

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

**MEDIEVAL TIMES U.S.A, INC. and
MEDIEVAL KNIGHTS, LLC**

and

AMERICAN GUILD OF VARIETY ARTISTS

**Case Nos. 22-CA-301865
22-CA-305612
22-CA-311585
22-CA-312517
22-CA-332987
21-CA-311421**

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for Respondent
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DECISION

Statement of the Case

LAUREN ESPOSITO, Administrative Law Judge. Based upon charges filed by American Guild of Variety Artists (AGVA or the Union), the Regional Director, Region 22, issued a Third Consolidated Complaint and Notice of Hearing on November 20, 2023 (the Complaint). The Complaint alleges that Medieval Times U.S.A., Inc. and Medieval Knights, LLC (Medieval Times or Respondent) violated Sections 8(a)(1) and (3) of the Act by disciplining Christopher Lucas on October 14, 2022, and December 15, 2022, and by discharging Lucas on January 21, 2023, in retaliation for his activities on behalf of the Union. The Complaint further alleges that Medieval Times filed and maintained a lawsuit against the Union and its members which was not reasonably based and was filed with a retaliatory motive or with an illegal objective, in violation of Section 8(a)(1) of the Act. The Complaint alleges that Medieval Times also violated Section 8(a)(1) by: (i) threatening that employees at its non-unionized facilities could not receive a wage increase because employees at its New Jersey facility had filed a petition for a representation election; (ii) convening mandatory meetings during paid time where it required employees to listen to unsolicited views regarding employees' Union activities, thereby implicitly threatening employees with unspecified reprisals if they refrained from listening to such presentations; (iii) seeking to have TikTok accounts of employee groups in New Jersey and California banned and seeking to block a Facebook post made by the California employee group in order to interfere with, restrain, and coerce employees in the exercise of their Section 7 rights; (v) threatening employees with discipline for handbilling on behalf of the Union on Medieval Times property; and (vi) serving employees with Subpoenas *Duces Tecum* in the instant

proceeding in order to coerce them and discourage them from exercising their Section 7 rights. On or about December 4, 2023, and December 28, 2023, Medieval Times filed Answers denying the Complaint's material allegations.

In this Decision, I find that Medieval Times violated Sections 8(a)(1) and (3) of the Act by issuing Christopher Lucas a written warning on October 14, 2022, and a final warning on December 15, 2022, and by discharging Lucas on January 21, 2023, in retaliation for his support for and activities on behalf of the Union, . I also find that Medieval Times violated Section 8(a)(1) by filing a lawsuit on October 13, 2022, against the Union and its members which was not reasonably based and was filed with a retaliatory motive, and by maintaining the lawsuit thereafter. In addition, I find that Medieval Times violated Section 8(a)(1) by the following conduct:

- Threatening that employees at its non-unionized facilities could not receive a wage increase because employees at its New Jersey facility had filed a petition for a representation election, and blaming the Union for its failure to provide mid-year wage increases to employees.
- Contacting TikTok seeking to have TikTok ban the California and New Jersey accounts of Medieval Times Performers United (MTPU) by claiming that posts made to these accounts infringed Medieval Times' trademark, in order to interfere with, restrain, and coerce employees in the exercise of their Section 7 rights.
- Contacting Facebook seeking to block a post made on the California MTPU Facebook account by claiming that the post infringed Medieval Times' trademark, in order to interfere with, restrain, and coerce employees in the exercise of their Section 7 rights.
- Threatening employees with discipline for peaceably handbilling on behalf of the Union on non-work time and in a non-work area of Medieval Times' property.
- Serving employees with Subpoenas *Duces Tecum* in the instant proceeding in order to coerce them and discourage them from exercising their Section 7 rights.

Finally, I dismiss the Complaint's allegation that Medieval Times violated Section 8(a)(1) by convening mandatory meetings during paid time where employees were required to listen to unsolicited views regarding their Union activities, thereby implicitly threatening them with unspecified reprisals if they refrained from listening to such presentations, pursuant to the Board's decision in *Amazon.com Services, LLC*, 373 NLRB No. 136 (2024).

This case was tried before me by videoconference on January 16, 2024, and in person at 20 Washington Place, Newark, New Jersey on January 17, 18, and 19, 2024,

January 22 through 26, 2024, and February 1, 2024. On the entire record, including my observation of the demeanor of the witnesses, and after considering the Post-Hearing Briefs filed by General Counsel and Medieval Times, I make the following

Findings of Fact

I. Jurisdiction

Medieval Times, a company with a principal office and place of business in Irving, Texas, operates locations throughout the United States, including facilities at 149 Polito Avenue, Lyndhurst, New Jersey and 7662 Beach Boulevard, Buena Park, California. Medieval Times has at all material times been engaged in providing show performance services. Medieval Times admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Medieval Times admits, and I find, that AGVA is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Procedural History of the Representation Cases and Unfair Labor Practice Charges

Medieval Times operates several locations, referred to as “castles,” where it entertains guests with staged performances featuring actors and stunt performers in period costume, including choreographed fights and games on horseback, while food and beverages are served. Tr. 70-71, 122. In early 2022, employees at the New Jersey castle, concerned regarding wage rates, working conditions, and safety issues, contacted Charging Party AGVA and began a campaign to have AGVA selected as their exclusive collective bargaining representative. Tr. 71-72. On May 26, 2022, AGVA filed a petition for a representation election in a bargaining unit of employees at the New Jersey castle in Case No. 22-RC-296686. Tr. 72; Jt. Ex. 7. On July 15, 2022, an in-person election was conducted at the New Jersey castle, and the majority of the eligible employees selected AGVA as their exclusive collective bargaining representative; the Union was certified on July 25, 2022. Tr. 72-73, 127, 433, 946, 950-951; Jt. Ex. 8.

In June 2022, AGVA was contacted by employees at the California castle, and AGVA filed a petition for a representation election in a bargaining unit at that location on July 22, 2022 in Case No. 21-RC-300023. Tr. 73-74; Jt. Ex. 9. An in-person election was conducted at the California castle on November 22, 2022, and AGVA was subsequently certified as the California employees’ exclusive collective bargaining representative. Tr. 628-629; Jt. Ex. 10. In the fall of 2022, AGVA was also contacted by Medieval Times employees at the company’s castles in Baltimore, Maryland, Chicago, Illinois, and Toronto, Canada; however, petitions for representation elections were never filed at those locations. Tr. 83-84.

The bargaining units at both the New Jersey and California Medieval Times locations consisted of knights and squires, show cast (including trumpeters), and stable hands employed at the pertinent castle. Jt. Exs. 7-10. All other employees were excluded, including food servers, wardrobe employees, bartenders, retail employees, sound and lighting employees, maintenance employees, housekeeping employees, kitchen employees, event staff employees, administration and marketing employees, office clerical employees, managerial employees, professional employees, guards, and supervisors within the meaning of Section 2(11) of the Act. Id.

The initial unfair labor practice charge in this matter in Case No. 22-CA-301865, filed on August 22, 2022, alleged in relevant part that “within the last six months,” Medieval Times did not provide wage increases to employees at its New Jersey castle while providing wage increases to employees at other castles in retaliation for the New Jersey employees’ protected concerted activities, in violation of Sections 8(a)(1) and (3) of the Act. G.C. Ex. 1(b). On October 20, 2022, AGVA filed another charge, alleging that Medieval Times had filed a baseless federal lawsuit against the Union and the employees for retaliatory reasons, in violation of Section 8(a)(1). G.C. Ex. 1(d). On February 1, 2023, AGVA filed a charge alleging that Medieval Times had violated Section 8(a)(1) by reporting to Facebook and TikTok that social media posts made by employees at its California castle, which constituted protected activity pursuant to Section 7 of the Act, infringed upon its trademark, and on February 2, 2023 the Union filed an identical charge with respect to social media posts made by the New Jersey employees. G.C. Ex. 1(f, h). Finally, on February 17, 2023, AGVA filed a charge alleging that Medieval Times discharged Christopher Lucas in retaliation for his union support and activities in violation of Sections 8(a)(1) and (3), and threatened employees with discipline in retaliation for distributing union handbills in violation of Section 8(a)(1). G.C. Ex. 1(j).

On May 19, 2023, AGVA amended the charge in Case No. 22-CA-301865. The amended charge not only alleged that Medieval Times did not provide wage increases to employees at its New Jersey castle while providing wage increases to employees at other castles in retaliation for the New Jersey employees’ protected concerted activities, but also contended that a \$1 per hour wage increase had been provided to employees at other castles as of July 4, 2022. G.C. Ex. 1(l). The amended charge further alleged that Medieval Times violated Section 8(a)(1) by holding a “captive audience” meeting with employees and a “paid anti-union labor consultant” on June 16, 2022. Id. On that same day, AGVA amended the charge regarding the discharge of Lucas and the alleged threat regarding handbilling to include allegations that Lucas was disciplined on October 14, 2022 and December 15, 2022, for retaliatory reasons. G.C. Ex. 1(n).

The initial Complaint in this case issued on August 21, 2023, and Medieval Times filed an Answer on September 5, 2023. G.C. Ex. 1(p, r). On October 6, 2023, Medieval Times filed a Motion to Dismiss paragraphs 8 and 14 of the Complaint, on the grounds that these allegations, which contended that Medieval Times violated Section 8(a)(1) by conducting “captive audience meetings” with its labor consultant, were precluded by

Section 10(b) of the Act.¹ G.C. Ex. 1(s, u). General Counsel filed an Opposition. G.C. Ex. 1(t). On December 5, 2023, the Board issued an Order denying Medieval Times' Motion to Dismiss, without prejudice to Medieval Times' raising the issue at the hearing or in Exceptions to any ALJ Decision. G.C. Ex. 1(ff). After the conclusion of General Counsel's direct case at the hearing, Medieval Times made a motion for partial summary judgment with respect to these same allegations, which I denied. Tr. 769-774.

In its Post-Hearing Brief, Medieval Times contends that the Complaint's allegations that it violated Section 8(a)(1) by conducting "captive audience meetings" are precluded pursuant to Section 10(b) of the Act, as are the allegations that Medieval Times violated Section 8(a)(1) when Pedro de Montaner threatened to withhold mid-year wage increases for all Medieval Times employees in retaliation for the New Jersey employees' having filed a petition for a representation election. See Post-Hearing Brief at 24-31, 35-41.

Finally, after the hearing opened on January 16, 2024, I granted General Counsel's motion to amend the Complaint to include an allegation that Medieval Times served employees with Subpoenas *Duces Tecum* in the instant proceeding in order to coerce and discourage employees from exercising their Section 7 rights. Tr. 7-9, 21; G.C. Ex. 1(kk). Medieval Times generally denied this allegation at the hearing and in its Post-Hearing Brief.

B. *Medieval Times' Operations*

As discussed above, Medieval Times operates a dinner theater with a staged performance including choreographed fighting and games with stunt performances. Guests generally arrive at the castle approximately one hour prior to the start of the show and enter the facility via the Great Hall or the Hall of Arms. Tr. 128, 571, 592, 1062. During this one-hour "pre-show" period, guests can purchase drinks at a bar and items in several giftshops which sell weapons, costumes, and various souvenirs. Tr. 123, 592-593, 1062. Guests can also interact with three of the characters who appear in the staged performance – the Queen, Lord Cedric, who is the Queen's right-hand, and the Lord Marshall, an emcee character who narrates the fights and jousts during the show. Tr. 123, 569-570, 1062. Guests can also purchase a scripted "knighting ceremony" performed by the Queen and Lord Cedric, where the guest kneels before the Queen seated on a throne, is dubbed with the title of their choice, and can have photographs taken with the characters.² Tr. 124, 592, 594, 1062, 1063. Approximately 15 minutes before the show is about to start, the Lord Marshall announces that it is time for the guests to make their way through an area called the Hall of Aragon and into the arena. Tr. 128, 482, 595, 1062. The characters also have scripted "commercials" directing guests to their reserved seats. Tr. 1062.

¹ The Complaint was amended several times, and after each amended Complaint issued Medieval Times filed a similar Motions to Dismiss these same allegations. See G.C. Ex. 1(v, aa, ee).

² The scripted portions of the show were written by Show Director Leigh Cordner, who was "responsible for the overall vision, integrity, and implementing the show," as well as "doing any script edits." Tr. 894, 1055. Cordner was Medieval Times' Show Director until sometime in 2023. Tr. 1055.

The show begins with announcements read from a scroll by Lord Cedric or the Lord Marshall. During the pre-show period, guests can purchase paid announcements for events they are celebrating such as birthdays and anniversaries, or other

5 acknowledgments, which are then read at the beginning of the show. Tr. 570-572, 1064-1066. The knights are all introduced with their specific colors, and the Queen is introduced in a procession on horseback. Tr. 125. The Queen welcomes the guests, and the show proceeds with performances on horseback, a performance with a falcon and Master Falconer, and games, jousts, and fights between the various knights in the
10 “sand” of the arena. Tr. 125. In addition to the regular evening or “sovereign” show, an educational matinee version of the show with an “anti-bullying” message is performed for children and teenagers. Tr. 1056.

After the show, the knights and actors return to the hall to interact with the
15 guests, sign autographs, and take photographs, as well as participate in any knighting ceremonies which could not be performed before the start of the show. Tr. 126, 1063.

Current employees Monica Garza, Marcus Vere, Jonathan Beckas, and Erin Zapcic were called to testify at the hearing by General Counsel. Garza and Zapcic both
20 play the Queen in the staged performance at the New Jersey and California castles, respectively; Zapcic also played the Queen at the New Jersey castle from February 2011 until June 2018. Tr. 122, 627-628. Vere and Beckas are knights who train and perform fights and stunts on horseback at the New Jersey castle. Tr. 271-272, 336-337. General Counsel also called as witnesses alleged discriminatee Christopher Lucas, who
25 played Lord Cedric from 2019 until his discharge on January 21, 2023, and former employee Sean Quigley, who had portrayed the Lord Marshall and occasionally Lord Cedric until leaving Medieval Times in January 2023. Tr. 423, 567. All of these employees and former employees were members of AGVA. Tr. 127, 272, 336, 434-435, 568, 628. Finally, General Counsel called Susanne Doris, who oversees AGVA’s
30 national office as its Executive Secretary-Treasurer, as a witness. Tr. 67-68, 90.

Medieval Times called its President and CEO Pedro de Montaner, also known as Perico Montaner, to testify. Tr. 933-934, 950. Medieval Times also called to testify Julie Muenzler, its long-time Vice President of Human Resources for all locations, and
35 Celeste Lanuza, its Senior Vice President of Marketing and Sales. Tr. 902-903, 962-963. From the New Jersey castle, Medieval Times called as witnesses Nate Thompson, the General Manager since May 31, 2022, Joshua Callahan, the Show Cast Manager, and Kyle Watkins, the Head Knight at that location. Tr. 783-785, 998, 1050-1052. Medieval Times also called Michael Holmes, a backstage employee who
40 maintains weapons, shields, and lances used by the knights in the performance, as a witness. Tr. 989-990. Holmes was a member of AGVA also. Tr. 990. Medieval Times admitted during the hearing that Montaner, Thompson, Callahan and Watkins were at all material times supervisors pursuant to Section 2(11) of the Act and agents acting on its behalf pursuant to Section 2(13). Jt. Ex. 11.

C. The Meetings at the New Jersey Castle Prior to the July 15, 2022, Election

As discussed above, AGVA filed a petition for a representation election in a unit of employees at the New Jersey castle on May 26, 2022, and the election was
 5 conducted in person on July 15, 2022. In June 2022, Medieval Knights held a series of meetings between the bargaining unit employees and labor consultant Rian Wathen, who introduced himself to the employees as a labor educator. Tr. 276-277. Medieval Times admitted during the hearing that at the time of the June 2022 meetings, Wathen was its agent pursuant to Section 2(13) of the Act. Jt. Ex. 12. Wathen was not called to
 10 testify at the hearing.

Separate meetings with Wathen were held for the show cast employees and for groups of knights, squires, and stable hands. See Tr. 127-128, 151-152, 275, 278-279. Meetings conducted on June 2, June 16, and June 23, 2022, were recorded by
 15 employees who attended, and these recordings, with transcriptions, were entered into evidence as General Counsel's Exhibits 5(a) and (c), 7(a) and (c), and 9(a) and (c), respectively. Tr. 1118-1119; Jt. Ex. 13. A portion of a meeting held on June 14, 2022, was also recorded, and this recording, with a transcription, was entered into evidence as Respondent's Exhibit 13(b). See Jt. Ex. 13.

20 1. Meetings Involving Wathen and the Show Cast

Monica Garza testified regarding the meeting which took place for show cast members in the Hall of Aragon on June 2, 2022. Tr. 128. Garza was informed of the
 25 meetings via an e-mail from Callahan, which stated as follows:

We have setup [sic] meetings over the next two days for different departments. Show Cast has two options. I put you in the group that should work best based off of your schedules and availability, but PLEASE
 30 just inform me as soon as you can if you need to switch the day.

G.C. Ex. 3, p. 2; Tr. 130-131. Callahan's e-mail also contained two separate lists of show cast members designated to attend meetings on June 2 and June 3, 2022. G.C. Ex. 3, p. 2-3. Lucas testified that he also received Callahan's June 2, 2022, e-mail. Tr.
 35 453.

Garza responded to Callahan's June 2, 2022, e-mail, stating "Can I ask why a third meeting is necessary?" because meetings had already been conducted regarding the recent discharge of two trumpeters. G.C. Ex. 3, p. 2; Tr. 130. General Manager
 40 Kimberly Paul replied, "These meetings are regarding the Union petition and it's [sic] process, so you have some information on it." G.C. Ex. 3, p. 1. Callahan also responded to Garza's question, stating, "I was asked to set these meetings up. Concerns were heard and some discussed, others not discussed. If you don't think it's

necessary that's fine. These meetings are not mandatory. Please let me know if you're going to attend."³ G.C. Ex. 4, p. 1; Tr. 132-133, 143, 215-218.

The June 2, 2022, meeting took place on paid work time. Tr. 454. Garza and Lucas testified that there was a sign-in sheet for employees attending the meeting and food and beverages were provided, neither of which occurred at regular show cast meetings. Tr. 144-145, 454, 462. Garza made a recording of the June 2, 2022, meeting, which was admitted into evidence with a transcription as General Counsel Exhibit 5(a) and (c). Tr. 136-138.

At the June 2, 2022, meeting, Wathen spoke to the employees generally regarding labor unions in the United States, the mechanics of the upcoming election and the process of collective bargaining. Wathen discussed the decline in union membership and representation in the private sector since 1945, which he described as "a bad trend" in terms of labor unions' "market share." G.C. Ex. 5(c), p. 17-19. Wathen also told the employees that selecting the Union as collective bargaining representative would end their "direct relationship" with Medieval Times, where the employer "talks directly to you" and is "a known quantity." G.C. Ex. 5(c), p. 32, 33, 35. Wathen characterized AGVA by contrast as an enigma, stating that it had not filed its Constitution and By-Laws with the Department of Labor as required. G.C. Ex. 5(c), p. 33-35. Wathen emphasized that although AGVA would be the employees' legal representative for the purposes of collective bargaining if it prevailed in the election, the Union "has the right to make decisions independent" of the employees on a "day-to-day" basis, which would engender in "conflicts" based on differing employee objectives. G.C. Ex. 5(c), p. 36-37, 38.

Wathen also discussed the collective bargaining process, strikes, and lockouts during this meeting. Wathen described the election as a referendum on "a process...called collective bargaining," which he characterized as "an unknown." G.C. Ex. 5(c), p. 22, 29, 39. Wathen stated that in collective bargaining, "anything to do with your job" in terms of wages, benefits and terms and conditions of employment "goes on the table." G.C. Ex. 5(c), p. 40. Wathen characterized the actual process of collective bargaining as a requirement that each party review the other's proposals and respond, "with the understanding the response could be you can go jump in the lake, you're crazy as hell, we'll never agree to that. That's a legal response." Id. Wathen emphasized that "union contracts are not required by law," and that "there's no time limit placed on the [collective bargaining] process." G.C. Ex. 5(c), p. 46. Wathen stated that when "a union comes in, 45 percent of the time now they fail to get a contract," using by way of

³ Garza testified that she did not tell her co-workers that Callahan had said that the June 2, 2022, meeting was not mandatory. Tr. 133, 218-219. Garza testified that she attended the June 2, 2022, meeting because it had been included in her work schedule, and she believed that it was necessary for the show cast members to receive the information being provided regarding the Union's petition. Tr. 133. Garza testified that she was never informed at any other time that the meeting was voluntary and was never told that she was free to leave, nor was she informed that failing to attend the meeting would not result in disciplinary action. Tr. 143-144, 215, 461-462. Lucas testified that he believed the meeting to be mandatory, based upon the wording of Callahan's initial e-mail and the fact that Callahan in arranging the meetings was attempting to accommodate the schedules of all of the show cast members. Tr. 454.

example recent organizing campaigns at Amazon and Starbucks, where “The question becomes will they ever have a union contract. We don’t know.” G.C. Ex. 5(c), p. 46, 47-48. Wathen stated that in terms of economic pressure “the only...real hammer” the Union could use is “the right to withhold labor,” which Wathen characterized as “a test of economic endurance,” “putting your pockets up against your employer, and see who lasts the longest.” G.C. Ex. 5(c), p. 52. Wathen told the employees that any “stipend from the union” during a strike would be “some small fraction or portion” of their wages, and that their ability to work another job while on strike could be restricted. G.C. Ex. 5(c), p. 52, 53. Wathen also told the employees that they could be permanently replaced while on strike. G.C. Ex. 5(c), p. 53-56. Wathen further claimed that there had been a general erosion in public support for labor unions and strikes, stating, “I don’t think people pay much attention to it anymore.” G.C. Ex. 5(c), p. 48.

Several employees spoke at the June 2, 2022, meeting, including alleged discriminatee Christopher Lucas. Lucas specifically asked Wathen regarding the impact of union representation on individual employment contracts. G.C. Ex. 5(c), p. 25-26. When Wathen referred to the collective bargaining process as “an unknown,” Lucas stated, “we’re voting for one voice who has a lot of experience in this presumable [sic], the union, being our collective representative instead of each of us going individually and saying...I’d like more money, I’d like...more benefits.” G.C. Ex. 5(c), p. 29. After Wathen characterized AGVA as a mysterious entity and an employee asked about its history, Lucas explained that AGVA had existed “Since the vaudeville days.” G.C. Ex. 5(c), p. 35. When Wathen discussed the mechanics of collective bargaining, Lucas stated that “if we vote for the union, we could have somebody that we could say here are our grievances” and “what we want,” after which the Union would “take it to management,” and countered Wathen’s response that “the hard part is when [the Union leaders] have to come back and...talk about what happened,” by stating that “at least they are making the effort to bring...our voices.” G.C. Ex. 5(c), p. 41-42. When Wathen compared the Union to “politicians” that “want my vote,” Lucas responded, “Just like politics. When you go into an election booth, they question you, say am I better off now than I was before. So, the question for this is will I be better off with a union representing me or individually dealing with management.” G.C. Ex. 5(c), p. 57. Lucas explicitly asked Wathen where employees could go to report violations of the law in connection with the AGVA organizing campaign. G.C. Ex. 5(c), p. 60. Finally, Lucas discussed the labor unions representing actors and other employees in the entertainment industry, stating with respect to Actor’s Equity that “when you get the job, then you have somebody negotiating on your behalf.” G.C. Ex. 5(c), p. 68, 69.

