Fashion Group does not perform fashion-department functions for all brands who have fashion-related content. Thus, the functions performed by the petitioned-for employees in the Fashion Group for brands that use that Group -- such as checking credits, styling, and calling in clothes and accessories from the market -- are performed by the employees at brands that do not use the Fashion Group, *i.e.*, *Harper's Bazaar* (print edition), *ELLE*, *Esquire* (men's fashion), *Marie Claire*, *Men's Health*, *The Oprah Magazine* (print edition), and *Town & Country*. Furthermore, the Fashion Group hired a fashion editor (disputed supervisor) from *ELLE* and its style director (disputed supervisor) from *Harper's Bazaar*, suggesting strongly that the job functions performed in the Fashion Group are similar to those performed at brands which do not use that hub. Finally, the bookings director (disputed supervisor) in the Fashion Group books hair, makeup, models and other talent for photoshoots as does the agreed-upon unit bookings editor at *The Oprah Magazine*.

The Entertainment Group's Executive Director Randi Peck provided clear testimony that an essential part of the work performed by the petitioned-for employees on her team is to pitch cover and story ideas to brands, derived from the team member's significant time spent absorbing celebrity cultural products, and from his/her predictive skills in spotting popular trends. The testimony of agreed-upon unit member Aminosharei, and documentary evidence submitted through him, corroborate Peck's testimony by showing the regular pitches he makes to editorial staff at the brands to which he is assigned. Thus, the Entertainment Group performs a similar job function to the scores of editors at all brands who, as one of their primary job functions, regularly pitch story ideas to brand editorial directors based the developments and trends they keep track of relevant to their topics of coverage. Furthermore, the booking function of the Entertainment Group is similar to the work performed by the bookings director (disputed supervisor) at the Fashion Group and the agreed-upon unit bookings editor at *The Oprah Magazine*

The purview of the Visual Group is broad across most brands in creating their photographic content, thereby relieving those brands who use the Visual Group of the job functions that they once had before brand photographic staff transferred to the Group in 2017. However, the Visual Group does not focus exclusively on photographs of celebrities and models; they also shoot products and items for brands such as *ELLE Decor*, *Woman's Day* and *Good Housekeeping*. In that regard, the brands that do not use the Visual Hub, such as *Car & Driver*, *Country Living*, *Delish*, The Enthusiast Group and *Food Network Magazine/The Pioneer Woman*, have staff photographers who perform that type of non-fashion photographic work for those brands.

d. Distinctions Based on Job Specialization

The more particular skills, qualifications and job functions revealed by the evidence raises the issue of job *specialization*, requiring me to consider the extent to which the specialization of employees doing the same and substantially similar jobs impacts the internal community-of-interest analysis for the petitioned-for unit.

When asked whether there is any crossover in personnel between her brand and luxury fashion brands, the managing editor of *The Oprah Magazine* described how careers develop in the

magazine industry: “You tend to get tracked and then you develop those resources and those contacts[, a]nd then if you're looking for another job, . . . that [brand] is looking for someone with those resources and contacts and you need to have them” When the managing editor of *Country Living* and *Veranda* was asked what background is sought in a job candidate at her brands, she answered, “it's different for each brand, and it's different based on whatever the position is.”

Therefore, in the context of this Employer, specialization is not only job-specific, but brand-specific. This is unremarkable because each of the Employer's witnesses were very clear in their testimony about their respective brand's unique blend of voice, look, coverage and audience. For example, an editor at *Harper's Bazaar* who is closely following the latest fashion coming from Paris will not be able to apply her trend-spotting skills to reviewing the latest cars from Detroit at *Car & Driver*; and an editor expert in the latest interior designers featured in *ELLE Decor* would not be able to build a recipe at *Delish*. A photographer who can make a plate of food look delicious in the pages of the *Food Network Magazine* is unlikely to translate that aesthetic sensibility to making a celebrity look glamorous for the cover of *ELLE*.

Board case law has long made clear that a unit can be appropriate where the general skills and job functions of employees are the same or substantially similar, but the specialization is different. *See, e.g., Point Park College*, 209 NLRB 1064 (1974) (Board finding appropriate college faculty across fifteen separate departments); *Florida Southern College*, 196 NLRB No. 133 (1972) (finding appropriate unit of all college faculty including those who spend a portion of their time engaged in the teaching function); *Stern's Paramus*, 150 NLRB 799, 801 (1965) (employer's 470 sales employees across the employer's 130 departments on five separate floors deemed an appropriate unit). *See also Macy's*, 361 NLRB 12 (2014) (Member Miscimmaro dissenting, arguing that finding appropriate a unit of salespeople in only one department ignores the record evidence “reveal[ing] that all salespeople storewide have the same or similar working conditions, employment policies, job responsibilities, performance criteria, benefit plans, and commission and compensation arrangements”).

Nevertheless, neither party in this case urges that the units here be separated based on job specialization. As explained more fully below, the differences in specialization exist as equally among employees *within* each of the Employer's proposed units as they do between employees in one of its proposed units and another. Thus, I conclude that collecting in one unit employees who have different specialties, but do the same or substantially similar work with similar skills and qualifications, does not render the petitioned-for unit here internally inappropriate, especially when there are numerous and significant similarities in interests, based on the traditional of community-of-interest criteria, as those set forth in this Decision.

3. Functional Integration

Generally, the Employer's brands are not functionally integrated – each can create its content independently of the other, save for one important exception.

The visual, fashion and entertainment hubs and brand are functionally integrated in the creation of a significant amount of essential brand content. The integration is such that the documentary and testimonial evidence is clear and ample that those brands using the Visual Group are not able to

create any brand photographic content without the involvement of petitioned-for Visual Group employees. Brands which use the Fashion Group also cannot create its fashion-related visual content without the involvement of the petitioned-for employees in the Fashion and Visual Groups. Any brand that wants to interview or photograph a celebrity cannot do so without the work performed by the petitioned-for employees in the Entertainment Group. Thus, the hubs and brands are highly functionally integrated because a final product results from the necessary fusion of work between a brand and the hubs.

4. Contact Among Employees

The evidence is abundant that the highly integrated functions of the hubs and brands require regular and frequent contact between the petitioned-for hub and brand employees. The level of interaction was clearly articulated by the Entertainment Group's chief: her employees are "constantly moving about throughout" Heart Tower "for meetings like a lunch meeting . . . or a breakfast meeting" and "[s]ometimes we have scheduled meetings with certain brands." The employees of all three hubs are in regular and frequent contact with brand employees to communicate and coordinate the large amount of details necessary to execute the brand's editorial vision during the life of a brand's project, and, with respect to the Entertainment Group, brand content begins before the project as well, when an employee from that team is pitching content ideas to brand editorial staff and attending regular brand staff meetings. Employee contact is further demonstrated in the regular communications among the scores of petitioned-for employees in the edit-ecomm Slack channel across nearly all the Employer's brands, for the purpose of effectuating the Employer's affiliate-revenue initiatives to place as many affiliate stories and links as possible on the widest variety of brand platforms. Employees who do the same type of work across brands are also regularly engaged with each other on Slack in order to share resources and information, such as best practices, and to trouble-shoot technical problems.

Otherwise, the contact among employees across brands occurs when the Employer sponsors cross-brand meetings and trainings, when there is cross-brand collaboration on content, or when an employee is seeking advice from a colleague at another brand. However, I find these types of contact to be sporadic and to comprise a small portion of the work performed by petitioned-for employees.

5. Employee Interchange

The record evidence does not reflect that there is any interchange among petitioned-for employees in the sense considered by the community-of-interest case law.⁷⁸

6. Terms and Conditions of Employment

As explained above, all petitioned-for employees are provided the same fringe benefits, and use the same online tools to access those benefits. All petitioned-for employees are subject to the same policies contained in the Employer's employee handbook. All petitioned-for employees are served

⁷⁸ I do not find that shared staff and cross-brand hiring fall within the community-of-interest criterion of interchange.

by the same human resources department and subject to the same policies and programs initiated by that department. All petitioned-for employees use common work tools, and the same communications platforms, which are all supported centrally by the Employer. All petitioned-for employees have similar work hours,⁷⁹ and all petitioned-for employee salaries are set centrally by the Employer.⁸⁰ *See, supra*, Section I.B. (Terms and Conditions of Employment Common to All Petitioned-For Employees).

7. Supervision

Each brand and hub is separately supervised, with employees overseen by their direct supervisors in matters such as assignment of work, discipline, vacation and promotion. As explained by the Employer in its post-hearing brief, “the dozens of brands operate as dozens of independent businesses, and the day-to-day separation in their operations would support each standing alone as a separate appropriate bargaining unit.” However, neither party argues in this case that the existence of brand-level supervision is relevant to their positions on appropriate unit. The brand-level supervision of employees does not impact the Employer’s argument for its proposed units because those units each contain several brands that are each separately supervised; and the petitioned-for unit collects a larger number of separately supervised brands.

8. Geographic Distinctions

Although the Board has found units to be separate based on geography, neither the Petitioner nor the Employer has proposed units based solely on geographic considerations in this case. In fact, the record evidence shows that geographical separation is not consistent with the manner in which the Employer designed its operations, and thus geographical considerations in that regard weigh in favor of finding the petitioned-for unit appropriate.

First, the number of employees outside the New York facilities is small compared to the whole of the petitioned-for unit. The Employer’s position statements lists approximately 434 agreed-upon unit employees, of which 47 (11%) work outside New York; of the 82 disputed supervisors, 5 (6%) work outside New York; of the total of 516 petitioned-for employees, 10% work outside New York.

Second, the evidence indicates that to separate the units geographically would fracture and interrupt the workflow and structures of the brands outside New York. One quarter of petitioned-for employees at three brands within Hearst Autos work in New York, which include the entirety of the agreed-upon unit employees at *Road & Track*, as well as two of the 25 agreed-upon unit employees working for *Car & Driver*. What is more, the CEO of Hearst Autos is located in New York, and, from his testimony, the fact that three-quarters of his brands’ staff are in Michigan does

⁷⁹ The time-zone of Alabama-based employees is one-hour behind the remaining petitioned-for employees. This one-hour difference still places Alabama employees in the same general band of work hours of the remainder of the petitioned-for unit.

⁸⁰ The Employer stated on the record that it “is not going to “contend that differences in salary among [its] six proposed units are a basis for finding a different community of interest among those six units.”

not hamper his work: he visits Michigan once a month to observe their work, and meets with the editors-in-chief of the brands weekly, presumably via teleconference. Furthermore, the sharing of *Car & Driver*'s data content with *Road & Track* is not impeded by the distance between New York and Michigan.

Although the proposed Alabama unit has fewer brand employees in New York, there are structural similarities between that proposed unit and Hearst Autos. Similarly to the three chiefs of the Hearst Autos brand reporting to their CEO in New York, the *Country Living* site director, and the two Alabama editors-in-chief, all report to chief content officer Lewis in New York. In further similarity, the distance between *Country Living* in New York and *Country* in Alabama does not impede the regular joint assignment of stories through electronic and telephonic communication between and among, on the one hand, the brand's site director and deputy editor in New York, and, on the other hand, the managing editor and executive editor in Alabama. The record also shows that *Veranda*'s senior style & market editor (an undisputed supervisor) works in New York; whereas *Veranda*'s remaining three supervisors, and the editor-in-chief, work in Alabama. Finally, the geographic distance has no impact on the use by *Country Living* of the Lifestyle Group's chief food director and her team in New York for the creation of recipe content.

With respect to the proposed Enthusiast Group, of the 21 agreed-upon petitioned-for employees working for The Enthusiast Group in Pennsylvania, three work in New York, and there are reporting structures spanning New York and Pennsylvania. The editor-in-chief of *Popular Mechanics* is in New York.⁸¹ The Group's agreed-upon unit director of video operations oversees a team of one agreed-upon unit video producer in New York and one agreed-upon unit video producer in Pennsylvania. The Group's features director (undisputed supervisor) works in New York, but reports to the director of content creation in Pennsylvania. The testimony of service, news & gear editor Dawson discloses that his health-related stores are reviewed by both the agreed-upon unit director of health, fitness & training in New York, as well as the director of content operations in Pennsylvania. Therefore, the distance between New York and Pennsylvania has no impact on the workflow, supervision and management of the Enthusiast Group's creation of content.

Indeed, as indicated by evidence of regular workflow and communication between the divided locations within the above brands and groups, and throughout the testimonial and documentary evidence in the record, the content created by petitioned-for employees is stored digitally. Petitioned-for employees send their visual and written work through the editorial review process by the same electronic means whether the work is being reviewed by an editor on the same floor in Hearst Tower or in another state. Email, Slack, Patti, Google docs, and other tools, in the context of this Employer's operations, are not used simply as a means to communicate or store work; it is the space where petitioned-for employees create, share, review and comment on content that only in some cases transforms into the tangible, physical form on the page of a newsstand magazine; otherwise, the vast majority of the Employer's content created by the petitioned-for employees remains, from inception to publication on the numerous online platforms, in digital format.

⁸¹ See Employer's Pos. Stmt. at 28.

Furthermore, the work of many editors is supported by centralized teams and experts in New York, and geographic location does not impact that support. As described above (*see* Section IX.B. (Cross-Brand Training)), trainings and meetings are conducted by teams in New York and are attended by petitioned-for employees from all brands, including those in Alabama, Pennsylvania and Michigan. The e-commerce team in New York supports the affiliate-revenue work of editors working in Hearst Tower through email and the edit-ecomm channel in the exact same way it does with such work performed by employees outside New York.

Furthermore, as the Employer states in its post-hearing brief, and as the record evidence shows: “In New York, though employees all work in one of two buildings, all the employees of each brand generally work on a single floor; their swipe cards most often do not even permit them access to other floors.” Indeed, the record is replete with evidence that, apart from the employee contact described above, employees at one brand do not have face-to-face professional (non-social) interaction with employees at another brand, even if they are on the same floor. As revealed in the testimony of *Cosmopolitan’s* editor-in-chief, her staff has no interaction with either the staff of *Men’s Health* or of *Good Housekeeping*. Similarly, *HGTV Magazine’s* editor-in-chief agreed with the Petitioner’s statement that “typically [*HGTV Magazine* employees] wouldn’t be working any more closely with employees at *Cosmopolitan* versus employees that work for the *Delish* brand.” Thus, generally, that amount of interaction between employees at brands in New York -- *i.e.*, no interaction -- is the same amount of contact that an employee in Hearst Tower has with one in Michigan, Alabama or Pennsylvania.

Based on the above, I find that, in the case of this Employer, geographical distance between petitioned-for employees to be less significant than in other contexts, and is in fact not consistent with the manner in which the Employer structures its operations.⁸²

In summary, I conclude that there is an internal community-of-interest among the petitioned-for employees. The employees in the brands and hubs have same or substantially similar skills, training and job functions, and perform the same or substantially similar work. There is also a high degree of functional integration, and frequent and regular contact, between and among employees of three hubs and those of many of the Employer’s brands. There is also regular contact between and among many employees across brands performing work related to e-commerce. The petitioned-for employees share a significant amount of benefits and other working conditions. Given these facts set forth in step one of the analysis, I find that differences in specialization among employees performing work at the 29 brands and three hubs, as well as the geographical separation

⁸² The evidence shows that the Hearst Autos works with a dedicated human resources partner based in San Francisco, and that the Enthusiast Group has a human resources representative working in the Pennsylvania offices. However, both those representatives work directly for the head of People and Culture Keesha Jean-Baptiste in New York. I conclude that the existence of separate human resources professionals for the two groups are insignificant to the community-of-interest analysis; but those facts do support the conclusion that geographic distinctions are less significant in the case of this Employer, who operates departments with personnel responsible for distant locations with direct reporting to New York.

of a minority of the petitioned-for employees, do not defeat the internal appropriateness of the petitioned-for unit.

Having now considered the internal community-of-interest of the petitioned-for bargaining unit, I turn to step two of the *Boeing* analysis.

C. Step Two: Distinctions and Similarities in Interests of Excluded Employees

Step two of the *Boeing* analysis requires me to determine whether any distinctions in interests between the petitioned-for unit and excluded employees outweigh any similarities between those two groups. In *Boeing*, the employer employed 2700 production-and-maintenance employees to work on an aircraft assembly line, and the union petitioned for 178 of those employees who worked in the last assembly stage. In step two of the analysis there, the Board considered similarities and distinctions in interest between the group of 178 petitioned-for employees and the remainder of Employer's production-and-maintenance employees. Thus, in *Boeing*, the universe of excluded employees was larger than the petitioned-for unit.

In contrast, the Union here petitions for a larger group of employees working in the Employer's editorial operations, and the Employer is proposing not one, but six, smaller units. I therefore see my task in step two here as comparing each one of the Employer's proposed units to the larger group of petitioned-for employees. In each of these six comparisons, I will consider, based on traditional community-of-interest factors, whether the remainder of the petitioned-for unit "have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with" the Employer-proposed unit in question. In addition, I will consider whether the distinctions in interests between the petitioned-for employees of *Best Products* outweigh the similarities in their interests with the petitioned-for employee group.

I have set forth in step one of the analysis the relevant similarities among the petitioned-for unit employees, while recognizing certain distinctions relating to specialization and geography which, in my opinion, do not render the petitioned-for unit internally inappropriate. In step two, I will examine the distinctions in interests raised by the Employer at hearing and in its post-hearing brief, and I note here that I have not found in the record any further distinctions relevant to the inquiry other than those I have already described.

1. The Issue of Brand Journalism Style and General Content Type

As an initial matter, the Employer raised, primarily through the testimony of its own witnesses, distinctions in the style of journalism practiced by the brands, and well as distinctions in brands based on broad categories of content. The Employer uses this evidence to support its argument

the employees working in its proposed “Home & Family” unit⁸³ should be separate from employees working in the proposed “Health & Lifestyle” unit.⁸⁴

a. Service Journalism

The Employer’s witnesses testified about the concept of “service journalism” and “service stories.” Through the questioning of its witnesses, the Employer sought to establish that the brands in its proposed Home & Family unit practice that style of journalism, whereas the brands in its proposed Health & Lifestyle unit do not.

I first note that the record reflects that the designations “Home & Family” and “Health & Lifestyle” (as well as “Editorial Operations”) are not distinct departments or any other type of pre-existing organizational division within the Employer’s editorial operations, and those terms were created solely for the purpose of responding to the Petition. I also conclude that, based on the descriptions of service journalism contained in the record (and set forth below), it is clear that, were the brands in the “Alabama Employees” unit (*Country Living* and *Veranda*) based in New York, the Employer would include them in the Home & Family unit because: (1) the Employer places the New York-based digital component of *Country Living* in its proposed Home & Family; and (2) the Employer, in its post-hearing brief, describes the content of *Country Living* and *Veranda* brands similarly to that of other proposed “Home and Family” brands. According to the Employer, the digital component of *Country Living*, as “Home & Family” brands *ELLE Decor* and *House Beautiful*, “are mainly focused on content related to the home and interior design,” whereas, similarly, the print edition of *Country Living*, covers “home decor as well as gardening, food, and home products.” Moreover, *Veranda* is “a luxury title primarily covering high end home interiors and also covering gardens, luxury travel, jewelry, and fashion.”

Thus, the two brands in Alabama should, pursuant to the Employer’s definition, have a service-journalism style, although their styles were not specifically elicited in the testimony of the Employer’s witnesses. It is further clear from the record that most of the content created by the Enthusiast Group and Hearst Autos, namely product reviews and recommendations, fit the service journalism style. The same can be said of *Best Products* with its heavy focus on product reviews.

One definition of service journalism was provided by *ELLE Decor*’s Executive Managing Editor Bauman when he described his brand’s style of journalism:

we think of ourselves as service journalists. You know there's a long tradition of service journalism where we are trying to give the reader some take away that they can then put into action in their own lives. We . . . might have . . . these very high end products [in the magazine] but we always include -- in every story in the magazine we have the

⁸³ *Cosmopolitan, ELLE, Esquire, Harper’s Bazaar, Marie Claire, Men’s Health, Seventeen, Town & Country, and Women’s Health.*

⁸⁴ *Country Living* (digital edition), *Delish, ELLE Decor, Food Network, Good Housekeeping, HGTV, House Beautiful, The Oprah Magazine, The Pioneer Woman, Prevention and Woman’s Day.*

little tag at the end that says for details for resources and then you turn you to . . . the back of the magazine where . . . we give these very small type listings of all the products featured in the stories, on the websites and where people can go to find[, for example,] an amazing chair that they love. . . . So . . . we're not doing hard-hitting international reporting. We're doing . . . service journalism.

The chief of *Good Housekeeping*, *Prevention* and *Woman's Day*, Jane Francisco, distinguished those three brands from *ELLE*, *Esquire*, *Harper's Bazaar* and *Marie Claire* by reference to service journalism:

[w]hen we cover fashion, we are really about like what am I going to wear today versus who designed something. In fact, we rarely ever even note that because that's not a part of how we create the content or what's happening within the context of the industry or tracking or focusing on trends within the context of that. We're very how-to-hands-on within the context of your world, your own world, your home, et cetera.

However, other evidence in the record significantly breaks down the Employer's purported distinction in the style of journalism practiced in the proposed Health & Lifestyle unit and the proposed Home & Family unit (and the other service brands). The editor-in-chief of *HGTV Magazine*, Sara Petersen, described her brand's style similarly to Bauman at *ELLE Decor* as "stories that help people choose something in their everyday life," "as opposed to . . . investigative journalism." However, when asked by the Employer to name other Employer brands that practice service journalism, she answered:

Food Network Magazine "helps people cook and plan meals and . . . dinner parties;" *Good Housekeeping*, *Country Living* and *House Beautiful* "help[] readers decorate," *The Oprah Magazine* "helps people . . . feel centered and balanced in life;" *Prevention* "[p]revent[s] yourself from getting sick;" *Men's Health* and *Women's Health* helps readers stay healthy and "fit;" and *Car & Driver* "helps people pick out a car to buy."

Peterson added that "even the beauty fashion magazines" do service stories, stating that "*Marie Claire* covers fashion, helps people know about fashion; and they also do some other kinds of women's interest pieces."

Other evidence supports the conclusion that the Employer's service-journalism distinctions among brands is either significantly overstated, or merely a matter of a brand's unique proportionate mixture of styles. For example, contrary to the Employer's assertion that only "Home & Family" brands practice service journalism, among the "requirements" in a job posting for *Men's Health* – which is in the Employer's proposed Health & Lifestyle unit -- are "[a] solid understanding of *Men's Health's* audience and editorial mission" and "[a] strong service-journalism sensibility." The editor-in-chief of *Women's Health* Elizabeth Plosser very directly testified that her brand

(which the Employer places in the proposed “Health & Lifestyle” unit) practices “service-based journalism,” while also stating that “the mission and ethos” of her brand and *Men’s Health* “are very similar” with “virtually the same content pillars.” What is more, when the Employer asked her to describe the “similarities” between her brand and *Cosmopolitan* — where Plosser had previously worked as a senior editor — she answered “I think the biggest one is that we are both service brands.” The managing editor of *The Oprah Magazine* — in the proposed Home & Family unit — testified that one-quarter of her brand’s content is not classified as service journalism, but rather “self-help” and “reporter pieces” focused on “inspirational stories.” “Health & Lifestyle” brand *Harper’s Bazaar* creates “best-products” content on its digital platform. Even the narrowly-focused content of the *Food Network Magazine* is not entirely service-oriented: according to its editor-in-chief, 30% of the content is “sort of lifestyle content around the stars of the network and the lifestyle of a food lover.”

Therefore, the Employer’s attempt to clearly distinguish its two proposed brand units in New York on the basis of journalism style is not supported by the totality of the evidence.

b. General Content Category

Similar to the Employer’s journalism-style argument, is the Employer’s argument based on a brand’s general content category. In its post-hearing brief, the Employer argues that the Home & Family brands “are focused on producing content related to home, food, and family.” Moreover, these brands are further divided into “natural subgroups.” *HGTV Magazine*, *Food Network Magazine*, and *Pioneer Woman* brands “are extensions of the respective television brands.” *Good Housekeeping*, *Prevention* and *Woman’s Day* “cover food, organizing, home design, and *Decor*,” as well as “beauty, health, food, and crafts and styling.” *Country Living*’s digital side, as well as *ELLE* and *House Beautiful*, “are mainly focused on content related to the home and interior design.” *Delish* covers food as does *The Food Network Magazine*, and therefore “focuses on a narrow corner of service journalism.”