Wathen also met with the show cast on June 23, 2022. On June 18, 2022, Callahan sent an e-mail to the employees announcing this meeting. G.C. Ex. 6; Tr. 145-146, 154-155, 462-463. In his e-mail, Callahan stated, “I need confirmation that you are able to attend the meeting **Thursday the 23rd at 1:30 pm.**” G.C. Ex. 6, p. 2-3 (emphasis in original). Callahan told the employees, “it is important that I know who will be attending.” G.C. Ex. 6, p. 3. Callahan stated, “Some of you are scheduled already, but if you are NOT scheduled for the practice, like the **trumpeters**, then you are needed and please reply,” referring to specific employees by name. G.C. Ex. 6, p. 3 (emphasis

in original). Callahan finished by telling the employees, “Again, it is important that all of you reply please.”⁴ Id. Garza made a recording of this meeting, which was introduced into evidence with a transcript as General Counsel Exhibit 7(a, c). Tr. 154-155, 1119.

5 Much of this meeting consisted of Wathen’s remarks regarding AGVA’s membership, dues, initiation fees, assessments, and Constitution and By-Laws, which were substantially similar to his statements during the June 16, 2022, meeting with Montaner discussed below. Thus, Wathen discussed AGVA’s decline in membership from 2012, to 2021, and AGVA’s dues, initiation fees and assessments, responding to
10 counterarguments from Lucas and Garza. G.C. Ex. 7(c), p. 9-11. Lucas in particular spoke about the history of AGVA and other unions representing actors, explaining that AGVA had lost membership when SAG, AFTRA, and Actors Equity relaxed their own membership standards. G.C. Ex. 7(c), p. 27-29. Lucas countered Wathen’s claims regarding AGVA’s “dormancy” by asserting that AGVA had obtained collective
15 bargaining agreements covering performers on cruise ships and with Cirque du Soleil. G.C. Ex. 7(c), p. 29-30.

Wathen also spoke at length regarding AGVA rules which purportedly prohibited its members from working with non-members and working in non-union productions.
20 G.C. Ex. 7(c), p. 14-15. Wathen claimed that these rules prohibited “Any type of gig work or anything,” and Garza immediately responded, “That’s actually not true.” G.C. Ex. 7(c), p. 15. Wathen contended that AGVA’s rule prohibiting performing with non-members would apply with respect to Callahan, Horse Trainer Amanda Kenny, and employees from different Medieval Times castles, and Garza immediately challenged
25 him. G.C. Ex. 7(c), p. 15-16. When Wathen insisted, Lucas discussed his lengthy experience as a member of SAG-AFTRA, stating that that SAG-AFTRA had permitted him to work with non-members on a particular show “many, many, many times,” and that “they look at it [on a] case by case basis.” G.C. Ex. 7(c), p. 17-20. Lucas specifically applied his experience to working with Callahan and Kenny, stating that
30 AGVA would likely permit its members to perform with them, even though as management they were not permitted to join the Union. G.C. Ex. 7(c), p. 20-21. Wathen distributed a copy of an article from *Backstage* magazine which referred to a SAG rule prohibiting members from working a non-union job in another theatrical union’s jurisdiction, and Lucas again protested, stating that SAG had given him explicit
35 permission to work at Medieval Times, despite its non-union status. G.C. Ex. 7(c), p. 25-26.

2. Meetings Involving Wathen and the Knights and Squires

⁴ Garza and Lucas testified that they considered the June 23, 2022 meeting to be mandatory, in that it took place during paid work time, there was a sign-in sheet, they were not told that the meeting was voluntary or that they were free to leave, and they were not informed that they would not be subject to discipline if they did not attend. Tr. 146, 150, 155-156, 466-467. Lucas also testified that he considered the meeting to be mandatory based upon Callahan’s statements that employees who were scheduled were “needed,” and that all employees must reply to his e-mail. Tr. 463-464.

Wathen also conducted several meetings to speak to the knights and squires regarding AGVA and the union organizing campaign. These meetings were announced on a message board backstage from the arena, where Head Knight Kyle Watkins posted the daily work schedule, including the particular show being staged, practice sessions, and each employee's schedule. Tr. 273-274, 992-994, 1034. Knight Jonathan Beckas testified that he and other knights and squires were told by Watkins that the first meeting was mandatory, and that the meeting would address the Union. Tr. 355-356, 357. According to Beckas, a few of the knights and squires asked if they could leave instead of attending the meeting because they had other obligations, but Watkins told them that they were required to attend. Tr. 356. Knight Marcus Vere testified that he was informed of a second meeting about a week later by Assistant Head Knight James Brown. Tr. 277-279, 310; see also Tr. 1005. Beckas testified that a final meeting with Wathen took place about a week or two before the election. Tr. 367. Attendance or sign-in sheets were passed around at the meetings, and Vere testified that Wathen asked about and noted which employees were absent.⁵ Tr. 278, 280, 358, 366-367.

Vere testified that at one of the meetings he attended, Wathen introduced himself as a labor educator and stated that he was there to discuss the petition for the Union election. Tr. 276-277. According to Vere, Wathen told the employees that if the Union prevailed in the election the employees' relationship with management "will be severed." Tr. 277. Vere testified that Wathen also told the employees that if the Union was certified the employees might be prohibited from taking work elsewhere, and that "the union may fine us for having another job." Tr. 277. Vere testified that this meeting lasted for approximately one hour. Tr. 277. Vere testified that during the second meeting, Wathen focused more specifically on AGVA, stating that it was a very small union, providing information regarding AGVA's finances, and asking the employees, "Do you think they can take care of you?" Tr. 280. Wathen also stated that he was unable to locate AGVA's Constitution. Tr. 280. Beckas generally testified that Wathen provided "a pretty negative review" of AGVA's Constitution during the meetings, as well as describing aspects of the election process. Tr. 366-367.

3. Meetings in mid-June 2022, with President and CEO Pedro de Montaner

On June 16, 2022, and June 17, 2022, meetings were held for the employees in the Hall of Aragon with Medieval Times' President and CEO Pedro de Montaner, along

⁵ Vere testified that he believed the meetings to be mandatory because the meetings were listed on the message board, they took place on paid work time, and there was no option for him to do anything else. Tr. 274, 277-279, 310. Vere and Beckas testified that they were never told that the meetings were voluntary, that they were free to leave, or that failing to attend would not result in disciplinary action. Tr. 277-278, 283, 357-358, 367. Watkins testified that the knights and squires' meetings with Wathen were not mandatory, and that they could "go if they wanted to" or "stay in the arena" and "practice." Tr. 1004-1005. Watkins stated that management was not "forcing" the employees to attend, but also testified that he would have preferred to know if an employee did not in fact attend one of the meetings. Tr. 1005, 1034-1035. Michael Holmes, a backstage maintenance employee and AGVA member, testified that while Watkins informed him about the meetings and they were scheduled on the message board during paid work time, the meetings were not mandatory. Tr. 992-994.

with Wathen, Vice President of Human Resources Julie Muenzler, and New Jersey General Manager Nate Thompson. Montaner testified that he could not recall exactly what he said to the employees during these meetings, or what questions any employees asked, stating, "I don't have a great memory of it." Tr. 940-941, 944-945, 954-955. Montaner testified that his remarks at each of the meetings were "pretty consistent, so I don't think there must have been differences" between his comments at one meeting as opposed to another.⁶ Tr. 945-946. One of Montaner's meetings with employees on June 16, 2022, was recorded, and the recording with a transcript was entered into evidence as General Counsel's Exhibit 9(a, c). Tr. 1119.

Employees were informed of the meetings with Montaner about a week before they were scheduled to occur. Callahan sent an e-mail to the show cast members on June 12, 2022, informing the cast that he had altered their schedules, so that "This Thursday's rehearsal is now a sit-down meeting with our CEO Perico Montaner," to address "all your concerns," including "the AVGA [sic] union." G.C. Ex. 8, p. 2; Tr. 156-157. Callahan e-mailed the show cast again on June 15, 2022, regarding the meeting with Montaner, stating, "This meeting will be instead of a rehearsal. This meeting is important so let's give that as much of the focus and attention needed." G.C. Ex. 8, p. 1. Callahan stated that food would be served, and specifically noted which employees would not be able to attend. G.C. Ex. 8, p. 1.

Watkins also sent an e-mail on June 12, 2022, to the knights and squires announcing meetings with Montaner. Tr. 1036; G.C. Ex. 46, p. 7; R.S. Ex. 30. In his e-mail, Watkins stated that he had deliberately altered the knights and squires' schedules "to include the meeting times" with Montaner during the upcoming week, thereby ensuring that the maximum number of employees would attend. G.C. Ex. 46, p. 7; R.S. Ex. 30; Tr. 1036. Watkins also told the employees "These meetings are important for [Montaner] to understand how you are feeling and what's been going on. This is YOUR chance." G.C. Ex. 46, p. 7; R.S. Ex. 30 (emphasis in original). In addition, on June 14, 2022, Horse Trainer Amanda Kenny e-mailed the employees in the stables department regarding the upcoming meetings with Montaner. G.C. Ex. 46, p. 1. Kenny told the employees, "The owner will be in town this week. We will be meeting with him in groups. This is not mandatory, but it is important. You will be on the clock and there will be food!" G.C. Ex. 46, p. 1.

Wathen began the June 16, 2022, meeting by discussing information he had obtained regarding AGVA. Wathen stated that AGVA was "not very active," and "fairly inert as a union" based upon its activity on Twitter and Facebook. G.C. Ex. 9(c), p. 3. Wathen told the employees that according to materials obtained from filings with the Department of Labor, AGVA dues ranged from \$27 to \$795, and there was an initiation fee of \$750, without any provision in the Constitution or By-Laws for waiver. G.C. Ex. 9(c), p. 4-5. Wathen stated that AGVA's membership had declined from 2,800 members in 2012 to 1,200 members in 2022. G.C. Ex. 9(c), p. 4. Based on the

⁶ Thompson also testified that he could not recall Montaner's specific remarks regarding employee wages at these meetings, but believed that Montaner's comments "would have" been similar. Tr. 792, 796, 801, 802-803.

financial information he had obtained, Wathen claimed that “somebody is paying fees and somebody is paying some types of fines,” because AGVA had received “\$83,000 in that category.” G.C. Ex. 9(c), p. 5-6. Wathen told the employees that they were responsible for paying AGVA dues directly, and that AGVA’s Constitution permitted the Union to impose additional assessments. G.C. Ex. 9(c), p. 6-7. Wathen also told the employees that AGVA’s rules prohibited members from performing with non-union personnel and working non-union jobs. G.C. Ex. 9(c), p. 7.

Montaner then spoke. Montaner began by introducing Thompson as the new General Manager of the New Jersey castle. G.C. Ex. 9(c), p. 9-10. Montaner then proceeded to discuss the impact of the COVID-19 pandemic on Medieval Times’ business, and the company’s efforts to recover from that period. G.C. Ex. 9(c), p. 10-12. Montaner then stated as follows:

So, we talked with the corporate team. We talked with the shareholders. And we plan decisions, and we plan on the best action. We’ve been preparing over the last month and a half to do something that we’ve never done, which is mid-year raises.⁷ But we spoke to a lawyer and just as we were about to do it, we can’t do it now. And I think you can explain a lot better the situation...because unfortunately it’s frustrating, it’s not only you guys. It’s that we can’t do anything for anyone.

G.C. Ex. 9(c), p. 12-13. Wathen then stated that “once a petition is filed, all of you are in what is called status quo,” so that “the employer can’t do anything negative, but they can’t do anything positive, either.” G.C. Ex. 9(c), p. 13. Wathen stated that because “unscheduled changes in benefits or policy” could be “considered a bribe or retaliation,” “the labor attorneys have recommended the safest course of action is not to do anything at this point until after the election.” *Id.* Wathen went on to state that “If the union won the election, then at that point you are represented, you’re in status quo” which “is not lifted until or if you get a contract.” G.C. Ex. 9(c), p. 14. However, “If the union loses the election, status quo is lifted 10 days after the election.” *Id.*

Montaner then echoed these themes. He assured the employees, “I’m a man of my word,” and “I follow through on what I say.” *Id.* However, Montaner stated that, “if the union is to win, I’m not going to be able to act. I’m not going to be able to do a lot of things.” G.C. Ex. 9(c), p. 16. Montaner said that if the union prevailed in the election, the employees’ terms and conditions of employment would “be in the hands of the lawyer talking to another lawyer,” who would “drag it out,” as was “their job,” because “the longer they drag it out, the more money they make.” *Id.* As a result, Montaner stated that “I would prefer that we speak directly, that any issues are resolved in-house.” *Id.* Later in the meeting, after an employee’s statement regarding her work in the show, issues with guests, and the compensation for Medieval Times employees, Montaner stated that management was “paying attention” and “had an action plan,” but “Right now

⁷ Thompson and Muenzler both testified that in the past Medieval Times employees had always received one yearly wage increase at the beginning or end of the calendar year, depending upon the specific payroll dates involved. Tr. 803-804, 904-905, 947.

it has to be on hold...– until we can – until it's not on hold any longer." G.C. Ex. 9(c), p. 62-67.

Christopher Lucas also spoke during the meeting with Montaner. Lucas told Montaner that the employees "want to hear what you have to say," but that "I think this meeting started off completely on the wrong foot, because you should have been the one to just come out and speak your heart to us...But first we got 15 minutes of hammering the union." G.C. Ex. 9(c), p. 30. Lucas also explained that management's lack of respect and appreciation for the work of the show cast and knights had been a significant impetus for the employees' organizing campaign. G.C. Ex. 9(c), p. 51-54.

Beckas and Vere testified regarding Montaner's meeting with the knights and squires as well as other Medieval Times management in mid-June 2022 in the Hall of Aragon. Tr. 284-285, 358-359. Beckas testified that Watkins told the employees that this meeting was also mandatory, and the meeting occurred during paid time. Tr. 358-359. Beckas testified that Montaner began the meeting by stating that he had been upset to learn what was going on at the New Jersey castle, and promised that there would be changes. Tr. 285, 359-360. Montaner also stated that he would like to give the employees raises, but could not because of "the status quo." Tr. 285, 360.

D. Medieval Times Performers United and the Employees' Activities on Social Media in Summer and Fall 2022

In the summer or fall of 2022, bargaining unit employees at the New Jersey castle began using the name Medieval Times Performers United (MTPU) to refer to the group of Medieval Times employees that supported collective bargaining representation by AGVA. Tr. 77, 186, 338. AGVA Executive Secretary-Treasurer Susanne Doris testified that MTPU was the name that "the performers at the Lyndhurst Castle...called themselves...as a group," stating that "It's not a union, but it was a name that they gave themselves." Tr. 75. Doris stated that MTPU was created "completely internally by the performers. AGVA had no input whatsoever." Tr. 75; see also Tr. 339. Doris and the Medieval Times employees who testified at the hearing all stated that MTPU was not a labor organization, although some had previously described MTPU as their local union. Tr. 111-112, 120, 255-256, 383, 629. The homepage of MTPU's website describes the group as "Medieval Times actors, stunt performers, and stable hands are joining together in union. Represented by the American Guild of Variety Artists." G.C. Ex. 2, p. 1. MTPU's homepage also characterizes "Who We Are" as "the actors, stunt performers, and stable hands of the knights and squires, show cast, and stables department at Medieval Times." Id. MTPU's Facebook and Twitter accounts similarly state, "We are actors, stunt performers, and stable hands of Medieval Times in Lyndhurst, NJ joining together in union with the American Guild of Variety Artists." G.C. Exs. 11, 12.

Doris and the employees testified that when MTPU wanted to create a website, she introduced them to Kate Barrows of the Department of Professional Employees (DPE), an affiliate of the AFL-CIO which encompasses AGVA. Tr. 75-78, 186-187, 339,

341. The DPE has specialists who assist AFL-CIO member unions with media and social media in the context of organizing campaigns. Tr. 75-76, 77, 109-110, 339. MTPU then created the website www.mtunited.org, with DPE's assistance. Tr. 78-79; G.C. Ex. 2. Knight Jonathan Beckas testified that he was involved in creating the MTPU website with the DPE, "confirming what it should look like, what it should say, and what goes on it." Tr. 339, 340. Beckas testified that he told the DPE that the website should include information describing MTPU, MTPU's activities, and MTPU's goals and objectives. Tr. 340-341. Doris testified that AGVA was not involved in the creation or administration of the www.mtunited.org website and had only provided information regarding the history of AGVA for the employees' use. Tr. 108-109, 189. Monica Garza testified that she asked AGVA to provide information in response to specific questions, which Garza then used to create an "FAQ" section for the website. Tr. 188, 189. Beckas testified that AGVA approved the website after it was created. Tr. 387.

The finished website contained an MTPU logo, which was created by Barrows and the MTPU members. Tr. 78-80, 342, 630; G.C. Ex. 2. Doris testified that AGVA viewed the various logos that Barrows and the employees had created, but played no role in determining which of those logos was ultimately selected. Tr. 79-80, 104-105, 341. Garza and Beckas testified that Barrows sent Beckas several different options for the website logo, and they chose one. Tr. 187-188, 385. Beckas testified that Barrows asked the employees what they wanted the logo to look like, and the employees expressed a preference that the logo incorporate imagery commonly associated with "the medieval era." Tr. 342-343. Beckas stated that after Barrows presented options to the employees, the employees "made minor tweaks, like the fist" that the logo contains. Tr. 342. Beckas testified that AGVA reviewed the final version of the logo, and had no objections. Tr. 343.

Since its creation, the MTPU website has been administered primarily by Beckas, together with Medieval Times employee Purnell Thompson, the stable steward at the New Jersey castle. Tr. 187, 339. Beckas testified that AGVA's involvement since the website was created has been minimal. Tr. 341-342.

MTPU also established several social media accounts, including accounts for the platforms Facebook, Twitter, and TikTok.⁸ Tr. 189, 343. Beckas testified that in June 2022, the DPE created the MTPU Facebook and Twitter accounts for New Jersey, both of which are denominated MTUnitedNJ. Tr. 343-344, 387. Beckas testified that these accounts were created to reach an audience familiar with Medieval Times' New Jersey show and operations, in order to inform them of the union organizing efforts at that castle. Tr. 347. MTPU's Facebook account contains the same logo as its website. Tr. 344-346; G.C. Exs. 11, 12. Beckas and Thompson administer the Facebook and Twitter accounts, and are the only individuals permitted to post content there. Tr. 344, 388-389. Beckas testified that he typically posts information regarding the progress of collective bargaining negotiations, but also posts memes. Tr. 247. On one occasion, Head Knight Kyle Watkins participated in a discussion initiated by the MTPU on its

⁸ Doris testified that AGVA had no involvement with any of the social media accounts created by Medieval Times employees. Tr. 84.

Twitter account, “liking” a comment which suggested that the Medieval Times employees go on strike in response to the MTPU post, “Our union needs your help! Medieval Times management is refusing to discuss measures that would ensure the safety of our performers. We need you to show solidarity by telling Medieval Times to bargain in good faith.” G.C. Ex. 13, p. 1, 4; Tr. 347-352.

Garza testified that she created a TikTok account for the New Jersey bargaining unit employees in early January 2023, entitled MTUnitedNJ, because she believed that TikTok “had a very large audience that kind of was untapped.” Tr. 189-190, 191. The MTUnitedNJ TikTok account included the MTPU logo created for the website as its profile picture. Tr. 192; G.C. Ex. 2. Garza testified that she was the only person who administered and posted videos to the New Jersey MTPU TikTok account. Tr. 190. Garza testified that she posted three videos, two of which introduced MTPU and provided information regarding its goals, and a third that “was like a meme.” Tr. 190. Garza testified that after the MTUnitedNJ account was established, it had 50 followers and about 500 “likes.” Tr. 191.

Employee Erin Zapcic testified regarding the social media accounts of the MTPU employees at Medieval Times’ Buena Park, California location. Zapcic stated that she created the California MTPU accounts on Instagram, Twitter, and TikTok, and administered an MTPU Facebook page created by a co-worker. Tr. 631, 634; G.C. Exs. 24, 25, 26. Zapcic testified that these social media accounts, all of which have the username MTUnitedCA, were created in mid-July 2022, shortly before AGVA filed a petition for a representation election at the California castle. Tr. 631-632. Zapcic testified that she administers all of the accounts, and posts content on the accounts on Facebook, Instagram and Twitter. Tr. 633. Content for the TikTok account was generally created by a co-worker, who submitted it for Zapcic’s approval prior to posting. Tr. 633. Zapcic testified that content posted on the MTUnitedCA Facebook, Instagram, and Twitter accounts consists primarily of images with captions, while content posted on TikTok is “almost exclusively” video. Tr. 636-634. Zapcic testified that the MTUnitedCA Facebook page has about 150 followers, the Twitter account has over 1,200 followers, the Instagram account has over 1,500 followers, and the TikTok account had about 8,200 followers. Tr. 634-635.

Zapcic testified that the social media accounts were recommended as a way to disseminate information to bargaining unit members and the general public regarding the status of the representation election at the California castle and the progress of collective bargaining negotiations. Tr. 635. Zapcic stated that the information posted on TikTok would attempt to “capitalize on trending memes” or “trending audio” in order to “build an audience.” Tr. 635. Zapcic testified that MTPU began posting on TikTok on December 31, 2022, after collective bargaining began, about the employees’ experiences and the negotiations. Tr. 635. MTPU then posted a video with information responding to questions regarding the Union and the employees’ goals and objectives. Tr. 635-637, 648; G.C. Ex. 27.

On January 25, 2023, Zapcic used material from Medieval Times' own Facebook page to create a post on the MTUnitedCA Facebook page soliciting other Facebook users to support the Union's efforts to obtain a collective bargaining agreement. Medieval Times had posted a photograph of a horse trainer performing a rear – where the horse stands on its hind legs – with a caption stating "Awe-Inspiring horsemanship! Our horses and cast are so talented." Tr. 638-640; G.C. Ex. 28. Zapcic took a screen shot of Medieval Times' post and shared it on the MTUnitedCA Facebook page, underlining the words "cast are so talented," and including her own caption, "Appreciate the shout-out, Medieval Times Dinner & Tournament – Buena Park! Now how about paying us a living wage?" Tr. 639-640, 679-682; G.C. Ex. 28. The text "Medieval Times Dinner & Tournament – Buena Park" consisted of a "clickable hyperlink," so that any viewer could click on that text and be routed to Medieval Times' Facebook page to leave a comment. Tr. 640, 648; G.C. Ex. 28. This hyperlink also notified page administrators for Medieval Times that its page had been mentioned in another Facebook post. Tr. 640. Because Medieval Times had placed the same post on its own Instagram account, Zapcic also took Medieval Times' Instagram post and incorporated it into the MTUnitedCA Instagram account, with her caption, on the MTUnitedCA account's "story." Tr. 640-643, 648-649; G.C. Ex. 30. Zapcic and a co-worker also incorporated the Medieval Times post into a video on TikTok. Tr. 643-645, 648; G.C. Ex. 29. The video posted on TikTok consisted of a screenshot of the same Medieval Times Facebook post, with the statement "If cast members 'are so talented.' Pay. Them." Tr. 643-644; G.C. Ex. 29. The TikTok video also included a clickable link stating, "go tell Medieval Times what you think," which provided users with the information necessary to leave a comment on Medieval Times' Instagram account. Tr. 643-646; G.C. Exs. 29, 30.