By contrast, according to the Employer, the brands of the “Health & Lifestyle” unit “are unified by their content focus especially related to trends in the fashion industry [and] their emphasis on visuals.” The brands also “cover the details of fashion (*e.g.*, who designed a particular garment)[.] track the industry,” and “closely monitor cultural trends in their editorial work.”

To provide evidentiary support to the separation between these proposed units, the Employer asked its witnesses to describe which Employer brands are similar to their own, and each witness named brands within the Employer-proposed unit in which his or her brand purportedly sits. Conversely, when asked whether the brands in the other proposed unit were similar, each answered in the negative, with some offering the caveat that, although the coverage areas might be similar, the topics are approached differently. For example, although both *Esquire* and *Delish* cover food and drink, *Delish*’s voice is different and the content is directed to a different audience. *Good Housekeeping*, *Prevention* and *Woman’s Day* cover beauty products as does *Harper’s Bazaar*, but the products, are drugstore, not luxury, brands.

However, the witnesses did not answer that *every* brand within their respective proposed units is similar because, as straight-forward as this testimony on general content type was, the witnesses

were just as clear in describing why each of their brands was unique in their voice, look, content mix and audience. For example, *Country Living*'s site director testified that her website's coverage is so "niched to the *Country Living* audience" that there is "not a lot of overlap" with any of the Hearst brands. Although *Harper's Bazaar*'s digital content is similar to *ELLE*'s, *Harper's Bazaar*'s voice is "is pretty much owned by Bazaar." Although its coverage areas are similar to *ELLE* and *Marie Claire*, *Cosmopolitan*'s voice and tone are "really different." Although *ELLE Decor*'s content is similar to that of *House Beautiful*, *Veranda*, and *HGTV Magazine*, that content "is not much like any of the other Hearst titles." *Esquire* displays luxury brands and contains longform journalism as does *ELLE*, but the coverage overlap between *Esquire* and *Men's Health* is "pretty slim." Regarding *Seventeen*, despite occasional syndication from *Cosmopolitan* and *ELLE*, the content of those brands are "too old" because "a lot of the content that might . . . work for other brands, just really won't work for [*Seventeen*'s] very young kind of niche audience." Contrary to the Employer's assertions in its post-hearing brief, nowhere in the testimony of the Employer's *Women's Health* and *Men's Health* witnesses was mentioned that those brands cover the fashion and beauty industry; rather, their "focus" (as the brand names imply) is on health and fitness.⁸⁵

Furthermore, in this testimony elicited by the Employer regarding which brands are close to each other in terms of content, the testimonial and documentary evidence, taken in its totality, show both: (1) the significant *distance* between brands within each of the two proposed New York units; and (2) the *closeness* between brands in one proposed New York unit and brands in the other proposed New York unit and elsewhere.

In regard to closeness, the Employer's proposed unit arguments are like a complex Venn diagram.⁸⁶ Within the proposed Health & Lifestyle unit, *Women's Health* and *Men's Health* are very similar brands, separated only by the reader's gender, and *Women's Health* is a sibling brand to *Cosmopolitan* because they are both service brands targeting the same audience with health-related content. *Men's Health*'s editor-in-chief considers *ELLE*, *Harper's Bazaar* and *Esquire* to be "similar brands" with "a similar sensibility" to his brand, although *Esquire*'s editor-in-chief considers the overlap of coverage with *Men's Health* to be very "slim." But, *Esquire* is "like the brother" to *Marie Claire* because they both cover politics, and *Marie Claire* and *Harper's Bazaar* are "sisters" to each other because they both cover luxury fashion and beauty brands. The content of *Harper's Bazaar* overlaps with *ELLE*, *Marie Claire* and *Town & Country* because they each cover high-end fashion and beauty, and both *Harper's* and *Town & Country* cover beauty products for an affluent readership. In the Home & Family unit, *Delish* and the *Food Network Magazine* both focus on food; *Food Network Magazine* and *The Pioneer Woman* are similar in the area of food and home coverage. *Good Housekeeping* and *HGTV Magazine* both cover home decorating. *The Pioneer Woman*, which covers some food, focuses on a one celebrity as does *The Oprah Magazine*. *The Oprah Magazine* has the same "home and lifestyle perspective" as *Good*

⁸⁵ *Esquire* contains fashion coverage among other types of content, and *Esquire* shares a fashion closet with *Men's Health*; however, these facts, based on the totality of the evidence, do not indicate that *Men's Health* "focuses" on fashion, but rather needs clothes to style talent for photographic content.

⁸⁶ *Esquire*'s editor-in-chief used the Venn diagram analogy when describing his brand compared to *Men's Health*.

Housekeeping, and an overlap in health coverage with *Prevention* and in food coverage with *Delish*. *Good Housekeeping* and *House Beautiful* are similar in their home decorating coverage, and share a “utilitarian” focus. The difference between *House Beautiful* and *ELLE Decor* is the high-end, luxury nature of *ELLE Decor*’s content.

However, on the other hand, *Harper’s Bazaar* “do[es not] do a lot of health” coverage, which is the primary content of both *Women’s Health* and *Men’s Health*. *Harper’s Bazaar* does not have social and political coverage like at *ELLE* and *Esquire*. *Harper’s Bazaar* and *Veranda* (a home-focused brand) both publish photography of high-end jewelry. Moreover, *Veranda* (a home-focused brand) is a “luxury title,” covering, for affluent readers, “high end home interiors,” “gardens,” “luxury travel,” jewelry and “a little bit of fashion;” *Town & Country* (a “Health & Lifestyle” brand) is a luxury magazine, covering “culture, travel, fashion, jewelry, beauty for a really high-end audience;” and *ELLE Decor* (a “shelter” brand) has “very discerning” audience that finds in that magazine products “that 99 percent of people cannot even afford.” *ELLE Decor* also covers “general culture, . . . art, museum exhibitions, movies, that kind of thing” as do the “Health & Lifestyle” brands. There also appears to be no overlap in coverage whatsoever between *Delish* and The Food Network on the one hand, and *House Beautiful* and *ELLE Decor* on the other, which are all “Home & Family” brands. It is also hard to conclude that *Prevention* (“Home & Family”), which focuses on health and wellbeing, has more affinity with *ELLE Decor* than with *Women’s Health* (a “Health & Lifestyle” brand). Thus, based on the totality of the evidence, the Employer cannot argue persuasively that, for example, the “Health & Lifestyle” brands of *Men’s Health* and *Town & Country* are closer to each other than are the “Health & Lifestyle” brands of *Town & Country* and *Harper’s Bazaar* to the home-focused brands of *ELLE Decor* and *Veranda*.

The Employer’s content divisions also break down on digital platforms. Although the evidence of syndication represents a minority (10-15%) of the content created by the brands in question, it is evidence that the Employer’s content divisions are porous. *See, supra*, Section X.B. (Syndication), summarizing the syndication work written by *Men’s Health* associate fitness editor Brett Williams for brands outside the proposed Health & Lifestyle unit; *Esquire*’s Sarah Rense (same), *ELLE*’s senior culture editor Julie Kosin (same); and *Good Housekeeping/Prevention/Woman’s Day*’s Lizz Schumer for syndication at brands outside the proposed Home & Family unit. The regular and large amount of affiliate-revenue stories also appear across brands without regard for the Employer’s proposed unit distinctions. Furthermore, the testimony from site directors reveal a variety of content overlapping the Home & Family and Health Lifestyle divide. For example, *Harper’s Bazaar*’s site director testified that it creates “best-of” content for fashion and beauty products; and the site director of *The Oprah Magazine* testified that the website covers “everything from entertainment and celebrity news to beauty, style, [and] obviously the latest Oprah news.” In fact, *ELLE Decor* (Home & Family brand) and *Town & Country* (Health & Lifestyle) share the same site director, as well as an agreed-upon unit associate editor, strongly suggesting an overlap in content.

However, not only does a close examination of the testimonial evidence reveal large holes in the wall erected by the Employer between the two proposed New York units, other evidence in the record shows that the Employer has in fact grouped certain brands together for business purposes that do not align with the Employer-proposed units in this case. As mentioned above, the terms “Health & Lifestyle” and “Home & Family” are not used to delineate any of the Employer’s

operations. However, the record reveals that the Employer uses the word “group” or similar term to aggregate several brands under one label for the purpose of marketing, advertising and sales. For example, the Employer promotes *Marie Claire*, *ELLE* and *Harper’s Bazaar* as “sister brands” within the “Fashion Group,” which, as described *Marie Claire*’s site director, is a way to involve all the brands in a sales deal when an advertiser is interested in one of them. Clearly, this demonstrates the Employer’s belief that the content and audience is so similar among those brands that the same products can be advertised across the brands within the group. Although those three brands find themselves within the Employer’s proposed Health & Lifestyle unit, *ELLE Decor*’s executive managing editor also described the “Luxury and Design Collection,” which exists for a similar marketing purpose, and includes not only *ELLE Decor*, *House Beautiful* and *Veranda* (home-focused brands), but also *Town & Country* (a “Health & Lifestyle” brand). Furthermore, evidence of the online webpage banners of several brands indicates alternative “group” designations that differ from the Employer’s proposed units in New York and elsewhere. *Delish*, *Best Products*, *Prevention*, *Veranda*, *House Beautiful* and *Woman’s Day* are presented to the public as part of the “Lifestyle and Design Group;” and *Cosmopolitan* and *Women’s Health* are part of the “Young Women’s Group.” However, *Esquire* and *Men’s Health* (two New York “Health & Lifestyle” brands) are grouped together with Pennsylvania-based and service-oriented *Bicycling*, *Popular Mechanics* and *Runner’s World* in the “Men’s & Enthusiast Media Group.”⁸⁷

To further support its content-category argument, the Employer presented evidence of cross-brand hiring to argue that employees have distinct skills and qualifications such that they can only work in either a Home & Family unit or a Health & Lifestyle unit. As described above, the managing editor of *The Oprah Magazine* testified regarding how specialization develops in the magazine industry based on an employee being “tracked” by his or her prior work experience. In particular, she attested to having not seen an employee move from “a mass publication” to “a luxury publication in fashion.” However, when the Employer asked the *Good Housekeeping*, *Prevention* and *Woman’s Day*’s chief Francisco “[h]ow common is it in [her] experience that people move between a service-oriented brand like *Good Housekeeping* or *Prevention* to a fashion magazine like *ELLE* or *Marie Claire*,” she answered:

I would say it's not common. I think it could happen. I think the higher -- the more experience someone has in one of those sort of channels, the less likely you would be able to and maybe even be interested in jumping from one to another.

She further explained that, in comparison to a “fashion brand” like *Harper’s Bazaar*:

the products that we focus on in our group[. . .] we don't focus on them in the same way. Not necessarily the same take on what's happening in terms of beauty. So the expertise has sort has developed in sort of slightly different direction, I would say. That would be true for, I mean, certainly for the fashion part of it, but we don't have anywhere fashion here that's a separate group. So it's,

⁸⁷ As noted above, the record does not contain evidence explaining why the *Lifestyle Group* (*Good Housekeeping/Prevention/Woman’s Day*) is not in Employer’s proposed Health & Lifestyle unit.

again, it's not impossible. It's unlikely that, that someone from . . . a brand like ours or one of our brands would move into one of the what I would call sort of call enthusiast's brands

Casting further doubt on the testimony of *The Oprah Magazine's* managing editor is the fact that her own magazine's agreed-upon unit associate beauty editor had worked at *Town & Country*, thus having crossed the Employer's purported divide between Health & Lifestyle (*Town & Country*) and Home & Family (*The Oprah Magazine*).

Nevertheless, the record evidence of cross-brand hiring does not support the Employer's argument. First, there are only a small number of cross-brand hires relative to the size of the bargaining unit. The Employer's position statement identifies about 430 agreed-upon unit employees and approximately 90 disputed supervisors. Of these 520 employees, the record contains evidence of only 17 instances where an identified employee moved employment from one brand to another. Second, seven out of those 17 (41%) are not instances where the hiring occurred between two brands within an Employer-proposed unit, but rather between one proposed unit and another: five show cross-hiring between the Health & Lifestyle and Home & Family proposed units, and two show movement between brands in the proposed Health & Lifestyle unit and the service-oriented brands of *Popular Mechanics* and *Best Products*. I thus conclude that, given the numbers involved, there is no significant tendency established in the evidence that employees move jobs only within an Employer-proposed unit.

c. The Weight Given to Distinctions Regarding Journalism Style and General Content Type

Service journalism, Home & Family, and Health & Lifestyle are broad concepts used to describe a brand's content. Rather than there being distinct lines dividing the brands grouped in the proposed Health & Lifestyle unit from those in the proposed Home & Family unit, the conclusion I draw from the evidence is that there is a spectrum of journalism and general content category within the work of an Employer brand, blended in different and unique proportions. Thus, because these concepts are so general and fluid, and due to the inconsistencies and deficiencies in the Employer's evidence outlined above, I cannot give these distinctions much weight relative to the concrete similarities of interest based on the traditional community-of-interest categories of skills and training, job functions, and terms and conditions of employment, as set forth above in the step one analysis.

For example, both "Health & Lifestyle" and "Home & Family" brands seek employees with the same skills and qualifications, and brands in both this proposed units have petitioned-for employees whose job functions are to create similar types of content.. *Esquire*, *The Oprah Magazine* and *Country Living* seeks employees with strong writing skills. *ELLE Decor*, *Harper's Bazaar*, as well as *House Beautiful* and *Country Living* seeks employees with a strong aesthetic sense. *Veranda* and *ELLE Decor*, as well as *Marie Claire*, *Town & Country*, and *Harper's Bazaar* seeks employees with industry contacts. Furthermore, editors have the job function of writing and editing news at *Cosmopolitan*, *Harper's Bazaar* and *Town & Country*, as well as at *Delish* and *Good Housekeeping*. Editors write about culture and entertainment at *Esquire* and *Seventeen*, as well as at *Good Housekeeping* and *The Oprah Magazine*. Editors create health-related content at

Men's Health, as well as at *Prevention* and *The Oprah Magazine*. There are social editors at *ELLE*, *Marie Claire*, *Seventeen* and *Women's Health*, as well as at *Good Housekeeping* and *The Oprah Magazine*; beauty editors work at *Cosmopolitan*, *Harper's Bazaar*, *Marie Claire*, as well as at the Lifestyle Group and *The Oprah Magazine*; market editors call-in at *ELLE* and *Harper's Bazaar*, and at *HGTV Magazine* and *House Beautiful*; and there are lifestyle editors at *Esquire* and at *Good Housekeeping*. Finally, there are numerous employees in positions in copying editing, researcher, art and design and photography who perform these functions at brands in each of the Employer two proposed New York units, as well as the Employer's other proposed units.

In addition to these concrete skills and job functions described in the step one analysis, I note the Visual Group's head Campbell testified that she assigns staff based on their experience creating content for the Employer brands for which they had previously worked. The evidence reveals that four team members are assigned to two brands within one Employer-proposed New York unit, but just as many (four) are assigned to one brand in one of the Employer-proposed units plus a brand from the other proposed unit. For example, a deputy visual editor is assigned to *Harper's Bazaar* and *Marie Claire* (both Health & Lifestyle brands), but another associate visual editor is assigned to *Men's Health* (Health & Lifestyle) and *Prevention* (Home & Family). This strongly suggests that not only can a petitioned-for employee regularly create content for types of brands across the Employer's proposed unit divide, but that the content is similar across the Employer-proposed units.

Finally, as I concluded in step one, distinctions that exist between brands in terms of skills, training, and job functions relate to the issue of specialization. However, specialization, particularly as it relates to the Employer's arguments regarding journalism style and general content category, is, based on the totality of the evidence, more *brand-specific* than related to whether an employee performs work for a brand within a "Health & Lifestyle" unit or a "Home & Family" unit.

An editor writing about luxury products for content appearing in either *ELLE Decor* ("Home & Family"), *Veranda* (a "home" title), *Harper's Bazaar* ("Health & Lifestyle") or *Town & Country* ("Health & Lifestyle") are all doing so based on a deep knowledge and interest in the various luxury products at issue. However, an editor calling in product for *House Beautiful* and *HGTV Magazine* (both "Home & Family" brands) would not have the expertise necessary to call in product for either *ELLE Decor* (another "Home & Family" brand) or *Harper's Bazaar* (a "Health & Lifestyle" brand). A food expert at *Delish* ("Home & Family") could not write a story about the latest trends in interior design at *ELLE Decor* ("Home & Family"), just as an *ELLE Decor* luxury design editor would not be able to review the latest fitness craze for *Men's Health* ("Health & Lifestyle"). Based on the record evidence, it is highly unlikely that an editor at *Seventeen* with a passion for teenage popular culture and social media platforms would be well-suited to reviewing the latest cultural events attended by the older, affluent audience of *Town & Country*, even though both *Seventeen* and *Town & Country* are in the proposed "Health & Lifestyle" unit. By the same token, the Employer cannot convincingly argue that writing news in a "Home & Family" brand is "service journalism," but writing news in a "Health & Lifestyle" brand is not. The content in each case is news, but about different subjects and for a different audience.

That similar examples are too numerous to recount reveal that the Employer does not persuasively argue that specialization, or a particular expertise, supports the unit separations that it proposes in

this case.⁸⁸ As stated above, the differences in job specialization exist as equally among employees *within* each of the Employer’s proposed units as they do between employees in one of its proposed units and another. In any event, I find that distinctions in specialization are not outweighed by the similarities in interest that I identify herein within the petitioned-for unit.

2. The Issue of Shared Employees

The Employer argues that brands that share a significant number of employees support its argument to divide the New York-based brand employees into either of the proposed Health & Lifestyle of Home & Family units.⁸⁹ The record reflects that certain brands share employees in various degrees. As developed in the testimony of the Employer’s witnesses, the reasons for sharing employees stems from a combination of two factors: economic efficiency (economies of scale) and overlapping coverage.

In the proposed “Home & Family” unit, *Good Housekeeping*, *Prevention* and *Woman’s Day* share eleven agreed-upon petitioned-for employees, which comprise all but a few of the employees performing work for *Prevention* and *Woman’s Day*. However, *Good Housekeeping* has over 15 petitioned-for employees working exclusively for that brand. All of the *Food Network Magazine*’s 14 petitioned-for unit employees also perform work for the *Food Network Magazine*; however, *The Pioneer Woman* has an additional five employees who work exclusively for that brand. In the proposed “Health & Lifestyle” unit, approximately one-third of each of the employee complements at *Men’s Health* and *Esquire* are shared.

While the Employer draws attention to the fact that there are a significant number of shared employees among five brands in its proposed “Home & Family” unit, and two brands in its

⁸⁸ Outside of the proposed Home & Family and Health & Lifestyle units, different specializations exist within each of the other proposed units. A visual editor or photographer in the Visual Group does not have requisite experience and contacts to do the celebrity-booking work of the Entertainment Group; and a fashion editor in the Fashion Group does not have the skillset to photograph the celebrity. The shared employees between *Veranda* and *Country Living* in Alabama perform specific tasks: copy editing, research, art and photography. Otherwise, the editors specializing in the “maintstream” products in *Country Living* would not likely have the knowledge for the designers of luxury jewelry and furniture featured in *Veranda*. (In this regard, I note the distinction made by *Harper’s Bazaar*’s executive managing editor regarding how the beauty-related coverage at her brand, which involves luxury products, is distinct from beauty coverage of “drugstore” products at brands such as *Good Housekeeping*.) Similarly, editors at *Car & Driver* are experts in the average consumer car, not the high-performance “super cars” that are subject of *Road & Track*’s focus. Finally, at the brands of the Enthusiast Group – *Bicycling*, *Runner’s World* and *Popular Mechanics* – its director Strickland described that he does not expect the employees he hires to be experts in every type of product used by a bicyclist, runner, or home repair enthusiast, and that different editor-enthusiasts have primary areas of content responsibility related to each brand’s separate focus.

⁸⁹ The Employer also argues that shared staff in the Alabama Employees unit and the proposed The Enthusiast Group unit supports separating those units from the remainder of the petitioned-for unit. I address that issue below in my separate discussion of each unit.

proposed “Health & Lifestyle” unit, the Employer’s argument is unpersuasive when there are six other “Home & Family” brands, and seven “Health & Lifestyle” brands, that do not share a significant number of employees.⁹⁰ In fact, outside of the shared complement at *Esquire* and *Men’s Health*, there is about the same small number of shared employees within the Health & Lifestyle proposed unit as there are between that proposed unit and brands outside that proposed unit.

Thus, I conclude that the existence of shared employees within each of the Employer’s proposed New York units indicates at most that certain brands have overlapping coverage such that it makes sense for the Employer to benefit from the efficiency of sharing employees. As such, this argument is a variant on the journalism-style and general-content-category arguments that I have already considered, and to which I accord little weight relative to the many and significant similarities in interest among petitioned-for employees based on the traditional community-of-interest criteria. With those considerations in mind, I turn now to the analysis of further contended distinctions raised by the Employer, primarily in its post-hearing brief, with respect to each of its proposed units relative to the larger petitioned-for unit.

3. The Employer’s Proposed Health & Lifestyle Unit

As stated above, the Employer’s proposed Health & Lifestyle unit consists of some brands with employees working in the New York facilities: *Cosmopolitan*, *ELLE*, *Esquire*, *Harper’s Bazaar*, *Marie Claire*, *Men’s Health*, *Seventeen*, *Town & Country*, and *Women’s Health*.

Apart from the journalism-style and general-content-category arguments addressed above, the Employer argues that the skills and training of employees in the proposed Health & Lifestyle unit are distinct from employees in other brands. First, “[a]cross the brands covering women’s and men’s fashion, good taste and established connections are required qualifications or the editorial staff,” in addition to “knowledge about the audience.” Quoting Harper Bazaar’s digital Editorial Director, an employee in the proposed Health & Lifestyle unit must be “a tastemaker and have[e] a real understanding of the luxury world,” as well as “ability to forecast trends.” Apart from fashion, “*Women’s Health* requires that fitness editors have their personal training certifications and *Men’s Health* highly values this certification for its editors as well.”

⁹⁰ There are a handful of shared employees elsewhere within each proposed New York units, which, contrary to the Employer’s position, include employees that are shared across the Employer’s proposed units in New York and elsewhere: (1) *Women’s Health* shares a *Men’s Health/Esquire* research editor, as well as an assistant editor and junior designer with *Men’s Health*; and (2) *ELLE* & *Town & Country* share a credits editor; (3) *Harper’s Bazaar*, *ELLE* and *Town & Country* share an editorial business director; and (4) *Cosmopolitan* and *Women’s Health* share an editorial business coordinator and an editorial business associate. However, (1) an associate editor on the digital side of *Town & Country* is shared between that brand and the digital component of *ELLE Decor*; (2) *The Oprah Magazine* shares an editorial business manager with *Harper’s Bazaar*, *ELLE* and *Town & Country*, and (3) until recently, *Car & Driver* and *Popular Mechanics* shared an editor.

However, the skills identified by the Employer are not exclusive to the proposed Health & Lifestyle unit, and not shared internally by employees in that proposed unit. In particular, the skill in trend forecasting is shared by the employees in the Entertainment Group, but not shared by *Women's Health* and *Men's Health* employees within the proposed Health & Lifestyle unit. Similarly, *Veranda* and *ELLE Decor* (outside the Health & Lifestyle unit) seek to hire employees with industry connections, whereas industry connections are not sought after at *Men's Health* and *Women's Health*. The preferred training and certifications for fitness editors at *Men's Health* and *Women's Health* are not required for fashion editors with the proposed Health & Lifestyle unit, but similar specialized training is required for some employees outside that proposed unit at *Car & Driver* and the *Good Housekeeping Institute*.