Zapcic testified that on January 28, 2023, she received a notification on Facebook stating that one of the posts on MTUnitedCA's account had been "flagged" for trademark infringement, and the account itself contained a notification stating, "Your post has been reported for trademark infringement. No one else can see your post. It was reported by Perico Montaner." Tr. 649, 651; G.C. Ex. 31. Beneath the notification was the photograph of the rearing horse that Zapcic had copied in a screenshot from Medieval Times' Facebook account. G.C. Ex. 31. When Zapcic logged onto the MTUnitedCA TikTok account that same day, a notification appeared stating "Account banned. Your account is being banned for violating TikTok's Intellectual Property Policy." Tr. 650-651; G.C. Ex. 32. Zapcic testified that the next day, January 29, 2023, the MTUnitedCA Facebook page had been completely restored. Tr. 651, 667. However, when she logged onto TikTok she received the same notification that the MTUnitedCA account had been banned. Tr. 651. Zapcic testified that she filed an appeal with TikTok regarding its ban on the MTUnitedCA account, but never received any response, and that the account remained inaccessible at the time of the hearing. Tr. 652-653, 678.

Garza testified that in late January 2023, she received a text message from Zapcic suggesting that she check the MTUnitedNJ TikTok account, because the MTUnitedCA TikTok account had been banned. Tr. 191, 653. Garza testified that when

she investigated, the MTUnitedNJ TikTok account had been removed from her phone, and when she attempted to log into the account via the internet there was red text stating that the account had been suspended. Tr. 191-192; see also Tr. 353-354. Garza testified that the MTUnitedNJ TikTok account remained suspended as of the day prior to her testimony at the hearing. Tr. 191; see also Tr. 354.

Garza testified that in early February 2023, after the MTUnitedNJ account was suspended, she created another TikTok account entitled MTUnitedNJ.official. Tr. 192-194; G.C. Ex. 33. Garza testified that she created this account because she had never received any information as to why the original MTUnitedNJ TikTok account had been suspended. Tr. 193. Garza testified that she administers the MTUnitedNJ.official account, and has posted about 7 videos. Tr. 193. Garza testified that the MTUnitedNJ.official account has 4,000 followers and about 40,000 likes. Tr. 193. The logo for the MTUnitedNJ.official account is identical to the logo used for the MTUnitedNJ account, except that the MTUnitedNJ.official account logo contains has no text. Tr. 194; G.C. Ex. 33. Garza testified that to the best of her knowledge the MTUnitedNJ.official account has never been suspended, and remained accessible at the time of the hearing. Tr. 194, 670-671. The MTUnitedNJ.official account describes MTPU as “Knights, Squires, Showcast and Stablehands of a certain Medieval castle in NJ.” G.C. Ex. 33.

E. The Trademark Infringement Litigation Initiated on October 13, 2022

On October 13, 2022, Medieval Times filed a Complaint and Jury Trial Demand in the United States Court for the District of New Jersey against MTPU and AGVA. Jt. Ex. 1. Doris testified that after AGVA’s certification was issued on July 25, 2022, the parties began negotiations for a collective bargaining agreement covering the bargaining unit at the New Jersey castle. Tr. 82; Jt. Ex. 8. Doris testified without contradiction that the first negotiating session took place in September 2022, so that the parties were in the initial stages of bargaining for a first contract at the time that the lawsuit was initiated. Tr. 82.

The Complaint filed by Medieval Times alleges that MTPU is “an unincorporated association” which “transacts business in interstate commerce, as it operates and provides services in at least New Jersey and California.” Jt. Ex. 1, p. 4. The Complaint alleges that MTPU, “represented by and in conjunction with AGVA, provides organizational services on behalf of its members with the aspiration of engaging in collective bargaining, as well as other products and services” pursuant to MTPU’s logo. Jt. Ex. 1, p. 13. The Complaint alleges that MTPU and AGVA used Medieval Times’ registered trademark without authorization “in connection with the sale, offering for sale, and distribution of” MTPU “goods and services” in a manner “likely to cause confusion, deception, and mistake by buyers and the consuming public,” thereby infringing Medieval Times’ trademark pursuant to 15 U.S.C. § 1114. Jt. Ex. 1, p. 25. The Complaint further alleges that MTPU and AGVA acted “at the least recklessly and at the most intentionally” and “in bad faith” in their conduct violating 15 U.S.C. § 1114, thereby entitling Medieval Times to “treble damages, attorneys’ fees and cost of suit.” Jt. Ex. 1,

p. 25 and at p. 27. The Complaint also alleges that MTPU and AGVA's conduct constituted "trademark infringement, false designation of origin, and unfair competition in violation of the Lanham Act," 15 U.S.C. § 1125(a). Jt. Ex. 1, p. 27. As part of the relief requested, Medieval Times sought "an accounting of all profits, gains, and advantages" resulting from the defendants' alleged Lanham Act violations, in addition to "treble damages" and "attorneys' fees and costs." Jt. Ex. 1, p. 30-31. Medieval Times also requested that MTPU and AGVA be enjoined from "providing services under the name MEDIEVAL TIMES (alone or in combination with other terms, including "Performers United")." Jt. Ex. 1, p. 28; see also Jt. Ex. 1, p. 28-29.

On December 27, 2022, MTPU and AGVA filed a Motion to Dismiss the Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, with a Memorandum of Law in support of the Motion. Jt. Ex. 2. MTPU and AGVA argued that the Complaint failed to state a claim upon which relief could be granted under Rule 12(b)(6), and that the District Court lacked jurisdiction to order the relief requested pursuant to the Norris-LaGuardia Act. See Jt. Ex. 2. On February 8, 2023, Medieval Times filed an Opposition to the Motion to Dismiss. Jt. Ex. 3. A subsequent mediation was apparently unsuccessful, and on July 25, 2023, Medieval Times wrote to the Magistrate Judge assigned to the case, requesting that the Court proceed to a decision on the Motion to Dismiss. Jt. Ex. 4.

On September 28, 2023, Judge William J. Martini issued a Decision and Order granting MTPU and AGVA's Motion to Dismiss the Complaint, and dismissing the Complaint with prejudice. Jt. Ex. 5, 6; reported as *Medieval Times U.S.A., Inc. v. Medieval Times Performers United*, 695 F.Supp.3d 593 (2023). The Court concluded that Medieval Times had "failed to allege facts sufficient to show plausible likelihood of consumer confusion," a "necessary element" of its claims pursuant to the Lanham Act.⁹ Jt. Ex. 5, p. 10. Specifically, applying the factors articulated in *Interpace Corp. v. Lapp, Inc.*, 721 F.2d 460 (3d Cir.1983), the Court found that the components of the images used by Medieval Times and MTPU did not create marks which were "confusingly similar." Jt. Ex. 5, p. 5-7. The Court also found that Medieval Times "has not pled any facts to show that" MTPU "intended to cause confusion" by using the images or incorporating the words "Medieval Times" into its name. Jt. Ex. 5, p. 7-8. Furthermore, the Court determined that Medieval Times had "pled no factual allegations to support its theory" that MTPU's inclusion of the words "Medieval Times" into its own name "could lead to the mistaken impression that" MTPU or AGVA was "affiliated with or endorsed by Medieval Times or that Medieval Times' employees are required to become members of the Union." Jt. Ex. 5, p. 8. In fact, the Court explained that the opposite was true given the generally adversarial nature of a union organizing campaign. Jt. Ex. 5, p. 8-9. The Court also rejected Medieval Times' argument that MTPU had somehow construed the New Jersey and California castles as its own property in statements providing MTPU e-mail addresses as contact information. Jt. Ex. 5, p. 9. Thus, the Court concluded that Medieval Times "has not sufficiently pled facts to show that there

⁹ Because Judge Martini found that "there is no basis for *any* relief" pursuant to the Complaint, he did not reach the question of whether the District Court lacked jurisdiction to order the relief sought pursuant to the Norris LaGuardia Act. Jt. Ex. 5, p. 10.

is a plausible likelihood that consumers would reasonably confuse ‘Medieval Times’ Dinner and Entertainment experience with use of the MTPU logo in publicly challenging and trying to reform Plaintiff’s labor practices.” Jt. Ex. 5, p. 9.

On October 16, 2023, Medieval Times filed a Notice of Appeal in the United States Court of Appeals for the Third Circuit, appealing Judge Martini’s September 28, 2023, Opinion and Order dismissing the Complaint.¹⁰ Jt. Exs. 68, 71. The appeal was docketed and the appellate process before the Third Circuit commenced. See Jt. Exs. 71 through 78. Medieval Knights represents in its Post-Hearing Brief at page 44 that the trademark infringement litigation has been resolved, and an Order of the Third Circuit dated April 5, 2024, dismissing the case is available on Westlaw. *Medieval Times U.S.A., Inc. v. Medieval Times Performers United, et al.*, 2024 WL 1734077. General Counsel, however, states that Medieval Times is continuing to pursue the lawsuit. Post-Hearing Brief at 64.

None of the employees who testified at the hearing were served with the Complaint and Jury Trial Demand filed by Medieval Times on October 13, 2022. See Tr. 243, 324-326, 408-410, 671-672, 751-753. However, General Manager Nate Thompson testified that he conducted meetings with employees regarding the litigation. Tr. 806-807. Thompson stated that shortly after Medieval Times’ Complaint was filed, Medieval Times management discussed an article in the Huffington Post which stated that the company had filed a lawsuit against individual employees. Tr. 807-808. On October 14, 2022, Vice President of Human Resources Julie Muenzler sent Thompson and other Medieval Times managers a document for their use in discussing the lawsuit with employees. Tr. 808-810; R.S. Ex. 14. This document stated as follows:

You may have heard that the company recently filed a lawsuit for trademark infringement.

This trademark lawsuit is not aimed, in any way, at our individual employees. The company DID NOT sue its employees. In fact, no employees or individuals are even named in this suit. In bringing this suit, Medieval Times is not seeking to restrict employees’ rights to unionize or to refrain from unionizing. Nor does Medieval Times take issue with individual employees advising the public of their desire to unionize, whether by referring to the company in online posts, in union literature, or on any picket signs.

But the company has an obligation to protect its valuable trademarks and has done so before. And this most recent use of the Company’s registered trademark within the very name of another organization creates a risk of confusion that could not be ignored.

¹⁰ On October 12, 2023, MTPU and AGVA’s attorneys filed a Motion for an Award of Attorneys’ Fees and Costs pursuant to 15 U.S.C. § 1117(a). See Jt. Ex. 67.

R.S. Ex. 14. Thompson testified that he deliberately met with the employees “who...I thought were going to be the most concerned about it, who seemed the most vocal,” and reported back to Montaner and Muenzler regarding these discussions. Tr. 898-899; R.S. Ex. 15; Tr. 811-813.

5 F. *Employee Distribution of Handbills on February 10, 2023*

10 Knight Marcus Vere testified that on February 10, 2023, he went to the NJ castle by himself to distribute handbills in support of AGVA. Tr. 285-286. Vere was not scheduled to work that day. Tr. 286. Vere testified without contradiction that typically up to 1,000 guests begin to arrive about an hour before the show starts, and the doors open 30 to 45 minutes before the show begins. Tr. 288. On February 10, 2023, the evening show was scheduled to begin at 7 p.m., so Vere arrived at approximately 5:45 p.m. Tr. 287-288.

15 The handbills Vere brought with him that day were created by Doris, and Vere brought about 500 to the castle, which he had obtained from AGVA representative Christopher Johnson. Tr. 286-287; G.C. 22. The handbills stated as follows:

20 **HEAR YE! HEAR YE!**

 MEDIEVAL TIMES “ROYALTY”
 IS LIVING IN POVERTY

25 OUR SQUIRES & STABLEHANDS
 QUALIFY FOR FOOD STAMPS
 AT \$14.13/HR

30 OUR KNIGHTS ARE FALLING OFF HORSES
 FOR \$16.00/HR

35 OUR PROFESSIONAL TRUMPETERS
 WERE OFFERED A 1% RAISE
 BRINING THEM TO 1 CENT OVER
 MINIMUM WAGE FOR THEIR
 TALENT AND EXPERIENCE

40 WHEN PRESENTED WITH INFORMATION
 OF THE REVENUE GENERATED
 FOR MEDIEVAL TIMES, A REPRESENTATIVE OF MT RESPONDED
 “NUMBERS CAN BE MANIPULATED”

45 WE HOPE YOU ENJOY OUR PERFORMANCE!
 PLEASE GO TO: MTUNITED.ORG TO SUPPORT US
 THANK YOU!!!

-PLEASE DO NOT LITTER-

G.C. Ex. 22.

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Vere testified that he began handbilling in the parking lot immediately north of the Medieval Times building. Tr. 289-290, 294-295; G.C. Ex. 23. Vere stated that at approximately 6:05 p.m., after he had distributed about 30 handbills, he was approached by Mike Shafron, a member of event staff. Tr. 291, 292. Shafron asked Vere what he was doing, and Vere told Shafron that he was handbilling, showing him the handbills. Tr. 291. Shafron said, "Okay" and left, but then returned a few minutes later, telling Vere that General Manager Nate Thompson was on his way, and Vere should probably leave. Tr. 291. Vere told Shafron, "It's okay. This is part of our union rights to hand bill in the parking lot." Tr. 291.

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Vere testified that Thompson then approached him, and told him that he was not allowed to handbill in the parking lot. Tr. 291. Vere testified that Thompson said he could distribute handbills from the sidewalk, by the traffic light. Tr. 291, 292. Vere went to the sidewalk, but guests were bypassing him and driving directly into Medieval Times' parking lot. Tr. 292. Vere testified that he then texted and called Johnson, and told him that Thompson had said that he was not permitted to handbill in the parking lot. Tr. 292, 314. Johnson agreed to speak to Thompson about the issue, so Vere returned to the parking lot, although he did not continue handbilling there. Tr. 292-293, 314. Instead, Vere approached another member of event staff, and asked him to contact Thompson. Tr. 293.

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Thompson arrived in the parking lot after a few minutes, and Vere asked him to talk to Johnson. Tr. 293. Thompson and Johnson had a brief conversation; Vere testified that he was approximately two yards away from Thompson at the time, and could hear some of what was said between them. Tr. 293, 314. Vere testified that he heard Thompson say, "We're going to let the lawyers duke it out." Tr. 315. Vere testified that after the conversation ended, he asked Thompson, "Hey, so can I continue hand billing in the parking lot?" Tr. 293. According to Vere, Thompson responded, "If you continue hand billing in the parking lot, we are going to have a sit down with disciplinary action." Tr. 293-294, 317-318; G.C. 23. Vere testified that he stopped handbilling, even though the majority of the guests were arriving at that time, because he believed that he would be disciplined if he continued to do so. Tr. 295, 332-333.

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Thompson also testified regarding his interaction with Vere on February 10, 2023. Thompson testified that he was informed by event staff that one of the knights was outside distributing pamphlets, so he went out and spoke to Vere. Tr. 885. Thompson testified that he thought Vere was prohibited from distributing handbills because "we have a policy against trespassing, so if you're off the clock as a team member you're not allowed on [Medieval Times] property." Tr. 885. Thompson testified that he therefore told Vere, "you're going to have to leave the property. You're allowed to be off property, and you can hand out the pamphlets off property, but you can't be on

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property.” Tr. 885. According to Thompson, Vere responded that “he was out there expressing his rights,” and Thompson reiterated that Vere needed to be off company property to do so. Tr. 886. Vere then went over to the sidewalk, and Thompson went back inside the castle. Tr. 886.

Thompson testified that he was called again by events staff and told that Vere wanted to speak to him. Tr. 886. When Thompson went back outside, Vere stated that Johnson wanted to talk to him; Thompson was familiar with Johnson from collective bargaining negotiations. Tr. 886. Thompson testified that he took the phone, and Johnson told him that in New Jersey employees were allowed to distribute leaflets in the parking lot. Tr. 886-887. Thompson stated that he believed employees were not permitted to do so. Tr. 887. Thompson testified that after “a back and forth” he and Johnson agreed to “have the lawyers duke it out on this one” and “follow whatever the lawyers say to do.” Tr. 887. Thompson testified that Vere then asked what he should do, and Thompson responded:

...well, look, I don't know who's right and who's wrong in this. My concern is that if we're right, then you're technically trespassing, and we would have to sit down after that to talk about trespassing on the property. If Chris [Johnson] is right, then you're fine, and you can keep on handing out pamphlets on [the] property and – nothing's going to happen. So, like, I would recommend going up on the sidewalk, but again whatever you feel comfortable doing we do that.

Tr. 887. Thompson also admitted that he mentioned the word “discipline” to Vere during their conversation. Tr. 900.

On Monday, February 13, 2023, at 12:43 p.m., Medieval Times' attorney Daniel J. Sobol, Esq. forwarded an e-mail to AGVA counsel Eric Greene, Esq., with a copy to Doris and Johnson, stating as follows:

Medieval Times will not prohibit Marcus Vere, while off duty, from peaceably distributing union literature in the castle parking lot. Furthermore, Medieval Times will not prohibit any bargaining unit members, while off duty, from peaceably distributing union literature in the castle parking lot.

R.S. Ex. 5; Tr. 316-317. Vere testified that Doris forwarded this e-mail to him. Tr. 316-317. However, Vere testified that he was never told by Thompson or any other manager that he was permitted to handbill in the parking lot. Tr. 330-331. Thompson confirmed that he never discussed the issue with Vere after the incident itself. Tr. 889.

Thompson testified that he subsequently learned that employees were permitted to distribute leaflets on Medieval Times property. Tr. 888-889. However, he stated that he had never seen any other employee distributing handbills outside the New Jersey

castle. Tr. 884. Vere also testified that no other employees had distributed handbills at the New Jersey castle since February 10, 2023. Tr. 295.

G. *The Discipline Issued to Christopher Lucas and Lucas' Discharge on January 21, 2023*

1. Lucas' Employment History and Activities with AGVA and Other Entertainment Industry Unions

Lucas began his employment at Medieval Times' New Jersey castle in 2015, and worked continuously until his discharge on January 21, 2023, as a member of the show cast. Tr. 422-423. Lucas initially played the role of the King, and after the show was changed in 2019, he played the role of Lord Cedric, also referred to as the Chancellor. Tr. 423. As Lord Cedric, Lucas performed the scripted portion of the show, and also interacted with guests in character before the scripted portion of the show began and after it ended. Tr. 423-424. Lucas' supervisor in 2022 and 2023 was Show Cast Manager Joshua Callahan. Tr. 424.

Lucas has been a member of Actors Equity and the Screen Actors Guild-American Federation of Television and Radio Artists – the two principal labor unions for professional actors – for many years, based upon his appearances in theater, film, and television productions. Tr. 428-431. When Lucas applied for employment with Medieval Times, his resume prominently noted his membership in Actors Equity and SAG-AFTRA, as is customary for actors. Tr. 431, 731-732. Lucas also testified without contradiction that he owned clothing bearing the logos of Actors Equity and SAG-AFTRA, including sweatshirts, hats, t-shirts and jackets, which he wore to work at Medieval Times at least once each week, both at rehearsals and before changing into costume in the castle's locker room. Tr. 431-432, 732. Lucas testified that he and Callahan discussed ongoing industry news involving the actors' unions, such as strikes and other labor issues, a couple of times each week. Tr. 433. Callahan testified that during his tenure as Show Cast Manager he was aware that Lucas was a member of Actors Equity and SAG-AFTRA. Tr. 1057-1058.

Lucas testified that he is also a member of AGVA, and learned of the organizing campaign at the New Jersey castle in May 2022. Tr. 433. Lucas testified that he obtained buttons and stickers containing the MTPU logo in May or June 2022. Tr. 433-434. Lucas placed MTPU stickers on the front of the cubicle at the top of his locker at the New Jersey castle, and placed an MTPU bumper sticker on the front of his car. Tr. 434, 437-438, 734. Lucas also placed an MTPU sticker on the back of his cell phone. Tr. 434-435, 436, 732-734; G.C. Ex. 14. Lucas testified that while using his phone in the locker room before and after the show, the back of the phone containing the MTPU sticker was visible to the rest of the room, so that it was seen by Callahan and Watkins when they were present. Tr. 435-436. In addition, Callahan's locker was two or three lockers down the row from Lucas', and Watkins' locker was directly opposite. Tr. 438-439.

In the summer of 2022, Lucas distributed articles from local newspapers which covered the organizing campaign to other Medieval Times employees in the locker room at the New Jersey castle. Lucas testified that the day after AGVA was certified as collective bargaining representative of the New Jersey castle employees, he purchased multiple copies of The Jersey Journal, with the cover story, "ROYAL REVOLT, Medieval Times staff votes to create the company's first union," and placed them in the locker room at the New Jersey castle. Tr. 439-442; G.C. Ex. 15. Lucas told the knights who came into the locker room after the show finished – with Watkins present – that he had purchased copies of the paper to make sure all of the employees received one. Tr. 440. The article in The Jersey Journal included a photograph of Lucas, in costume and identified by name. G.C. Ex. 15, p. 2. Lucas was also featured in an article which appeared on newjersey.com, again photographed in costume and identified by name. Tr. 442-443; G.C. Ex. 16. That article quotes Lucas regarding the impetus for the organizing campaign that "Money, benefits and safety are pressing issues...but 'a lack of respect' underscores all." G.C. Ex. 16, p. 11. Lucas is quoted as stating, "When you're in a union as a professional actor, you get that stamp of credibility" which was "what we wanted more than anything." G.C. Ex. 16, p. 11-12. Lucas is further quoted as follows:

All across the country, workers are realizing that, "Hey, we can do this...You may not get 100% of what you...better than having 0% of what you want."

* * *

There hasn't been a day yet where I'm doing a show where an audience member has not come up and, either loudly or quietly, said, "Hey, we're in a union, and we're behind what you guys are doing." So, it's nice to hear that.

G.C. Ex. 16, p. 13.

In addition, Lucas expressed support for AGVA, MTPU and entertainment unions generally "many times" on his public Facebook account. Tr. 443-444, 449; G.C. Ex. 17(a). On July 15, 2022, Lucas posted regarding AGVA's having prevailed in the representation election that day. G.C. Ex. 17(a), p. 1. Lucas stated:

Our goal was simply to be recognized...as professionals...It's not strictly about being able to make a living wage, having full benefits, security or anything else – though those things are important – it's about joining the 200,000 other performers in the United States who are certified by virtue of their union membership as professionals who are serious about the career they chose.