Although not raised by the Employer in its position statement, the evidence reveals that certain brands in the proposed Health & Lifestyle are visually driven, thus requiring employees to conceptualize stories more visually than in written terms. Those skills are shared by employees in the Visual and Fashion Groups, as well as by fashion employees outside the Health & Lifestyle unit (such as at *The Oprah Magazine*); but, those skills are not essential to most employees at the health-focused *Men's Health* and *Women's Health*, and for many positions at *Esquire*, all of which are in the proposed Health & Lifestyle unit.

With regard to terms and conditions of employment, the Employer argues that “[u]nlike brands in other groups, most of the Health & Lifestyle brands have fashion closets in their offices, and regularly arrange for highly specialized clothing and accessories to be loaned for their photo shoots.” Those closets also have certain fashion assistants maintaining the closets, and some brands have policies and procedures to avoid loss. Fashion-closet-related terms and conditions of employment are shared by the Fashion Group, which maintains the fashion closet for brands using the fashion hub. By contrast, *Women's Health* does not have a fashion closet, and the closet shared by *Men's Health* and *Esquire* was described by *Esquire's* editor-in-chief as “less a closet and more a big room where we keep all of the clothes and accessories that we use to shoot both celebrities and models for the magazine and the website.” Similar rooms, and associated policies, are located at other brands in the petitioned-for unit outside the proposed Health & Lifestyle unit. *Country Living* and *Veranda* have a prop closet in which items are stored for photoshoots, as does *ELLE Decor* and *House Beautiful*. The Alabama facilities also has a crafts closet with associated loss-prevention policies and procedures in place.

The Employer further argues that the terms and conditions of employment involved in photoshoots “are significantly different experiences at the Health & Lifestyle brands than at the Home & Family brands,” where to shoot items (rather than celebrities) requires extensive planning and expense. To be sure, the work of editors involved in planning an expensive, high-caliber celebrity photoshoot are unique in some respects, but those terms and conditions of employment are shared by employees in the Employer-proposed “Editorial Operations” unit. Testimony also reveals that some regular photographic content in *Esquire* requires the lower-level planning and expense that Employer’s witnesses describe at non-fashion-focused magazines; and photographic content at *Women's Health* and *Men's Health*, apart from their covers, is similar to other brands with fitness content, such as *Runner's World* and *Bicycling*, which are outside the proposed Health & Lifestyle unit.

The Employer further argues that the Health & Lifestyle unit “is also distinguished by events that editors attend outside the office” because “[t]hey regularly attend fashion shows, beauty shows, launch events, and market appointments, in New York but also all over the world, where they tend to see editors from other brands in the Health & Lifestyle [proposed unit].” However, the evidence elicited in the record discloses that, although employees at one brand may have opportunities to travel more often than employees at another, the differences related to travel are only in frequency, not in kind. Thus, fashion-related coverage may entail for some employees international travel to the fashion shows in London, Paris and Milan, but international travel is part of the work of employees at *Car & Driver* and *Road & Track*, and for employees in the Fashion Group (budget and “bandwidth” permitting). *ELLE Decor* (outside the proposed Health & Lifestyle unit) also sends employees to trades shows internationally, such as to London, Milan, Paris, Austria and St. Bart’s, and traveling domestically to attend trade shows is part of the job for employees at *Country Living* and *ELLE Decor*, as well as employees at *Car & Driver* and *Road & Track*. The evidence reveals that local new-product launches and press events are a regular part of the work of many petitioned-for employees at multiple brands across the petitioned-for unit. Thus, employee travel outside the proposed Health & Lifestyle unit is substantially similar to travel within it.

The Employer further argues that certain brands within the Health & Lifestyle unit share employees, which argument I have addressed above, finding that this argument is not persuasive in light of the seven other brands in the proposed Health & Lifestyle unit that do not share any significant number of employees.

Finally, the Employer argues that “*Town & Country* shares the 24th floor of the Hearst Tower with *Marie Claire*” and that “*Men’s Health* and *Women’s Health* share office space, . . . and regularly interact with one another on various content initiatives.” Firstly, there is no evidence that shared office space on the same floor begets relevant interaction between the employees at *Town & Country* and *Mare Claire*. Secondly, the Employer identified only three projects on which the employees at *Men’s Health* and *Women’s Health* regularly collaborate; otherwise, the testimony from *Men’s Health* employee Brett Williams specifically testified that he does not interact professionally with *Women’s Health* employees. By contrast, the evidence of regular interaction between and among employees in the proposed Health & Lifestyle unit and the employees of the proposed Editorial Operations unit is regular and frequent, and encompasses content (covers and photospreads) appearing in every issue of the Health & Lifestyle brands for which the Groups in the proposed Editorial Operations unit work.

In sum, as described above, I accord little weight to distinctions based on service-journalism and general content category between petitioned-for employees and the proposed Health & Lifestyle unit. I also give very little weight to the additional distinctions raised by the Employer because the skills and qualifications, and terms and conditions of employment, that the Employer proposes to be distinctions are in fact present in the petitioned-for unit outside the proposed Health & Lifestyle unit. Therefore, I conclude that the distinctions in the interests between the employees in proposed Health & Lifestyle unit do not outweigh the similarities in interest, found in the step one analysis above, between proposed Health & Lifestyle unit employees and the larger petitioned-for unit.

4. The Employer's Proposed Home & Family Unit

As stated above, the Employer's proposed Home & Family unit includes digital component of *Country Living*, as well as *Delish*, *ELLE Decor*, *Food Network Magazine*, *Good Housekeeping*, *HGTV Magazine*, *House Beautiful*, *The Oprah Magazine*, *The Pioneer Woman*, *Prevention* and *Woman's Day*.

In its post-hearing brief, the Employer primarily argues that the distinctions between the proposed Home & Family unit and the remainder of the petitioned-for unit relate to journalism style, general content category, and the employee skills, training and job functions associated with journalism style and general content category. For the reasons set forth above, I accord little relative weight to those arguments in this case. The Employer also argues that there is cross-brand hiring within the Home & Family unit, but not between the Home & Family unit and other proposed units; I concluded above that this argument is not supported by the evidence. I have also addressed above the Employer's argument regarding the shared employees among certain brands, but not others, the proposed Home & Family unit.

In sum, I conclude, as I do with the proposed Health & Lifestyle unit, that distinctions in journalism style and general content category, as well as geography, do not outweigh the similarities in interests among the petitioned-for unit, and that the additional distinctions raised by the Employer in its post-hearing brief do not add any addition weight to those distinctions relative to the similarities.

5. The Employer's Proposed Editorial Operations Group

As stated above, the Employer uses the label "Editorial Operations" to describe a proposed unit that includes the Entertainment, Visual and Fashion Groups, but, as I previously noted, that designation is not a distinct department or other type of pre-existing organizational division within the Employer's editorial operations. Furthermore, as I conclude in the step one analysis, the job functions performed by the employees in the three Groups are shared with petitioned-for employees outside the proposed Editorial Operations unit. Employees in each hub performs work in a particular aspect of content creation: Entertainment Group employees pitch content ideas to brands and facilitates the placement of celebrities in brand content; Visual Group employees photographs people, products and other subjects for use in brand content; and Fashion Group employees call-in product, edit and style photoshoots. In fact, there are more shared job functions between the Editorial Operations employees and the remainder of the petitioned-for unit than there are job functions shared among the three Groups within that proposed unit. Finally, where the Employer distinguishes the work of employees in the hubs from those outside the proposed unit based on "multi-brand responsibilities," the record shows that there are petitioned-for employees who have content responsibilities towards several brands, such as the employees in the Enthusiast and Lifestyle Groups, at the *Food Network Magazine/The Pioneer Woman*, and among the various shared employees elsewhere in the petitioned-for unit.

Preliminarily, the Employer argues, in its post-hearing, that the proposed Editorial Operations unit should be separate because "[t]he three hubs . . . provide their respective shared services in an integrated way" and because the hubs' employees interact frequently with each other on projects.

Thus, the Employer ignores the wealth of evidence in the record showing both the high degree of functional integration between the hubs and brands, as well as the regular and frequent contact between petitioned-for employees in the three Groups with the many petitioned-for brand employees who are responsible for initiating, directing and guiding a project to completion. In fact, the level of employee interaction is greater in this instance than anywhere else in the petitioned-for unit, save the level of contact among employees within each of the brands.

For example, with regard to the Entertainment Group, the Employer argues that the employees there, unlike the remainder of the petitioned-for unit, are guided by a “‘Hearst First’ mantra, meaning that while each of them is responsible for the celebrity relationships for a few individual brands, the staff’s priority must be the best interest of [the Employer] as a whole, and connecting celebrities to particular brands that fit.” By contract, “[e]mployees who work for a specific brand . . . are not tasked with prioritizing [the Employer’s] overall needs over that of their brand.” However, the testimony of the Group’s director discloses that she uses the “‘Hearst First’” principle with her staff as a way to make sure that they do not “hoard[] information” gathered in their consumption of celebrity culture, but instead share information and ideas, and collaborate regarding which brand would best be served by the information. I find that this to be just one aspect of the Entertainment Group’s job functions, and speaks more to multi-brand responsibility than it does to a significant distinction to the work of the remainder of the petitioned-for unit.

Regarding the Fashion Group, the Employer argues that, “[u]nlike editorial staff at the individual brands, each employee in the Fashion Hub works as a ‘category expert on a part of the fashion marketplace rather than an individual Hearst brand’ — each specializing in a particular area of the fashion industry across brands.” However, this type of specialization within the Fashion Group mirrors the expertise found in fashion departments at brands who do not use the Fashion Group. Each brand has its unique look and target audience, and the fashion editors are experts on the clothes and accessories suited to that look and audience.

With regard to the Visual Group, the Employer argues that the work of employees in that Group is distinct from brand work because the Group’s employees have access to photo studios, as well as specialized equipment and editing tools. However, there are brands elsewhere in the petitioned-for unit that have their own visual staff who perform photographic work at the *Food Network Magazine/The Pioneer Woman*, the Enthusiast Group, *Car & Driver*, and *Country Living*, which has its own photo studio and equipment.

I conclude that the foregoing distinctions raised by the Employer regarding its proposed Editorial Operations group do not outweigh the similarities in interests with the remainder of the petitioned-for unit, as set forth above and in the step one analysis. Although the Employer correctly states that the Visual Group performs work only for brands at the New York facilities -- except for the *Food Network Magazine/The Pioneer Woman*, whose photographic staff apparently must create their visual content separately due to the joint-venture relationship with the Discovery Channel -- I do not find this distinction to outweigh the previously-identified substantial similarities in interest in the categories of functional integration, employee contact and job functions.⁹¹

⁹¹ The record contains evidence that the Employer has a “video hub” in which petitioned-for employees perform work for specific brands to which the employees are assigned. The Employer

6. The Enthusiast Group

The Employer argues that three brands of the Enthusiast Group – *Bicycling*, *Runner's World* and *Popular Mechanics* -- should be in a separate unit from the rest of the petitioned-for unit for the following reasons.

The Employer contends that the internal organization of the Enthusiast Group distinguishes it from the remainder of the petitioned-for unit. However, there are many similarities between the Lifestyle Group of brands (*Good Housekeeping*, *Prevention* and *Woman's Day*) and the Enthusiast Group in terms of organizational structure. Both Groups have one budget covering the three brands. Both groups are led by an editorial director, and each editorial director holds an additional title related to one of the brands within the group: Lifestyle Group director Francisco is also the editor-in-chief of *Good Housekeeping*, and Enthusiast Group director Strickland is “the chief enthusiast for *Bicycling*.” Although Francisco reports to chief content officer Kate Lewis, and Strickland reports to senior consumer revenue vice president Madden, both Lewis and Madden report directly to President Troy Young. Furthermore, *Woman's Day* has an editor-in-chief, and *Prevention* has a content director, who both report to Francisco, just as *Popular Mechanics* has an editor-in-chief and *Runner's World* has senior test editor/“runner-in-chief,” who both report to Strickland.

The three Lifestyle Group brands and the Enthusiast Group brands also share the same structure in their mix of shared and brand-specific staff. In the Lifestyle Group, the shared complement includes eleven petitioned-for employees that create health, food and crafts/styling content for all three brands; in the Enthusiast Group, editors have “primary responsibility” related to specific brand content and content pillars, they are also expected to create content for all three brands. Just as the Enthusiast Group has a test team that performs the testing for all three brands, the *Good Housekeeping Institute* performs that function for the Lifestyle Group's three brands. However, the organizational charts of the Groups reveal that both Groups have brand-specific employees. In the Enthusiast Group, there is an open position for a deputy editor for *Runner's World* and *Bicycling*, to whom five petitioned-for employees report; and a separate deputy editor for *Popular Mechanics* to whom four petitioned-for employees report. In the Lifestyle Group, three petitioned-for employees work exclusively for *Prevention* and are focused on creating digital content different from *Prevention's* print content; and *Woman's Day* has two petitioned-for employees and two disputed supervisors working exclusively on *Woman's Day* content. As stated above, *Good*

stated on the record that the petitioned-for employees in the video hub's organizational chart who are identified as assigned to a brand are considered employees performing work for the brand (as if those employees were included in the brand's own organizational chart). Thus, those brand-assigned employees are agreed-upon unit employees in both the petitioned-for unit and in the Employer-proposed New York units of Home & Family and Health & Lifestyle. However, there are a handful of employees in that hub who are not assigned to a brand, and the Employer takes the position that they should be in its proposed Editorial Operations unit. Because both the Employer and Petitioner agree that these employees fall within the classifications of “editorial, video, design, photo, and social staff,” I conclude that they are properly included in the petitioned-for unit.

Housekeeping has over fifteen agreed-upon unit employees working exclusively on *Good Housekeeping* content.

In addition to structure, the Employer identifies certain terms and conditions of employment that purportedly distinguish the brands in the Enthusiast Group from the remainder of the petitioned-for unit. The Employer argues “employees [in the Enthusiast Group] work as a hive and no single individual makes editorial decisions because the structure is based on function, not hierarchy.” First, the testimony of service, news & gear editor Dawson reveals that, as other brands, his Group has a hierarchical review process for content. In any event, there is testimony in the record that other brands make editorial decisions on a collaborative basis. When asked about his involvement in content decisions for the *Men’s Health* digital platforms, deputy editor Dukoff testified that “the majority of our content mix and those kinds of decisions happen in a pretty informal and collaborative process [and] there is no hierarchical, linear process that every single piece of content on the website goes through.” Similar testimony was given by *ELLE*’s site director and senior culture editor, and in describing working with her video team, the chief of *Seventeen* testified: “we like to be collaborative and . . . you never know where a great idea is going to come from; [s]o we’ll all brainstorm together.”

The Employer also distinguishes the Enthusiast Group’s working conditions from other brands because “the employees regularly run together at lunchtime and hold staff bike rides every few days to immerse themselves in the lifestyle of their audience.” However, this is very similar to what the *Women’s Health* editor-in-chief described in her testimony: “I like to get the team together for a sweat outside of the office[, s]o we pretty regularly do team workouts.” The Employer also argues that “testers rarely attend press events and focus instead on comparative qualitative testing of gear or products around the office.” However, that is not the case for the non-testing editors at The Enthusiast Group. Editor Andrew Dawson testified that he and other editors covered the New York City marathon, and Dawson has traveled domestically for “classic reporting trips.” In any event, Strickland is not the only brand chief who prefers editors to refrain from attending product launches; *House Beautiful*’s editorial director also describe her preference for designers to send fabric and furniture to the brand rather than have editors visit the designer.

The Employer also attempts to distinguish the Enthusiast Group employees from other petitioned-for employees because, in the Enthusiast Group, “employees are expected to be enthusiasts themselves.” As stated above, a passion for brand content is an oft-stated qualification for employees elsewhere in the petitioned-for unit, namely at *Cosmopolitan*, *Delish*, *Town & Country*, *ELLE*, *Harper’s Bazaar*, *The Oprah Magazine* and The Visual Hub.

The Employer argues that the job function of employees in the Enthusiast Group is “to survey the market and test products on a day-to-day basis, and to be experts on their readers’ passions.” The work described by both Employer’s and the Petitioner’s witnesses regarding testing at the Enthusiast Group is nearly identical to the process described by editor Melanie Yates at *Best Products*: conceiving the topic, calling in product, developing a test, having coworkers be the testers, collecting the results, and writing the story. Compare, *e.g.*, Yates’s testimony with that of former test editor Dan Roe regarding the testing of headphones. Furthermore, the job requirements of being an expert in a subject of interest to a brand’s audience is in evidence throughout the petitioned-for unit, especially at brands, like those in the Enthusiast Group, where the content focus

is narrow, such as at *Car & Driver*, *Delish*, the *Food Network Magazine*, *Prevention*, *Men's Health*, *Road & Track*, and *Women's Health*.

Finally, the Employer additionally argues that “the Enthusiast Group’s business model . . . is unique in that it is based on consumer revenue.” The evidence shows that the Enthusiast Group has differently proportioned goals in the types of revenue generated than do other brands, which the Employer contends creates less pressure on an editor to write stories appealing to advertisers rather than readers, and “orients the publications toward their readers in a way that may not be necessary for magazines with wider appeal.” However, when the Employer asked consumer vice president Madden how “that performance metric, if anything, result[s] in what people do on a day-to-day basis in the Enthusiast Group,” he answered only that it “creat[es] the longer form content that may not get as many views but would create a loyal audience that comes back multiple times.” The record amply reveals that longer form content is written by editors throughout the petitioned-for unit, and it appears counterintuitive that the longform content at other brands is not written to interest its readers to continue following the brand’s content. In any event, despite the contended narrower focus on the types of revenue generated at other brands, the brand-performance evidence in the record shows that the affiliate revenue created by the brands of the Enthusiast is on par with other Employer brands.

In sum, I do not find the distinctions raised by the Employer to outweigh the similarities in interests identified in step one of the analysis. In fact, as described here, many of the Employer’s distinctions advanced by the Employer represent more of a similarity than a distinction in the interests of employees elsewhere in the petitioned-for unit.

With regard to the existence of shared staff, I considered above the Employer’s arguments regarding shared employees in the proposed New York units, and determined those arguments to be similar to the Employer’s arguments regarding journalism style and general content category, each of which I give little weight for the reasons stated above. However, in the New York context, I noted that the Employer does *not* argue that the existence of shared staff among *a few* brands *within* one of the two proposed New York units requires that those brands with shared staff be separate from the remaining brands in the proposed unit. For example, the Employer does not argue that *Men’s Health* and *Esquire*, because of its shared staff, should be a separate unit from the remaining seven brands in the proposed Health & Lifestyle unit.

However, by contrast, the existence of shared staff is among the reasons cited by the Employer to separate the three brands in the proposed Enthusiast Group unit from the remainder of the petitioned-for unit. Nevertheless, existence of shared staff at the Enthusiast Group, and the fact that they are geographically separate from the remainder for the petitioned-for unit, do not outweigh the similarities in interest that I have previously identified in both step of the *Boeing* analysis and here in step two. First, a shared employee complement is only one aspect of the internal organization of the Enthusiast Group, which, in all other organizational respects, is similar to the brands of the Lifestyle Group, which the Employer does not argue should be in a separate unit based on internal organizational considerations. Secondly, as described above, from an organizational perspective, the Employer has specifically structured the daily work of the Enthusiast Group to be supervised and overseen by New York-based supervisors and agreed-upon unit employees operating *within* the three brands.

I therefore conclude that the distinctions raised by the Employer with respect to *Bicycling*, *Popular Mechanics* and *Runner's World* do not outweigh the similarities in interests with the remainder of the petitioned-for unit.

7. The Employer's Proposed Unit of Alabama Employees

The Employer proposes that all employees working at the brands in its Alabama facilities – *Country Living* and *Veranda* -- be in a separate bargaining unit, but exclude those employees creating content for the *Country Living's* online platforms, who work in the New York facilities.

The Employer argues that the two brands share a managing editor, and about half the agreed-upon unit staff of each brand are shared. However, for the same reasons identified above with respect to the Enthusiast Group, I do not find that shared staff and geographic separation outweigh the numerous similarities in interest that I have previously identified. Furthermore, the existence of shared management and staff between *Country Living* and *Veranda* is a facet of the organizational structure of several of the Employer's other brands elsewhere in the petitioned-for unit. *Good Housekeeping*, *Prevention* and *Woman's Day* share an executive managing editor; as do *ELLE* and *Town & Country*. Other brands also share upper-level brand personnel: *Delish* and *House Beautiful* share an editorial director; *Food Network Magazine* and *The Pioneer Woman Magazine* share an editor-in-chief; and *ELLE Decor* and *Town & Country* share a site director.

The Employer also points to the evidence that the two brands share a photo studio, and that *Country Living* has a test kitchen, a crafts closet, a prop closet that houses items for photo shoots, as well as specific guidelines for the use of the kitchen and crafts closet. These terms and conditions of employment as well pertain to several other brands. Studio D in New York is used by the Visual Group and shared with other brands in the New York facilities. *ELLE Decor* has a prop closet, and the fashion closets at various brands have associated guidelines for their use. *Delish* has two test kitchens, and the Lifestyle Group's test kitchen is shared by its three brands.

The Employer excludes the petitioned-for *Country Living* online content employees from the Alabama unit because: (1) the content created by Alabama employees for publication on the brand's digital platform is insignificant and involves only contact between supervisory staff; and (2) otherwise, there is no contact between the print and digital employees. (As described above, the brand's site director and deputy director in New York provide stories to the managing and executive editors in Alabama for assignment in Alabama).

The evidence shows that, of the 60 or 70 stories per week published on the *Country Living* digital platform, five of them are the product of a joint assignment process between, on the one hand, *Country Living's* site director and deputy editor in New York, and, on the other hand, the managing editor and executive editor in Alabama: the New York supervisors choose the five topics and the Alabama supervisors assign the work to Alabama editors to write. Thus, less than 1 in 10 stories appearing on the *Country Living* digital platform are written in Alabama.

However, these facts exist elsewhere in the petitioned-for unit. The Employer states in its post-hearing brief that:

Most of those brands have separate digital and non-digital staff. Some are based in New York, some in Pennsylvania, some in Michigan, and some in Alabama. Some of the brands have separate teams working on digital and printed content; some brands blend those functions; and some brands publish only digitally.

Although the record does not reflect that “most” of the brands have separate digital staffs, it does reveal that there is a spectrum of fully-integrated digital and print staffs, partially integrated staffs, and non-integrated staffs. Based on testimonial evidence and the Employer’s organizational charts, the following brands have, as does *Country Living*, separate digital staffs, with separate assignment and reporting structures from the print editions: *ELLE*, *Town & Country*, *ELLE Decor*, *Marie Claire*, *Harper’s Bazaar* and *The Oprah Magazine*. Further similar to the *Country Living* brand, some print editors write content for the digital side at *Town & Country*, *Marie Claire*, *Harper’s Bazaar* and *The Oprah Magazine*. Notably, the evidence shows that less content is contributed than *Country Living* Alabama staff than by print staff at *ELLE* (no content), *ELLE Decor* (no content) and *Harper’s Bazaar* (5 out of 400 stories per month come from the print staff.) Moreover, among the brands that separate print and digital staffs, the only non-material interaction between those two staffs is evidenced at *Marie Claire*; otherwise, just as at *Country Living*, there is either no, or extremely little, interaction at other brands where the staffs are divided.

Finally, I note that the Employer does not argue that a New York brand’s separated digital staff should not be included with the brand’s print staff in an Employer-proposed unit because of the separation. For example, despite the fact that *Town & Country* and *ELLE Decor* share the same site director, the Employer includes both the digital and print staffs of *Town & Country* in its proposed “Health & Lifestyle” unit, and does the same with *ELLE Decor*’s separate staffs in its proposed “Home & Family” unit.