Id. Other users posted questions regarding what the Union had accomplished, and Lucas responded by stating, "As professional performers in a long running show, it is

our obligation and duty to organize collectively to make sure we get the fairest working terms and working conditions possible,” and encouraged performers in other productions and venues that “organized labor gets things done, and that salaries, benefits, security, working conditions and other concerns always improve once union representation is voted in.” G.C. Ex. 17(a), p. 2. Lucas’ July 16, 2022, post also contained a list of factors entitled “The UNION Difference” which addressed an employer’s obligation to bargain prior to changing terms and conditions of employment, transparency in terms of wage rates, collective representation, and due process via the grievance procedure. Id; see also G.C. Ex. 18, p. 1.

Lucas continued to post information regarding the AGVA organizing campaign and collective bargaining later in the summer and fall of 2022. On August 22, 2022, Lucas posted an update regarding the status of collective bargaining negotiations, and the employees’ goals in the bargaining process. G.C. Ex. 17(a), p. 5. On October 7, 2022, Lucas posted a “call to action” for readers to “fill out a quick form to send a letter” to Medieval Times, exhorting Respondent to bargain in good faith with AGVA. G.C. Ex. 17, p. 9. On October 14, 2022, Lucas posted regarding the status of bargaining and the trademark infringement lawsuit Medieval Times filed against MTPU and AGVA, characterizing the lawsuit as a meritless stratagem to delay negotiations. G.C. Ex. 17(a), p. 10. In August, September, and October, Lucas also posted historical information about not only AGVA, but Actors Equity, unionization at the Walt Disney company, and the union activities of actors Boris Karloff and Bela Lugosi. G.C. Ex. 17(a), p. 4, 7, 8, 11. And on November 10, 2022, Lucas urged the Medieval Times employees at the California castle, to vote to certify AGVA as their collective bargaining representative. G.C. Ex. 17(a), p. 12.

The evidence establishes that Medieval Times management at the New Jersey castle was aware of Lucas’ Facebook posts. Watkins and Callahan are “friends” of Lucas on Facebook. Tr. 445-449; G.C. Ex. 17(b); G.C. Ex. 18, p. 3. In addition, Watkins commented on, and therefore ostensibly reviewed, Lucas’ July 16, 2022, post described above, in favor organizing for fair terms and conditions of employment, together with the list of factors Lucas described as “The UNION Difference.” Tr. 450-451; G.C. Ex. 18.

2. Medieval Times’ Progressive Discipline Policy

Medieval Times’ Standards of Conduct provide that Respondent “has established a system of progressive discipline” involving formal coachings, written warnings, final warnings, and termination of employment. Tr. 906; R.S. Ex. 16, p. 1. Vice President of Human Resources Julie Muenzler testified that generally a first offense would result in an “informal coaching that is a discussion with a team member,” and is not documented in the employee’s personnel file in the absence of any further infraction. Tr. 906. A second instance of misconduct would engender a “formal coaching...documented on a piece of paper put in the employee’s file,” which would also note the previous informal coaching. Tr. 906-907. The “next step” in the disciplinary process is a written warning, which refers to both the informal and formal coachings previously issued. Tr. 907. The

last step prior to discharge is a final warning, which also describes the employee's previous disciplinary history. Tr. 907. The Standards of Conduct provide that the system "is not formal and the Company may, at its sole discretion, utilize whatever form of discipline is deemed appropriate under the circumstances," including discharge,
 5 "without any prior warnings or discipline." R.S. Ex. 16, p. 1.

Muenzler testified that the progressive disciplinary policy encompasses all forms and incidents of misconduct, so that there are no separate disciplinary "tracks" for specific issues, such as time and attendance. Tr. 907.

3. The Written Warning Issued to Lucas on October 14, 2022

On October 14, 2022, General Manager Nate Thompson issued Lucas a written warning, with Show Cast Manager Joshua Callahan present. Tr. 480, 500, 837; G.C.
 15 Ex. 20. The "Detailed Description" of the conduct leading to the warning states as follows:

Chris is receiving a written warning for failing to follow company standards.

Chris was performing in the role of Cedric in the 8:00 pm show on 10/8/2022. During pre-show the Cedric character is expected to stay in the HOA [Hall of Arms] to perform knightings with the queen until 5 mins. before the scheduled show time (see attached email from Leigh regarding expectations for knightings). On 10/8 Chris and the queen left the HOA 10 mins early without checking in with the knightings desk.

On 10/14/2022 Chris was performing as Cedric during the Educational Matinee. While performing the cyber scene during the matinee, Chris added a joke referencing a Disney character in the middle of a line. This was an adlib that Chris has done before in the show and has received informal coachings about (See attached notes).

G.C. Ex. 20.¹¹ The "Disciplinary History" section referred to two previous disciplinary actions: a May 30, 2022, informal coaching for "Adlibbing [sic] during the show" and a September 11, 2021, written warning for "Time and Attendance."¹² Id. In the section entitled "Team Member Comments," Lucas stated, "Both infractions – leaving early and ad-libbing, were committed by fellow cast members, in the same show, yet they were not written up for it. Seems like I'm being singled out." Id.

¹¹ Lucas testified that he was only given the two-page written warning in evidence as General Counsel's Exhibit 20 at the meeting with Thompson and Callahan, and was not provided with copies of any of the notes that the warning refers to as attached. Tr. 544-545. Lucas testified that he had received some of the notes previously via e-mail, and that the contents of some of the notes had been reviewed with him and other show cast members verbally by Callahan. Tr. 545-551; G.C. Ex. 39, p. 94-118. Thompson testified that Lucas was offered copies of the notes, but did not take them. Tr. 851.

¹² The Complaint does not allege that the May 30, 2022, informal coaching or the September 11, 2021, written warning were issued for retaliatory reasons.

Various witnesses addressed the issues involved in leaving the pre-show area and the events of October 8, 2022. Lucas and Garza testified that the pre-show period typically ends when the actor portraying the Lord Marshall tells the guests and show
 5 cast members in the Hall of Arms that the arena is open, and the guests can take their seats, which is referred to as the “table call.”¹³ Tr. 181, 482. Garza testified that after the table call, the photographer typically began breaking down stanchions in the area where photographs of the guests and show cast were taken, and the trumpeters returned their swords in order to leave. Tr. 183-184. Garza testified that if guests were
 10 still signing up for knighting ceremonies at that time, the knighting ceremony continued until 5 minutes before the show began; otherwise, the show cast members were permitted to leave. Tr. 181. Thompson also testified that “the cutoff” for the pre-show should be 5 minutes before the show is scheduled to start. Tr. 839-840. The actors were not permitted to wear watches, and there were no clocks visible in the pre-show
 15 area, so they typically left when directed to do so by the knightings desk, when the Lord Marshall announced that the arena was open, or when there were no additional guests present for a knighting ceremony.¹⁴ Tr. 181, 183-184, 483-484, 841-842. Thompson testified that the actor playing Lord Cedric was expected to check with the knightings desk to determine whether there were guests waiting for a knighting ceremony, ask the
 20 knightings desk, “What time is it? Are we good to go?” and then “come back and collect the rest of the show cast” to go backstage and prepare for the show. Tr. 840.

Lucas and Garza testified that in the months prior to October 2022, Thompson held a meeting with Callahan and the show cast which addressed issues involving the
 25 pre-show, specifically the time that the show cast members should leave the pre-show in the Hall of Arms. Tr. 185, 485-486. Lucas and Garza both testified that they understood as a result of this meeting that the show cast was to use their own judgment regarding the issue, and if there were no other knighting ceremonies occurring, they could leave the pre-show area, even if they had not been explicitly told to do so.¹⁵ Tr.
 30 185, 486.

Lucas testified that on October 8, 2022, the Lord Marshall had called the guests into the arena for the evening show, and the Hall of Arms was empty. Tr. 484. Lucas testified that he and Garza, who was playing the Queen for that particular show, looked
 35 over to the knightings desk for direction, but no one was present. Tr. 484-485. Lucas stated that he and Garza therefore left the pre-show area to prepare for the show.¹⁶ Tr. 485. Thompson testified that he had no personal knowledge regarding Lucas’ conduct and made the determination to discipline Lucas for leaving the pre-show area early on October 8 based upon an e-mail he received from Food Services Manager Layne Rice

¹³ Garza and Lucas testified that there are typically 10 to 15 minutes between the end of the pre-show and the start of the performance, during which the actors do a secondary check of their microphones, adjust their costumes, and otherwise prepare for the start of the show. Tr. 182-183, 483.

¹⁴ Garza testified that a clock was installed in the pre-show area in November 2023. Tr. 183.

¹⁵ Thompson and Callahan did not address this meeting during their testimony.

¹⁶ Garza testified that she could not recall the specific details of leaving the pre-show with Lucas on October 8. Tr. 184. She testified that, “it was kind of just like every other day, a table call had already happened and people started breaking down around me, so I went.” Tr. 184.

describing the incident. Tr. 842-844; R.S. Ex. 17. Rice did not testify, and her e-mail to Thompson states that her knowledge of the Lucas' conduct was based in turn upon information provided to her by "team members at the knightings desk." R.S. Ex. 17, p. 2; see also Tr. 845. Thus, Rice's e-mail was not admitted as evidence establishing that Lucas actually engaged in the conduct the e-mail describes. Tr. 844. Garza was not disciplined regarding this episode.¹⁷

The October 14, 2022, incident involved an ad lib regarding a Disney character during Lucas' performance in an educational matinee that day. Lucas testified that there are unscripted moments in the educational matinee, a 20-minute show regarding cyber-bullying and other issues designed for children and teens, entitled "Chivalry in Action." Tr. 485-488, 493, 588-589; G.C. Ex. 41, p. 51-72. The script for the educational matinee contains a scene in which Lord Cedric and the Queen are perplexed by a mobile phone containing social media applications, which has been reproduced at length below for context:

(Chancellor [Lord Cedric] on stage, MC enters on horseback in arena into key light.)

CHANCELLOR – Ah, Sir Robert! How go the preparations? Will all of your Knights be ready for the opening of the tournament?

HEAD KNIGHT – They will be Cedric, they were.....distracted for a moment, but....

CHANCELLOR – *(Interrupting)* Distracted? What could be more important than the tournament? Distracted *how*?

LK – *(Stepping out from the group and bowing to stage)* Pardon Lord Cedric, we were regaled by a tale of high comedy, involving a low-born idiot of a girl from the scullery.

(As he finishes this line, he turns to include the group, laughing on mic)

(SFX of group laughing.)

CHANCELLOR – High comedy is it? Tell me more.....

LK – The story going around My Lord, is that one of the servant girls nearly knocked the Queen off of her feet.

¹⁷ Thompson testified that Garza was not disciplined for leaving the pre-show area early on October 8 because she was simply following the direction of Lucas as Lord Cedric. Tr. 841-842. Garza testified that a couple of weeks later, Thompson questioned her regarding why she and Lucas had "left the knighting ceremonies too early." Tr. 184. Thompson testified that during this conversation, Garza told him that she "followed" Lucas after Lucas told her "we're good to go." Tr. 841.

CHANCELLOR – Go on.....

LK – Some of the others have heard that she has ruined the gown Her Majesty was to wear to the tournament tonight, and that for her clumsiness, she has been clapped in irons!

(SFX of group in agreement, laughter, shoving and high-five.)

CHANCELLOR – And who among you was there to witness this account?

(Group looks around at each other.)

CHANCELLOR – Aha! It is as I thought! Spreading this sort of untruth is a dark practice, and beneath you, My Lords. See how your young Squires join in, following the lead of those *already* lost in false tales and wild exaggerations! In honoring our oath, we should strive to ‘*do the right thing*’ and not engage in this sort of gossip, nor should we allow *others* to engage in it.

HEAD KNIGHT – *(Turning to group)* Chivalry in action does not mean only that we be *fair* to all, but that we fight wrong when we see *and* hear it – and spreading this type of rumor is wrong.

(Queen arrives on stage doing some ‘business’ as she does first line.)

QUEEN – What type of rumor is that, Cedric?

CHANCELLOR – Oh, just some wild retellings of the little accident with Maid Gwendolyn. The entire story has been blown out of all proportion, so that little or *none* of the truth remains.

QUEEN – Wild retellings? You mean *gossip*! *(She now turns to group in arena.)* My goodness! Don’t you have anything better to do? If you must know, there was small mishap concerning my maid and I. She is loyal, and trustworthy, and *well* above any scandal your rumors report!

HEAD KNIGHT – *(Bowing)* Forgive them, My Lady. They don’t realize the harm that all this passing of rumors and gossip can do.

QUEEN – And all without a shred of truth. Let it be forgotten. *(Queen & Chancellor turn towards throne.)*

(Lead Knight now steps forward holding up his cell phone.)

LEAD KNIGHT – “But, there are *pictures* Your Highness!”

QUEEN – *(Stopped in tracks and then coming forward)* Pictures? How can there be pictures? Is there a *painting* of my poor maid in her embarrassment?

5 **LEAD KNIGHT** – Technology my Lady!

HEAD KNIGHT - Brave new world!

10 **LEAD KNIGHT** – – Time marches on, Instagram, YouTube, Snapchat - and all that stuff.....here! I'll send them!

QUEEN – Send? Send how? I have no magic device!

15 **CHANCELLOR** – Nor do I!

QUEEN - Although it seems to me, that as Queen of this castle, and ruler of this realm.....*(Turning towards MC)*

20 **MC** - You should have been the first to get an upgrade, Highness!

LEAD KNIGHT – Not to worry your Majesty, here... I sent it to the castle's email account.

25 *(E-mail 'swish' then a 'Popcorn' alert SFX.)*

(2nd 'Popcorn' alert SFX. Queen & Chancellor look up and around for source of the noise.)

30 **QUEEN & CHANCELLOR** – What is that?

(3rd 'Popcorn' alert SFX.)

(The MC waits for the 3rd SFX. He motions to Cedric on stage.)

35 **MC** – Cedric, see for yourself! Look on the table behind you...

(Chancellor goes to table and picks up phone. He fumbles with it for a second until the MC tells him how to use it.)

40 **MC** - There, just.... right, *(Chancellor is pressing buttons)* *(SFX of alarm alert)* No, no, don't touch that one... press the little picture of the bird... yes, there.

45 **CHANCELLOR** – Oh my goodness, some *very* unkind things being said about Maid Gwendolyn here, *very* unkind! But Lord Marshal.... What is 'unfriending'? I'm not familiar with the term...Oh! Look at it go!

MC – I believe she is ‘*trending*’.

(The Queen is watching Cedric from her stage.)

QUEEN - But those things are *all* untrue! And unfair!

CHANCELLOR – *(Still fascinated with the phone)* – That’s not what it says *here* Your Grace!

(The assembled group in the sand now begins thrusting their own phones into the air and saying (via SFX with overlay).

“Or here!” “Or here!” “Or *here!*” 200 hits on YouTube!

QUEEN – *(Motions to Cedric to hand her the phone if possible. If not, preposition a second phone on Queen’s stage.)* This, Lord Chancellor, is a magical device!

CHANCELLOR – Capable of great power...

QUEEN – *(‘Scrolling’ through phone)* And of great harm! For its’ power has been used unjustly! *(‘Reading’ posts.)* The maid merely toppled a tray! No hurt came to our person, the maid, or my *dress*! Neither was she censured *or* punished! And to say otherwise is to show that you have been misled by what you have seen and read there!

MC – And yet My Lady, the damage has been done ...

QUEEN – And so it can be *undone*!

CHANCELLOR - The Code of Chivalry teaches us upon our sacred oath to protect the weak, to be loyal to our friends, and to fight wrong when we encounter it.

QUEEN - And so should ‘Chivalry in Action’ be our guide when navigating this ‘device of wonder’. *(Holding out phone)*

(All in arena perform low bow to stage.)

Tr. 488-489, 491-492; G.C. Ex. 41, p. 67-71.

As set forth in the script above, after the Queen and the Chancellor ask “What is that?” when an e-mail receipt notification sounds, and the MC says, “Cedric, see for yourself! Look on the table behind you...” there is a parenthetical stage direction:
“(Chancellor goes to table and picks up phone. He fumbles with it for a second until the

MC tells him how to use it.)” G.C. Ex. 41, p. 70. Lucas testified that this type of parenthetical stage direction, referred to as a “wrylie,” indicates that the actor is “given license to fill that moment in some way where it doesn’t drag on forever,” with physical and/or verbal business to “entertain the audience” so that “there’s not dead silent or dead air.” Tr. 487-488, 492-493. Sean Quigley, who had performed the roles of the Lord Marshall and the Lord Cedric, testified that if such directions are “generally descriptive but not specific enough to tell us what to do, the consensus is it’s up to us to convey whatever this is attempting to convey” physically and/or verbally. Tr. 590, 592. Zapcic, who plays the Queen, similarly testified that the dramatic elaboration of such parentheticals is “up to the actor’s interpretation,” in terms of both physical and verbal expression, taking into consideration that the meaning to be conveyed must be comprehensible to the audience given the size and configuration of the performance venue. Tr. 660-662. Callahan testified that while the parenthetical stage directions “tell the actor essentially what to do at that time,” or “how to say a line” in terms of emphasis or simultaneous action, such stage directions do not tell the actor what to say. Tr. 1060-1061.

Lucas testified that when the educational matinee arrived at the point of the parenthetical stage direction quoted above, he would typically pick up the cell phone, fumble with it, and “say something” while doing so. Tr. 489, 493. Quigley also testified that each actor “might do something physically different just to show they weren’t sure what [the phone] is,” such as “bang it or interact with it in a strange way,” with “any number of improvised lines” to convey the character’s unfamiliarity with a cell phone. Tr. 590-591. During the October 14, 2022, educational matinee, at the point indicated in the script by the preceding parenthetical stage direction, Lucas picked up the phone and said, “What’s this? What’s this?” referring to a song sung by the character Jack Skellington in the movie *The Nightmare Before Christmas*. Tr. 489-493. Lucas testified that immediately after he did so, actor Chris de Crescenzo, who was playing the Lord Marshall, said, “Oh, you’re not Jack,” and then moved on to the Lord Marshall’s next scripted line, “There, just... right, (*Chancellor is pressing buttons*) (*SFX of alarm alert*) No, no, don’t touch that one... press the little picture of the bird... yes, there.” Tr. 494; G.C. Ex. 41, p. 70.

Lucas testified that after October 14, 2022, he stopped incorporating “ad libs” into his performances in the educational matinee, since the disciplinary notice he received specifically pertained to that version of the show. Tr. 748-750. However, he continued to incorporate ad libs into the announcements portion of the evening show that he performed as Lord Cedric. Tr. 748. Lucas also testified that after October 14, 2022, “it seemed like every show I was doing, there was somebody watching,” usually Callahan but sometimes another manager. Tr. 505-506. Lucas stated that he was able to see these managers sitting in special box seats while he performed onstage. Tr. 506. Lucas further testified that after October 14, Callahan began giving him verbal notes regarding his performance after every show, whereas in the past Callahan had given the entire show cast notes as a group during rehearsal, without specific notes for each actor. Tr. 506-507.

4. The Final Warning Issued to Lucas on December 15, 2022

On December 15, 2022, Lucas was issued a final warning by Callahan and Thompson. Tr. 500, 502; G.C. Ex. 21. The Detailed Description of the conduct leading to this warning reads as follows:

Chris Lucas is receiving a Final Notice for insubordination.

Chris has been coached on several occasions to limit the number of additional jokes he does while reading announcements. Josh, the Show Cast Manager, sent Chris notes back in October specifically instructing him to refrain from adding jokes during the announcements. Managing the amount of time spent during announcements in the NJ location has been a challenge over the years and is a consistent note from Leigh during his visits (See attached show notes from 10/2016, 6/2017, and 1/2018).

Chris was also instructed to stop using a joke that references the Disney character "Bruno" as it is a copyright reference and does not fit the Medieval theme (see attached email dated 10/8/2022). On November 16th Josh sent a follow up reminder to the rest of the show cast reminding them that they needed to refrain from using pop culture references while on mic or in costume.

On 12/10/2022 Chris was performing as Cedric during the 5:00 pm show. During the announcements Chris added three jokes, one of which was a reference to the Disney character "Bruno."

G.C. Ex. 21. The Disciplinary History section of the final warning referred to the October 14, 2022, written warning discussed previously, as well as the May 30, 2022 informal coaching and September 11, 2021 written warning. G.C. Ex. 21. In the Team Member Comments section, Lucas wrote, "Saying the name 'Bruno' in an announcement and stopping short to say 'Oh, we don't talk about him' is NOT a copyright violation. So, you're completely wrong about that." Id (emphasis in original).

A number of witnesses testified regarding the announcements portion of the show performed by Lord Cedric or the Lord Marshall, and the role of ad libs and references to contemporary popular culture during the announcements. As discussed above, while waiting in the Hall of Arms before going into the arena, guests could purchase a paid announcement to be read out during the show for events such as birthdays or anniversaries. Tr. 496, 570-571. A scroll containing material pertinent to the announcement was then prepared which contained the general location for the seat of the individual or group that paid for the announcement, the name of the individual or group, and a general description of what the announcement was for. Tr. 496, 571, 578-580, 1064-1065, 1075. While the scroll sometimes included a specific line that the actor was asked to state verbatim, the purpose of the announcement was sometimes

expressed in one or two words, such as “birthday 35,” and the actor reading the announcements was “expected to elaborate on that” or “fill in banter between.” Tr. 496, 571-572; see also Tr. 1065-1067.

5 Lucas, Quigley, Garza and Zapcic all testified that the actors performing the announcements portion of the show regularly incorporated ad lib references to contemporary popular culture into their presentation of the material contained on the scroll in a variety of ways. Lucas, Quigley and Zapcic testified that it was common for guests to attend the show in their own costumes, dressed up as characters from
10 television series such as Game of Thrones, video game franchises such as the Legend of Zelda, or generic characters such as a princess, a king or a knight.¹⁸ Tr. 497, 575-576, 577, 656. Thus, the actors commonly referred to such characters and/or productions while performing the announcements, and were sometimes specifically directed to do so via the content of the scroll.¹⁹ Tr. 576, 578-579, 616-617. Quigley
15 testified that it was also customary for the actor performing the announcements to incorporate references to contemporary popular culture based upon the information about a particular guest which appeared on the scroll – such as a joke based upon the Indiana Jones movies for a group of guests from Indiana, or a reference to the Star Wars movies for a guest named Luke. Tr. 576-577. Quigley testified that he himself
20 began doing so in 2017, about six months after starting his employment at Medieval Times, based upon his observation of the other actors performing the announcements. Tr. 581. Lucas also testified that he had made such spontaneous references to contemporary pop culture since the inception of his employment in 2017, and Zapcic testified that actors, including Lucas, used ad libs during the announcements “pretty
25 much every day.” Tr. 496-497, 657-658. Garza testified that she heard Lucas refer to Bruno from the Disney movie *Encanto* approximately 10 times, and that Lucas and other actors who played Lord Cedric referred to television shows and movies popular at the time, such as Game of Thrones.²⁰ Tr. 174-176, 177. Quigley testified that Lucas was particularly adept at spontaneously creating ingenious improvisational jokes or
30 “bits” incorporating references to contemporary pop culture.²¹ Tr. 584-587.