Thus, I conclude, as does the Employer regarding brand print and digital staffs in New York, that the digital and print staffs of *Country Living* should not be fractured. As described above, the facts argued by the Employer to separate the Alabama employees from the remainder of the petitioned-for unit also pertain to certain brands within the Employer’s Health & Lifestyle and Home & Family units. Just as the Employer does not contend those distinctions are meaningful within its proposed units, I do not find that those distinctions outweigh the similarities between the Alabama employees and the remainder of the petitioned-for unit. Furthermore, given the little weight I accord distinctions of specialization and geography as set forth above, I find that the similarities described in step one among the petitioned-for employees are not outweighed by the distinctions argued by the Employer.

6. Hearst Autos

With regard to the three brands in the proposed Hearst Autos unit, the Employer argues that Hearst Autos is a wholly-owned subsidiary. As I have discussed in the step one analysis, I conclude that, whereas Hearst Autos is structured as a separate division, the brands within Hearst Autos are treated, within the Employer’s editorial operations, nearly identically to other brands.

With regard to skills, training and job functions, the Employer in its post-hearing brief, argues that:

Most employees in Ann Arbor are either “road warriors,” whose job consists of pre-testing analytics and auto maintenance, or vehicle testers, who primarily perform instrumented testing of cars at the Chrysler Proving Grounds in Chelsea, Michigan. Many of these employees have engineering or technical degrees, with an understanding of how cars function, and have taken driver training courses.

However, the record does not contain evidence on the number of “road warriors” who work in the single garage at the Michigan facilities. The record is clear that only five petitioned-for unit employees perform instrumented testing at the Chrysler Proving Grounds in Michigan. Furthermore, the Employer’s witness only identified two undisputed supervisors, and one former testing director, as having engineering degrees; otherwise, the instrumented-testing employees are “self-taught, but are sort of physics and engineering minded.” Thus, an engineering degree is neither a requirement for a petitioned-for unit job, nor do any petitioned-for unit employees have one. Therefore, other than the five identified instrumented-testing employees, who are certified to drive cars at the Chrysler Proving Grounds, the remaining employees working at the Heart Autos brands who do the long- and short-term car testing, although possessing a passion for the automotive world, have the driving skills and training of a car consumer.⁹² I also find that the road warriors and the instrumented-testing employees do work substantially similar to the petitioned-for employees at the *Good Housekeeping Institute*, who in fact have science degrees and who the Employer agrees should be included in its proposed Home & Family unit within the agreed-upon classifications of “editorial, video, design, photo, and social staff.”

In regard to testing, the Employer further argues that *Car & Driver* testing is unique within the petitioned-for unit because it “generates extraordinarily detailed data on more than 200 data points.” Although the amount of data is not contained in the record regarding the work done at the labs of the *Good Housekeeping Institute*, the Employer’s witnesses testified that “data” is brand content just like any other type. As stated by the Lifestyle Group’s Jane Francisco:

many of the people who run the labs and work in the labs are scientists so . . . some of them create content. . . . [L]ike they create all of the -- like they do all of the testing and create all the data And put it in -- so our writers . . . might interview them to create the content. Like they cocreate the content for any number of stories for both print and digital.

The Enthusiast Group’s chief Strickland also testified about data content in the context of assigning work:

⁹² Only one employee witness testified to taking a specialized driving course, but he is not a driver who uses the proving grounds track.

So we're . . . very data driven. And so the staff will -- everything we do starts with the data and -- or involves, like, trying to create another data place. So sometimes we'll do things we don't have data for. And then [editors] will work with their . . . director levels and decide what those stories are.

I therefore conclude that the work of developing data is one type of content creation, and those employees at *Car & Driver* who collect data, including the road warriors, are involved in content creation equally to other petitioned-for employees.

Further regarding skills and qualifications at Hearst Autos, the Employer argues that:

when evaluating a candidate for a position at *Car and Driver* uniquely include knowledge of the automotive industry, vehicle dynamics behavior, ability to drive well to test vehicles and effective communication skills to both an enthusiast and mass shopper audience.

As I conclude above, this distinction is one of specialization, and to the extent that the Employer argues that an employee's deep knowledge of automobiles and the automotive industry distinguishes that employee from the remainder of the petitioned-for unit, I will not privilege that knowledge over the deep knowledge of fashion, interior design, food and health possessed by numerous employees at the Employer's other brands. In any event, the evidence revealed that there are car reviews and automotive content created by other brands, namely, *Good Housekeeping*, *Esquire* and *Popular Mechanics*.

With regard to the terms and conditions of employment of employees at Hearst Autos, the Employer argues that Hearst Autos "employees also travel more than employees at any other brand, often on 'press trips' paid for by car manufacturers eager to have their cars tested by the Hearst Autos' deeply experienced editors, often under extreme conditions." While it is true that *Car & Driver* editors appear to travel more frequently than other petitioned-for employees,⁹³ fashion editors at other brands will travel internationally to the fashion shows, and there is much evidence in the record (*see, supra*, Section V (Employee Travel)) that manufacturers invite petitioned-for editors at other brands to attend press trips and trade events similarly to the Hearst Autos editor's trips to the Los Angeles and Detroit shows.

Finally, although acknowledging that there are Michigan employees who "provid[e] more general news coverage or social media marketing, and do not make the press trips or drive high-performance cars," the Employer argues that these employees have the "unique work experience" of using test cars as they would their personal cars. Because this experience relieves employees of paying for gas (because test car gas is reimbursed) and perhaps the need to own a personal car, I find this a significant benefit not shared by the remainder of the petitioned-for unit except perhaps by one petitioned-for an employee at the Enthusiast Group, who has not "bought running shoes in

⁹³ There is only one instance found in the record of "extreme conditions," when an editor drove a high-performance car on a glacier.

probably two years” because he runs exclusively in test shoes. I also note that an editor at the Enthusiast Group may be testing bicycles for as long as two months at time, and would use test bicycles regularly in place of his or her own.

In conclusion, the three brands in Hearst Autos are in a separate department, some editors travel more frequently than other petitioned-for employees, and they receive a significant benefit in the use of test cars. However, in all other respects, the skills, qualifications, job functions and terms and conditions of employment of the petitioned-for employees at Hearst Autos are the same or substantially similar to the remaining employees in the petitioned-for unit. I thus conclude that the distinctions in department, travel and car benefit, together with the specialization and geographic distinctions discussed above, do not outweigh the similarities in interest between Hearst Autos employees and the remainder of the petitioned-for unit.

7. *Best Products*

It is clear from the evidence that *Best Products* employees perform the same work as many other editors do – product reviews and comparisons, and affiliate revenue stories. Senior home editor Melanie Yates described the work of an editor at *Best Products* as largely writing content: “it starts at the pitch process, pitching ideas to the managing editor, having those ideas assigned to me on a weekly basis, and then spending a lot of time . . . researching and putting together stories, interviewing experts and . . . writing the piece to completion.”: Yates also edits the works of less senior editors “for clarity, for grammatical issues, syntax issues, and just to make sure that the piece flows as it should.” Furthermore, Yates conceives and executes product testing, which involves: (1) researching the product category and discussing the direction of the project with brand management; (2) devising a test and establishing criteria; (3) calling in the product from industry press contacts; (4) distributing the product to test editors and gathering feedback data from them; and (5) integrating the data into a review.

Regardless of the fact that employees perform the same and substantially similar job functions as many other petitioned-for employees, the Employer argues to exclude *Best Products* employees from the petitioned-for unit because of two aspects of their terms and conditions of employment: (1) employees are goaled on affiliate revenue;” and (2) they can only “pitch content ideas to management for its revenue potential, in contrast to the more collaborative, independent editorial work by employees in other brands.”

According to the brand’s director Andersen, Best Product editors must reach an annual affiliate revenue goal, which motivates editors to be “strategically thinking about [how] can [they] -- can [they] generate revenue if [they] create this piece of content?” The Employer did not provide evidence on the extent to which Andersen’s employees are “goaled” relative to other performance factors, other than to say that the editor’s revenue numbers are tracked and provided to the employee regularly. However, brand-level evaluation of performance is a term and condition of employment common to all petitioned-for employees, and the evidence shows that the management of individual brands determines, with guidance from the human resources department, the performance factors required to succeed at each brand.

With regard to the Employer's second contended distinction in terms and conditions of employment, Anderson described that it is harder for editors to pitch a product for review where there is no affiliate agreement covering the product. According to Anderson, the editor has to provide:

some sort of reason, whether it be, listen, our users are talking about this. We've seen it on social media. We need to be in front of this. And we'll talk to the ecommerce team and see if they can set up a partnership.

Best Products' focus on affiliate review thus narrows for the editor the range of products that the editor may include in a review. However, that narrowing comes after the topics are assigned to the editor by use of an SEO "keyword," which is a topic "that will do well from an SEO perspective," but "not necessarily [determine] the products within the review." This assignment process is what was described by *Country Living's* site director: The Employer's centralized SEO manager assigned to her brand provides a monthly list of keywords, and based on those keywords, the brand's deputy editor initiates the assignments. Therefore, I conclude that this distinction raised by the Employer is only one part of the many job functions performed by a *Best Products* editor: the selection of products. Apart from that, as detailed by Yates, there is no difference in the myriad job tasks performed by an editor at *Best Products* compared with product review testers and editors at other brands.

I also note that the brand does not exclusively focus on affiliate revenue because 20% (1 in 5) of the products reviewed are not subject to a current affiliate-revenue agreement, and the Employer does not measure the performance of the brand based solely on affiliate revenue. Furthermore, Yates testified that the brand's "social editor will write stories every single day in which there are not affiliate links or products to buy."

Because I conclude that the two contended distinctions in the terms and conditions of Best Product's employees do not outweigh the similarities between those employees and the petitioned-for unit, I find that the appropriate unit in this case includes Best Product employees in the agreed-upon classifications.

C. Step Three: Guidelines Established by the Board

As stated above, the third step in the *Boeing* analysis requires "consideration of guidelines that the Board has established for specific industries with regard to appropriate unit configurations." *Boeing*, 368 NLRB No. 67, slip op. at 4. I do not find any industry guidelines applicable to this case.

D. Contract Bar and Bargaining History

The Employer introduced a collective-bargaining agreement (“CBA”) between it and the Hearst International Employees Association (the “HIEA”), effective by its terms until 2022.⁹⁴ The Employer argues that it serves as a bar to the Petition.

In order to serve as a bar, a contract must be written, be signed by all parties, cover an appropriate unit, and contain substantial terms and conditions of employment which would provide stability to the bargaining relationship. *See Appalachian Shale Products, Co.*, 121 NLRB 1160 (1958); *see also Moveable Partitions*, 175 NLRB 915 (1969). A contract which covers only union members will not serve as a bar. *See Appalachian Shale, supra*. A contract may serve as a bar for up to three years. *See General Cable Corp.*, 139 NLRB 1123 (1962). The party asserting contract bar bears the burden of proving that the contract in question bars a petition. *See Roosevelt Memorial Park*, 187 NLRB 517 (1970).

Here, the CBA does not have bar quality because it does not cover an appropriate unit. The CBA neither contains a unit description, nor sufficiently describes the employees or classification of employees it purportedly covers. In its preamble, the CBA merely states that for the purposes of the agreement, the HIEA is “acting for and on behalf of itself and all those employees prescribed by the National Labor Relations Board under Case No. II-R-2027.” That case number does not correspond to the certification of the Employer’s employees. Rather, the document in the National Archives, for Case No. II-R-2027, concerns a steelworker union seeking to represent employees at an architectural firm. The Employer did not proffer, nor did the Region uncover, the certification referenced in the preamble. Similarly, the wage schedule attached to the CBA covers only four named categories: “Receptionist,” “Routine Clerical,” “Non-Routine,” and “Associate.” None of the categories overlap with the classifications or titles evidenced in the proceeding. Without more, those descriptions do not sufficiently describe the actual classifications the Employer purports the HIEA represents. Thus, on its face, the CBA cannot constitute a bar to the current petition.

The Employer also relies on extrinsic evidence, in the form of documents and the testimony of its head of human resources, to establish the intended coverage of the CBA. *See Bob’s Big Boy Family Restaurants*, 235 NLRB 1227 (1978) (extrinsic evidence is admissible to establish contract coverage in representation cases where ambiguity exists). However, that evidence not only fails to change my conclusion regarding the CBA’s lack of bar quality, it supports it by revealing glaring

⁹⁴ Notably, the HIEA did not appear during the hearing and has yet to intervene in the proceedings. On December 10, 2019, upon learning of the existence of the contract, the Region mailed the HIEA an “intervenor letter” stating that the HIEA may have an interest in the current proceeding, and providing the procedures, steps, and deadlines for intervention. The HIEA neither replied to the letter nor took any steps to intervene. Indeed, the Board has held that intervenor-unions must “exhibit an active interest in representing employees” and must “manifest a desire to engage in collective-bargaining on behalf of the employees in whom they assert interest.” *United Boat Service Corp.*, 55 NLRB 671 (1944). No case law supports the proposition that the Employer can intervene on behalf of the HIEA. Having shown no interest in participating in this matter, the HIEA cannot be granted intervenor status and will not appear on the ballot. *See McLaren Macomb*, Case 07-RC-243228 (Unpublished Board Order dated April 14, 2020).

and unexplained inconsistencies in CBA coverage related to job titles, brands and divisions in the Employer's operations.

Employer Exhibit 70(a)-(b) contains a list of "Union Eligible Brands" and "Excluded Brands/Groups," as well as three lists of job titles categorized as either "Editorial Roles," "Publishing Roles," or "Etc." According to the head of the Employer's human resources department, Senior Vice-President and Chief Talent Officer Keesha Jean-Baptiste, these lists are what her department "uses to determine . . . what brands and job titles are eligible for the HIEA."

Employer Exhibit 71 is a chart containing what purports to be the current list of employees who are covered by and receiving benefits under the CBA. The chart shows 51 names, each employee's title, and the brand or non-editorial department in which they work. In essence, 25 names on the list are those of the employees in the list of 25 "HIEA Employees" submitted with the Employer's position statement (with some discrepancies not material to this analysis⁹⁵). The remaining 26 names are of employees with non-editorial job titles working in non-editorial departments, such as "US HMO Finance NY" and "US HMD Bldg Servs."⁹⁶ Although not submitted through human resources head Jean-Baptiste, this document appears to be what she alluded to in her testimony when questioned about whether it is the Employer's policy to apply the contractually-mandated annual wage increase to employees who "opt-out" of being HIEA members. She answered, "If they are still *listed as HIEA members*, they would've received a 2.5 percent increase." (Emphasis added).

For reasons that the Employer does not adequately explain, the list of "Union Eligible Brands" does not contain the entirety of the Employer's magazine brands.⁹⁷ Furthermore, of the "Eligible" brands, only the "print" staff is included, which: (1) contradicts the testimony and organizational charts showing that certain brands (such as *Cosmopolitan*, *Esquire* and *Good Housekeeping*) have integrated staffs; and (2) is inconsistent with the Employer's proposed units that include both the print and digital staffs of each brand. Further unexplained by the Employer is that both the "Eligible" and "Excluded" categories each contain a mixture of its proposed "Health & Lifestyle" and "Home & Family" brands.

Indeed, there is no evidence whatsoever introduced at hearing providing the rationale for why a brand appears in one "eligible" or "excluded" category and not the other. This is especially troublesome when examining the purported list of job titles covered by the CBA. Whereas

⁹⁵ Only 22 names match the Employer's list of 25 HIEA employees in its position statement, and about three names from the CBA-covered employee list do not appear in the position statement, but appear in the Employer's brand organizational charts. I assume that these discrepancies are a product of either oversight or the result of very recent hires or departures from employment.

⁹⁶ For example, the evidence reveals that the HIEA president is a clerk in the building services department.

⁹⁷ As listed, the "Union Eligible Brands" are: "Cosmopolitan Print," "Esquire Print," "Food Network Mag," "Good Housekeeping Institute," "Good Housekeeping Print," "Harper's Bazaar Print," "HGTV," "Marie Claire Print," "Oprah Mag Print," and "Town & Country Print." As listed, the "Excluded Brands/Groups" are the remaining petitioned-for brands and the "Digital" sides of the "Union Eligible Brands."

Employer Exhibit 70(b)'s job title category of "Editorial Roles" includes editorial positions appearing in the Employer's organizational charts, the HIEA unit includes non-editorial titles (such as "Advertising/ Marketing/Promotion/Business/Design Coordinator," "Clerk," and "Wait Staff") which clearly do not fall under the classifications of "editorial, video, design, photo, and social staff" that the Employer agrees accurately describes the employees in its proposed bargaining units.

Furthermore, Employer Exhibits 70(a)-(b) and 71, taken together, reveal that the job titles purportedly covered by the CBA do not match the wage schedule titles in the CBA quoted above (*i.e.*, "Receptionist," "Routine Clerical," "Non-Routine," and "Associate"), and the Employer presented no evidence that any of these documents were incorporated into the CBA.

The "Editorial Roles" listed in Employer Exhibit 70(b) identifies:

Editorial/Design/Photo/Fashion/Market/Beauty Assistant
Assistant Editor
Assistant Fashion/Features/Beauty/Food Editor
Executive Assistant
Assistant Research [sic] Editor
Editorial Business Manager
Editorial Business Coordinator
Assistant to the Editor-in-Chief/Creative Director

The titles revealed in the purported employee list in Employer Exhibit 71 show the following additional titles: Assistant Accessories Editor, Assistant Beauty Editor, Assistant Books Editor, Assistant Market Editor, Assistant Photo Editor, Assistant Visual Editor, Editorial Assistant, Editorial Business Assistant, Fashion and Retail Credits Editor, and Style Assistant.

A comparison of these CBA-covered titles with the Employer's organizational charts reveals the many inconsistencies which support my conclusion that the HIEA unit is not appropriate for the purposes of barring the Petition. For example:

- (1) One "Union Eligible Brand" may have both CBA-covered titles occupied by HIEA members as well as other CBA-covered titles occupied by agreed-upon unit (petitioned-for) employees *instead of* HIEA members.
- (2) Although a CBA-covered job title may be occupied by an HIEA member at one of the "Union Eligible Brand," the identical title at another "Union Eligible Brand" is occupied by an agreed-upon unit (petitioned-for) employee *instead of* an HIEA member.
- (3) There are identical CBA-covered job titles at both "Union Eligible Brands" and at brands included in the list of "Excluded Brands/Groups." However, these identical titles at "Eligible" brands are (inconsistently) occupied by HIEA members or petitioned-for employees, and the identical titles at the "Excluded" brands are occupied by petitioned-for employees.

The following chart summarizes the foregoing facts.

Job Title	“Union Eligible Brand” where title is occupied by HIEA member	“Union Eligible Brand” where title is occupied <i>instead</i> by an agreed-upon unit (petitioned-for) employee	“Excluded Brand/Group” where that title is occupied by an agreed-upon unit (petitioned-for) employee
Executive Assistant	<i>Harper’s Bazaar</i> -print	<i>The Oprah Magazine</i> —print	
Fashion Assistant	<i>Marie Claire</i> -print <i>Esquire</i> -print ⁹⁸	<i>The Oprah Magazine</i> -print	<i>ELLE</i> ⁹⁹
Assistant Beauty Editor	<i>The Oprah Magazine</i> -print	<i>Harper’s Bazaar</i> --print	
Beauty Assistant	(Listed as CBA-covered title in Employer Exh. 70(b)).	<i>Marie Claire</i> --print	
Editorial Assistant	<i>Good Housekeeping Institute</i> <i>Esquire</i> <i>HGTV Magazine</i> <i>Food Network Magazine</i>	<i>HGTV Magazine</i> ¹⁰⁰ <i>Cosmopolitan</i> <i>Good Housekeeping</i>	<i>Veranda</i> Lifestyle Group (shared staff) <i>Woman’s Day</i> <i>Men’s Health</i> <i>Men’s Health</i> <i>ELLE Decor</i> <i>Country Living</i> -digital <i>The Oprah Magazine</i> -digital
Assistant Editor	<i>Cosmopolitan</i> <i>Food Network Magazine</i> <i>The Oprah Magazine</i> -print <i>HGTV Magazine</i> <i>Esquire</i>		<i>Seventeen</i> <i>Car & Driver</i> <i>Road & Track</i> <i>Country Living</i> -print <i>Prevention</i> <i>Women’s Health</i> <i>ELLE</i>

Thus, the unexplained, and inexplicable, inconsistent coverage of the CBA occurs at the brand level, within the group of “eligible” brands covered by the CBA, and within the petitioned-for unit as a whole. The CBA’s coverage also includes a seemingly arbitrary collection of job titles across

⁹⁸ The fashion assistant at *Esquire* is shared with *Men’s Health*, an “Excluded Brand.”

⁹⁹ At *ELLE*, the title is “closet fashion assistant.”

¹⁰⁰ There are two editorial assistant positions at *HGTV Magazine*: one is occupied by an HIEA member, the other is occupied by an agreed-upon unit (petitioned-for) employee.

both the editorial and non-editorial sides of the Employer's operations. Based on the foregoing, I conclude that the CBA is not a stabilizing labor agreement sufficient to operate as a bar.¹⁰¹

Finally, the parties first entered into the CBA in 1941, revealing a bargaining history of nearly 80 years. The Employer's organizational charts show that the employees listed as "HIEA Employees" in the Employer's position statement are spread among the staffs of *Cosmopolitan*, *Esquire*, *Food Network Magazine/The Pioneer Woman*, *Good Housekeeping Institute*, *Harper's Bazaar*, *HGTV Magazine*, *Marie Claire*, *The Oprah Magazine* and *Town & Country*. The fact that the Employer has collectively bargained with the HIEA for eight decades regarding a unit spanning both the Employer's proposed "Health & Lifestyle" and "Home & Family" units strongly weighs against finding that the Employer's proposed separate units are appropriate. *See Boeing*, 368 NLRB No. 67, slip op. at 2 and cases cited therein ("the Board has also long given substantial weight to prior bargaining history for the purpose of not disturb[ing] units established by collective bargaining as long as those units are not repugnant to Board policy or so constituted as to hamper employees in fully exercising rights guaranteed by the Act") (internal quotation marks omitted). In this case, there is a long history of collective-bargaining in a single unit of employees working across many of the Employer's varied brands.

PART TWO: SUPERVISORY STATUS

For the reasons stated above, I have declined to hear evidence regarding the contended supervisory status but for the following individuals: Julie Kosin, Bridget Clegg, Patricia Camerota, Rachel Lieberman, Spencer Dukoff, and Evan Romano. Of these, all but the last testified during the hearing. In addition, the Employer offered testimony by individuals in the Employer's management hierarchy regarding the duties and responsibilities of the putative supervisors.

The Employer argues that each of the putative supervisors regularly performs at least one of the functions recognized by statute as required for supervisory status. Further, the Employer contends these individuals are properly excluded from the unit and improperly involved in obtaining Petitioner's showing of interest because their work is fundamentally "managerial." *See Allstate Insurance Co.*, 332 NLRB 759, 762 (2000) (managerial status defined as the "taking or recommending discretionary actions that effectively control or implement employer policies"). While the Employer acknowledges that, in contrast with the Board's articulation of criteria for 2(11) status, the Board has found "no firm criteria for determining managerial status," counsel nonetheless contends the supervisory and/or managerial status of the six contested individuals flows from their assertedly determinative role in setting the visual content, editorial content, and scope of the brands for which they work.

¹⁰¹ Because the evidence and testimony suggest that the Employer has applied the CBA to certain employees while denying the contract's benefits to others who work in the same bargaining-unit positions, the Employer may have applied the CBA on a "members-only" basis. *See Tri-State Transportation Co.*, 179 NLRB 310 (1969) (when employer has not applied a collective-bargaining agreement to all of the employees in the classifications covered therein, the contract does not establish the existence of a stabilizing labor agreement).

In contrast, Petitioner argues the evidence fails to establish that the putative supervisory employees have the authority to perform any of the supervisory functions required by statute. While recognizing the role of all six employees in assigning and directing work, Petitioner argues such assignment or direction is routine, nonmandatory, or collaborative and hence insufficient to support a finding of supervisory status. With respect to those individuals the Employer claims participate in hiring, Petitioner contends such participation was sporadic and, in any case, does not reflect the exercise of “independent judgment.” Finally, Petitioner argues the evidence is insufficient to demonstrate that any of the six possess disciplinary authority that would warrant a finding of supervisory status. Petitioner did not address the asserted managerial status of the named individuals in its post-hearing brief.

I. FACTS RELEVANT TO SUPERVISORY STATUS

A. Julie Kosin

Julie Kosin is the senior culture editor for the digital platform of *ELLE* (*ELLE.com*), and has held that position since October 9, 2019. Consistent with her job description,¹⁰² Kosin testified that she “oversee[s] all culture coverage on *ELLE.com*” and “run[s] the culture vertical at *ELLE.com* which includes movies, TV, music, podcasts, and theater” Kosin reports directly to *ELLE* Site Director Katie Connor. Kosin has no direct reports and does not review the performance of any employees. There is no evidence that Kosin has any authority to hire, fire, suspend, transfer, discipline, reward, or promote employees or to adjust employee grievances, and no evidence that she has ever done so.

ELLE Site Director Connor and Kosin both testified that decisions about what content would be posted to *ELLE.com* were highly “collaborative.” All of the *ELLE.com* writers and editors have access to a Slack channel on which they pitch story ideas by “dropping in links” and on which “the entire team can talk about how one story will come to be.” In addition, there are “monthly pitch

¹⁰² The job description created for the position of Senior Culture Editor describes the position as follows:

This position will be a mix of writing and editing—the ideal candidate will be as comfortable writing a quick take on Rihanna's latest as they are at planning and executing longform trend pieces, reported features, and celebrity profiles.

Responsibilities:

- Oversee culture coverage (writing and editing), ensuring a mix of subjects, range of content — from quick takes and news posts to packages to reported stories — and a diversity of subjects
- Plan and coordinate *ELLE.com*'s culture daily, weekly, and monthly coverage with strategy to ensure traffic growth
- Cultivate and manage a stable of freelance writers
- Write and/or assign and edit news stories, Q&A's, profiles, and SEO-forward posts
- Develop editorial series and franchises
- Identify and conceive of unique ways to cover culture news to maximize *ELLE.com*'s impact
- Contribute to awards season coverage

meetings” to which writers and editors bring “self-generated” story ideas. The “general framework of the coverage” is established at these meetings. Connor meets with Kosin and other direct reports after the monthly pitch meeting “to determine what stories we’re actually going to run that week and that month.” Connor testified that Kosin had final decision making authority in regard to daily news content but “[i]f it’s a larger profile culture feature, that will fall to me.” Kosin testified that she was “always “gut checking” story ideas with Connor throughout the day” but that Connor “doesn’t oversee every single item that goes up under my purview.”

Connor and Kosin both testified about Kosin’s role in the assignment of work on a day-to-day basis. While Connor testified generally that Kosin is responsible for assigning pieces to both junior staffers and freelancers, Kosin explained that she simply covers items directly or “ask[s] if somebody else on the team can cover it.” According to Kosin’s uncontroverted testimony, she generally asks whether a particular person is available and “they [sic] are able to say no if they’re working on something else.” Connor admitted that while Kosin uses her “best judgement” in making assignments, those assignments are based on workload, level of interest, and expertise. Kosin and Connor agreed that Kosin assigns about five stories a day in this fashion and is responsible for editing and posting those stories to the website. Connor also testified that Kosin may provide guidance on the “angle” of assigned stories.

Connor asserted that Kosin is responsible for determining deadlines for the stories she assigns but admitted those deadlines are “usually based on the release dates of whatever the project is” and “will also take into account what other coverage is lined up.”

Although Kosin testified she has never been told she would be adversely affected by poor performance of another employee, Connor testified that inadequate content posted to the website “would be [K]osin’s responsibility.” Connor did not explain in what manner Kosin would be held responsible if such circumstances arose. There is no evidence Kosin has ever faced any kind of adverse job consequence due to deficient content created by another employee.

B. Bridget Clegg

Bridget Clegg is the art production manager for *Best Products* and has held that position since May 2018, when she was promoted from her previous position as Photo Editor. Clegg reported to Director for *Best Products* Jamie Miles until about March 2019, when Miles was replaced by Christine Anderson. Anderson has worked remotely from Colorado since July 2018.

There are 14 employees who work for *Best Products*, including eight editors/writers, a managing editor, a copy editor, and an art team comprising Clegg and Photo Editor Kayla Ramsey. Director Anderson testified that Clegg is “in charge of the entire visual representation of *Best Products.com*,” including designing “lead images” that follow a piece of content wherever it is promoted and planning and running photo shoots done for the site.

Clegg testified that the “main goal of . . . my job and . . . the art team in general is to make sure that all the stories that the editors have written have the corresponding art to go live with” Clegg explained that she is “basically a photo editor, designer and then I function as like a producer for photo shoots and a stylist on set.” Clegg assists in “onboarding” new employees by meeting with

them on their first day “just to explain how the photos work for *Best Products*, if they need help using Photoshop, the file management system that we use, and. . . how to upload and credit photos properly in our CMS.” Clegg onboarded Ramsey.

Clegg has never been told during her tenure as art production manager that she has authority to hire employees and there is no evidence that she has ever done so. While Clegg conducted a second-round interview of Ramsey and reviewed Ramsey’s “edit test,” Clegg testified that the decision to hire Ramsey was made by then-Director Miles and that she did not participate in the decision. Although Anderson testified that she understood Clegg to be “part of the process of hiring” Ramsey, she admitted Clegg did not work for her at that time and there is no evidence that Anderson had competent knowledge regarding the hiring decision or Clegg’s role in it.¹⁰³

After Ramsey was hired, Clegg conducted weekly meetings for the *Best Products* team during which the art team could hear from the editors about upcoming projects and discuss ideas for photo shoots. Clegg also arranged bi-weekly (which became monthly) meetings with Ramsey and then-Managing Editor Miles to discuss what the art team was working on, especially bigger projects. Anderson testified that she has weekly one-on-one meetings with Clegg, and “leadership meetings” with SEO Associate Director Erica Murphy, and Managing Editor Scott Simone, which Clegg will attend “[i]f we’re meeting about something that requires photography or design elements.”

Clegg assigns work to Ramsey but Anderson and team editors also assign projects directly to both Clegg and Ramsey. Clegg makes and tracks assignments using a Google doc to which the entire team has access and to which both she and Ramsey contribute; that document has a line for each story and a column for associated photos and artwork. Using that Google doc, Clegg alternates assigning herself or Ramsey the photos for each story “unless there’s some kind of like story that might be more interesting to [Clegg] or Kayla.”¹⁰⁴ For photo shoots, Clegg adds both her own and Ramsey’s initials to the assignment column because Ramsey has photography skills while Clegg does on-set styling and production.

Site Director Anderson testified that Clegg works “with [her] and the other senior local members of the staff to figure out what content we are pushing live that week” and then “figures out what particular pieces of content Kayla needs to work on, so that they are meeting the deadlines of the rest of the team with live dates that we have set in our schedule.” Site Director Anderson further testified that Clegg sets photo editor Ramsey’s work hours and handles Ramsey’s vacation and time off requests. However, Anderson conceded that “most employees work from 10 to 6” except for “a couple of people who’ve chosen that they would rather work 9 to 5.”

¹⁰³ Anderson testified, speculatively, that if Ramsey were to leave her position Anderson would not hire someone of whom Clegg did not approve. Anderson further testified that a recommendation from Clegg that Ramsey be terminated would be given “100 percent” weight in the decision because “Kayla works for [Clegg].”

¹⁰⁴ In regard to setting deadlines, Clegg explained that “[s]ome things are. . . standard, like, we usually give a week after a photo shoot for the photo edits but the deadline can kind of be negotiated based on what each of is [sic] working on.”

Clegg has not promoted anyone during her tenure at *Best Products* and has not been told that she had authority to do so. When Ramsey requested a promotion in June 2019, Clegg passed along the request to Anderson, who directed Clegg to have Ramsey submit the basis for the request in writing. Clegg testified that Anderson denied the request and that Clegg had no input into the decision. Anderson testified, in contrast, that “[Clegg] and I discussed whether or not she—we thought [Ramsey] deserved it.” However, Anderson admitted that Ramsey’s request was denied because “[w]e determined there wasn’t a budget for a promotion.”

In September 2019, Clegg drafted a document she referred to as “art team rules” [sic] that described the distribution of duties on the art team between herself and Ramsey. Clegg explained that she sent the document to Anderson for approval and then sent it out. Clegg also prepared a document entitled “KR 2019 Goals” which Anderson admitted was “based on a conversation between myself, [Clegg] and HR, where we decided that in order for Kayla to feel like her job title, and job description, and everything, all lined up . . . and I had [Clegg] right [sic] that and decide what it should be. . . .”

Clegg testified that she has never disciplined any employee during her tenure at *Best Products* or been informed that she has authority to do so. However, Anderson described an instance in which Ramsey sent out what Anderson considered an inappropriate email to the entire *Best Products* team. According to Anderson, she forwarded the email to Clegg “and said, if I were you, I would write her up,” but Clegg did not do so. Anderson’s message to Clegg was not entered into evidence, there is evidence Clegg received it, and she was not asked about it during her testimony. Moreover, the record contains no evidence to suggest the Employer maintains or adheres to a progressive discipline policy and Anderson did not explain how, if at all, such a “write up” might figure into the Employer’s disciplinary scheme, if any.¹⁰⁵ Although Anderson further testified that Clegg decided to speak with Ramsey about the incident instead, she again failed to explain how she knew this and did not clarify how such a discussion, if any, would factor into the Employer’s discipline process, if at all. While Anderson testified that the incident was obliquely mentioned in Clegg’s feedback to Ramsey in connection with Ramsey’s June 2019 performance review, which stated “I’d like you to work on developing your professional communication skills,” Anderson did not explain how performance reviews factor in to the Employer’s disciplinary practice, if at all.

Clegg did contribute to Ramsey’s 2019 performance review, providing manager feedback. Anderson testified that the form of the document drafted by Clegg is a standard one produced by HR and referred to it as a “quarterly review.”¹⁰⁶ However, it is unclear whether it constitutes a

¹⁰⁵ The Employee Handbook section on Conduct in the Workplace simply notes that “[f]ailure to abide by the Company's standards of conduct may result in disciplinary action” and that “[t]he appropriate disciplinary action imposed will be determined by the Company in light of all relevant circumstances” but does not enumerate the steps if any in the disciplinary process.

¹⁰⁶ It appears that this review was done pursuant to a new, two-part “review[] and career planning” process announced on May 9, 2019 by Employer Senior Vice President and Chief Content Officer Kate Lewis. Lewis’ email explains that the new process includes an employee “self review” and a “manager review” and states that “[t]hese career discussions are separate from the merit process.”

final performance review and what its value is, if any, in the Employer’s annual “merit process.”¹⁰⁷ Clegg was not asked about the document and did not testify about it or its contents.

Anderson testified that Clegg is “responsible” to Anderson for Ramsey’s work. A February 2018 performance review, prepared by former Site Director Miles, states that Clegg “acted more like a manager to [Ramsey]” and that, “in 2018, I’d love for her. . . to embrace the management role fully, managing [Ramsey’s] assignments and overall quality closely, helping to coach her and provide more meaningful feedback.” Anderson’s performance feedback to Clegg in 2019 identifies “coaching” as an area of “opportunity for improvement or continuous learning” and states that Clegg “has taken recent managerial issues with confidence and poise.”¹⁰⁸ There is no evidence as to how, if at all, these performance reviews affected Clegg’s employment status or terms and conditions.

C. Patricia Camerota

Patricia Camerota is the social media editor for *Cosmopolitan* and has held that position since May 2018. She reports to *Cosmopolitan*’s Deputy Editor Rosa Heyman, who in turn reports to Editor in Chief Jessica Pels. According to the Employer’s organizational chart, Camerota has no direct reports. Camerota testified, consistent with her job description,¹⁰⁹ that her job is “to take content that’s published to the site or in the magazine and then distribute it creatively across platforms like Instagram, Facebook, Twitter, [and] LetBoard” using a variety of platform tools to “repackage the

Indeed, it appears that a new “merit process” was not implemented until six months later, in or about November 2019.

¹⁰⁷ There is scant testimony regarding the extent to which, if at all, the new performance review process bears on the subsequently announced “merit process.” Only Division Director of *Marie Claire* Sally Holmes testified that she decided merit increases based in part on performance reviews. There is no evidence regarding whether consideration, if any, given to performance reviews in determination of merit increases is consistent across brands rather than decided independently by each brand’s leadership, and Anderson did not testify to any reliance on the new performance reviews in determining merit increases at *Best Products*.

¹⁰⁸ Clegg testified that, in 2019, she “coached” Ramsey in preparing a presentation for the *Best Products* team about upcoming photo shoots. As discussed in detail supra, see fn. 4, there is no evidence that the Employer maintains a progressive discipline policy or that “coaching” is a step in a progressive discipline or evaluation process.

¹⁰⁹ The Employer’s job description, drafted before Camerota was hired, describes the responsibilities of the Social Media Editor position as follows:

- * Craft social media-friendly headlines and schedule new content to be published across social channels with a strong sense of what works on each platform
- * Create social-first content for Instagram and Instagram Stories, with an eye towards growing an engaged audience
- * Monitor analytics constantly and adjust the social lineup as needed
- * Follow what’s trending and share news as it happens with relevant editors
- * Pitch and execute regular ideas for social video content
- * Help editors with headlines with a focus on sharable and compelling content
- * Inform edit team on social best practices and new strategies

content” and “redesign it on the different platforms to. . . drive traffic back to the site.” However, Camerota specifically testified that she does no work on the platform Snapchat. Rather, *Cosmopolitan* employs a Snapchat Editor, Mia Landiere, and an Associate Editor, Sarah Weldon, who reports to Landiere and works exclusively on Snapchat.

Cosmopolitan also hires temporary editorial fellows on a six-monthly basis. The current fellow, hired in November 2019, is Megan Uy. The fellows are budgeted to provide 1,000 hours of work, which maximum cannot be exceeded without approval of Human Resources. The principal job of fellows is to support the social media team and the Snapchat team” by performing “daily programmatic tasks.” Editor in Chief Pels admitted that “the editorial fellow used to be considered a sort of universal editorial resource like our interns” but asserted that this changed about a year and a half ago, when she “dedicated the fellow to [Camerota] as her resource.” The Employer’s ADP system lists Camerota as Uy’s supervisor.

Camerota participated in the process of hiring editorial fellow Uy. Camerota, Associate Editor Weldon, and News Writer Shannon Barbour contributed to the job description for the position, and Camerota and Weldon reviewed resumes and called in candidates for interviews. Camerota testified that she and Weldon recommended Uy as their preferred candidate to Deputy Editor Heyman. Pels testified that Uy was hired “on Camerota’s recommendation” but it does not appear that Pels was directly involved in the hiring decision. Pels testified that Heyman had “final say” in the decision to hire Uy and explained that “[o]ur ethos is basically to confirm. . . it’s like, I’ll do the final meeting to make sure I agree with you.” Pels admitted she would not hire someone who Camerota recommended if either she or Heyman did not think the person was competent.

Regarding assignment of work, Pels testified that Camerota is “the primary person dictating how the fellow spends her time.” However, Pels was unsure whether the fellow’s Snapchat duties came through Camerota. Pels testified that in making assignments to Uy, Camerota “is probably assessing what is a higher-level skill set, which she would do herself[,] versus what is more, like, busywork that she could assign to the fellow.” Pels admitted that Uy also does “some contributing social work, and she helps with some of the video work as needed.”

Camerota testified that Uy helps her “to post stuff on Facebook” on a daily basis and that “[w]e . . . share that responsibility.” She described the assignment of the fellow’s work as follows: “based on Megan’s day and how busy she is, when she has time available, she helps both the Snapchat team curry content for their user-generated platform . . . and then afterwards, if she has more time, she helps post things on Pinterest . . . Facebook.” Camerota testified that the fellow’s Snapchat duties come directly from Associate Editor Weldon and Snapchat Editor Landiere, with whom Uy communicates daily. Camerota explained that Uy spends her mornings working on Snapchat and, thereafter, works “not just with me[. . . s]he does tasks for the social media team, yes, Facebook, Pinterest and then she also works on writing video posts assigned by other editors and updating, like I said, articles from other editors. . . [s]o it’s not just a 50/50 split.” In addition, Camerota testified that Deputy Editor Heyman corresponds with Uy “for anything that [Heyman] needs her to do immediately or in a certain amount of time, editorial work.”

Editor in Chief Pels testified that she understood that Camerota set Uy’s hours of work and that she believed that Camerota could authorize Uy’s time off requests and also authorize overtime.

Camerota was not asked about her authority in this regard. Camerota testified that she had never been told that she could suffer adverse employment consequences for inadequate work by Uy or for failing to adequately oversee Uy's work.

D. Rachel Lieberman

Rachel Lieberman has been the supervising video producer for *Seventeen* since February 2019. Prior to that time, Lieberman worked for the Employer's centralized video team but was frequently assigned to work as a producer on *Seventeen*'s video shoots. Lieberman was brought on to the *Seventeen* staff in her current title by *Seventeen* Executive Director Kristin Koch.¹¹⁰ She reports directly to Senior Vice President of Video Development and Content Strategy Zuri Rice, who oversees the work of editorial video teams across the Employer's brands as well as the centralized video team members who support all of the brands. In her current position, Lieberman oversees the *Seventeen* video team, which includes two shooter/editors, Joe Storch and Deanna Govea, and a graphics editor, Kelsey Fink.

Rice testified that Lieberman's role as supervising video producer is to "oversee[] the *Seventeen* video team in putting together video, leading the video efforts, and also working hands-on to lead our day-to-day strategy of how we meet our set goals how we continue to grow various channels on the *Seventeen* brand of video." Rice explained that Lieberman's work includes coming up with video ideas, implementing those ideas, overseeing the day-to-day "workflow and direction" of the video team, and reporting on how the team is progressing to Rice. Regarding Lieberman's responsibilities in handling shoots by the video team, Rice testified that Lieberman directs a shoot from "top to bottom. . . making sure that the schedule and timeline is kept. . . overseeing the

¹¹⁰ Koch prepared the job description for the position of the supervising video producer, which defines the role and the required qualifications as follows:

This supervising producer will be the team lead and responsible for creative, development, programming, script writing, producing/directing and overseeing post-production on various types of video content.

Key Qualifications:

- 5+ years experience producing and developing digital series on various platforms including: comedy/viral videos, beauty/style/food tutorials, entertainment/celeb content
- Proven ability to manage and lead a team of shooters and editors
- Proven ability to create video for multiple social video platforms
- Outstanding organization, time management, and problem-solving skills
- Ability to bring big ideas and see them through
- Best in class leadership and communication skills when developing and producing projects.
- Ability to see multiple projects as a whole and ensure that all parts are moving well
- Self-motivator and team player
- Calm in stressful situations
- Willing to be stay late and be on-call as needed
- Manage and meet deadlines
- Enjoy working in a collaborative environment

creative aspect, . . . making all the on-the-ground decisions.” Rice characterized Lieberman as both the producer and director on the set. However, Rice admitted she does not go on set or attend shoots. Similarly, Koch testified that she might be called in by the video team for her feedback but doesn’t generally participate in day-to-day video production.

Although Rice testified in general terms that Lieberman “works with HR to hire those on her team,” Lieberman testified she was not informed at the time of her hire that she had authority to hire. Rice admitted there is no documentation designating hiring authority to Lieberman and Lieberman has been involved in hiring only one person, Govea, during the time she has worked at *Seventeen*. Furthermore, Rice admitted that she did not recall discussing Lieberman’s future role in hiring, if any, with Lieberman after Govea’s hire. Although Executive Director Koch testified that she would not hire someone onto the video team if Lieberman did not approve, Rice admitted that she would not hire on Lieberman’s recommendation if she did not agree about the applicant’s competency.

Shooter/Editor Govea was hired after Executive Director Koch went out on maternity leave in August 2019. Koch informed Lieberman she had been “working with finance. . . so that we could add someone to the video team” and that Rice would continue working on this in her absence. Lieberman testified that Koch instructed her that “if that head count opened up while she was gone . . . that I shouldn’t wait for her and that I should just find someone.”¹¹¹ Rice informed Lieberman the “head count” had opened and Lieberman was tasked with overseeing the process of hiring someone to fill the position. Lieberman initially recommended a freelancer, Branson, who had been working with the video team for some time.¹¹² However, Branson declined the offer. Thereafter, HR sent Lieberman Govea’s resume and samples of her work. Lieberman agreed to interview Govea and liked her. Lieberman asked Ashley Martinez in HR “what the next steps would be” and was told to give Govea an edit test. While SVP VD Rice had final authority regarding Govea’s hire, Rice testified she gave Lieberman’s recommendation “a great deal of weight,” did not personally interview Govea, and had no “involvement in the decision making.”¹¹³

¹¹¹ Also at this time, Lieberman moved into the office Koch shares with Rice. It appears that she continued to sit in this office after Koch’s return from leave, so that the office is now shared by the three of them.

¹¹² In this regard, Lieberman testified: “[W]e’d been working with Branson for some time as a freelancer, so he had worked with Kristin [Koch], with Zuri [Rice]. He was known to them, and he could shoot and edit, which was what we needed.” Lieberman further testified that she had spoken with Rice about the possibility of hiring Branson for the open position and that “she’d given her approval, but she asked me to put it in writing that I’d like it to be Branson.”

¹¹³ Lieberman’s testimony strongly suggests that she only received one resume from HR and interviewed only one candidate for the position. Although Executive Director Koch testified that Lieberman “interviewed candidates” and “narrowed down who she wanted to, you know – who she wanted to hire,” Koch’s testimony is inherently unreliable in this regard given that she was on maternity leave at the time and admitted that she “wasn’t looped into the conversation” regarding the hiring decision. For the same reason, Koch’s testimony that Lieberman “worked with HR . . . on that process of back and forth of negotiating what the salary and the title would be,” is not probative.

During the time that Lieberman has worked for *Seventeen*, no employees have been terminated. However, Executive Editor Koch testified that if Lieberman “felt somebody on our team was not performing or had violated some sort of conduct. . . worthy of termination, she would recommend that.” There is no evidence Lieberman has ever made such a recommendation. Koch testified that if she had done so, “then that would be a conversation that we would bring to HR.” Koch testified that she would not terminate someone from the team who Lieberman wanted to keep “unless there was like a glaring thing.”

Lieberman has never been told she has authority to transfer employees. The only evidence of a transfer at *Seventeen* occurred before Lieberman joined *Seventeen*, when Kelsey Fink, who was part of the Employer’s Snapchat team, transferred to the video team. Regarding this transfer, Koch testified that when “head count” opened up, she “let [Lieberman] know that I would be able to transfer [Fink] to the video team” and that Lieberman “interviewed her, and liked her. . . [a]nd so we decided to bring her over.” Lieberman was not asked about her role in the transfer, and it appears undisputed that she was still working as part of the centralized video team at that time, rather than full time for *Seventeen*.

Decisions regarding *Seventeen*’s content are highly collaborative. Lieberman testified that “as a producer, I work with the . . . talent team but also internally to develop ideas for what we want our videos to be, what we want . . . to look like. We will brainstorm together what those ideas are going to be . . . [a]nd then work with our schedule to make sure that we have time to shoot things, time to edit things.” Executive Director Koch testified that the entire *Seventeen* team participates in bi-weekly meetings, which Koch also attends with some frequency, for the purpose of “brainstorming” ideas for videos and video series. When Koch is unable to attend, these meetings are led by Lieberman. Koch testified that, based on these meetings, Lieberman “would sort of work it out what she thought were the best ideas from that. . . flesh it out a little bit more” with members of the team and then “run that concept by Zuri and myself.” Lieberman testified that she has weekly meetings with SVP VD Rice at which she pitches ideas from the video team for Rice’s approval. In addition, Rice testified that she also holds bi-weekly “leadership meetings” for all of the “team leads” under her supervision.