Callahan also testified that ad libs were used during the announcements section of the show. Tr. 1072. Lucas, Quigley and Zapcic all testified that Callahan referred to characters from Harry Potter and the Game of Thrones series when performing the
35 announcements, as well as to Disney characters such as Mickey Mouse or Goofy when guests from Florida were present. Tr. 495, 498-499, 582-583, 657. Callahan testified

¹⁸ Quigley testified that Medieval Times’ gift shop at the New Jersey castle sold specific weapons and armor from Game of Thrones and the Legend of Zelda for purchase by guests. Tr. 593-594.

¹⁹ Callahan also testified that guests were permitted to include references to contemporary popular culture in the content of the announcements they purchased. Tr. 1108.

²⁰ Garza testified that such pop culture references “never really stuck with me because it happens pretty often.” Tr. 176. In fact, during her testimony in January 2024, Garza stated that an actor playing Lord Cedric had referred to Jack Frost’s “bringing our first snowfall of the season” during announcements the previous week. Tr. 179-180.

²¹ For example, Quigley testified that on one occasion the scroll referred to a guest or pet named “Elton,” and after reading the name Lucas feigned a stumble, and then told the audience, “Ha, I’m still standing,” a reference to the Elton John song with that title. Tr. 587.

that while he was aware that other actors made such ad libs, he personally would only make references to popular culture which were specifically included on the scroll as requested by the guests. Tr. 1074-1076. Callahan also distinguished between ad libs to “encourage cheers” which “move[] the momentum of the show forward” and “self-serving” references to popular culture “to get a laugh, to ham it up,” and “draw attention to one’s self,” thereby causing other actors to “forget a line” and ultimately “stall the show.” Tr. 1077-1079. Callahan testified that two actors “recently” included references to pop culture not contained on the scroll when performing the announcements – Lucas, who joked about the Bruno character from *Encanto*, and “an actor who referenced a video game” called “War Hammer.” Tr. 1076, 1103.

The witnesses who had portrayed the Lord Cedric and/or the Lord Marshall also testified that performing the announcements portion of the show required balancing two somewhat antithetical objectives – creating and sustaining audience enthusiasm and engagement, while ensuring that the announcements did not become overly lengthy. The witnesses generally testified that announcements were expected to take about 5 to 10 minutes in total, although they could run shorter or longer depending upon the number of announcements that had been purchased. See Tr. 612-613. Callahan stated that part of the cast’s objective during the announcements was to maintain engagement and elicit cheers from the audience for the guests and events acknowledged via the paid announcements.²² Tr. 1072-1073. Quigley testified that the announcements could become “stagnant” and “bring the energy down,” which required “us[ing] these improvisations of as a tool of interacting with the audience.” Tr. 580; see also Tr. 497-498. Lucas similarly testified that the pop culture references would “get a laugh out of the crowd” and “keep them involved in the show.” Tr. 499. Quigley also testified that the actors had been instructed that “it is up to us to make that moment of the show interesting, because otherwise you’re just reading off a list of names and saying Happy Birthday.” Tr. 655; see also Tr. 497. Furthermore, if the announcements are performed in a rote manner, and the guests are no longer engaged, a guest might not notice the announcement that they had purchased, and request a refund. Tr. 497, 655. Thus, the overall goal communicated to the actors was to “make the announcements as interesting as possible while also not taking up too terribly much time.” Tr. 655-656.

The competing considerations involved in the announcements portion of the show – creating and maintaining audience enthusiasm while ensuring a sufficient but not overly lengthy presentation of the material – had long engendered recommendations and guidance from Director of Show Leigh Corder. Tr. 894. For example, in October 2016, Corder noted that the announcements at the New Jersey castle were running far longer than elsewhere, and stated, “Do your best to give the client what they paid for, but keep it moving!” G.C. Ex. 39, p. 102-103. Corder’s notes entitled “FOR USE IN JAN 8 REHEARSAL ONLY” instruct actors playing Lord Cedric and the MC, “On double and triple nights, especially with large lists, move through the announcements quickly...On single show nights or with small lists you have more

²² Callahan also testified that if there were few announcements, the actors needed to “bide some time” with improvised material before the performance could continue. Tr. 1073.

leeway.” G.C. Ex. 39, p. 111-112. Thompson and Callahan testified that Cordner’s notes were e-mailed directly to Callahan as the Show Cast Manager, who would have then discussed them with the show cast.²³ Tr. 895-896, 1068-1069.

5 Callahan also informed the show cast regarding issues with the length of announcements via his own show notes, which he sent them by e-mail. In a February 16, 2019, e-mail, Callahan’s notes to the show cast included, “**Let’s keep announcements moving fast** so we can get right to games in the show. No
10 referencing special announcements or unusual names, please let’s say what’s there on the scroll and then let’s move on briskly with next announcement, back-and-forth between Cedric and MCI.” G.C. Ex. 39, p. 113.²⁴ On June 19, 2022, Callahan told the show cast, “Show times have been well, just be careful with runtime for announcements **CEDRICs** but we are doing ok there too!” G.C. Ex. 39, p. 114. On October 29, 2022, Callahan e-mailed the show cast notes which included the following:

15 **CEDRICS:** Good rule of thumb for announcements. Just deliver announcements including Names and the Celebration to expedite long lists and especially during the Triple Saturdays and Double show days like
20 Sundays. On single show days with short lists, still be respectful but may some leeway [sic] to be more candid. The middle show Saturdays are mostly always sold out and have long guest celebration lists which means lots of announcements.

25 G.C. Ex. 39, p. 115. In addition, Callahan testified that he generally informed the show cast “quite a bit” that they should “be careful with adlibs,” that “They could happen, but once you go out on a ledge and do that, you could cause more disruption, you can make things worse, so be careful with the adlibs.” Tr. 1097. Quigley also testified that Callahan would tell the show cast to limit pop culture references “all the time” in
30 rehearsals and via notes, telling the show cast that “announcements are taking too long,” so “we need to get the show shorter” by cutting out ad libs and improvisations that were not in the script. Tr. 587-588. More generally, on September 2, 2022, Callahan e-mailed the show cast notes stating in part, “Please no adding lines, words or ad libs to our scripted text in the show.” G.C. Ex. 39, p. 97-98; Tr. 1098-1099. Quigley testified

35 What I would do if I received specific feedback about not making any pop culture references, I would stop making pop culture references until a time where I heard somebody else do a pop culture reference. Oftentimes, it was Josh [Callahan] himself, and then I would take that as a green light
40 signal in my head that I guess we’re okay to do that again.

Tr. 588.

²³ Cordner’s notes are referred to in the December 15, 2022, final warning issued to Lucas. G.C. Ex. 21.

²⁴ All emphasis in Callahan’s show cast notes quoted herein appears in the original documents. Lucas is included on all of Callahan’s e-mails. See G.C. Ex. 39, p. 113-117.

On October 8, 2022, Callahan e-mailed Lucas a list of notes pertaining solely to Lucas' performance, as opposed to the show cast in general. G.C. Ex. 39, p. 118.²⁵ These notes included the following:

5 Announcements: yours are by far on average longer than all others. I
 know sometimes we have long list of announcements, but your never
 come under 6 or 7 minutes lately even with a relatively equal list of
 announcements compared to other shows. Please no adding jokes into
 the announcements. This is a not [sic] from the past that we have all had
 10 before. You add the Bruno joke which is a copyright reference. Please do
 NOT use this one. You encourage a cheer from your house (last night it
 was yellow). Please do not do this. I know you're adding reference to the
 fact it is "your house" but it adds unnecessary time to the announcements
 portion. Also, you sometimes add the Lance a lot joke, though I'm not sure
 15 you did last night. You did add an announcement for JC and Monica. You
 did this another night on Monica's birthday. Please understand all
 announcements need to be approved by management. When they are
 added, they must not be long. Both added announcements were over two
 lines. We do not allow that for guests who pay for them. (This is a long
 20 one. But it is reoccurring and a very important one.)

G.C. Ex. 39, p. 118; R.S. Ex. 10. Callahan stated, "You have a spirited show. A Lot of
 energy and laughs to be had with the way you deliver lines and your performance, so
 there is no need to add things to it. A lot of the others look up to you and respect you
 25 and hope you can be example of how to make the show fun and energetic 'as is' with
 the script and direction given." Id.

On November 16, 2022, Callahan for the first time sent the entire show cast
 notes which characterized references to contemporary popular culture as incongruent
 30 with the fundamental basis of the show itself, as opposed to simply lengthening the
 announcements to the point that they became unwieldy:

To All Show Cast: Please remember we provide our guests with an
 experience and participate in their "escapism" as they enjoy the splendors
 35 of the past while visiting Medieval Times. Anytime we are on mic or in
 costume, try to stay in character and avoid any references to modern pop-
 culture or technology that could take our guests "out of the show" during
 their "journey to the past" that we are creating. I know this is more difficult
 in those moments before and after the scripted show. However, we all
 40 have guidelines and, at some point, received a script to go off for tower
 and even post show announcements and table call. Just be careful of any
 ad libs including modern references even during those more free-spirited
 moments pre and post-show, and reference those early scripts should you

²⁵ Callahan's October 8, 2022, e-mail is referred to in the December 15, 2022, final warning issued to Lucas. G.C. Ex. 21.

be unsure about what to say. As always, talk to me and we can review this if you have any questions.

Tr. 505; G.C. Ex. 10, p. 2; G.C. Ex. 39, p. 117.

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5. The Discharge of Lucas on January 21, 2023

Lucas testified that on January 21, 2023, he was scheduled to clock in at 3 p.m., and received a text message from Callahan asking him to come to the office immediately, because Thompson wanted to see him. Tr. 507. When Lucas arrived at the office, Callahan and Thompson were present. Tr. 507, 862. Lucas testified that during the “very brief meeting,” Callahan and Thompson stated that he had clocked in to work late a few days earlier, and that “they were terminating my employment.” Tr. 507. At 6:56 p.m. that day, Thompson sent an e-mail to Eva Egger stating, “I met with Chris Lucas today to terminate his employment. Chris was late for his shift on Thursday and was on his final notice.” G.C. Ex. 39, p. 120; Tr. 858-859.

H. *The Subpoenas Issued to the Employees Immediately Prior to the Hearing*

During the week before the hearing in this case was scheduled to begin,²⁶ Medieval Times served a number of individuals, including current employee witnesses Garza, Beckas, and Vere, with Subpoenas *Duces Tecum*. G.C. Exs. 34, 36, 37; Tr. 195, 199, 305-306, 368. Christopher Lucas was also served with a Subpoena *Duces Tecum*, as were current employees Purnell Thompson and Joseph Devlin. G.C. Exs. 35, 48-49; Tr. 754, 951-952. Service of the Subpoenas on Garza, Vere and Beckas was affected during work time; Garza and Vere were in rehearsals at the New Jersey castle, and Beckas was in the middle of a show. Tr. 194-197, 305-306, 368-369. Garza testified that there were approximately 20 other employees present at the time she was served, and Vere testified that other employees were present when he was served as well. Tr. 196-197, 262-263, 305-306.

The Subpoenas contained 31 identical requests for documents and electronically stored information. In contending that service of these Subpoenas violated Section 8(a)(1) of the Act, General Counsel refers in particular to requests 5, 12, 14, 23 through 28, and 31 of the Documents to be Produced, contained in the Attachment to the Subpoena, which require production of the following materials:

5. Copies of any and all emails, text messages, social media commentary, correspondence and other documents regarding any meetings occurring on or around June 2022 held by and/or with Perico Montaner.

* * *

²⁶ The hearing was initially scheduled to open on January 8, 2024, but was postponed until January 16, 2024 due to my illness.

12. Copies of any and all emails, text messages, social media commentary, correspondence and other documents regarding any meetings occurring on or around June 2022 held by and/or with Rian Wathen.

5

* * *

14. Regarding the logo utilized by Medieval Times Performers Union that is the subject of the Respondents' lawsuit filed in the District Court of New Jersey captioned 2:22-cv-6050 (the "Logo"), identify and provide all documents related to:

10

- (a) The individual(s) who designed the Logo;
- (b) How the Logo was designed and any prior iterations or versions thereof;
- (c) Any source material for the creation, design or concept of the Logo;
- (d) Who has ownership of or otherwise controls the Logo;
- (e) The process by which the Logo was decided upon and/or agreed upon;
- (f) Any and all emails, text messages, social media commentary, correspondence and other documents regarding the Logo or any other the requests [sic] in this Paragraph 13(a) through (e).

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23. All internal communications among and between the Union's members, officers, agents and representatives, excluding attorneys, regarding Christopher Patrick Lucas.

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24. Regarding all accounts on TikTok created, utilized and/or promoted as being the account(s) of Medieval Times Performers United New Jersey, Medieval Times Performers United California, and/or Medieval Times Performers United Buena Park (collectively the "TikTok Accounts"), identify and provide any and all documents related to:

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- (a) The individual(s) who control the TikTok Accounts;
- (b) The individual(s) who created or set up the TikTok Accounts;
- (c) The individual(s) who have access to the TikTok Accounts;
- (d) The individual(s) who have access to and authority to create or generate posts from the TikTok Accounts;
- (e) The individual(s) who have or do post from the TikTok Accounts;
- (f) The individual(s) who approve, sanction or otherwise allow posts, including their content, to be made and disseminated from the TikTok Accounts.

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25. All communications by Union's members, officers, agents and representatives, excluding attorneys, to TikTok regarding the TikTok Accounts and postings by Medieval Times Performers United New Jersey.

26. All communications by Union's members, officers, agents and representatives, excluding attorneys, to TikTok regarding the TikTok Accounts and postings by Medieval Times Performers United California.

27. Regarding all accounts on Facebook created, utilized and/or promoted as being the account(s) of Medieval Times Performers United New Jersey, Medieval Times Performers United California, and/or Medieval Times Performers United Buena Park (collectively the "Facebook Accounts"), identify and provide any and all documents related to:

- (a) The individual(s) who control the Facebook Accounts;
- (b) The individual(s) who created or set up the Facebook Accounts;
- (c) The individual(s) who have access to the Facebook Accounts;
- (d) The individual(s) who have access to and authority to create or generate posts from the Facebook Accounts;
- (e) The individual(s) who have or do post from the Facebook Accounts;
- (f) The individual(s) who approve, sanction or otherwise allow posts, including their content, to be made and disseminated from the Facebook Accounts.

28. All communications by Union's members, officers, agents and representatives, excluding attorneys, to Facebook regarding the Facebook Accounts and postings by Medieval Times Performers United Buena Park.

* * *

31. Any and all emails, text messages, social media commentary, correspondence, notes, memoranda, and other documents exchanged by and between Marcus Vere and Union representative Chris Johnson, excluding those communications that include Union lawyers.

See G.C. Ex. 34-37, 48-49. Garza, Beckas, and Vere testified that they began searching for and collecting materials responsive to the Subpoenas immediately after receiving them. Tr. 195-196, 262-263, 306-307, 419-420.

On December 27, 2023, General Counsel filed and served a Petition to Revoke the Subpoenas served on Lucas and Vere. R.S. Ex. 7. Subsequently, on January 12, 2024, Medieval Times, by its attorneys, wrote to Garza, Vere, and Beckas enclosing a

second Subpoena *Duces Tecum*.²⁷ Tr. 245-246, 248, 321-322, 405-406; R.S. Exs. 3, 6, 8. Garza was served with Medieval Times' second Subpoena in the employee lounge before clocking out, with "a good few" other employees from different departments present. Tr. 247, 262. Vere was similarly served with the second Subpoena at the New Jersey castle, while in the lounge with Joseph Devlin and other employees. Tr. 321-322, 331-332.

The cover letter enclosing the Subpoenas served on January 12, 2024 stated, "Please ignore the prior subpoenas you were served within this matter. Furthermore, enclosed herewith is a repudiation of the prior subpoenas you were served with." R.S. Exs. 3, 6, 8. The Definitions and Instructions in the January 12, 2024 Subpoenas defined "Document" and "Communications" as "excluding materials containing or pertaining to employees' Section 7 rights and excluding materials submitted to the National Labor Relations Board." R.S. Exs. 3, 6, and 8 at p. 7, par. b, c. The Definitions and Instructions also directed the Subpoenas' recipients that "If any...document is no longer in your possession because it has been submitted to the National Labor Relations Board, do not disclose that fact." R.S. Exs. 3, 6, and 8 at p. 8-9, par. q, r. Paragraph u of the Definitions and Instructions stated, "All documents requested herein are to the exclusion of any information pertaining to the exercise of employees' Section 7 activity and are to the exclusion of any materials submitted to the National Labor Relations Board." R.S. Exs. 3, 6, and 8 at p. 9. The quoted text excerpted above appeared in the Subpoenas in bold type. The Documents to be Produced stated as follows:

1. Any and all recordings, either audio, video or both, of any meetings occurring on or around June 2022 held by and/or with Perico Montaner, **excluding information pertaining to employees' Section 7 activity.**

2. Any and all transcripts, dictations or other written memorialization of any meetings occurring on or around June 2022 held by and/or with Perico Montaner, **excluding information pertaining to employees' Section 7 activity.**

3. Any and all notes taken during or immediately subsequent to any meetings occurring on or around June 2022 held by and/or with Perico Montaner, **excluding information pertaining to employees' Section 7 activity.**

4. Copies of any and all emails, text messages, social media commentary, correspondence and other documents, **excluding information pertaining to employees' Section 7 activity**, regarding any meetings occurring on or around June 2022 held by and/or with Perico Montaner where Perico Montaner is alleged to have "threatened that

²⁷ Medieval Times' second Subpoena *Duces Tecum* was also sent to employees Joseph Devlin and Purnell Thompson, together with the same cover letter and statement described below. R.S. Ex. 28, 29; Tr. 957-960.

[Respondent's] employees at Respondent's non-unionized facilities could not receive a wage increase because its employees at Respondent's New Jersey facility filed a representation petition with the National Labor Relations Board (Case 22-RC-296686)".

5. Copies of any and all emails, text messages, social media commentary, correspondence and other documents, **excluding information pertaining to employees' Section 7 activity**, regarding whether any meetings occurring on or around June 2022 held by and/or with Rian Wathen were mandatory.

R.S. Exs. 3, 6, 8, p. 9-10 (emphasis in original).

Finally, the January 12, 2024, letters containing the revised Subpoenas also included a sheet of paper stating the following:

THE NATIONAL LABOR RELATIONS ACT GIVES YOU THE RIGHT TO

Form, join, or assist a union;

Choose representatives to bargain with us on your behalf;

Act together with other employees for your benefit and protection; and

Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain or coerce you in the exercise of the above rights.

Specifically:

WE WILL NOT seek documents and information through a government issued subpoena, that are related to employees' Section 7 rights.

WE WILL NOT seek documents and information through a government issued subpoena, that were provided to the National Labor Relations Board.

WE HAVE rescinded and given no effect to any prior subpoenas that were served, and remain unresolved, to employees prior to the date hereof.

WE HAVE rescinded and given no effect to any prior subpoenas seeking documents and information related to employees' Section 7 rights.

WE HAVE rescinded and given no effect to any prior subpoenas that seeking documents provided to the National Labor Relations Board.

R.S. Exs. 3, 6, 8, p. 12; see also R.S. Ex. 4. This sheet of paper was also posted in the New Jersey castle near the time clock, where employees clocked in at the start of their shifts. Tr. 248-250, 323-324, 407-408; R.S. Ex. 4.

5

Decision and Analysis

A. General Principles and Contentions Involving Witness Credibility

10 Evaluating certain issues of fact in this case requires an assessment of witness credibility. Credibility determinations involve a consideration of the witness' testimony in context, including factors such as witness demeanor, "the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole." *Double D Construction Group*, 339
 15 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001), enf'd. 56 Fed.Appx. 516 (D.C.Cir. 2003); see also *Hill & Dales General Hospital*, 360 NLRB 611, 615 (2014). Corroboration and the relative reliability of conflicting testimony are also significant. See, e.g., *Pain Relief Centers, P.A.*, 371 NLRB No. 70 at p. 2, fn. 4, 14 (2022), enf'd. 2023 WL 5380232 (4th Cir. 2023) ("detailed account" of meeting provided by employee
 20 witnesses credited where Respondent witnesses "skipped almost all of the moment-by-moment details" except for legally significant statements); *Precoat Metals*, 341 NLRB 1137, 1150 (2004) (lack of specific recollection, general denials, and comparative vagueness insufficient to rebut more detailed positive testimony). It is not uncommon in making credibility resolutions to find that some but not all of a particular witness'
 25 testimony is reliable. See, e.g., *Farm Fresh Co., Target One, LLC*, 361 NLRB 848, 860 (2014).

In addition, the Board has developed general evidentiary principles for evaluating witness testimony and documentary evidence. For example, the Board has determined
 30 that the testimony of an employer respondent's current employee which is contrary to the respondent's contentions in the case may be considered particularly reliable, in that it is potentially adverse to the employee's own pecuniary interests. *Avenue Care & Rehabilitation Center*, 360 NLRB 152, 152, fn. 2 (2014); *Flexsteel Industries*, 316 NLRB 745 (1995), *aff'd*, 83 F.3d 419 (5th Cir. 1996). It is also well-settled that an
 35 administrative law judge may draw an adverse inference from a party's failure to call a witness that would reasonably be assumed to corroborate the party's version of events, particularly where the witness is the party's agent. *Chipotle Services, LLC*, 363 NLRB 336, 336 fn. 1, 349 (2015), enf'd. 849 F.3d 1161 (8th Cir. 2017); *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006). Adverse inferences may also be drawn
 40 based upon a party's failure to introduce into evidence documents containing information directly bearing on a material issue. See *Metro-West Ambulance Service, Inc.*, 360 NLRB 1029, 1030, fn. 13 (2014).

As a general matter, in making credibility resolutions here I have considered the
 45 demeanor of the witnesses, the context of their testimony, corroboration via other testimony or documentary evidence or lack thereof, the internal consistency of their

accounts, and the witnesses' apparent interests, if any. Any credibility resolutions I have made are addressed and incorporated into my analysis herein.

I find that Monica Garza, Jonathan Beckas, Marcus Vere, and Erin Zapcic were generally credible witnesses overall. All of these employees provided detailed, specific testimony regarding the various topics they addressed, which was predominantly consistent on direct and cross-examination. In addition, as current employees of Medieval Times who testified in a manner adverse to Respondent's interests, their testimony is considered particularly reliable pursuant to the caselaw discussed above. *Avenue Care & Rehabilitation Center*, 360 NLRB at 152, fn. 2; *Flexsteel Industries*, 316 NLRB at 745. I also find Sean Quigley to be a reliable witness, based upon his comprehensive testimony regarding the pre-show, show, and post-show responsibilities of Medieval Times' show cast performers. Although Quigley was no longer employed by Medieval Times at the time of his testimony, there is no contention that he was somehow biased based upon any circumstances involved in the termination of his employment. Finally, I find that Susanne Doris, AGVA's Executive Secretary-Treasurer, was a generally reliable witness. The credibility of alleged discriminatee Christopher Lucas will be addressed in the context of the allegations that Lucas was unlawfully disciplined and discharged, discussed below.