Lieberman and Executive Director Koch both testified that Koch “has to sign off on every single video concept that goes out” and also signs off on graphics and other projects. Koch admitted she approves all of *Seventeen*’s video content and that Lieberman usually shows her and Rice a series before it goes live for a “final sign-off.” Lieberman testified to a more robust review of the video team’s work, explaining that Koch watches the videos produced by the team and gives approval or “notes,” which she described as “comments, you know, cut this, is there anything else like this, move these around.” Koch admitted that she might provide Lieberman with some guidance, for example “this video is cool but it’s kind of dark,” but that Lieberman is responsible for directing the video team to address any issues she raises. In addition, Koch testified that Lieberman “handles the whole production calendar” for a video, choosing “the date it should go live. . . based on strategy, whether it was. . . coinciding with a certain project [sic] that the talent in it was promoting or whether she felt like that was the best date to greenlight a series.”

There is some evidence that Lieberman may recommend that a video be “killed” if she believes it is not going to perform. Specifically, Lieberman conceptualized and produces a YouTube series

called Bestie Picks Bae with the video team. Lieberman testified that, in November 2019, she decided on reviewing an episode of the series that was going to be released that it was not likely to do well and “asked permission to not post that video,” which permission was granted. Lieberman explained that she is expected to produce three videos per week and that by “killing” this episode she did not meet that goal for the week.

Rice testified summarily that Lieberman “uses her judgment” in assigning work to the video team. Lieberman explained the assignment of work on video shoots in more detail as follows: “[M]ost of our shoots require two shooters, so every time there’s a shoot, it’s Joe and Deanna. There’s no assigning; they both do it. . . . [S]ince they can all edit, it’s kind of everyone just takes what’s coming up next in order, and I don’t assign who edits what. . . .” Lieberman testified that whoever does the editing on a video generally also does the graphics, but that, because Storch lacks graphics skills, Fink does graphics when he edits. In addition, Lieberman has authority to use freelancers on an as-needed basis based on a predetermined budget.

Lieberman and Executive Editor Koch both testified about Lieberman’s role as a director and producer specifically in regard to celebrity shoots, which account for two-thirds of the video team’s shooting work. Koch stated that Lieberman “will completely execute it, schedule it, and then arrange the team so it gets shot, edited, and produced.”¹¹⁴ Lieberman explained that celebrity shoots are “designed to only take 20 to 30 minutes or else celebrities won’t do them” and that “it’s very much up to them when they come in. . . .we have basically no say over what time or what day they come in.” Although Koch testified that Lieberman scouts out locations and determines travel for video shoots, Lieberman testified that 99 percent of the shoots are done in studios in the Sheffield building; the remainder are shot at other locations in New York City. Lieberman books studio according to the celebrity’s specified time frame and then asks the people on her team and any freelancers working with them how much time they need to set up lights and cameras and build the set. Lieberman then creates a call sheet entering the timeline for the shoot based on the information obtained.

Executive Director Koch admitted she sets work hours—usually 10 a.m. to 6 p.m.—and does scheduling at *Seventeen* generally but testified that Lieberman handles scheduling for the video team “because shoots are—you know, at different times.” There is no evidence that any member of the video team works hours different from the standard 10 am to 6 pm Monday through Friday set by Koch. Koch further testified that if anyone on the video team needs time off, s/he “puts their [sic] time off requests through Rachel.” It is unclear whether Lieberman may independently grant such requests. Koch admitted that any “long-term leave requests” such as maternity leave, medical leave or personal leave would “come to me first. . . [a]nd then I would work with HR.”

¹¹⁴ In addition, Koch testified generally that Lieberman “works with the celebrity publicists and the talent to book them, to bring them in to decide which franchise or video we’ll do.” However, Lieberman testified that celebrities usually “come to us because they are promoting something.” As to the process by which celebrities are “booked,” Lieberman testified specifically in regard to a call sheet offered into evidence by the Employer, that “this celebrity, their publicist reached out to [E]ntertainment [M]anager, Emily [Hausman], saying they wanted to come in and. . . [w]e said okay.”

Koch testified summarily that she views Lieberman as “responsible” for the work of the video team. Rice explained that as a “team lead” Lieberman is “responsible for the performance of the brand. . . [a]nd she’s the person who’s kind of making sure that the team’s work is leading up to contributing to the goals that have been set.” Lieberman testified that she had never been told that she will suffer any adverse employment consequence due to poor performance by another employee or insufficient oversight of others.

Although Rice testified that Lieberman may impose discipline without consulting her, Lieberman testified she was never told she had such authority, and there is no evidence Lieberman has issued any discipline while at *Seventeen*. Executive Director Koch testified that sometime in 2019 Lieberman “spoke to” two video team employees who had a loud argument during a shoot and stated that “that was sort of a disciplinary . . . situation that she handled.” Koch admitted that she knew of the incident because it was reported to her by Lieberman, and Lieberman was not asked about the incident during her testimony. Koch did not indicate whether Lieberman’s conversation with the disputing employees constituted a step in the Employer’s disciplinary process or had any impact on the employees’ employment.

Regarding performance evaluations, neither Lieberman nor Rice was asked about Lieberman’s involvement in the process. Executive Director Koch testified that “we have a system where you put in your review, they put in their review, and then you meet with the employee to talk about their performance,” and that Lieberman “handled reviews. . . for the video team” in 2019. Koch admitted this was Lieberman’s first experience doing so and that “she asked for any tips or points on doing it and then she ran it.” When asked who does “formal performance reviews,” Koch testified that Lieberman “would do them now.”¹¹⁵ The reviews prepared by Lieberman in 2019 were not entered into evidence and it is unclear what impact these reviews have, if any, on raises, promotional opportunities, or any other aspect of the video team employees’ terms and conditions of employment.

Lieberman has never seen the budget for *Seventeen*’s video department and plays no role in setting it. Lieberman has no authority to make decision that will cause a shoot she is directing to exceed the budget. In December 2019, Lieberman received an email entitled “wish list” from Shooter/Editor Storch regarding rental equipment used by the video team that Storch recommended purchasing and she forwarded the email to Rice, Executive Director Koch, and Video Production Director Manecha Guillaume, asking Storch for further information about cost savings. Rice responded by informing Storch and Lieberman that Video Production Director Guillaume was communicating with Finance about the proposed purchase of equipment and that Guillaume “will be your point when she hears.” Although Lieberman continued to communicate with Guillaume about the issue and ultimately was informed by Guillaume that the purchase had been authorized, it is unclear who made that decision.

¹¹⁵Koch testified regarding the new “self-review and manager review processes” announced by Employer Senior Vice President and Chief Content Officer Kate Lewis in May 2019 that “[w]e did this once.” Koch did not testify as to whether merit increases were awarded after the new review process was completed or as to what reliance, if any, she placed on the reviews in determining merit increases.

Regarding adjustment of employee grievances, Koch testified generally that Lieberman has authority to address problems or concerns of the video team. Koch also testified, specifically, regarding Lieberman's actions in response to an on-the-job injury sustained by Shooter/Editor Storch. According to Koch, Lieberman sent Storch to the Employer's medical center and informed Koch of the accident. Storch was sent to the hospital and was out for several months, returning to work in August 2019 on a part-time basis. There is no evidence as to who authorized Storch's part-time status. Koch further testified that, since Storch's return to work, he "works with Rachel" when he needs an accommodation of his injury. However, Koch went on maternity leave within a few weeks of Storch's return and did not return to work until January 2020.

On Storch's first day back at work, Employee Benefits Manager Rhonda Tarver contacted Executive Editor Koch, to inquire how he was managing his workload. Koch responded, copying Lieberman for her input. The following day, Tarver sent Koch and Lieberman an email stating "we want to make sure we are giving Joe the time and patience to reacclimate to the workplace" and that "[w]e don't want to push him or exacerbate his symptoms." A week later, at which time Koch was out of work, Tarver followed up and Lieberman explained that she had removed Storch from a project because "he's still not comfortable looking at screens" and that Storch was planning to work from home the following week because "there will be a lot of loud noises on our floor" which would be difficult for him to work through. Lieberman copied Rice on the email thread, "while Kristin is out."

E. Spencer Dukoff

Spencer Dukoff has been the deputy editor of content strategy at *Men's Health* since February 1, 2019. He works closely with Deputy Editor of Content Jordyn Taylor; both report directly to *Men's Health's* Executive Editor Mike Darling. The *Men's Health* editor-in-chief is Richard Dorment. Dorment described *Men's Health* as "a multi-platform brand[,] meaning that we distribute content across different platforms" including "print publication, which comes out ten times a year[,] . . . our website, which is updated up to 25 times daily[,] . . . our social channels, things like Facebook and Twitter and Instagram[,] . . . [and] our video channel which is both on site and on YouTube." Dorment further explained that he has executive editors who oversee each of these platforms and that Dukoff is "directly underneath my executive editor of digital (Darlington)."

Dorment described the role of the deputy editor of content strategy as follows: "This person's job is to . . . look at data and analyze it to see what's performing and how it's performing and why it's performing [and] then to take that information and really educate the rest of the staff on what's working, what's not working, what we can be doing better."¹¹⁶ Dukoff similarly testified that his

¹¹⁶ The Employer entered into evidence the job description for the Deputy Editor of Content Strategy which describes the role as follows:

The Deputy Editor, Content Strategy will oversee the daily operations of the brand's social feeds, work closely with the editor in chief and executive editor to strategize about search traffic and other modes of audience acquisition, and develop innovative content distribution plans. This editor will work with the rest of the digital team to ensure that all the content being produced is optimized for social and search. This role isn't just about analytics, though the

“primary responsibilities are to track and provide insights when it comes to website performance, digital content performance, on a variety of platforms . . . pretty much any way that a [sic] online user interacts with *Men’s Health* magazine, I am responsible for figuring out: one, where those eyeballs are coming from, and potentially, how do we get more eyeballs to that place.” Dukoff explained that he uses tools like Google Analytics to evaluate the performance of content and provide insight into how the content might be optimized to improve performance. Dukoff attends “social editor meetings” and meetings across brands regarding various social media platforms and various on-line tools to gather ideas about “best practices” to be implemented at *Men’s Health*.

Dukoff is involved in decisions about what content will be posted to the *Men’s Health* website. Those decisions are highly “collaborative.” Dorment testified that “as people sort of filter in through the day . . . we are figuring out what we’re going to cover that day -- what those 25 stories are going to be . . . [s]ome of them have been long planned . . . , but I’d say a half to three quarters of the things that we’re working on any given day are things that are responsive to the news.” According to Dorment, there are Slack channels for the various “content verticals”—such as culture, fitness, health—that “fill up with . . . news items. . . .and typically some combination of Mike Darling . . . Jordyn Taylor . . . and Spencer. . . will basically say yes, no, maybe.” Dukoff testified that his primary role in this regard is to evaluate story ideas and pitches coming from writers and editors in terms of how they will perform or how their performance may be optimized. Dukoff testified that his input was not “a hard [red or green] light.” Dorment admitted he is the “final word” on what content is published to the website and that “Darling also has a final say” and can “overrule” Dukoff.

Dorment further testified that he checks in with his executive staff, including Dukoff and Deputy Editor of Content Taylor, throughout the year to discuss “overall strategies. . . [r]eally big picture things that ultimately dictate what we cover on a day-to-day basis,” such as whether the brand is covering too much news or more resources should be directed to the “health vertical” as opposed

ability to interpret insights is certainly required—it’s about thinking about the *Men’s Health* brand in a big-picture way, and how to best leverage and guide its content across our various distribution channels. . . .

Responsibilities:

- Conceptualize and execute the brand’s ever-changing social, search, e-commerce, and newsletter strategies
- Interpret analytics and educate the *Men’s Health* team on the development and implementation of these strategies, and help them pitch and assign stories that are optimized based on these insights
- Ensure that *Men’s Health* social feeds are optimized to maximize traffic, engagement, and other KPIs at all times
- Brainstorm large-scale projects (editorial, social, and video-based) that reach new audiences, engage loyal ones, and make waves in the industry
- Work across departments (including the in-house video team, print, sales, etc.) to develop and execute creative rollout plans for key brand events, editorial initiatives, and partnerships
- Broker and manage relationships outside of HDM that work to expand the *Men’s Health* audience and content portfolio

to the “culture vertical.” Dorment testified that Dukoff plays a “key part” in formulating these strategies. It is unclear whether these meetings are in addition to or identical with weekly “leadership meetings” with Executive Editor Darling, Deputy Editor Taylor, and Dukoff, at which the group discussed “high level staffing issues, resource issues, long term planning, overall challenges.” Dorment described Dukoff’s role in those meetings as “one of four participants to talk about things to help me sort of figure it all out.”

Dukoff testified that although he oversees the performance of all content, he does not directly assign or edit content. While Dorment testified that Dukoff assigns stories to other staff, he described a voluntary rather than prescriptive process: “He’ll say why don’t we do this or – or . . . do you have the bandwidth to do this” and “[i]f someone is busy or can’t do it for whatever reason, they will say so and usually that’s enough.” As to whether Dukoff exercised judgment in regard to assignment of work, Dorment admitted, “People tend to be organized by their content vertical . . . [s]o he will certainly go to those people in those verticals.”

Dukoff has never been informed he will suffer any adverse consequence to his employment based on the performance of others or for failing to provide oversight. Dorment nonetheless testified summarily that Dukoff is “responsible” to him for pieces he assigns. With respect to whether Dukoff directs work, Dorment testified that Dukoff will “talk a little bit how [sic] it can be optimized for distribution . . . [a]nd then as far as what we call packaging— . . . the headlines and what’s called metadata that we imbed within the story . . . a lot of that comes from Spencer.” Dukoff may also adjust the “angle” of a story and Dorment testified, “If somebody pitched an angle that he felt was wrong. . . .—I would discipline if he weren’t doing that.” There is no evidence that Dukoff has ever been disciplined.

Regarding authority to discipline, Dorment testified that there have been instances in which people were taking too long to complete work, saying, “It has been surfaced to me, and I’ve had to intervene,” but also testified that he has “mentioned several times that I expect them as deputy editors—I’m speaking about Jordyn [Taylor] -- [Dukoff], specifically, to exercise that authority themselves.” Dorment said, “If somebody is either not creating enough volume or they’re talking [sic] too long, [the Deputy Editors] need to use both their independent authority and their independent judgment to take care of themselves.” There is no evidence either Taylor or Dukoff has disciplined any employee and Dukoff did not testify whether he was told at any point he had such authority.

F. Evan Romano

Evan Romano is an associate editor at *Men’s Health*. The testimony is unclear regarding when he was hired. The Employer’s organization chart for *Men’s Health* reflects that he reports to Executive Editor Darling. According to *Men’s Health* Editor in Chief Dorment, Romano oversees the “production of the culture vertical, which is. . . the section of our site and a portion of our content that relates to celebrity entertainment, pop culture.” Romano did not testify during the hearing.

Romano’s job description, which was created in late 2018 or early 2019, prior to his hire, describes the position as follows:

Men's Health is seeking a smart, enthusiastic, and experienced associate editor to write, report, assign, and edit stories for both print and online. Will oversee trending news and pop culture coverage on menshealth.com—typically assigning, editing, and/or writing 3 to 4 posts a day. . . . The ideal candidate will also have some experience with the long-lead editorial forecasting and planning needed to produce a monthly publication. Will play a key role in developing and top-editing fresh, irresistible, and on-brand copy both online and in print. . . . Will also be responsible for identifying accomplished freelance writers. . . .

Responsibilities include:

- Conceive, plan, and execute daily trending news and culture content for menshealth.com.
- Conceive, plan, and execute a host of new culture franchises, based on top performing past analytics, for both print and web
- Oversee a variety of front-of-book features in the monthly magazine on topics ranging from pop culture to sex and relationships
- Create and execute big-idea packages, franchises, and destination centers for web and print
- Assist in monitoring, reaching, and exceeding online traffic and affiliate goals
- Work closely with all departments including IT, design, production, SEO, and advertising
- Monitor and analyze metrics to advise on decisions about site content

Romano does not have any direct reports. *Men's Health* is in the process of seeking a Senior Editor who will be responsible, inter alia, for “helping out culture vertical” and will report to Executive Editor Ben Court.

Dorment testified that Romano is responsible for assigning work to freelance writers and fulltime Editorial Assistants Joshua St. Claire and Temi Adebowale. Dorment described the assignment process, which utilizes Slack channels as follows:

they'll drop in idea[s] and typically what will happen is Evan, you know, will . . . say Temi, do you have an bandwidth (sic) today? Can you take this story? And typically what Temi does is she will provide a little thumbs up emoji on Slack, which is to say yes, I'll do it. Same thing with Josh. And if they're busy-- . . . she will say as much and we'll find someone else to right [sic] it.

Dorment explained that work assignments are based on “availability and interest, but also obligation, it's . . . part of their job responsibilities.” The job descriptions of St. Claire and

Adebowale are not in evidence and there is no evidence that either has ever been disciplined for declining a particular assignment.

Dorment also testified summarily that Romano is “accountable” for the success of the stories that he assigns. There is no evidence that Romano has ever been disciplined as a result of poor performance by the Editorial Assistants or for any other reason.

II. ANALYSIS

A. Supervisory Status of Kosin, Clegg, Camerota Lieberman, Dukoff and Romano

Section 2(11) of the Act defines a “supervisor” as “any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” Possession of any one of these indicia will suffice, and it is the authority to perform the functions identified by statute rather than frequency of exercise that determines supervisory status. *Id.*; *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006). However, where evidence that a putative supervisor was informed of such authority is lacking, the frequency of exercise is relevant (as a means of establishing the purported authority). *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2014) (citing *Greenspan, D.D.S., P.C.*, 318 NLRB 70, 76 (1995), *enfd.* 101 F.3d 107 (2d Cir. 1996), for the principle that “[w]hen an individual has not been notified, orally or in writing, that he is vested with a supervisory power, the frequency of exercise of the authority is relevant to a determination of whether in fact the authority has been delegated to him”); *Chevron USA*, 209 NLRB 59, 61 (finding “isolated and infrequent incidents of supervision do not elevate a rank-and-file employee to a supervisory level”).

The burden of showing that the requirements of 2(11) are met is on the party alleging supervisory status, here the Employer. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 711-712 (2001). Moreover, the Board has a duty, recognized by the Courts, “to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect.” *Westinghouse Electric Corporation v. NLRB*, 424 F.2d 1151, 1158 (7th Cir. 1970), *cert. denied* 400 U.S. 831. Thus, supervisory status is not proven where the record evidence “is in conflict or otherwise inconclusive.” *The Republican Company*, 361 NLRB at 97 (quoting *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989)). Moreover, mere paper authority is insufficient in itself to establish supervisory status, as is conclusory testimony in this regard. *Training School at Vineland*, 332 NLRB 1412, 1416 (2000) (evidence supporting finding of actual as opposed to mere paper authority required to establish supervisory status); *Alternate Concepts, Inc.*, 358 NLRB 292, 294 (2012) (“[M]ere inferences or conclusory statements, without detailed, specific evidence are insufficient to establish supervisory authority.”).

During the hearing, the Employer objected to but complied with the Hearing Officer’s request that he state at the outset of each contested individual’s testimony the indicia that the Employer was

relying on in asserting the individual's supervisory status. The totality of the evidence presented is considered below.

1. Role in Assignment and Direction of Work

Each purported supervisor plays some role in the assignment of work to other employees within the brand for which s/he works and/or in the direction of that assigned work. The Board has defined the power to “assign” on which a finding of supervisor status may be based as the power of “designating an employee to a place (such as a location, department, or wing), appointing an individual to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee.” *Oakwood Healthcare, Inc.*, 348 NLRB at 689-690. The Board has made clear that assignment of overall duties does not include instruction to perform discrete tasks or routine distributions of work. *Id* at 693. Moreover, the Board has held that the power to assign will support a finding of supervisory status only if the putative supervisor has the authority to require employees to accept such assignments. See, e.g., *Golden Crest Healthcare Center*, 348 NLRB 727, 729 (2006) (citing cases for the proposition that supervisory authority not established where the putative supervisor has the authority to request but not require that a certain action be taken).

In addition, the Board has clarified what constitutes “responsible direction” of work sufficient to establish supervisory status under the Act. In this regard, the Board has distinguished “lead men” from statutory supervisors, concluding that mere oversight and routine guidance of other employees in the performance of their work is insufficient in itself to meet the statutory requirements for supervisory status. See, e.g., *Shaw, Inc.*, 350 NLRB 354 (2007) (foremen who ensured the performance and completion of employer's jobs consistent with established employer practices and worked alongside crewmembers are lead persons, not statutory supervisors); see also *Suburban Newspaper Publications, Inc.*, 226 NLRB 154, 156 (the role of an editor in directing reporters' work is that of a leadman rather than a statutory supervisor); *The Washington Post Co.*, 254 NLRB 168, 205 (1981) (although editors assign and direct work for reporters “the nature of the relationship is not supervisory but that of a working leadman”). Thus, the Board has held that supervisory status flows from the direction of employees only in so far as it involves the exercise of independent judgment and in so far as the person in whom such authority is vested is “accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly.” *Oakwood Healthcare, Inc.*, 348 NLRB at 692.

At the hearing, the Employer argued that the authority to assign and direct was exercised by each of the disputed employees in a manner sufficient to support a finding of supervisory status. However, as discussed in detail below, that contention is not supported by the record evidence.

All of the putative supervisors and the higher-level managers that testified at the hearing testified to a highly collaborative process for deciding content at the brands for which they work, undercutting a finding of supervisory status on this basis. *The Washington Post Co.*, 254 NLRB 168, 202 (1981) (national assistant editor's assignment process that was “cooperative and informal” insufficient to establish supervisor status). Many witnesses described a content development process that utilized brand-limited Slack channels into which editors, writers and

other members of the within-brand editorial teams can “drop” links to pitch story ideas or a shared Google doc to which all team members have access and can contribute. Others testified to weekly or monthly brainstorming meetings attended by the entire editorial team at which all participants pitch story ideas.

Although the purported supervisors have varying degrees of involvement in assigning of particular stories or projects to particular employees at the brands for which they work, their roles in this regard are similar in kind and do not involve the use of independent judgment. Kosin and *Men’s Health* Associate Editor Romano assign selected stories to members of the editorial team based primarily on workload, interests, and expertise, a process that the Board has recognized as routine. *The Scranton Tribune*, 294 NLRB 692, 693 (1989) (assignment of work based on availability merely routine); *The Bakersfield Californian*, 316 NLRB 1211, 1221 (1995) (assignment of work based on interest insufficient to establish supervisory status); *Volair Contractors, Inc.*, 341 NLRB 673, 675 fn. 10 (2004) (assignment of work based on established areas of expertise not evidence of independent judgment). Similarly, Clegg and Lieberman distribute work on their team based on team members’ established skills and otherwise simply on an alternating basis. It is clear that such distributions of work, based on a regular rotation or well-established areas of expertise, do not involve exercise of independent judgement necessary to support a finding of supervisory status. *Modesto Radiology Imaging, Inc.*, 361 NLRB 888, 890 (2014) (assignment of employees based on a regular rotation does not require exercise of independent judgment); *Shaw, Inc.*, 350 NLRB at 355-356 (assignment of work based on known, well-defined skills does not require independent judgement); see also *KGW-TV*, 329 NLRB 378, 382 (1999) (citing cases for both propositions).¹¹⁷

Significantly, in so far as Kosin, Dukoff and Romano make specific work assignments, it is clear that those assignments may be refused. Thus, although Dukoff testified that he does not directly make assignments, *Men’s Health* Editor in Chief Dorment, in suggesting the contrary, described the process as more voluntary than prescriptive (“[i]f someone is busy or can’t do it for whatever reason, they will say so and usually that’s enough”). Similarly, Kosin testified that she either covers selected news items herself or asks somebody on the team to do so, but “they are able to say no if they’re working on something else.” Although Romano did not testify, *Men’s Health* Editor in Chief Dorment similarly testified that Romano generally asks members of the editorial team to take particular stories and “if they’re busy-- . . . [they] will say as much and we’ll find someone else to right [sic] it.” As it is clear that Dukoff, Kosin and Romano lack authority to require employees to accept their assignments of work, their role in this regard cannot support a finding of supervisory status. *Golden Crest Healthcare Center*, 348 NLRB at 729; see also *The*

¹¹⁷To the extent that Clegg participated with Site Director Anderson and Employer Human Resources in developing broader goals for Ramsey based on a new job description and prepared a description of “art team roles,” the evidence fails to establish to what extent, if at all, Clegg’s role in the process was determinative as opposed to documentational. Thus, when asked about the creation of the outline of Ramsey’s 2019 goals, Anderson testified vaguely that “it was based on a conversation between myself, [Clegg] and HR, where we decided. . . .” and “I had [Clegg] right [sic] that and decide what it should be based on Bridget’s needs for their department.” In short, the evidence is inconclusive in regard to whether Clegg’s role in the assignment of “general overall tasks” to Ramsey reflects the requisite exercise of independent judgment to support a finding of supervisory status.

Washington Post Co., 254 NLRB at 205 (citing cases for principle that where editors assign reporters to events by “mutual consent” and the editor’s primary duty is to “check the quality of the copy and require that unsatisfactory copy to be rewritten,” editor’s authority to assign and direct “clearly routine”).

The same is true of *Cosmopolitan* Social Media Editor Camerota’s role in assigning work to Editorial fellow Uy. Although *Cosmopolitan*’s Editor in Chief Pels, who does not directly supervise Camerota, testified generally that Camerota is the “primary person dictating how the [editorial] fellow [Meagan Uy] spends her time,” Pels admitted that she did not actually know how a substantial part of Uy’s work, her Snapchat duties, was administered and Camerota testified she has no role in the assignment or oversight of those duties. Moreover, Pels’ testimony in this regard is in tension with Camerota’s testimony that she “shares” responsibility for posting content to Facebook with Uy “based on Megan’s day and how busy she is” once Megan has completed her Snapchat work. The sharing of duties on the basis of availability described by Camerota is in marked contrast with Camerota’s testimony that her direct supervisor, *Cosmopolitan* Deputy Editor Heyman, communicates directly with Uy throughout the day “for anything that [Heyman] needs her to do immediately.” In short, the evidence fails to establish that Camerota’s assignment of work carries a mandate that takes precedence over Uy’s other assignments or is anything other than routine. *The Washington Post Co.*, 254 NLRB at 205, 212 (assignments made by “mutual consent” and “availability” insufficient to establish supervisory status); *see also Atlantic City Electric Co.*, 2019 WL 7584366 (November 18, 2019) at fn. 3 (system operators who could cancel work assignments not supervisors, in part based on the absence of evidence that they could reassign cancelled work); *cf. WDTN-TV*, 267 NLRB 326, 326 (1983) (news producers who had discretion to override assignments of stories to employees by the assignment editor deemed statutory supervisors).

As to the appointment of employees to a time, there is evidence that several of the putative supervisors determine the hours of their direct reports and handle their leave requests. Nevertheless, the evidence likewise falls short of establishing that such decisions are other than routine. Thus, *Cosmopolitan* Editor in Chief Pels’ testimony that she “believe[s]” Camerota can authorize overtime for Uy and grant her time off requests is inconclusive on the question whether exercise of such authority, if in fact vested in Camerota, requires independent judgement. On the contrary, the evidence indicates that such determinations are constrained at least in part by routine factors outside Camerota’s control.¹¹⁸ Similarly, although Site Director Anderson testified that Clegg sets Ramsey’s work hours and handles her time off requests, there is no evidence to suggest that Ramsey’s hours depart from the norm and, in any case, Anderson’s testimony strongly implies that individual preferences govern scheduling as a general matter rather than being mandated by supervision. Finally, although Executive Editor Koch testified that Lieberman set the video teams hours as required by her shooting schedule, there is no evidence that Lieberman has ever required members of the video team to work outside regular hours set by Koch. *See, e.g., The Washington Post Co.*, 254 NLRB at 197 (paper marker supervisor who works as a leadman and performs low level supervisory functions such as scheduling and allowing vacations and time off when significant supervisory authority is vested in higher personnel).

¹¹⁸ Thus, Pels admitted that Uy’s overall work hours were limited to 1,000 hours in the course of her 6 month appointment, which cannot be exceeded without permission of Human Resources.

In regard to the direction of work assigned, the evidence likewise fails to establish that the purported supervisors exercise independent judgment in overseeing or reviewing the work of other employees. Thus, it is clear that the fact that the putative supervisors edit, correct and in some cases may “kill” the work of those to whom they make assignments is not itself sufficient to establish supervisory status. *The Scranton Tribune*, 294 NLRB 692, 692-693 (1989) (authority to correct, edit and even “kill” other employees’ work does not compel supervisory finding (citing cases)); see also *The Washington Post Co.*, 254 NLRB at 205. To the extent putative supervisors at issue here, such as Clegg, guide other less experienced employees in the performance of their work—in Clegg’s case, “onboarding” Photo Editor Ramsey and teaching her to “work with our templates” and in accordance with “our brand standards”—that is the routine work of a lead person rather than evidence of supervisory status. See, e.g., *Shaw, Inc.*, 350 NLRB at 355; see also *Suburban Newspaper Publications, Inc.*, 226 NLRB at 156; *The Washington Post Co.*, 254 NLRB at 205. Furthermore, although Clegg testified that she “coached” Ramsey in preparing a presentation for the *Best Products* editorial team, there is no evidence that her role in this regard was other than that of an experienced employee overseeing the work of a less experienced employee to ensure consistency with established Employer standards. As discussed in more detail, *infra*, the evidence fails to establish that any of the putative supervisors at issue here formulates or has authority to depart from the established standards and goals, for their brand.

Likewise, although many of the purported supervisors also play a role in setting deadlines in the direction of work, it is unclear to what extent such decisions may be said to reflect the exercise of independent judgement. Thus, *Best Products* Site Director Anderson admitted that she, Clegg, and “the other senior local members of the staff” work together to determine “live dates” for selected content, and, although it is undisputed that Clegg is responsible for setting art team deadlines, the evidence indicates those deadlines are largely routine and constrained by the deadlines of the editorial team more generally.¹¹⁹ Similarly, although *ELLE.com* Site Director Connor testified that Kosin determines deadlines for the stories she assigns, she admitted that this determination is constrained by the “release date” of a project and other related coverage that may be lined up. Such constrained decision making within established parameters is insufficient to support a finding of supervisory status. See *Contra Costa Times*, 225 NLRB 1148, 1148 & 1155 (1976) (journeyman printer who set deadlines for his department within established publication schedules not a statutory supervisor absent evidence that these decisions were more than routine).

The same may be said of *Seventeen* Supervising Video Producer Lieberman’s role in planning and executing video shoots for the *Seventeen* video team. Although Lieberman is responsible for planning, creating a schedule (or “call sheet”) for, and overseeing the execution of video shoots, the evidence suggests that her role in this regard is that of a coordinator rather than a statutory supervisor. Thus, Executive Editor Koch testified that Lieberman “will schedule [the shoot], and then arrange the team so it gets shot, edited and produced.” Lieberman’s specific testimony in this regard, concerning scheduling of celebrity shoots, makes clear that her role is tightly constrained by talent availability and the standard 20 to 30-minute time frame allotted for these shoots. Moreover, it is clear that Lieberman relies on the well-established expertise of her team to estimate

¹¹⁹ To the extent Clegg testified that some deadlines “can kind of be negotiated based on what each of [us] is working on,” the record fails to clarify how disagreements in this regard are settled.

the time needed to set up lights and cameras and “build[s] the schedule based around that.” Liberman’s role in this regard does not appear to involve independent judgment of the kind that would render her a statutory supervisor. See *Westinghouse Broadcasting Co.*, 215 NLRB 123, 124-125 (1974) (producer/directors who produce shows according to established production parameters, collaborate with talent and production team members who are independently capable of executing their assignments, and initiate changes in set, script, style and location not statutory supervisors). Rather, it is clear that the members of the video team work as an integrated production team and that Lieberman’s role in coordinating their work to develop a single product does not warrant a finding of supervisory status. See *KGW-TV*, 329 NLRB 378, 381 (1999) (assignment editors and news producers not statutory supervisors where they coordinate and work in concert with on-air talent and other employees, including studio personnel, as part of an integrated production team (citing cases)); see also *Multimedia KSDK, Inc. v. NLRB*, 271 F.3d 744 (8th Cir.) (recognizing the validity of the Board’s finding in *KGW-TV, id.*, that producers’ coordination of a collaborative news creation process insufficient to support a finding of supervisory status).

Finally, the evidence in regard to whether the six purported supervisors are “responsible” in their direction of the work of other employees, as required by statute, is sparse and inadequate to warrant a finding of supervisory status. Thus, *Seventeen* Executive Editor Koch testified summarily that Lieberman was “responsible for the work” of the video team and SVP VD Rice stated that Lieberman is “responsible for the performance of the brand,” yet there is no evidence to suggest that Lieberman ever suffered any adverse employment consequence for inadequate work by any member of the video team or was ever informed that this could occur. In yet more conclusory fashion, *Men’s Health* Editor Dorment affirmed in response to leading questions that Dukoff and Romano were “accountable” for the stories assigned by them,¹²⁰ and *ELLE.com* Site Director Connor likewise testified that inadequate content posted to the brand website would be Kosin’s “responsibility.” No evidence was presented to show that any of the purported supervisors was ever disciplined or ever suffered any adverse employment consequence as a result of work s/he assigned to others.¹²¹ Moreover, Kosin, Dukoff, and Camerota expressly testified they had never

¹²⁰ Dorment’s further testimony regarding Dukoff’s responsibility to guide other employees regarding the optimal presentation of stories assigned to them--“if somebody pitched an angle that [Dukoff] felt was wrong, I’ve seen many times when he’s corrected them, and I would discipline if he weren’t doing that.”—is both hypothetical and inapposite. At most, this testimony reflects that Dorment might discipline Dukoff for failing to perform the advisory role inherent in his position rather than that any action would be taken against him as a result of another employee’s failure to properly implement his suggestions.

¹²¹ The fact that *Best Products* Art Production Director Clegg’s supervision of Photographer Ramsey was mentioned in her 2018 and 2019 performance reviews does not bolster the inadequate evidence regarding responsible direction of work. That is because, as discussed in more detail below, the evidence entirely fails to establish that these performance reviews had any direct effect on any term and condition of Clegg’s employment. See *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (fact that employer evaluation form provides for charge nurses to be rated on their direction of work of certified nursing assistants (CNAs) insufficient to demonstrate that they “responsibly direct” the CNAs absent evidence the evaluations affect some aspect of the charge nurses employment or may be a basis for adverse action against the charge nurses).

been informed they might suffer adverse employment consequences due to the inadequate work of other employees, let alone their failure to oversee that work. Such conclusory testimony, without more, cannot meet the Employer's burden here. *Alternate Concepts, Inc.*, 358 NLRB at 294.

For the reasons discussed above, I find it clear that the role of the six purported supervisors in the assignment and direction of work for their brands will not support a finding of supervisory status.

2. Role in Hiring/Firing/Transfer of Employees

There is no evidence that *ELLE.com* Senior Culture Editor Kosin, *Men's Health* Deputy Editor of Content Strategy Dukoff or *Men's Health* Associate Editor Romano have any role in hiring or firing employees. In contrast, *Cosmopolitan* Social Media Editor Camerota, *Best Products* Art Production Director Clegg, and *Seventeen* Supervising Video Producer Lieberman each participated in hiring of one employee. Because the evidence presented fails to establish that Camerota or Clegg "effectively recommended" the one employee in whose hire each participated and because the circumstances surrounding Lieberman's hire of one employee are insufficient to establish her independent judgment or any on-going authority in this regard, their roles in hiring those three fails to establish they are statutory supervisors. Moreover, although authority to effectively veto hiring decisions of management may establish supervisory status, the speculative testimony of *Seventeen* Executive Editor Koch and *Best Products* Site Director Anderson that they would not hire someone of whom Lieberman and Clegg, respectively, disapproved, is inconclusive here given that neither Lieberman nor Clegg was informed she had such authority and there is no evidence either exercised that purported authority. *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2014) (citing *Greenspan, D.D.S., P.C.*, 318 NLRB 70, 76 (1995), *enfd.* 101 F.3d 107 (2d Cir. 1996), for the principle that "[w]hen an individual has not been notified, orally or in writing, that he is vested with a supervisory power, the frequency of exercise of the authority is relevant to a determination of whether in fact the authority has been delegated to him").¹²²

It is a matter of well-established law that merely screening resumes, interviewing applicants, or evaluating their technical skills is insufficient to establish hiring authority of the kind that warrants a finding of supervisory status. *The Republican Company*, 361 NLRB at 97 (citing cases for principle that "[a]bsent additional evidence, an individual does not effectively recommend hiring where acknowledged supervisors also interview the candidates" or where participation in hiring

¹²² The Board's decision in *Sheraton Universal Hotel*, 350 NLRB 1114, 1118 (2007), is not to the contrary. The Board in that case found testimony by the employer's hiring manager, that disapproval of an applicant by the alleged supervisor "would be fatal" to an applicant's hire, sufficient to establish supervisory status even absent specific evidence that the alleged supervisor exercised such authority. However, in that case, there does not appear to have been any evidence that the alleged supervisor was unaware of her authority in regard to hiring. Here, by contrast, Clegg expressly testified she was never told she had any authority to hire employees. Purported supervisor Lieberman similarly testified she was not informed at the time of her hire that she had any hiring authority, and, apart from a circumstance-limited instance in which hiring authority was conveyed to her (discussed in detail below), she was never told her authority had been permanently altered in that regard.

was “limited to assessing the technical skills of prospective candidates”). Rather, where the evidence indicates that there is a final decision maker other than the purported supervisor, whose approval is required before a hiring decision may be made, the purported supervisor will be deemed to meet the statutory requirements only in so far as the final decisionmaker’s approval was routinely given based on her recommendations without any independent assessment. *Id*; see also *Cardinal Timothy Manning*, 23 NLRB 1218, 1222 (1976) (department chairpersons who have authority to make recommendations regarding hire/fire of teachers and whose recommendations were “generally followed” statutory supervisors). Furthermore, the Board has held that, where a purported supervisor considers only one applicant for hire or where an applicant who is hired on the purported supervisor’s recommendation has previously worked for and is known to the employer, the circumstances fall short of establishing the exercise of independent judgment characteristic of a statutory supervisor. See *Oakwood*, 348 NLRB at 693 (finding no “independent judgment” in regard to hiring when “there is only one obvious and self-evident choice”); see also *Victoria Partners*, 327 NLRB 54, 62 (1998) (alleged supervisor who recommended hire of one employee who had previously worked for the employer and whose work was known to the final decision maker, insufficient to establish supervisory status).

It is undisputed that Clegg conducted a second-round interview of *Best Products* Photo Editor Ramsey prior to her hire and recommended, based on review of Ramsey’s “edit test” at then-Director Jamie Miles’ request, that she be hired. However, Clegg testified that Miles made the decision to hire Ramsey and that she (Clegg) did not participate in the decision. There is no evidence as to the weight given Clegg’s recommendation and no evidence that it was anything more than an assessment of Ramsey’s technical proficiencies and/or “compatibility.” See *The Republican Company*, 361 NLRB at 97; see also *Tree-Free Fiber Co.*, 328 NLRB 389, 391 (1999) (“However, compatibility recommendations by team leaders--or team members—are insufficient to support a finding of hiring authority within the meaning of Section 2(11).”) Anderson’s testimony that she understood that Clegg was “part of the process of hiring” Ramsey does little to assist, given the fact that Clegg did not work for her at that time and the absence of any evidence that Anderson had direct knowledge of or participation in the decision-making process. In short, the evidence is insufficient to establish that Clegg’s role in Ramsey’s hiring process can be viewed as an effective recommendation of hire. See, e.g., *The Door*, 297 NLRB 601, 601-602 (1990) (employee whose role in hiring limited to screening resumes, making recommendations based on technical qualifications, and participating in interview process lacked authority to effectively recommend hire).

Similarly, Camerota’s role in the hiring of *Cosmopolitan* Editorial fellow Uy falls short of establishing supervisory status. Although Camerota collaborated with Associate Editor Weldon and a news writer in preparing a job description for the fellow position and, in conjunction with Weldon, sorted through resumes, called candidates in for interviews, and ultimately recommended Uy, it appears undisputed that the final hire decision was made by *Cosmopolitan* Deputy Editor Heyman. *Cosmopolitan* Editor in Chief Pels admitted that the general practice in this regard is for the decision maker to “do the final meeting to make sure that [she] agree[s]” with a hire recommendation. Although Pels also testified that Uy was hired “on Camerota’s recommendation,” there is no evidence that Pels was directly involved in the hiring process let alone that Camerota had any independent say over the hire decision apart from her collaboration with Associate Editor Weldon. In short, the evidence fails to demonstrate that Camerota’s role in

this collaborative process may be deemed an “effective recommendation” of hire. See, e.g., *The Republican Company*, 361 NLRB at 97 (evidence that assistant classified manager jointly interviews and recommends candidates for hire with another manager and testimony of advertising director, who is not directly involved in the hiring process, that the assistant classified manager was the “primary decision maker” insufficient to establish that she effectively recommends hiring).

It is clear that, unlike Clegg and Camerota, Lieberman effectively recommended *Seventeen Shooter*/Editor Govea for hire when a position opened up while Executive Director Koch was on maternity leave. Although it is undisputed that Rice, rather than Lieberman, had final authority to hire for the position, she testified unequivocally that she did not interview Govea prior to her hire and gave Lieberman’s recommendation “a great deal of weight” in approving the hire. Nevertheless, the totality of the circumstances leading to Govea’s hire fails to support the conclusion that Lieberman was a statutory supervisor because the evidence does not show Lieberman exercised independent judgment in recommending Govea for hire.

As an initial matter, it is clear that Rice initiated the hiring process by notifying Lieberman that “head count” had “opened up.” At that time, Lieberman spoke with Rice about filling the position and they agreed that the position should be offered to a freelancer, Branson, who had been working with the video team on an on-going, as-needed basis and whose work was well known to both SVP VD Rice and Executive Editor Koch. Lieberman testified that she put her recommendation in writing at Rice’s request. Lieberman further testified that, after Branson refused the offer, she was sent Govea’s resume by Employer Human Resources, interviewed her, and, after administering an “edit test,” recommended her hire. Govea had previously worked as a freelancer for the Employer with the Employer’s *Good Housekeeping* brand. The evidence thus makes plain that Lieberman only recommended hire of applicants known to and approved of by the Employer and that, in both instances, there was only one “obvious and self-evident” choice. *Oakwood*, 348 NLRB at 693.¹²³ Such a role in hiring is, by itself, insufficient to support a finding of supervisory status. *Id*; see also *The Bakersfield Californian*, 316 NLRB at 1221 (assistant metro editor whose recommendations regarding hire of several applicants were given “great weight” insufficient to establish supervisory status where applicants were either former employees or otherwise known to management).

Moreover, even assuming that Lieberman’s hire of Govea might be deemed a statutorily sufficient exercise of supervisory authority, it is insufficient under the circumstances here to establish that Lieberman possesses such authority on an on-going basis. See *Volair Contractors, Inc.*, 341 NLRB 673 (2004) (evidence that foreman was told he had authority to hire/fire when working on one job site and did so insufficient to demonstrate his supervisory status at a different job site where circumstances cast doubt on the continuation of that authority and there was no evidence

¹²³ Executive Editor Koch’s testimony that, in hiring Govea, Lieberman “interviewed candidates” and “narrowed down who she wanted” is unreliable in that Koch, who was out on maternity at this time, admitted that she “wasn’t looped into the conversation” regarding the hiring decision and there is no evidence to indicate that she had direct knowledge regarding the number of applicants interviewed or considered by Lieberman.

that he had exercised such authority at the new job site).¹²⁴ Thus, Lieberman testified that she was not informed at the time of her hire that she had any authority to hire employees. Rather, before departing for an extended maternity leave, Executive Editor Koch notified Lieberman that she would be charged with overseeing the hiring of a new employee should permission to do so be given during Koch's absence. Rice admitted that she did not recall discussing with Lieberman after the hire of Govea any future role Lieberman might have in hiring. Under these circumstances, the evidence is insufficient to establish that Lieberman's hire of Govea was anything other than a temporary performance of a supervisor's duties in the supervisor's absence and, as such, does not warrant a finding of supervisory status. See, e.g., *In the Matter of Farm Journal Inc.*, 69 NLRB 1346, 1347-1349 (1946) (senior editor who on one occasion, in the absence of the managing editor, hired an employee not a statutory supervisor on that basis).¹²⁵

Finally, any contention that Lieberman may be deemed a supervisor based on her role in the transfer of Graphics Editor Fink from the Employer's Snapchat team to the *Seventeen* video team is unavailing. *The Washington Post Co.*, 254 NLRB at 208-209 (Living editor who recommended transfer of one reporter not statutory supervisor due to "sporadic" and "limited" exercise of such authority). The only evidence in this regard is Executive Editor Koch's testimony that she proposed the transfer of Fink to Lieberman and that Lieberman agreed with the proposed transfer after interviewing Fink. Obviously, Fink's work was known to the Employer, and there is no evidence that Lieberman did anything more than weigh in on an arrangement engineered by her supervisor. See *The Bakersfield Californian*, 316 NLRB at 1222 (assistant metro editors whose input is sought on evaluations and merit increases not statutory supervisors where evidence indicates that their opinions are more of an affirmation of the suggestions made by the metro editor than independent assessment). Certainly, there is no evidence that Lieberman's role was decisive, and, in any case, the fact that Lieberman was offered only a single transfer candidate for

¹²⁴ The Board's decision in *I-O Services, Inc.*, 218 NLRB 566, 567 (1975) is not to the contrary. In that case the Board affirmed the administrative law judge's conclusion that a day shift supervisor who was told on one occasion when she consulted her manager that she could fire a poorly-performing employee if that employee's performance issues did not resolve was a statutory supervisor. In so finding, the administrative law judge affirmed that a single instance of hiring/firing was generally insufficient to establish supervisory status. However, the judge relied on the evidence that the putative supervisor's manager had also repeatedly criticized her for failing to fully satisfy her supervisory responsibilities in concluding that the manager's designation of authority in that regard was on-going and sufficient to establish supervisory status even in the absence of evidence that she repeatedly exercised that authority.

¹²⁵ The fact that Lieberman has authority on an on-going basis to decide when freelancers will be called in on shoots she is overseeing, within a budget provided to her, is not to the contrary. As an initial matter, the evidence is entirely insufficient to establish that these freelancers are employees of the Employer. See *Boston After Dark, Inc.*, 210 NLRB 38, 43 (1974) (freelancers engaged by arts editor not employees based on evidence that, although they worked regularly with the employer, they were also able to decline work). Furthermore, there is no evidence that Lieberman has any role in hiring freelancers. Rather, the evidence indicates that the brand has a stable complement of freelancers with whom it regularly works, and there is no evidence as to how those freelancers are selected. Thus, there is no basis to conclude that Lieberman regularly exercises authority to hire employees by virtue of her authority to determine the use of freelancers.

consideration undercuts any claim that she exercised “independent judgment” in this regard. *Oakwood*, 348 NLRB at 693. Finally, it is undisputed that the transfer occurred before Lieberman was hired to her current position, and there is no evidence that she has participated in any transfer of employees since assuming her current title.

The evidence is therefore insufficient to conclude that any of the purported statutory supervisors exercised “independent judgement” or otherwise effectively recommended employees for hire or transfer.

3. Role in Discipline/Reward of Employees

There is no evidence *ELLE.com* Senior Culture Editor Kosin, *Cosmopolitan* Social Media Editor Camerota, or *Men’s Health* Associate Editor Romano have any authority to reward or discipline other employees. Although *Best Products* Art Production Director Clegg and *Seventeen* Supervising Video Producer Lieberman prepared performance evaluations for employees reporting to them and, on rare occasion, addressed employee misconduct, the record fails to establish that either possesses authority to reward or discipline employees in any manner.