I find that the testimony of Nate Thompson, General Manager at the New Jersey castle, was not entirely reliable. Thompson often responded to questions regarding past events using the conditional – stating for example that he “would have” taken some action or that something “would have” happened – so that it was unclear as to whether he was recounting actual events to the best of his recollection or speculating as to what had occurred based upon general assumptions or practices. See Tr. 791-792, 802-803, 837, 847, 851-852, 868-869, 878, 883-884. Thompson persisted in these conditional formulations despite my explicit request that he distinguish between suppositions based upon general routine or understanding as opposed to his specific personal knowledge and recollection of events. See Tr. 871-873, 878, 883-884. In addition, questions posed to elicit additional detail from Thompson during his direct examination were sometimes formulated as a “summary” of his previous testimony but included material to which Thompson had not in fact previously testified, or were otherwise leading. See Tr. 824-827, 832-833, 865, 876, 879, 882-884. Testimony engendered in this manner has been disregarded. Furthermore, much of Thompson's direct testimony regarding the discipline issued to Lucas was elicited by having Thompson review documentary evidence such as disciplinary forms and e-mails prior to any question regarding the circumstances that the materials addressed. See Tr. 811-813, 831-832, 838-840, 845-847, 848, 882-883. Indeed, when Thompson was questioned regarding events pertinent to Lucas' December 15, 2022, final warning *without* being given an explicit opportunity to review the documentary evidence first, he articulated a different rationale for the discipline imposed than the rationale contained in the final warning itself. Tr. 851-854; G.C. Ex. 39, p. 99-101. As a result, when evaluating the evidence regarding these issues I have not construed Thompson's testimony as based upon an independent recollection of the events involved.

Thompson's testimony was also contradicted with respect to certain material issues by the testimony of more credible witnesses, and was inconsistent on direct and cross-examination. In particular, Thompson's account of his meeting with Monica Garza regarding the evening that Garza and Lucas allegedly left the pre-show area early contradicted Garza's more credible testimony with respect to an issue material to the legitimacy of Medieval Times' investigation into the events precipitating Lucas' October 14, 2022, written warning. Tr. 841, 845. In addition, Thompson's testimony with respect to whether he told Marcus Vere that "discipline" would ensue if Vere continued handbilling in Medieval Times' parking lot, as alleged in the Complaint, was not consistent on direct and cross-examination. See Tr. 885-887, 900. These discrepancies, explicated in further detail below, further undermine the credibility of Thompson's overall testimony.

Finally, Thompson repeatedly provided testimony regarding Medieval Times' asserted legitimate, non-discriminatory reasons for Lucas' discipline and discharge which was summarily contradicted by documents that he himself signed or created. Thompson initially testified that Lucas received a final warning on December 15, 2022, for ad libs during his performance, while the final warning itself states that it was issued for "insubordination;" Thompson revised his account only after explicit prompting from Medieval Times' counsel. Tr. 851-854; G.C. Ex. 39, p. 99-101. In addition, while documents created and signed by Thompson stated that Lucas was discharged because he was late for a shift while on a final warning, in his testimony Thompson claimed that "in writing here it's saying tardiness, but really it's overall performance." Tr. 859; G.C. Ex. 39, p. 119, 120; see also G.C. Ex. 39, p. 119, 82. Thus, Thompson's testimony and Medieval Times' documents flatly contradicted one another with respect to the crux of its defenses to the allegations that Lucas was disciplined and discharged for retaliatory reasons. And when not directly spurred by counsel to ameliorate the disparities involved, Thompson attempted an impromptu revision of the pertinent documentary evidence. Such circumstances cast significant doubt on the reliability of Thompson's testimony overall.

I similarly did not find Joshua Callahan, Show Cast Manager at the New Jersey castle, to be a generally credible witness. Callahan's testimony involving the critical issue of the actors' use of improvisation and ad libs during the performance of the show was conclusively refuted by the mutually corroborative and substantially more detailed testimony of the actors themselves, some of whom were still employed by Medieval Times when they testified at the hearing.²⁸ Callahan's own periodic notes to the show cast addressing this topic further undermined his assertions. These evidentiary discrepancies involving the actors' use of improvisation and ad libs during the show were directly pertinent to Medieval Times' purportedly legitimate reasons for issuing Lucas a written warning on October 14, 2022, and a final warning on December 15, 2022. Callahan's failure to provide accurate testimony regarding matters crucial to Medieval Times' proffered rationale for disciplining Lucas compromises the overall reliability of his testimony.

²⁸ The testimony of Head Knight Kyle Watkins on this issue was similarly rebutted.

Vice President of Human Resources Julie Muenzler provided credible general testimony regarding Medieval Times' human resources policies, its Standards of Conduct, and its progressive discipline policy. Muenzler was not specifically involved the events related to Lucas' discipline and discharge, and did not provide testimony regarding such issues. Celeste Lanuza, Medieval Times' Senior Vice President of Marketing and Sales, testified regarding prior litigation and events involving Medieval Times' trademark and business affairs. The probative value of Lanuza's testimony is addressed *infra*, in connection with the allegations regarding Medieval Times' trademark infringement lawsuit.

B. The Employees' Meetings with Rian Wathen in June 2022

The Complaint at Paragraph 9 alleges that Medieval Times violated Section 8(a)(1) by convening mandatory meetings for employees during paid time in the Hall of Aragon, where the employees were required to listen to Respondent's unsolicited views concerning the employees' protected union activities, as presented by labor consultant Rian Wathen. Medieval Times contends that the employees were not required to attend the meetings with Wathen, but that even if the meetings were mandatory, they did not constitute a violation of the Act pursuant to *Babcock & Wilcox Co.*, 77 NLRB 577 (1948). Post-Hearing Brief at 31-35. Medieval Times also asserts that the Complaint's allegations regarding the employees' meetings with Wathen are time-barred pursuant to Section 10(b) of the Act. See Post-Hearing Brief at 35-41.

On November 13, 2024, in *Amazon.com Services, LLC*, the Board overruled *Babcock & Wilcox Co.*, and held that an employer interferes with employee Section 7 rights, in violation of Section 8(a)(1), when it "compels" employees to attend "mandatory meetings urging the employees to reject union representation," also referred to as "captive-audience meetings," "on pain of discipline or discharge." *Amazon.com Services, LLC*, 373 NLRB No. 136 at p. 1-2, 8-9. However, the Board specified that the new "policies and standards" articulated in *Amazon.com Services, LLC* would be implemented solely on a prospective basis, and would not be applied retroactively in all pending cases, so that an employer's "conduct that was clearly lawful at the time it was undertaken" would not constitute an unfair labor practice. 373 NLRB No. 136 at p. 20; see also *Siren Retail Corp. d/b/a Starbucks*, 373 NLRB No. 135 at p. 1-2 (2024).

Because the Board held in *Amazon.com Services, LLC*, that the policies and standards it discussed there were not to be applied retroactively in pending cases, Medieval Times' conduct in arranging Wathen's meetings with the employees in June 2022 did not violate Section 8(a)(1), even if the meetings with Wathen were in fact mandatory.²⁹ As a result, I will recommend that this allegation be dismissed.

C. Pedro de Montaner's Alleged Threat Regarding Wage Increases During the Meetings in mid-June 2002

²⁹ I therefore need not determine whether the evidence establishes that the meetings were mandatory, or whether the Complaint's allegations regarding the meetings are precluded by Section 10(b) of the Act.

The Complaint alleges at Paragraph 8 that Medieval Times violated Section 8(a)(1) in June 2022, when CEO Perico Montaner threatened that employees at non-unionized Medieval Times facilities could not receive a wage increase because employees at the New Jersey castle had filed a petition for a representation election. In addition to contending that Montaner's comments did not violate Section 8(a)(1), Medieval Times argues in its Post-Hearing Brief that this allegation is time-barred pursuant to Section 10(b) of the Act. I will first address Medieval Times' argument that this allegation is time-barred, and then discuss the actual statements made by Montaner at the June 2022 meetings.

1. Medieval Times' Contention that the Allegation is Precluded by Section 10(b)

Medieval Times asserts that the Complaint's allegation that in June 2022 Montaner unlawfully threatened that employees at non-unionized Medieval Times facilities could not receive a wage increase because employees at the New Jersey castle had filed a petition for a representation election is precluded pursuant to Section 10(b). To the extent that this defense was properly raised, the record establishes that the allegation is "closely related" to the allegations contained in timely-filed charges, and is therefore not time-barred.

As an initial matter, the record here raises a substantial issue as to whether Medieval Times' Section 10(b) defense to the allegations regarding Montaner's remarks was properly asserted. It is well-settled that a Section 10(b) defense is waived if it is not advanced in the pleadings or at the hearing. See *Alternative Energy Applications, Inc.*, 361 NLR 1203 (2014); *Paul Mueller Co.*, 337 NLRB 764 (2002). Thus, a respondent may not properly raise a Section 10(b) defense for the first time in its post-hearing brief. *Alternative Energy Applications, Inc.*, 361 NLRB at 1203, 1214, fn. 5; *Paul Mueller Co.*, 337 NLRB at 764-765. The Board has noted that the "failure to plead or specifically litigate" a Section 10(b) defense may prejudice General Counsel, who is effectively prevented from developing a hearing record adequate to address the issue. See *Paul Mueller Co.*, 337 NLRB at 764-765, citing *Taft Broadcasting*, 264 NLRB 185, 190 (1982).

Here, the allegation regarding Montaner's purported threat was included in the first Consolidated Complaint in this case issued on August 21, 2023, as well as in the Second and Third Consolidated Complaints, issued on October 25, 2023 and November 20, 2023, respectively. G.C. Ex. 1(p, v, aa). In its Answers to those Complaints, Medieval Times asserted generally, as one of its Affirmative Defenses, that "some or all of the allegations" in each Complaint were "barred by the six-month statute of limitations set forth in Section 10(b) of the Act." See G.C. Ex. 1(r, y, dd). Medieval Times also asserted that the specific allegation that it violated Section 8(a)(1) by conducting "captive audience meetings" was "barred by Section 10(b) of the Act." *Id.* However, Medieval Times did not raise such an explicit Section 10(b) defense to the allegations regarding Montaner's remarks in its Answers. Instead, Medieval Times asserted that the Complaint's allegations involving Montaner, "exceed those allegations included in the underlying unfair labor practice charges, as amended," and that Medieval Times had

been "denied due process" and lacked "an opportunity to respond to the allegations" as a result. *Id.*

Medieval Times continued to pursue these distinct lines of argument with respect to the Montaner and "captive audience meeting" allegations after the pleadings stage of the case. Its Motions to Dismiss prior to the opening of the hearing addressed only the Complaint allegations regarding the "captive audience meetings," arguing that those portions of the Complaint were precluded pursuant to Section 10(b). G.C. Ex. 1(s, u, ee). During the hearing itself, Medieval Times made a Motion for Summary Judgment with respect to the "captive audience meetings" allegations, arguing that they were precluded by Section 10(b) as well as contrary to existing Board law permitting its conduct. See Tr. 769-775. Only in Medieval Times' Post-Hearing Brief did it raise for the first time the specific contention that the allegations involving Montaner's remarks at the June 2022 meetings were time-barred. Post-Hearing Brief at 24-31. Thus, General Counsel in her Post-Hearing Brief did not address the potential applicability of Section 10(b) to the allegations involving Montaner's statements. General Counsel only discussed Medieval Times' argument – asserted in its Answers – that it was deprived of due process and an opportunity to respond to the allegations regarding Montaner's remarks because they "exceeded the allegations included in the underlying unfair labor practice charges." See Post-Hearing Brief at 119-120. Such a course of litigation renders Medieval Times' assertion of a Section 10(b) defense to the allegation regarding Montaner's comments in its Post-Hearing Brief problematic.

Regardless of whether Medieval Times' Section 10(b) defense to Paragraph 8 was properly asserted, however, the Complaint's allegation regarding Montaner's statement is not barred on such grounds. It is well-settled that an untimely complaint allegation is not precluded by Section 10(b) if the pertinent conduct occurred within six months of a timely-filed unfair labor practice charge and is "closely related" to the timely-filed charge's allegations. See, e.g., *FCA US, LLC*, 371 NLRB No. 32, p. 1, fn. 1, p. 12 (2021); *Alternative Energy Applications, Inc.*, 361 NLRB at 1203. In order to determine whether a complaint allegation is "closely related" to the allegations of a timely-filed charge, the Board evaluates the following three factors:

(1) whether the otherwise untimely allegation is of the same class as that of the timely filed charge, i.e., whether the allegations involve the same legal theory and usually the same section of the Act; (2) whether the otherwise untimely allegation arises from the same factual situation or sequence of events as the allegation in the timely charge, i.e., whether the allegations involve similar conduct, usually during the same time period, and with a similar object; and (3) whether a respondent would raise the same or similar defenses to both allegations.

Charter Communications, LLC, 366 NLRB No. 46, at p. 2 (2018), *enf'd*, 939 F.3d 798 (6th Cir. 2019); see also *Alternative Energy Applications, Inc.*, 361 NLRB at 1203, citing *Redd-I, Inc.*, 290 NLRB 1115, 1118 (1988). In *Carney Hospital*, the Board held that with respect to the second factor, "the mere occurrence" of alleged violations "during or in

response to the same organizing campaign is insufficient” to demonstrate the required “close factual relationship.” 350 NLRB 627 (2007). However, the Board stated that an adequate factual relationship can be established via a showing that the conduct which is the subject of the untimely allegation is “part of an overall employer plan to undermine union activity,” or involves “similar conduct, usually within the same period with a similar object.” *Carney Hospital*, 350 NLRB at 630, quoting *Ross Stores, Inc. v. NLRB*, 235 F.3d 669, 673 (D.C. Cir. 2001) and *Sam’s Club v. NLRB*, 173 F.3d 233, 246 (4th Cir. 1999). A close factual relationship may also be demonstrated by a “causal nexus between the allegations,” or where the incidents involved “are part of a chain or progression of events.” *Carney Hospital*, 350 NLRB at 630.

The allegation that in June 2022 Montaner unlawfully threatened that employees at non-unionized castles could not receive a wage increase because employees at the New Jersey castle had filed a petition for a representation election is not time-barred pursuant to the analysis described above. This contention, first alleged in the Complaint issued on August 21, 2023, is closely related to allegations contained in the charge and amended charge in Case No. 22-CA-301865. The first charge in that case was filed on August 22, 2022, within six months of Montaner’s June 2022, meetings with the employees, and alleged in part that, “Within the last six months, [Medieval Times] did not provide raises to employees at its Lyndhurst, New Jersey location when it provided raises to employees at other locations, in retaliation for Lyndhurst employees’ protected concerted activities.” G.C. Ex. 1(b). On May 19, 2023, the Union filed an amended charge in Case No. 22-CA-301865, alleging in part that: (i) “within the last six months,” Medieval times “did not provide raises” to the New Jersey employees while providing raises to employees at other locations, in retaliation for the New Jersey employees’ protected concerted activities; and (ii) “On or about July 4, 2022, the Employer gave mid-year \$1 wage increases to non-unionized employees but failed to give such raises” to the New Jersey employees “to chill, deter, and/or interfere with” the New Jersey employees’ Section 7 rights. G.C. Ex. 1(l).

Pursuant to the first of the factors comprising the *Redd-I* analysis, the timely allegations contained in the charge and the complaint’s allegation regarding Montaner’s statements address violations premised upon the same theory. The timely filed charge alleged that the New Jersey castle employees had not received a wage increase because of their Union activity and petition for a representation election, while the Complaint alleged that Montaner had threatened the New Jersey employees that employees at other castles could not be given a wage increase for the same reason. Therefore, both contentions are premised upon a theory that Medieval Times was attempting to unlawfully coerce employees in the exercise of their Section 7 rights via its control over their wage rates and the withholding of wage increases. See *Vista del Sol Health Services, Inc.*, 363 NLRB 1193, 1219 (2016) (untimely allegation regarding wage increase motivated by anti-union animus and timely allegations of unlawful inducements and promises of benefits both grounded in theory of “unlawful inducements”); *Fry’s Food Stores*, 361 NLRB 1216, 1216-1217 (2014) (allegations implicated the same legal theory where all involved discrete facets of an investigatory interview subject to *Weingarten* protections). It should be noted in this respect that, as the Board has

stated, “it is not necessary that the same sections of the Act be invoked” in order to find that timely and untimely allegations share a similar legal theory. *Nickles Bakery of Indiana*, 296 NLRB 927, 928, fn. 5 (1989); see also *Vista Del Sol Health Services, Inc.*, 363 NLRB at 1218-1219 (untimely allegation that wage increase instituted for retaliatory reasons violated Section 8(a)(3) and timely allegations that statements constituting unlawful inducements and promises of benefits violated Section 8(a)(1) both premised upon “unlawful inducements” theory). The Complaint allegation involving Montaner’s statement consequently shares an underlying theory with the timely filed allegations that Medieval Times used its control over wage rates to restrain and coerce employees in the exercise of their Section 7 rights pursuant to the first component of the *Redd-I* analysis.

The record also establishes that the untimely allegation regarding Montaner’s remarks is part of the same “factual situation or sequence of events as the allegation in the timely charge,” the second of the *Redd-I* factors. Montaner’s allegedly unlawful statement in June 2022, is one of a series of allegations involving Medieval Times’ purportedly unlawful response to AGVA’s nationwide organizing, which includes the meetings at the New Jersey castle with labor consultant Rian Wathen in June 2022, the trademark infringement litigation initiated on October 13, 2022, the written and final warnings issued to Christopher Lucas on October 14, 2022 and December 15, 2022, Lucas’ discharge on January 21, 2023, Medieval Times’ alleged complaints to Facebook and TikTok regarding the New Jersey and California MTPU accounts on those platforms in late January 2023, and the alleged threat to discipline Marcus Vere for handbilling at the New Jersey castle on February 10, 2023. The Complaint in effect alleges these activities as “part of an overall employer plan to undermine union activity” with the objective of thwarting AGVA’s nationwide organizing effort. *Carney Hospital*, 350 NLRB at 630; see also *Charter Communications, LLC*, 366 NLRB No. 46 at p. 3.

In addition, Montaner’s remarks can be considered as “part of a chain or progression of events” which eventually involved the allegedly retaliatory written and final warnings issued to Lucas and Lucas’ allegedly unlawful discharge.³⁰ The evidence establishes that Lucas spoke in favor of the Union during Montaner’s meeting with the show cast employees in mid-June 2022, telling Montaner candidly that while the employees “want to hear what you have to say,” the meeting “started out on the wrong foot,” because Montaner “should have been the one to just come out and speak your heart to us,” but “first we got 15 minutes of hammering the union.” G.C. Ex. 9(c), p. 30. Later in the meeting, Lucas explained the genesis of the employees’ rationale for embarking upon the organizing campaign with AGVA. G.C. Ex. 9, p. 51-54. Lucas’ statements during the meeting therefore not only identified him as a key Union supporter but criticized management’s treatment of the knights and show cast, as well as the conduct of the meeting itself. The untimely allegation regarding Montaner’s statement is therefore part of “a progression of events” related to Medieval Times’ “response to the union campaign” which allegedly encompassed Lucas’ discharge. See

³⁰ The initial charge alleging that Medieval Times violated Sections 8(a)(1) and (3) of the Act by discharging Lucas on January 21, 2023, in retaliation for his Union support and activities was filed on February 17, 2023, well-within the Section 10(b) period. See G.C. Ex. 1(j).

Charter Communications, LLC, 366 NLRB No. 46 at p. 3 (timely and untimely allegations factually related where all were pertinent to “Respondent’s belief that [alleged discriminatee] was the mastermind of the union activity and to the steps it allegedly took to thwart that activity”); *Metro One Loss Prevention*, 356 NLRB 89, 100 (2010) (all allegations factually related where they pertained to “Respondent’s reaction to the Union’s campaign and [alleged discriminatee’s] prominent role therein, and its attempt to thwart that campaign”).

The final component of the *Redd-I* analysis also supports the conclusion that the untimely allegation regarding Montaner’s statements in June 2022 is closely related to timely filed allegations. The third component of the analysis addresses whether the respondent “would raise the same or similar defenses to both allegations,” including “whether a reasonable respondent would have preserved similar evidence and prepared a similar case in defending” the timely and untimely allegations. *Redd-I*, 290 NLRB 1118; see also *Starbucks Coffee Co.*, 372 NLRB No. 50 at p. 3, reconsideration denied, 372 NLRB No. 102 (2023); *Fry’s Food Stores*, 361 NLRB at 1217. The Board has found that the *Redd-I* standard may be met even if the third component of the analysis is not satisfied. See *Alternative Energy Applications, Inc.*, 361 NLRB at 1203 (untimely allegation regarding supervisor’s prohibition on employee’s discussion of wages and threat of discharge closely related to timely allegation that employee was unlawfully discharged, even though “the alleged unlawful statement and discharge would not necessarily prompt the same or similar defenses”).

Here, Montaner’s remarks at the June 2022 meetings – purporting to explain why Medieval Times was not increasing wages for employees at the New Jersey castle – would be inevitably presented as part of a case that Medieval Times had in fact provided wage increases to employees at other castles, while refusing to do so in New Jersey, in retaliation for the New Jersey employees’ Union support and activities. Thus, the case presentations for the timely allegations would have necessarily encompassed evidence regarding Montaner’s remarks at the June 2022 meetings. See *Airgas USA, LLC*, 373 NLRB No. 102 at p. 2 (2024) (managers’ statements to employees “the most direct evidence of animus” and “go directly to the Respondent’s motive for failing to grant the...wage increase to the unit employees”). Furthermore, because, as discussed above, the allegations regarding Montaner’s remarks have been included in the Complaint since its first iteration issued on August 21, 2023, and the hearing opened on January 16, 2024, Medieval Times was given an adequate opportunity to prepare a response.

For all of the foregoing reasons, I find that the allegation that Medieval Times violated Section 8(a)(1) when Montaner threatened in June 2022, that employees at non-unionized Medieval Times facilities could not receive a wage increase because employees at the New Jersey castle had filed a petition for a representation election is not precluded by Section 10(b) of the Act.

2. Montaner’s Statements during the Meetings in June 2022, Violated Section 8(a)(1) of the Act

Section 7, the Act's fundamental provision, states in part that employees "shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other
 5 concerted activities for the purpose of collective bargaining or other mutual aid or protection." Section 8(a)(1) of the Act provides that an employer may not "interfere with, restrain, or coerce employees" in the exercise of their rights to engage in activity protected by Section 7. It is well-settled that employer motive and an employee's subjective interpretation of the employer's conduct is generally "immaterial" when
 10 evaluating an alleged violation of Section 8(a)(1). *Lush Cosmetics, LLC*, 372 NLRB No. 54 at p. 3 (2023), quoting *KSM Industries, Inc.*, 336 NLRB 133 (2001); see also *Boar's Head Provisions Co.*, 370 NLRB No. 124 at p. 1, fn. 1 and at p. 16 (2021). Instead, the Board determines whether "statements alleged to violate Section 8(a)(1)...have a reasonable tendency to coerce employees in the exercise of their Section 7 rights." *Id.*
 15 In applying this analysis, the Board "considers the total context of the alleged unlawful conduct from the viewpoint of its impact on employees' free exercise of their rights" pursuant to Section 7. *Lush Cosmetics Co.*, 372 NLRB No. 54 at p. 3, citing *American Tissue Corp.*, 336 NLRB 435, 441-442 (2001).

As a general matter, during an organizing campaign an employer may lawfully grant or withhold a wage increase or other benefits, so long as it is not "manipulating benefits in order to influence [the] employees' decision during the union organizing campaign." *Aluminum Casting & Engineering Co.*, 328 NLRB 8, 9 (1999), *enf'd.* in relevant part 230 F.3d 286 (7th Cir. 2000), quoting *NLRB v. Otis Hospital*, 545 F.2d 252,
 25 255 (1st Cir. 1976). Thus, an employer may postpone a wage increase or other benefit adjustment "so long as it makes clear to employees that the adjustment would occur whether or not they select a union, and that the sole purpose of the adjustment's postponement is to avoid the appearance of influencing the election's outcome." *KOFY TV-20*, 332 NLRB 771, 792 (2000). By contrast, a statement to employees "blaming the
 30 Union and the upcoming election" for an employer's failure to provide a wage increase or other specific employment benefit violates Section 8(a)(1). *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 at p. 5, 75, reconsideration denied 372 NLRB No. 157 (2023); *KFOY TV-20*, 332 NLRB at 792, quoting *Atlantic Forest Products*, 282 NLRB 855, 858 (1987) (the employer "must avoid attributing to the union the 'onus for the postponement of adjustment in wages and benefits'"); *Aluminum Casting & Engineering Co.*, 328 NLRB at 8.
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Pursuant to this standard, Montaner's remarks at the meetings with employees in mid-June 2022 were unlawfully coercive, and therefore violated Section 8(a)(1).³¹

³¹ The evidence establishes that Montaner met with groups of Medieval Times employees at least twice, on June 16 and 17, 2022. Montaner testified that he could not recall exactly what he said to the employees at these meetings, but stated that his remarks at each of the meetings were "pretty consistent, so I don't think there must have been differences." Tr. 945-946. Thompson also indicated that Montaner's remarks regarding wages "would have been" similar in all of the meetings. Tr. 792, 796, 801, 802-803. Furthermore, Medieval Times contends in its Post-Hearing Brief at 21-22 that Montaner made substantially similar statements at both meetings. As a result, the evidence establishes that Montaner's

Montaner, in concert with Wathen, squarely blamed the Union and the existence of the organizing campaign for not providing the employees with mid-year raises. Montaner began by stating that the company had been “preparing over the last month and a half” to provide “mid-year raises,” which “we’ve never done,” but “just as we were about to do it, we can’t do it now,” and “we can’t do anything for anyone.” G.C. Ex. 9(c), p. 12-13. Wathen elaborated that “once a petition is filed, all of you are in what is called status quo,” such that Medieval Times “can’t do anything negative, but they can’t do anything positive, either.” G.C. Ex. 9(c), p. 13. This statement did not accurately describe Medieval Times’ legal obligations, as Respondent contends in its Post-Hearing Brief, for, as discussed above, an employer may grant wage increases while a representation petition is pending so long as it is not deliberately “manipulating benefits in order to influence [the] employees’ decision during the union organizing campaign.” *Aluminum Casting & Engineering Co.*, 328 NLRB at 9; Post-Hearing Brief at 23-24. In fact, the Board has found that similar statements impermissibly blamed the Union for the employer’s failure to provide wage increases prior to a representation election. See *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 at p. 75 (employer unlawfully blamed Union for failure to provide annual cost of living increases by telling employees that they “were in a status quo position” due to impending representation election, and employer was not “able to give out raises at that point for that reason”). Wathen then stated that changes in wages or other benefits which had not been previously scheduled could be “considered a bribe,” such that “the labor attorneys have recommended the safest course of action is not to do anything...until after the election.” G.C. Ex. 9(c), p. 13. While this remark may have construed Medieval Times as motivated by a desire to “avoid the appearance of influencing the election’s outcome” in foregoing wage increases, it also acknowledged that the actual decision was made by Medieval Times itself, and was not legally mandated. *KOFY TV-20*, 332 NLRB at 792 (evidence ultimately undermined employer’s claim that it was “doing only what the law allows” in delaying wage increases).

Furthermore, Montaner and Wathen’s remarks did not “make clear” that the mid-year wage increases would occur regardless of whether or not the employees selected the Union as their collective bargaining representative. See *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 at p. 76; *KOFY TV-20*, 332 NLRB at 792. Instead, Montaner and Wathen raised the specter of a protracted collective bargaining process which would preclude implementing wage increases or other benefits for an extended period of time. Montaner told the employees that “if the union is to win, I’m not going to be able to act. I’m not going to do a lot of things.” G.C. Ex. 9(c), p. 16. Montaner stated that instead the employees’ terms and conditions of employment would “be in the hands of the lawyer talking to another lawyer,” who would “drag it out” to maximize their own billings. *Id.* Wathen stated that if the Union became the employees’ collective bargaining representative, they would be “in status quo,” precluding wage and benefits changes, which would not be “lifted until or if you get a contract,” whereas “If the union loses the election, the status quo is lifted 10 days after the election.” G.C. Ex. 9(c), p. 14. Thus, toward the end of the meeting, Montaner told the employees that

remarks recorded on January 16, 2022, in evidence as General Counsel Exhibit 9(a, c), are representative of his statements in all of his meetings with employees that occurred in mid-June 2022.

management was “paying attention” to their concerns, and “had an action plan,” but “Right now it has to be on hold.” G.C. Ex. 9(c), p. 67. These comments conveyed to the employees that selecting the Union as their representative would preclude wage increases throughout an interminable collective bargaining process, and effectively
 5 blamed the Union and the organizing campaign for Medieval Times’ failure to provide the mid-year wage increases Montaner had broached earlier in the meeting. See *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 at p. 76 (employer violated Section 8(a)(1) when it not only failed to reassure employees that wage increases would be provided after representation election, but communicated “that in
 10 the event the union won the election that bargaining could take years”).

For all of the foregoing reasons, the evidence establishes that during meetings with employees in mid-June 2022, Medieval Times CEO Pedro de Montaner made statements threatening that employees at non-unionized Medieval Times facilities could
 15 not receive a wage increase because employees at the New Jersey castle had filed a petition for a representation election and blaming the Union for Respondent’s failure to provide mid-year wage increases, in violation of Section 8(a)(1) of the Act.

20 D. Medieval Times’ Filing and Maintenance of the Trademark Infringement Lawsuit

The Complaint alleges that on October 13, 2022, Medieval Times filed a trademark infringement lawsuit against MTPU and AGVA in the United States District Court for the District of New Jersey which was not reasonably based and was filed with
 25 a retaliatory motive, or was initiated in order to further an illegal objective, in violation of Section 8(a)(1) of the Act. For the reasons discussed herein, the evidence overall substantiates this contention.

In *Bill Johnson’s Restaurants v. NLRB*, the Supreme Court held that in order to
 30 establish that a pending lawsuit violated Section 8(a)(1), the evidence must demonstrate that the lawsuit lacked a reasonable basis and was filed with a retaliatory motive. 461 U.S. 731, 748 (1983). The Supreme Court further held in *Bill Johnson’s Restaurants* that if the lawsuit had ended “in a judgment adverse to the plaintiff,” the Board could find a violation if the evidence established that the lawsuit “was filed with
 35 retaliatory intent.” 461 U.S. at 749. Years later however, in *BE&K Construction Co. v. NLRB*, the Supreme Court determined that a standard prohibiting “all reasonably based but unsuccessful suits filed with a retaliatory purpose” was invalid. 536 U.S. 516, 536 (2002); see also *Milum Textile Services Co.*, 357 NLRB 2047, 2049 (2011). Subsequently, on remand from the Supreme Court, the Board held that in order to
 40 establish a violation of the Act, the evidence must demonstrate that the lawsuit in question was not reasonably based, regardless of the status of the lawsuit itself and the plaintiff’s motive in filing it. *BE&K Construction Co.*, 351 NLRB 451, 456 (2007). As a result, after *BE&K Construction Co.* a lawsuit may violate Section 8(a)(1) only if it is “both objectively baseless and retaliatory,” is preempted, or “has an objective that is
 45 illegal under federal law.” *International Longshoremen’s Association, AFL-CIO, CLC*,

372 NLRB No. 36 at p. 4-5 (2022), enf'd. 74 F.4th 368 (4th Cir. 2023), quoting *Bill Johnson's Restaurants*, 461 U.S. at 737, fn. 5.

In its decisions, the Board has developed criteria for determining whether a lawsuit lacks a reasonable basis, or whether “no reasonable litigant could realistically expect success on the merits.” *BE&K Construction Co.*, 351 NLRB at 457, quoting *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries*, 508 U.S. 49, 60 (1993); see also *Atelier Condominium & Cooper Square Realty*, 361 NLRB 966, 968 (2014), enf'd. 653 Fed.Appx. 62 (2nd Cir. 2016). The Board has incorporated factors discussed by the Supreme Court in *Bill Johnson's Restaurants* to elucidate the standard for determining a lawsuit's lack of reasonable basis, such as whether “the plaintiff's position is plainly foreclosed as a matter of law or is otherwise frivolous,” and whether the claims are based upon “plainly unsupportable [factual] inferences” or “patently erroneous submissions with respect to mixed questions of fact and law.” *Allied Mechanical Services*, 357 NLRB at 1229, enf. denied 734 F.3d 486 (6th Cir. 2013), quoting *Bill Johnson's Restaurants v. NLRB*, 461 U.S. at 731, 745 fn. 11, 747. In addition, the Board has stated that the General Counsel must establish that the plaintiff, “When it filed its complaint or during the time before it voluntarily dismissed the action, did not have and could not have reasonably believed it could acquire through discovery or other means evidence needed to prove essential elements of its causes of action.” *Milum Textile Services*, 357 NLRB at 2053. The Board has also stated that it “may draw guidance from the summary judgment and directed verdict jurisprudence” in the appropriate forum to determine whether a lawsuit is reasonably based, as discussed by the Supreme Court in *Bill Johnson's Restaurants*. *Allied Mechanical Services*, 357 NLRB at 1229, quoting *Bill Johnson's Restaurants v. NLRB*, 461 U.S. at 746 fn. 11; see also *Milum Textile Services*, 357 NLRB at 2053.

The Board has similarly developed criteria for determining whether a lawsuit was initiated with a retaliatory motive. For example, the Board evaluates whether the lawsuit “was filed in response to protected activity.” *Atelier Condominium & Cooper Square Realty*, 361 NLRB at 970; see also *Milum Textile Services Co.*, 357 NLRB at 2049, 2051; *Allied Mechanical Services*, 357 NLRB at 1232. The Board also considers whether additional factors, such as other unfair labor practices and independent evidence of unlawful motive, tend to establish anti-union animus relating to the defendants. See *Atelier Condominium & Cooper Square Realty*, 361 NLRB at 970; *Allied Mechanical Services*, 357 NLRB at 1232; *Milum Textile Services*, 357 NLRB at 2049, 2051-2052. The amount and nature of the damages sought by the plaintiff may also demonstrate retaliatory motive. See *Atelier Condominium & Cooper Square Realty*, 361 NLRB at 971 (claim for total damages of \$190 million “as both compensatory and punitive, without differentiation” redolent of unlawful intent). Finally, the Board may consider a lawsuit's “obvious lack of merit” as evincing its retaliatory nature. *Atelier Condominium & Cooper Square Realty*, 361 NLRB at 970; *Allied Mechanical Services*, 357 NLRB at 1233.

The complaint filed by Medieval Times on October 13, 2022 alleges that MTPU and AGVA used Medieval Times' registered trademark without authorization “in

connection with the sale, offering for sale, and distribution of” MTPU “goods and services” in a manner “likely to cause confusion, deception, and mistake by buyers and the consuming public,” thereby infringing Medieval Times’ trademark pursuant to § 1114 of the Lanham Act.³² The complaint also alleges that MTPU and AGVA’s conduct

5 constituted “trademark infringement, false designation of origin, and unfair competition in violation of the Lanham Act,” 15 U.S.C. § 1125(a).³³ The complaint alleges that MTPU and AGVA acted “at the least recklessly and at the most intentionally” and “in bad faith” in their conduct violating 15 U.S.C. § 1114, thereby entitling Medieval Times to “treble damages, attorneys’ fees and cost of suit.” In addition, as part of the relief

10 sought, Medieval Times requested that MTPU and AGVA be enjoined from “providing services under the name MEDIEVAL TIMES (alone or in combination with other terms, including ‘Performers United’)”. Jt. Ex. 1, p. 25, 27, 28-29.

The Lanham Act is the “core” federal statute protecting trademarks, images which

15 identify a product’s source and distinguish that source from others. *Jack Daniel’s Properties, Inc. v. VIP Products LLC*, 599 U.S. 140, 146 (2023), citing 1 J. McCarthy, Trademarks and Unfair Competition § 3:1 (5th ed. 2023). Trademarks benefit consumers by enabling them to choose “the goods and services that they wish to purchase, as well as those they want to avoid,” and benefit the producing source to

20 ensure that they “reap the financial rewards associated with the product’s good reputation.” *Jack Daniel’s Properties, Inc.*, 599 U.S. at 146, quoting *Matal v. Tam*, 582 U.S. 218, 224 (2017), and *Qualitex Co. v. Jacobson Products Co.*, 514 U.S. 159, 164 (1995). In order to prevail on claims of trademark infringement, false designation of origin, and unfair competition, a plaintiff must establish that its marks are valid and

25 legally protectable, that it owns the marks, and that the defendant’s use of the marks to identify particular goods or services is likely to create confusion regarding the goods and services’ origin or source. See, e.g., *Checkpoint Systems, Inc. v. Check Point Software Technology, Inc.*, 269 F.3d 270, 279-280 (3rd Cir. 2001); *A & H Sportswear, Inc. v. Victoria’s Secret Stores, Inc.*, 237 F.3d 198, 210 (2000); see also *Jack Daniel’s*

30 *Properties, Inc.*, 599 U.S. at 147 (“Confusion as to the source is the *bête noire* of trademark law,” as it “stands directly opposed to the law’s twin goals of facilitating consumers’ choice and protecting producers’ good will”). Consonant with the Lanham Act’s fundamental purpose, §§ 1114 and 1125(a) specifically require that the use of the mark at issue occur “in commerce.” *Sensient Techs. Corp. v. SensoryEffects Flavor*

³² 15 U.S.C. 1114(1)(a) provides that an individual infringes a trademark where they “use in commerce,” without the trademark holder’s consent, “any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.”

³³ 15 U.S.C. 1125(a)(1)(A) states that “any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which...is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person” “shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.”

Co., 613 F.3d 754 (8th Cir. 2010); *Cellco Partnership v. Communication Workers of America*, 2003 WL 25888375 at *2-3 (D. N.J. 2003).

A likelihood of confusion exists when consumers viewing a mark “would probably assume that the product or service it represents is associated with the source of a different product or service identified by a similar mark.” *A & H Sportswear, Inc. v. Victoria’s Secret Stores, Inc.*, 237 F.3d at 211, quoting *Dranoff-Perlstein Associates v. Sklar*, 967 F.2d 852, 862 (3rd Cir. 1992). Where the goods at issue in a trademark infringement dispute do not directly compete with one another, the Third Circuit evaluates the following “nonexhaustive” list of factors in order to determine whether a likelihood of confusion exists between marks:

- (1) The degree of similarity between the owner’s mark and the allegedly infringing mark;
- (2) The strength of the owner’s mark;
- (3) The price of the goods and other factors indicative of the care and attention expected of consumers when making a purchase;
- (4) The length of time the defendant has used the mark without evidence of actual confusion arising;
- (5) The intent of the defendant in adopting the mark;
- (6) The evidence of actual confusion;
- (7) Whether the goods, though not competing, are marketed through the same channels of trade and advertised through the same media;
- (8) The extent to which the targets of the parties’ sales efforts are the same;
- (9) The relationship of the goods in the minds of consumers because of the similarity of function;
- (10) Other facts suggesting that the consuming public might expect the prior owner to manufacture a product in the defendant’s market, or that he is likely to expand into that market.

A & H Sportswear, Inc., 237 F.3d at 211, citing *Interpace Corp. v. Lapp, Inc.*, 721 F.2d 460, 462 (3rd Cir. 1983). In the Third Circuit, courts generally refer to these criteria as “the *Lapp* factors,” and to the overall standard as “the *Lapp* analysis.”

The District Court granted MTPU and AGVA’s Motion to Dismiss Medieval Times’ trademark infringement complaint in an Opinion dated September 28, 2023. *Jt. Ex. 5; Medieval Times U.S.A., Inc. v. Medieval Times Performers United*, 695 F.Supp.3d 593

(2023). In doing so, the District Court applied the standard applicable under Federal Rule of Civil Procedure 12(b)(6) for “failure to state a claim upon which relief can be granted,” that dismissal of a complaint is appropriate where “accepting all of the facts alleged in the complaint as true, the plaintiff has failed to plead ‘enough facts to state a claim to relief that is plausible on its face.’” Jt. Ex. 5, p. 4, quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007); see also *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While this standard does not require factual allegations establishing a “probability” that the plaintiff is entitled to relief, the allegations must demonstrate “more than a sheer possibility that a defendant acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. at 678. The court must accept all well-pleaded allegations as true and “view them in the light most favorable to the plaintiff,” but need not credit “bald assertions” or “legal conclusions.” *In re Burlington Coat Factory Securities Litigation*, 114 F.3d 1410, 1429 (3rd Cir. 1997); see also *Bell Atlantic Corp.*, 550 U.S. at 555; *Ashcroft v. Iqbal*, 556 U.S. at 678-679. Thus, the complaint must contain “well-pleaded facts” which allow the trier of fact to “infer more than the mere possibility of misconduct.” *Ashcroft v. Iqbal*, 556 U.S. at 679.

In this legal context, the record evidence establishes that Medieval Times’ lawsuit was not reasonably based pursuant to *BE&K Construction*, in that during the filing and pendency of the lawsuit Medieval Times “could not have reasonably believed it could acquire through discovery or other means evidence needed to prove essential elements of its causes of action.” *Milum Textile Services*, 357 NLRB at 2053. Specifically, the evidence demonstrates that Medieval Times could not have reasonably believed it could acquire evidence to establish that the alleged use of its marks by MTPU and AGVA was “likely to create confusion regarding the origin of the goods or services” in the minds of consumers, an essential component of its claims of trademark infringement, false designation of origin, and unfair competition. *Checkpoint Systems, Inc.*, 269 F.3d at 279-280; see also *A & H Sportswear, Inc.*, 237 F.3d at 211. The evidence further establishes that Medieval Times could not have reasonably believed that MTPU and AGVA’s use of its marks occurred “in commerce,” as required pursuant to §§ 1114 and 1125(a) of the Lanham Act. Thus, the evidence ultimately establishes that Medieval Times’ trademark infringement lawsuit against MTPU and AGVA lacked a reasonable basis pursuant to *BE&K* and subsequent Board caselaw.³⁴

³⁴ Medieval Times contends in its Post-Hearing Brief at 44 that I “expressly and repeatedly barred” it from presenting evidence regarding “the validity of the IP Lawsuit.” In fact, I ruled that Respondent’s questions to employee Erin Zapcic on cross-examination regarding whether she purchased items with the MTPU logo would not elicit relevant information, given the Board’s analysis regarding whether a lawsuit was not reasonably based and was initiated with a retaliatory motive. See Tr. 672-673, 675-677. I further explained that because the standard requires a consideration of whether the Respondent “did not have, and could not have reasonably believed it could acquire through discovery or other means, evidence needed to prove essential elements of its causes of action,” evidence regarding *Medieval Times’* knowledge of facts relevant to the purportedly improper use of its trademark in commerce might be relevant to whether its lawsuit violated Section 8(a)(1). *Milum Textile Services Co.*, 357 NLRB at 2053. My reference at the hearing to the *Conley v. Gibson* standard for evaluating a motion to dismiss pursuant to Rule 12(b)(6) is corrected in my analysis herein. Tr. 675-676.

As discussed above, in an Opinion dated September 28, 2023, the United States District Court for the District of New Jersey dismissed Medieval Times' trademark infringement lawsuit with prejudice, pursuant to a motion filed by MTPU and AGVA.³⁵ The Board has held that while the dismissal of a lawsuit does not conclusively demonstrate that the lawsuit lacked a reasonable basis, "the rationale set forth" by the court that did so "appropriately bears on that question." *Allied Mechanical Services*, 357 NLRB at 1229. As a result, I shall proceed from the reasoning and analysis articulated in the District Court's Opinion granting MTPU and AGVA's Motion to Dismiss Medieval Times' complaint pursuant to Rule 12(b)(6).

In dismissing Medieval Times' lawsuit, the District Court concluded that Medieval Times had failed to plead facts sufficient to establish a level of similarity between its own mark and the mark used by MTPU and AGVA which was "likely to create confusion" in consumers' minds regarding the origin of goods and services. As the District Court stated in its Opinion, similarity between the owner's mark and the allegedly infringing mark is the "single most important factor in determining likelihood of confusion" pursuant to the *Lapp* analysis. Jt. Ex. 5 at p. 7, quoting *Kos Pharmaceuticals, Inc. v. Andrx Corp.*, 369 F.3d 700, 712-713, 725 (3rd Cir. 2004); see also *A&H Sportswear, Inc.*, 267 F.3d at 216. Marks are considered confusingly similar where "ordinary consumers would likely conclude that [the two products] share a common source, affiliation, connection or sponsorship." *Kos Pharmaceuticals, Inc.*, 369 F.3d at 713, quoting *Fisons Horticulture, Inc. v. Vigoro Industries, Inc.*, 30 F.3d 466, 477 (3rd Cir. 1994); see also *A&H Sportswear, Inc.*, 237 F.3d at 216. The general test for similarity does not involve a "side-by-side comparison," of the marks but requires a consideration of "whether the labels create the same overall impression when viewed separately." *Id.*

Here, as the District Court discusses, the Medieval Times and MTPU logos are unmistakably visually distinct. Jt. Ex. 5, p. 6-7. For example, the Medieval Times logo consists of two lines of yellow and black script – stating "Medieval Times" and "Dinner & Tournament," respectively. Jt. Ex. 5, p. 2; see also Jt. Ex. 1, p. 12. However, the MTPU logo consists of a red circle with red swords emerging from it; the red circle contains a yellow ring near its border, and the red area inside the yellow ring contains a yellow fist emerging from a black castle. The yellow ring near the border includes black lettering stating "Medieval Times Performers" at the top, and "UNITED" at the bottom. Lettering in the red area surrounding the yellow fist and black castle states, "Represented by AGVA" at the top and "Medieval Times Actors, Stunt Performers, and Stable Hands" around the remainder. *Id.*; see also Jt. Ex. 1, p. 14. Furthermore, as the District Court noted, the fonts used for the words "Medieval Times" in the Medieval Times and MTPU logos are entirely dissimilar. Jt. Ex. 5, p. 7. See *A&H Sportswear*,

³⁵ As discussed in the Statement of Facts, General Counsel asserts in her Post-Hearing Brief that the lawsuit remains pending on appeal before the United States Court of Appeals for the Third Circuit. Medieval Times represents that the lawsuit has been resolved, and an April 5, 2024, Order of the Third Circuit dismissing the case is available on Westlaw. *Medieval Times U.S.A., Inc. v. Medieval Times Performers United, et al.*, 2024 WL 1734077. However, as discussed *supra*, under the *BE&K* standard the current posture of the lawsuit alleged to have violated Section 8(a)(1) is not dispositive.