Authority to prepare performance evaluations is not an indicator of supervisory status absent evidence the evaluation process has a direct and material impact on some aspect of employees’ terms and conditions of employment. *Modesto Radiology Imaging, Inc.*, 361 NLRB 888, 889 (2014) (citing cases for the proposition that authority to evaluate employees will only support a finding of supervisor status to the extent in is shown to constitute an “effective recommendation” of promotion, wage increase or discipline). The evidence on that point is inconclusive here. Thus, although the Employer announced on May 9, 2019, that it was implementing a new “process for reviews and career planning. . . to formalize an ongoing dialogue between you and your manager,” the announcement makes clear that “[t]hese career discussions are *separate from the merit process.*” Indeed, there is no evidence to establish generally how, if at all, the new review process affects the new “merit process” that was implemented six months later. Although there was testimony from managerial employees from many of the Employer’s brands regarding performance reviews and the award of merit increases, only *Marie Claire’s* Division Director, Sally Holmes, testified that her decisions regarding merit increases were based in part on performance reviews. The evidence as a whole is thus inconclusive as to whether there was any generalized relationship between the evaluation process and reward of employees and there is no evidence upper management at *Best Products* or *Seventeen* relied in any measure on these performance reviews in making decision about compensation or promotion.¹²⁶ *Id*; see also *Elmhurst Extended Care Facilities*, 329 NLRB 535, 537 (1999).

Although there is some evidence that both Clegg and Lieberman have on rare occasion addressed misconduct by employees whose work they oversee, that evidence is sparse and likewise insufficient to warrant finding supervisory status. Thus, Executive Director Koch’s testimony that

¹²⁶ Although *Seventeen* Executive Director Koch testified that *Seventeen* employees were subject to the new self-review and manager review process and that this had been done “once,” she was not asked and did not testify whether those performance reviews had any impact on her determination of merit increases.

Lieberman “spoke to” two employees who were having a loud argument on set is both hearsay and insufficient to establish Lieberman’s disciplinary authority. Indeed, Koch characterized the incident as “sort of. . . disciplinary” and there is no evidence the Employer maintains a progressive discipline process, let alone that the conversation constituted a step in any such process or was documented in the employees’ personnel files. *The Republican Company*, 361 NLRB at 99 (issuance of verbal reprimands insufficient to establish supervisory status absent evidence that they may relate to later, actual discipline (citing cases)).

Best Products Site Director Anderson’s testimony that Clegg had “a chat” with Ramsey about a team-wide email she sent is likewise hearsay and there is no evidence as to how Anderson, who works remotely, knew of the discussion. Even assuming such a conversation occurred, there is no evidence it constituted discipline that would support a finding of supervisory status. *Veolia Transportation Services, Inc.*, 363 NLRB No. 98, slip op. *8 (Jan 20, 2016) (citing cases for the principle that “[a]uthority to issue verbal reprimands is, without more, too minor. . . to constitute supervisory authority). Furthermore, although Anderson testified that she forwarded Ramsey’s inappropriate message to Clegg in an email stating “if I were you, I would write her up,” that email is not in evidence and Anderson did not explain what she meant by a “write up.” Absent evidence of a progressive discipline policy and that a “write up” is a step in any disciplinary scheme maintained by the Employer, Anderson’s testimony fails to establish conferral of disciplinary authority. *Cf. id* at *1-2 (road supervisors who were tasked with completing observation notices regarding bus operators performance of their work not statutory supervisors because there was no evidence that these reports were disciplinary or regularly led to disciplinary consequences). In contrast, Clegg, who was not asked specifically about this incident, testified she had never been told she had authority to discipline any employee and had never done so. Finally, Anderson’s testimony that the incident was obliquely referenced by Clegg in Ramsey’s June 2019 performance review and that “I feel like” this reference “is a disciplinary action” is both speculative and, in any case, unpersuasive in the absence of evidence that performance reviews may or have in fact lead to disciplinary consequences. *Modesto Radiology Imaging, Inc.*, 361 NLRB at 889.

Nor is Clegg’s asserted supervisory status established by her role in a request for promotion made by Ramsey in August 2019. It is clear Ramsey made the request to Clegg who reported it to Site Director Anderson and then conveyed to Ramsey Anderson’s instruction that Ramsey prepare a written justification for the request. Although Anderson testified that she discussed with Clegg whether or not “she—we thought [Ramsey] deserved [the promotion],” Anderson admitted the request was not denied on that basis but rather because “[w]e determined there wasn’t a budget for a promotion.” There is no evidence that Clegg plays any part in budgetary considerations generally and Clegg testified that she had no input into the denial of Ramsey’s request. Moreover, Clegg testified she had never been told she had any authority to promote employees and had never done so during her tenure at *Best Products*. Thus, the evidence in this regard fails to establish that Clegg had authority to grant or effectively recommend promotion and there is no evidence that her role in the denial of Ramsey’s request, if any, went beyond providing input regarding Ramsey’s technical abilities. *Cf. The Republican Company*, 361 NLRB at 97 (review of applicants’ technical skills in itself insufficient to establish hiring authority per 2(11)).

The evidence in regard to Dukoff’s role in discipline/reward of employees is even more sparse. *Men’s Health* Editor in Chief Dormont testified that there had been instances in which employees

were not completing work timely and that “it had been surfaced to me, and I’ve had to intervene.” That testimony is inconclusive on the question whether Dukoff was the one to bring these instances to Dorment’s attention let alone whether he made any recommendation as to how they should be handled. Although Dorment testified, vaguely, that he had “mentioned several times that I expect them as deputy editors—I’m speaking about Jordyn [Taylor] -- [Dukoff], specifically, to exercise that authority themselves,” it is unclear to whom this was “mentioned” and thus unclear whether Dorment expressly conveyed this authority to Dukoff. *The Republican Company*, 361 NLRB at 97. Certainly, there is no evidence that Dukoff was aware of having disciplinary authority or exercised such authority at any time. *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2014) (citing *Greenspan, D.D.S., P.C.*, 318 NLRB 70, 76 (1995), *enfd.* 101 F.3d 107 (2d Cir. 1996), for the principle that “[w]hen an individual has not been notified, orally or in writing, that he is vested with a supervisory power, the frequency of exercise of the authority is relevant to a determination of whether in fact the authority has been delegated to him”). Moreover, the evidence fails to establish whether discipline of the kind referred to by Dorment involved other than routine considerations. In short, the evidence is both too vague and too conclusory to warrant a finding that Dukoff had authority to discipline sufficient to warrant finding him a statutory supervisor on that basis. *Alternate Concepts, Inc.*, 358 NLRB at 294 (“[M]ere inferences or conclusory statements, without detailed, specific evidence are insufficient to establish supervisory authority.”)

4. Role in Adjustment of Grievances

The evidence regarding the role of the purported supervisors in the adjustment of employee grievances was largely conclusory. Only *Seventeen* Executive Editor Koch testified with specificity. In particular, Koch testified that video team Shooter/Editor Storch suffered an on-the-job injury and that his “accommodation” on his return to work was handled by Supervising Video Producer Lieberman. As discussed in detail below, the evidence fails to establish Lieberman’s supervisory status because it fails to show the existence of a grievance or demonstrate that Lieberman’s role in assisting Storch involved the exercise of “independent judgment” rather than routine compliance with instructions received from Human Resources while Koch was on leave.

Shooter/Editor Storch’s on-the-job injury occurred on set and was witnessed by Supervising Video Producer Lieberman. There is no indication that Executive Editor Koch was present and she testified she learned of the incident because Lieberman reported it to her after sending Storch to the Employer’s medical center. Although Storch was thereafter sent to the hospital and did not return to work until many months later, there is no evidence Lieberman played any role in the decision to send Storch for outside medical evaluation or in the arrangement of Storch’s medical leave. On the contrary, Koch admitted that she is solely responsible for handling employee requests for extended leave. Moreover, although Storch returned to work on a part-time basis, there is no evidence Lieberman played any role in that arrangement or had any independent authority to grant part-time status.

Although Executive Editor Koch testified generally that, since Storch’s return to work in August 2019, he “works with” Lieberman when he needs an accommodation, Koch went on maternity leave within two weeks of Storch’s return and did not herself return to work until shortly before her testimony in this case. Koch did not explain the basis of her assertion and failed to describe any specific accommodation authorized by Lieberman. Indeed, the only evidence in this regard is

an email chain between Employer Human Resources Manager Tarver and Koch, copying Lieberman, on Storch's first day back at work, in which Tarver inquired how he was managing his duties. It is clear Tarver directed this inquiry to Koch in the first instance, who forwarded it to Lieberman for her input. When Tarver followed up a week later with Lieberman and Koch, Lieberman immediately added Rice to the email thread noting that Koch was out. Thus, the evidence clearly suggests that Lieberman was not the final authority or point of contact in regard to accommodating Storch.

In addition, the evidence fails to establish that Storch requested or demanded any particular adjustment in his working conditions from Lieberman. On the contrary, it appears that Employer Human Resources Manager Tarver independently sought Executive Editor Koch's input in regard to Storch's work performance and that Koch in turn sought input from Lieberman. There is nothing to suggest that Lieberman's input was anything more than "reportorial." See, e.g., *Veolia Transportation Services, Inc.*, 363 NLRB at *1-2. Furthermore, it is clear that it was Tarver who determined that an accommodation of Storch to minimize imposition of duties that would "exacerbate his symptoms" was appropriate and communicated this to Lieberman and Koch. *Id.* Lieberman's removal of Storch from an assignment that caused him discomfort, which she reported in response to a follow up email from Tarver, reflects little more than the exercise of her routine assignment authority, discussed above, in accordance with specific management policy dictated to her. *Cf. Byers Engineering Corp.*, 324 NLRB 740, 741 (1997) (leadman not a statutory supervisor based on his assignment of a health-compromised employee to a location far from his medical care, where evidence failed to show that assessment of the employee's medical condition was a factor in his assignment or was determined independently by leadman).¹²⁷ Moreover, to the extent Lieberman indicated Storch would be working at home during a particularly noisy period in the office that might exacerbate lingering effects of his injury, the evidence fails to demonstrate how this arrangement came about let alone that such arrangements were other than routine. In short, there is no indication Lieberman was presented with a grievance, let alone made any adjustment of a grievance requiring exercise of independent judgment.

B. Managerial Status of Putative Supervisors

As noted above, the Employer contends that the six employees at issue here must be deemed statutory supervisors because they are managerial employees. The Employer has cited no case law to support its contention that supervisor status follows *per se* from a finding of managerial status and it is clear that the Board applies distinct analyses to these issues. See, e.g., *Allstate Insurance Co.*, 332 NLRB 759, 762 (noting absence of "firm criteria" in determining managerial status); cf. *Oakwood Healthcare, Inc.*, 348 NLRB at 687 (possession of at least one of the twelve indicia set forth in Section 2(11) is required to establish supervisory status). Nevertheless, the managerial status of the named employees is considered below.

¹²⁷Although Lieberman's reassignment of Storch was clearly based on his medical condition, the evidence fails, as in *Byers Engineering Corp.*, to show that Lieberman acted independently in this regard. On the contrary, as discussed above, Lieberman was implementing a clear instruction from Human Resources in reassigning Storch. Furthermore, there is no the evidence the Lieberman's reassignment of Storch was in response to a grievance, complaint or demand made by Storch to her directly. *Cf. id* at fn. 4.

The burden of establishing managerial status rests on the party asserting it. *The Republican Company*, 361 NLRB at 96 (citing cases for the principle that “[t]he party seeking to exclude an individual as managerial bears the burden of proof”). Performance of duties involving considerable discretion with minimal supervision does not necessarily indicate managerial status. *American Federation of Labor and Congress of Industrial Organizations*, 120 NLRB 969, 973-974 (1958) (citing cases). Rather, to establish managerial status, the party asserting it must demonstrate that the putative managerial employees “formulate and effectuate high level employer policies” or have “discretion in the performance of their jobs independent of their employer’s established policy.” *The Republican Company*, 361 NLRB at 95-96 (quoting *General Dynamics Corp.*, 213 NLRB 851, 857 (1974)); see generally *NLRB v. Yeshiva University*, 444 U.S. 672, 682 (1980) (faculty who decide what courses their employer will offer, to whom, and in accordance with what methods, grading policies and matriculation standards are managerial, where evidence presented showed that none of the faculty’s academic initiatives had been vetoed in over ten years, 98 percent of their hiring recommendations were given effect, none of their promotion decisions had been overturned, and on several occasions the faculty had overridden recommendations by the deans). The Board has made clear that “the exercise of judgment within the limitations of established policy does not confer managerial status absent authority to influence the establishment of such policy.” *American Radiator & Standard Sanitary Corp.*, 119 NLRB 1715, 1717 (1958) (citing cases) For reasons discussed below, the evidence falls far short of establishing that any of the six employees at issue here satisfies the requirements of managerial status.

The Employer contends that the role of the putative managerial employees in determining the content and scope of the brands for which they work renders them managerial employees. However, there is no evidence in the record suggesting that the putative supervisors have the authority to approve content that departs from the unique mix of voice, style and content established at their brands and expected by their readers, or to publish content on new platforms. Moreover, even those putative supervisors, like *Seventeen* Supervising Video Producer Lieberman, who have a substantial role in deciding the content to be developed by their teams, are subject to review and approval of higher management and it is unclear how frequently they are overruled. Cf. *NLRB v. Yeshiva University*, 444 U.S. at 682. Thus, the evidence fails to establish that the employees at issue here exercise discretion in the performance of their responsibilities “independent of their employer’s established policy” as managerial status would require. See, e.g., *Westinghouse Broadcasting Co.*, 215 NLRB at 126 (involvement of producer/directors in formulating and effectuating management policy subject to approval of higher management insufficient to establish managerial status); *Suburban Newspaper Publications, Inc.*, 226 NLRB at 156-157 (editors responsible for content of editorial page not managerial based on evidence that their work was routinely submitted for approval by executive editor or publisher before printing); cf. *The Republican Company*, 361 NLRB at 96 (editorial page editor who, in addition to writing or editing content that expresses established institutional views of the newspaper also writes and directs editorials on topics outside the paper’s institutional positions, is a managerial employee based in part on evidence that his supervisor’s veto power in this regard is rarely exercised). Furthermore, to the extent some of the putative supervisors, such as *ELLE.com* Senior Culture Editor Kosin, may exercise independent authority in selecting daily news content, the Board has recognized that such decisions are not managerial in nature. See *Bulletin Company*, 226 NLRB 345, 359 (1976) (assistant news editors who select daily news content and determine its placement

in newspaper not managerial employees because “it is clear that decision as to (1) the newsworthiness of news story, and (2) the actual placement of the story. . . cannot be described as “policy decisions.””).

Although a few putative supervisors, including Clegg, Lieberman, and Dukoff, attend so-called “leadership meetings” to discuss higher-level issues involving the content and scope of coverage of their brands, the evidence fails to demonstrate those individuals play a decisive role in determining management policy. Thus, *Best Products* Director Anderson testified that Clegg might attend leadership meetings with her, Associate Director Murphy, and Managing Editor Simone, in circumstances where the subject for discussion involved “photography or design elements,” but there is no evidence as to the scope of matters addressed at those meetings let alone as to Clegg’s role, if any, in formulating policy. Further, that testimony indicates that Clegg’s attendance at those meetings related to her photography and design expertise, not to any development of Employer policy. Similarly, although SVP VD Rice testified she holds bi-weekly “leadership meetings” with all “team leads” under her supervision (which presumably includes Lieberman), there is no evidence high-level policy is formulated at these meeting, let alone that Lieberman plays a decisive role in any such policy determinations. See *A.S. Abell Company*, 81 NLRB 82, 83 (1949) (editorial writers who participate in daily conferences at which “editorial policy” of newspaper is discussed and formulated not managerial where evidence failed to show that they formulate or determine policy). Although *Men’s Health* Editor in Chief Dorment testified in greater detail about meetings of his executive staff, including Dukoff, to discuss “overall strategy” and weekly “leadership meetings” regarding staffing, resources, and long term planning, his testimony that Dukoff had “a key part” in these meetings was conclusory. Indeed, when pressed, Dorment described Dukoff’s role at these meetings as “one of four participants to help me sort to sort of figure it all out.” In short, the evidence falls far short of establishing that Clegg, Lieberman or Dukoff formulates and effectuates management policy. *Id.*

Men’s Health Deputy Editor of Content Strategy Dukoff’s daily responsibility for gathering data on content performance and educating the *Men’s Health* editorial staff in that regard is likewise insufficient to support the conclusion that he independently formulates and effectuates high level policy. See *The Washington Post*, 254 NLRB at 186-187 (assistant market research manager who gathers and studies information for her department to increase employer’s advertising market not a managerial employee as evidence does not support conclusion that she has authority to formulate, determine, or effectuate employer policy). Moreover, although Dukoff attends numerous cross-brand “social editor” meetings on the optimal use of various on-line tools and social media platforms to gather “best practices” for implementation at *Men’s Health*, there is no evidence Dukoff has authority to implement those ideas independently or depart from established policy in doing so. On the contrary, Editor in Chief Dorment testified that Executive Editor Darling “could overrule” Dukoff’s recommendations and there is no evidence how frequently that occurs.

Similarly, the fact that *Best Products* Art Production Manager Clegg is responsible for communicating “brand standards” to Photographer Ramsey and making sure her work is on par with those standards is insufficient to establish managerial status. The same may be said of *Seventeen* Supervising Video Producer Lieberman’s responsibility for making sure that the video team contributes to the performance of the brand and “the goals that have been set.” That is because the evidence fails to establish that either Clegg or Lieberman has a decisive role in

formulating brand standards and goals or has authority to independently depart from such established goals and standards in the performance of her duties. *See Westinghouse Broadcasting Co.*, 215 NLRB at 126 (producer/directors who exercise substantial discretion in the performance of their work while adhering to “departmental directives” and “preconceived production practices” not managerial); *see also American Radiator & Standard Sanitary Corp.*, 119 NLRB at 1717.

Although the evidence indicates that *Seventeen* Supervising Video Producer Lieberman may have some role in arranging collaborations between *Seventeen* and outside individuals, specifically celebrities, the evidence as to the nature of her authority in that regard is inconclusive. Thus, while Executive Editor Koch testified that Lieberman collaborated with celebrity publicists and the Employer’s Entertainment manager to “book” talent and “decide which franchise or video we’ll do,” the extent of Lieberman’s independent decision making is unclear. *See, e.g., American Federation of Labor and Congress of Industrial Organizations*, 120 NLRB at 975 (the Board has declined to find managerial status based on authority to “pledge an employer’s credit” where exercise of such authority is strictly limited and not regularly exercised (citing cases)). Indeed, the only specific evidence in this regard concerns a celebrity shoot that was initiated by the celebrity’s publicist contacting the Employer’s Entertainment Manager directly. There is no evidence to indicate Lieberman was involved in setting the terms of this collaboration, let alone that she has any role in formulating Employer policy in this regard. *See, e.g., G.P. Putnam’s Sons Inc.*, 226 NLRB 1256, 1262 (1976) (assistant editor who read and recommended manuscripts for publication not a managerial employee based on absence of evidence she had authority to negotiate contracts with authors or artists or determined which manuscripts the employer would purchase, publish, and promote); *cf. Swift & Company*, 115 NLRB 752, 753 (1956) (procurement drivers who are responsible for locating egg and poultry suppliers for the employer and independently determining purchase price based on changes in the market and employer need are managerial employees).

The evidence that Lieberman is responsible for determining when freelancers are needed on a video shoot and has participated in discussions regarding the video team’s use of its budget is likewise insufficient to establish her managerial status. There is no evidence regarding how particular freelancers are selected or that Lieberman plays any role in that regard, in determining their compensation, or setting their other terms and conditions of employment. *See The Washington Post Co.*, 254 NLRB at 185-186, 209-210 (art director who determines whether freelancers are needed on a project and is given a budget for freelancers not a managerial employee because authority to use freelancers not managerial); *see also Boston After Dark, Inc.*, 210 NLRB at 42 (procurement of freelancers insufficient to establish managerial status). Although she is given a budget for use of freelancers, she has no role in determining that budget and cannot exceed it without authorization. In the circumstances in which Lieberman escalated a budgetary request for purchase of equipment made by a member of the video team to upper management, the evidence suggests her role was limited to that of an interested conduit. *See American Federation of Labor and Congress of Industrial Organizations*, 120 NLRB at 975.

As discussed above, the evidence fails to establish that any of the six employees determines management policy or has authority to depart from it in the performance of his/her duties. The Employer has therefore failed to meet its burden of demonstrating the managerial status of the disputed employees. *The Republican Company*, 361 NLRB at 96.

In conclusion, because I find that the evidence presented fails to establish that any of the six individuals whose supervisory or managerial status is at issue have the requisite authority to be so designated, there is no basis to exclude them from the petitioned-for unit.

5. Based on the foregoing, I find that the following unit is appropriate within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and regular part-time editorial, video, design, photo, and social staff performing work for the Employer’s magazine brands, including but not limited to *Autoweek*, *Best Products*, *Bicycling*, *Car and Driver*, *Cosmopolitan*, *Country Living*, *Delish*, *ELLE*, *ELLE Decor*, *Esquire*, *Food Network Magazine*, *Good Housekeeping*, *Harper’s Bazaar*, *HGTV Magazine*, *House Beautiful*, *Marie Claire*, *Men’s Health*, *The Oprah Magazine*, *The Pioneer Woman*, *Popular Mechanics*, *Prevention*, *Redbook*, *Road & Track*, *Runner’s World*, *Seventeen*, *Town & Country*, *Veranda*, *Woman’s Day*, and *Women’s Health*.

EXCLUDED: All other employees, guards, professional employees, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Writers Guild of America, East, Inc.

A. Election Details

During the hearing, the Union and the Employer proposed the manner in which the election should be conducted. However, on March 7, and various dates thereafter, New York Governor Andrew Cuomo issued a series of Executive Orders banning public gatherings of individuals of any size for any reason, ordering the public to stay at home, and closing all non-essential businesses in response to the growing spread of the current pandemic. On March 19, the Board suspended all elections through April 3. On April 1, the Board issued a press release informing the public it would not extend the suspension of elections beyond April 3, 2020. The Board explained that when it suspended elections for that two-week period, it “was not confident that any type of election could be run effectively.” However, based on assurances by the General Counsel that there are measures available to permit the conduct of some elections, the Board deferred to Regional Directors to use their discretion to determine, on a case-by-case basis, whether an election could be held in a “safe and efficient” manner under all the circumstances. In these changed circumstances due to the current COVID-19 pandemic, the Region requests the parties to submit their positions in writing, together with any relevant evidence as to the manner in which an election may be conducted as soon as practicable that ensures the safety of all parties, the voters, the public, and Board personnel. The Region Director will thereafter issue an Order administratively deciding the election details. To be timely, such position and evidence must be received by May 15, 2020.

When feasible, the position and evidence shall be filed electronically with the Region and served electronically on the other parties named in this decision. The position and supporting evidence may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(1) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be received by the regional director and the parties by May 13, 2020. The list must be accompanied by a certificate of service showing service on all parties.

The region will no longer serve the voter list. Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by

using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Notices of Election will be electronically transmitted to the parties, if feasible, or by overnight mail if not feasible. Section 102.67(k) of the Board's Rules and Regulations requires the Employer to timely post copies of the Board's official Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted. You must also distribute the Notice of Election electronically to any employees in the unit with whom you customarily communicate electronically. In this case, because the manner in which the election is to be conducted is not currently known, the Region Director will provide the Notices following the issuance of the Order deciding the election details.

To make it administratively possible to have election notices and ballots in a language other than English, please notify the Board agent immediately if that is necessary for this election. Also, if special accommodations are required for any voters, potential voters, or election participants to vote or reach the voting area, please tell the Board agent as soon as possible.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: May 8, 2020

A handwritten signature in cursive script, reading "John J. Walsh, Jr.", positioned above a horizontal line.

John J. Walsh, Jr., Regional Director
National Labor Relations Board, Region 2
26 Federal Plaza, Room 3614
New York, New York 10278