Inc., 267 F.3d at 217. Thus, the two logos are completely visually distinctive.³⁶ In addition, as the District Court states, the components of the MTPU logo which are similar to elements of Medieval Times' business operations – such as a castle with parapets and swords – are generically associated with the Medieval era and not unique to Medieval Times' operations in and of themselves. Jt. Ex. 5, p. 7; see also Jt. Ex. 1, p. 7-11, 17-18, 20. The only other commonality is the use of the colors red and yellow in both the MTPU logo and in Medieval Times' costumes and castle façade. Jt. Ex. 5, p. 6. As a result, as the District Court concluded, "neither a side-by-side comparison nor the overall impression is confusingly similar." Jt. Ex. 5, p. 7; see also *Trader Joe's Co. v. Trader Joe's United*, 2024 WL 305697 at *6-7 (C.D. Ca. 2024) (no "compelling similarities" between marks of employer and labor union where apart from the "Trader Joe's" name in both logos, "the use of the color red and the circle logo shape" were the "only negligible similarities," and the union's design contained "a raised fist...widely recognized as a symbol of labor, social, and political movements"); *Silgan Containers LLC v. International Association of Machinists*, 2018 WL 5840766 at *3 (E.D. Wis. 2018) (no plausible likelihood of confusion where the union was "not using a close copy of the SILGAN trademark or logo, but instead merely using the name 'Silgan' as an identifier of the employer of the employees it seeks to assist in unionizing").³⁷

The dissimilar nature of the Medieval Times and MTPU logos discussed by the District Court – both when directly juxtaposed and in light of the various accoutrements of clothing, décor and design used in Medieval Times' operations – was well-known to Medieval Times when Respondent initiated its lawsuit on October 13, 2022. The MTPU website created in the summer or fall of 2022 contained the MTPU logo, as did MTPU's Facebook and Twitter accounts created in June 2022. G.C. Ex. 2, 11, 12, 13; Tr. 343-344, 387. Stickers and other materials containing the MTPU logo had been distributed prior to the election. See Tr. 433-438, 732-734; G.C. Ex. 14. Indeed, Medieval Times reproduced the MTPU logos and materials which purportedly infringed its trademark in the complaint it filed against MTPU and AGVA on October 13, 2022. See Jt. Ex. 1 p. 15, 16, 17, 21, 22, 23. Thus, Medieval Times was aware when it initiated its lawsuit of the insubstantial nature of its contention that its mark and the MTPU's logo were sufficiently similar to generate a likelihood of confusion in the minds of consumers – the first and most important element of the *Lapp* analysis. See *Food Science Corp. v. Nagler*, 2010 WL 4226531 at *3 (D.N.J. 2010) (noting that "by its nature, a trademark claim turns on facts known to a plaintiff because it requires a showing that the public is likely to be deceived by the public conduct of the defendant toward the plaintiff's own mark").

³⁶ It is also readily apparent, as the District Court determined, that the scalloped border enclosing the yellow fist emerging from the black castle on MTPU's social media accounts is visually diverse from the several different crests and coats of arms used by Medieval Times in its operations. See Jt. Ex. 1, p. 7-11, 21; Jt. Ex. 5, p. 3, 7.

³⁷ By contrast, in *Brach Van Houten Holding, Inc. v. Save Brach's Coalition for Chicago*, the defendant's logo incorporated the plaintiff's in precisely the same wording, shape, background and colors, except that the defendant changed the color of one of the multiple stripes in the plaintiff's logo's background. 856 F.Supp. 472, 474, 475, fn. 2 (N.D. Ill. 1994). The District Court here distinguished *Brach Van Houten Holding, Inc.* on this basis. See Jt. Ex. 5, p. 7.

Nor could Medieval Times have reasonably believed that it possessed or could have acquired evidence to establish that MTPU and AGVA intended to cause confusion in the minds of consumers – the fifth of the *Lapp* factors – by creating and using the logo described above. As the Third Circuit has stated, the intent of the defendant in the context of the *Lapp* analysis is relevant “to the extent that it bears on the likelihood of confusion,” such that “mere intent to copy, without more,” does not establish “the defendant’s success in causing confusion.” *A&H Sportswear, Inc.*, 237 F.3d at 225. Instead, a defendant’s intent will evince a likelihood of confusion pursuant to the *Lapp* analysis “only if an intent to *confuse* consumers is demonstrated via purposeful manipulation of the junior mark to resemble the senior’s.” *A&H Sportswear, Inc.*, 237 F.3d at 226 (emphasis in original).

The visual elements of the MTPU logo in and of themselves rebut Medieval Times’ contention that MTPU and AGVA intended to confuse consumers regarding their status or relationship with Medieval Times’ business. The MTPU logo explicitly contains the statements, “Represented by AGVA” and “Medieval Times Actors, Stunt Performers, and Stable Hands,” which encircle a raised fist. Jt. Ex. 5, p. 2; see also Jt. Ex. 1, p. 14, 22. As the District Court noted, on the MTPU website the words “Medieval Times Actors, stunt performers, and stable hands are joining together in union. Represented by the American Guild of Variety Artists (AGVA)” appear under the logo. Jt. Ex. 5, p. 3; see also Jt. Ex. 1, p. 14. Furthermore, on MTPU’s Facebook page, the statement “United for a fairer, safer, and more enjoyable workplace at Medieval Times” appears over the black castle and yellow fist comprising a portion of the MTPU logo. Jt. Ex. 1, p. 19-20; see also Jt. Ex. 5, p. 8. Thus, the District Court concluded that the MTPU materials reproduced in Medieval Times’ complaint deployed Medieval Times’ name and assorted visual elements associated with the Middle Ages in order “to identify the Union as employees of Medieval Times,” and not to generate confusion among consumers as to an association between MTPU and Medieval Times. Jt. Ex. 5, p. 7, quoting *Marriott Corp. v. Great American Service Trades Council*, 552 F.2d 176, 179-180 (7th Cir. 1977) (name chosen by labor organization “may very well facilitate its organizational drive to represent the employees of a particular employer,” as it may “identify and publicize the employer which is the target of the campaign and instill a measure of collective identity among employees”). It should be noted in this respect that the incorporation of employer names into the names of unions and other employee organizations is by no means an uncommon or unprecedented occurrence. See, e.g., *Starbucks Corp.*, 373 NLRB No. 44 (2024) (discussing “Starbucks Workers United” sign); *Amazon.com Services, LLC*, 373 NLRB No. 92 (2024) (involving Decision and Certification of Representative for “Amazon Labor Union”); *Trader Joe’s Company*, 2024 WL 305697 at *1 (Trader Joe’s United the name of “a union representing” the company’s employees).³⁸ Thus, a number of federal district courts have concluded in

³⁸ Medieval Times was aware of this phenomenon at the time the lawsuit was filed. An October 14, 2022 post on its attorneys’ website stated that “the arguments and outcome” of its lawsuit “hold particular significance as high-profile unionization campaigns like Starbucks Workers United and Amazon Labor Union maintain organizing efforts that bear company names.” See Jt. Ex. 38, p. 7, fn. 2, citing <https://www.stevenslee.com/news/stevens-lees-labor-and-ip-team-lead-notable-union-trademark-infringement-case/>

the context of trademark infringement litigation that unions and employee organizations involved in labor organizing have not used the employer's name as a "source identifier" or "to sow confusion," but are simply identifying the employer of the employees for which the union is advocating. See, e.g., *Sligan Containers LLC*, 2018 WL 5840766 at *3 (union was "not using a close copy of the SLIGAN trademark or logo, but instead merely using the name 'Sligan' as an identifier of the employees it seeks to assist in unionizing"); *Circle Group v. Southeastern Carpenters Regional Council*, 2010 WL 11549830 at *6 (N.D. Ga. 2010) (possibility of confusion "remote" where plaintiff Circle "alleges that the Union uses the mark as part of a negative publicity campaign critical of Circle's labor practices, not as a 'source identifier' of a product or service"); *Cintas Corp. v. Unite Here*, 601 F.Supp.2d 571, 579 (S.D.N.Y. 2009), aff'd. 355 Fed.Appx. 508 (2nd Cir. 2009) (union defendants' use of plaintiff's mark not likely to create confusion where they were "not using the 'CINTAS' mark as a 'source identifier,' but rather solely to criticize Cintas' corporate practices"). As a result, the District Court found that Medieval Times had "pled no factual allegations that could support its theory" that the MTPU name could generate "the mistaken impression that Defendants are affiliated with or endorsed by Medieval Times or that Medieval Times' employees are required to become members of the Union," an assertion it characterized as "entirely conclusory." Jt. Ex. 5, p. 8.

Furthermore, as the District Court discusses, the inherently adversarial nature of a union organizing campaign or other labor conflict contravenes any contention that MTPU and AGVA's use of Medieval Times' name and imagery associated with the Middle Ages would be likely to cause confusion in terms of the ninth, "similarity of function," component of the *Lapp* analysis. Jt. Ex. 5, p. 8-9. This factor involves a determination as to whether "buyers and users of each parties' goods are likely to encounter the goods of the other, creating an assumption of common source affiliation or sponsorship," or whether a consumer might "reasonably conclude" that "both related products" were being "offered by the same source" or "one company."³⁹ *Checkpoint Systems, Inc.*, 267 F.3d at 286; *Fisons*, 30 F.3d at 481. Courts have repeatedly found that the adverse interests and often contentious tenor of organizing campaigns and other labor-management conflicts render an assertion of consumer confusion inherently implausible. See *Trader Joe's Co.*, 2024 WL 305697 at *6 ("fundamentally, the context in which consumers find the Union's products," via a union website "openly critical of Plaintiff's labor practices," "minimizes the likelihood the public will mistakenly assume the goods at issue are related"); *Silgan Containers, LLC*, 2018 WL 5840766 at *4 ("Confusion is even less likely to occur...in the context of an attempt to unionize laborers given the inherent adversarial relationship between IAM and Silgan in such a

³⁹ Medieval Times alleges in its complaint that MTPU "appropriates" the New Jersey and California castles "as its own" via the following statements, "If you have questions or need to get in touch with our union at the castle in [Lyndhurst, NJ/Buena Park, CA], contact us at [MTUnitedNJ@gmail.com/MTUnitedCA@gmail.com]." Jt. Ex. 1, p. 18. The phrase "at the castle in" New Jersey or California is obviously describing the respective employee bargaining unit locations, and not asserting that the castles themselves are somehow owned or operated by MTPU. The District Court determined that these statements "accurately reflect that there are two unions – one for those who work at the castle in CA and another for those who work at the castle in NJ," and therefore did not evince bad faith on the part of MTPU or AGVA. Jt. Ex. 5, p. 9.

situation”); *Cintas Corp.*, 601 F.Supp. at 579 (no possible confusion where union defendants’ “entire effort” was “directed at attacking Cintas” via a website characterized by “transparent...dismay”); *WHS Entertainment Ventures v. United Paperworkers International Union*, 997 F.Supp. 946, 951-952 (M.D. Tenn. 1998) (low likelihood that “typical consumer” would experience confusion as to whether union flyers containing a parody of plaintiff restaurant’s logo and “a listing of health food violations” were produced by restaurant itself); *International Association of Machinists v. Winship Green Nursing Center*, 103 F.3d. 196, 203-204 (1st Cir. 1996) (propensity for “consumer” confusion evaluated in light of the “heated” nature of union “representational campaigns”); and see *Jack Daniel’s Properties, Inc.*, 599 U.S. at 153 (“consumers are not so likely to think that the maker of a mocked product is itself doing the mocking”).

Medieval Times was fully cognizant that its own circumstances comported with such a scenario at the time it filed its trademark infringement complaint on October 13, 2022. As discussed above, the MTPU logo which Medieval Times claimed infringed its trademark was developed in the summer of 2002, and is reproduced in Medieval Times’ complaint. The material from the MTPU website discussed above appears in Medieval Times’ complaint as well. See Jt. Ex. 1, p. 19-20. AGVA’s petition for a representation election at the New Jersey castle was filed on May 26, 2022, and Medieval Times hired a labor consultant and conducted a series of meetings in June to convey its opposition to the Union to the employees. On July 22, 2022, AGVA filed a petition for a representation election at the California castle. Three days later, AGVA prevailed in the election at the New Jersey castle, and the election at the California castle was eventually scheduled for November 22, 2022. Furthermore, Doris testified without contradiction that the initial negotiating session between AGVA and Medieval Times for the New Jersey bargaining unit took place in September 2022, and that as of October 13, 2022, the parties were in the early stages of bargaining for a first contract. Tr. 82. In addition, the initial unfair labor practice charge in Case No. 22-CA-301865 had already been filed. Thus, at the time the trademark infringement lawsuit was initiated Medieval Times was well aware that it was embroiled in a protracted labor organizing campaign involving more than one of its locations, with AGVA at that point having successfully been certified as collective bargaining representative in New Jersey and a second representation election pending in California. The evidence further establishes that Medieval Times opposed AGVA’s organizing campaign, and committed other unfair labor practices in response, as described herein. In the context of this ongoing and antagonistic conflict, Medieval Times’ assertion that MTPU and AGVA’s graphics were likely to create confusion among consumers regarding their source, because consumers might believe MTPU and AGVA to be associated with or approved by Medieval Times itself, is simply not convincing.

In addition, as the District Court discussed, Medieval Times did not allege in its complaint that any actual confusion among consumers involving its own trademark and the MTPU logo existed; actual confusion is the sixth of the *Lapp* factors as well as an element of the fourth. Jt. Ex. 5, p. 9. As the District Court noted, actual confusion “may be highly probative of the likelihood of confusion overall.” *Checkpoint Systems, Inc.*, 269 F.3d at 291. Medieval Times’ failure to allege any facts to demonstrate actual

confusion between its own trademark and the MTPU logo constitutes further evidence that its trademark infringement lawsuit was not reasonably based.

Thus, to summarize the factors comprising the *Lapp* analysis, the District Court found that the first and most important – the degree of similarity between Medieval Times’ trademark and the MTPU’s allegedly infringing mark – was “not compelling” and supported the conclusion that Medieval Times had not plausibly alleged a likelihood of confusion. The District Court noted that there was no dispute with respect to the second element of the *Lapp* analysis, the strength of Medieval Times’ mark, which presumably favored a conclusion that a likelihood of confusion could be plausibly alleged. Jt. Ex. 5, p. 6. However, the District Court also found that Medieval Times had not “plead any facts to show” that the Union intended to cause confusion, the fifth of the *Lapp* factors. With respect to the ninth component of the *Lapp* analysis, the District Court determined that Medieval Times had not alleged facts to plausibly establish a likelihood of confusion in terms of similarity of function. Finally, the District Court noted that Medieval Times had not “alleged any actual confusion,” the sixth element of the *Lapp* standard, and a component of the fourth element. Thus, at least four of the ten factors comprising the *Lapp* analysis – including its most critical component – supported a finding that Medieval Times had not plausibly alleged a likelihood of confusion, whereas only one supported a conclusion that Medieval Times had plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp.*, 544 U.S. at 570.

In addition, the record demonstrates that the weakness of Medieval Times’ claims pursuant to the *Lapp* factors comprising the likelihood of confusion analysis was known to Medieval Times at the time that it filed its trademark infringement lawsuit. The first and most important of the *Lapp* criteria – the similarity of the marks – was apparent, as both marks and other visual aspects of Medieval Times’ operations were reproduced in its complaint. The factors undermining an argument that MTPU and AGVA intended to cause confusion and that consumers would likely be confused due to similarity of function (the fifth and ninth *Lapp* factors) were well-known to Medieval Times given the relevant caselaw, its general knowledge of the Union’s activities, and its awareness that it was facing an ongoing, partially successful, Union organizing campaign, negotiations for an initial collective bargaining agreement, and pending unfair labor practice charges. Medieval Times’ cognizance of a lack of evidence regarding actual confusion (the sixth of the *Lapp* factors and an element of the fourth) is demonstrated by its failure to include such an allegation – or any facts supporting one – in its complaint. Thus, the record overall supports the conclusion that Medieval Times’ lawsuit lacked a reasonable basis pursuant to *BE&K* and its progeny.

It should also be noted that in addition to the “likelihood of confusion” analysis which formed the basis for the District Court’s dismissal of Medieval Times’ complaint, AGVA and MTPU also presented a substantial legal argument that the complaint should be dismissed because the Union’s logo was not being used “in commerce,” as required pursuant to §§ 1114 and 1125(a) of the Lanham Act. See Jt. Ex. 2, p. 6-10. The District Court found it unnecessary to address this contention, given Medieval Times’

failure to allege facts sufficient to establish the “plausible likelihood of consumer confusion” necessary to its Lanham Act claims. However, as the Union noted in its Memorandum of Law in Support of its Motion to Dismiss, a number of courts, including the District of New Jersey, have dismissed trademark infringement actions against unions arising out of organizing campaigns and other labor-related issues on the grounds that such activities were not encompassed by the Lanham Act’s requirement that the allegedly infringed trademark be used “in commerce.”⁴⁰ *Cellco Partnership v. Communications Workers of America*, 2003 WL 25888375 at *3-6; see also *Circle Group*, 2010 WL 11549830 at *6; *WHS Entertainment Ventures*, 997 F.Supp. at 947-951; *Sodexo USA, Inc. v. Hotel and Restaurant Employees Local 531*, 989 F.Supp. 169, 172 (D. Conn. 1997). By contrast, the only case discussed by Medieval Times to support its contention that MTPU’s alleged use of its trademark occurred “in commerce” is not directly applicable. See Jt. Ex. 3, p. 16-18. In *Brach Van Houten Holding, Inc. v. Save Brach’s Coalition for Chicago*, the defendant was comprised of a group of organizations, including a Center for Labor Research and an Interfaith Network together with a labor union, which was “providing services” in connection with an impending plant closure. 856 F.Supp 472, 473, 475-476 (1994); see also *United We Stand America, Inc. v. United We Stand, America, New York, Inc.*, 128 F.3d 86, 89-90 (2nd Cir. 1997) (collecting cases involving not-for-profit organizations which provided “services” pursuant to the Lanham Act). The cases discussed above which considered *Brach Van Houten Holding, Inc.* in this respect rejected it on the grounds that the intent of union defendants before them was “to pressure an employer in a labor dispute.”⁴¹ *WHS Entertainment Ventures*, 997 F.Supp at 951; *Cellco Partnership*, 2003 WL 25888375 at *4. Thus, the Union here also advanced a significant argument that its logo was not being used “in commerce,” a threshold consideration that would have precluded the Lanham Act’s applicability entirely.⁴²

⁴⁰ In some of these cases, the courts found that that the union’s activities did not constitute a use of the purportedly infringed trademark “in commerce,” even though the union ran advertisements containing the logo as part of its overall campaign. See *Cellco Partnership*, 2003 WL 25888375 at *5-6 (union ran “ads” containing the disputed mark); *Circle Group*, 2010 WL 11549830 at *2 (plaintiff alleged that the union included its trademark in “promotional and advertising materials”). In discussing these decisions, including *Cellco Partnership*, I am fully cognizant that they did not constitute binding precedent on the District of New Jersey in the context of Medieval Times’ lawsuit.

⁴¹ Medieval Times’ Opposition also discusses *International Association of Machinists v. Winship Green Nursing Center* to support its contention that MTPU used its trademark “in commerce.” Jt. Ex. 3, p. 17, quoting 103 F.3d at 202. However, while the concurring opinion in that case, which Medieval Times quotes, concluded that the employer’s “misuse of the union’s trademark in its campaign literature during the union election is not a commercial use of the mark,” the majority specifically stated that it intended to express “no view of the concurring opinion’s suggested holding.” 103 F.3d at 207-208, and at 107, fn. 11. As a result, the majority’s statement, “In the vernacular of the marketplace, IAM was ‘selling’ its services to the prospective union members and Winship was ‘selling’ the negative,” is not a legal determination that the employer’s electioneering propaganda in that case constituted use of a trademark “in commerce” pursuant to the Lanham Act. 103 F.3d at 202.

⁴² Medieval Times countered these contentions primarily by arguing that *Cellco Partnership* was distinguishable because the union in that case did not use any part of the employer’s name in its own moniker, which Medieval Times argued precluded the contention that the union there was using the employer’s name as a “source identifier” and therefore removed its activities from “commerce” within the meaning of the Lanham Act. Jt. Ex. 3, p. 18-19. Such an argument is not compelling given the above

The District Court's dismissal of the complaint in the context of a Rule 12(b)(6) motion further supports a conclusion that Medieval Times' lawsuit was not reasonably based. As the Board noted in *Allied Mechanical Services*, a plaintiff is in a more advantageous position when facing a motion to dismiss pursuant to Rule 12(b)(6), as opposed to a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56, or for a directed verdict pursuant to Rule 50. *Allied Mechanical Services*, 357 NLRB at 1229, fn. 37. As discussed above, the standard for evaluating a motion to dismiss requires that the court consider all "well-pleaded" allegations of the plaintiff's complaint as true to determine whether they establish "a claim to relief that is plausible on its face." A motion for summary judgment or for a directed verdict, by contrast, requires the evaluation of an existing evidentiary record to determine whether the movant has demonstrated that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Thus, in the context of a motion to dismiss the plaintiff has the benefit of an assumption that facts are true based solely upon its own adequately pleaded allegations, allegations which may not be entirely or unambiguously substantiated when the evidentiary record is developed through discovery.

Here, Medieval Times argued at length in its Opposition to MTPU and AGVA's Motion to Dismiss that analysis of the *Lapp* factors prior to any discovery in the trademark litigation would be "premature and incomplete." Jt. Ex. 3, p. 20-22, 25, 27-29, and at p. 22 quoting *Lorillard Technologies, Inc. v. N.J. Ale House, LLC*, 2015 WL 1197531 at *9 (D.N.J. 2015) (likelihood of confusion "a fact-laden inquiry that is more appropriately undertaken at the summary judgment stage"). The District Court, however, found that dismissal of Medieval Times' complaint at the pleading stage was warranted pursuant to circumstances explicitly envisioned by the Supreme Court in the trademark infringement context. As the District Court noted, in 2023 the Supreme Court plainly stated that "every infringement case involving a source-identifying use" need not "require[] full-scale litigation," and in the event that "a plaintiff fails to plausibly allege a likelihood of confusion" dismissal under Rule 12(b)(6) is appropriate. *Jack Daniel's Properties, Inc.*, 599 U.S. at 157, fn. 2; see also *Food Sciences Corp.*, 2010 WL 4226531 at *3 ("Likelihood of confusion is an issue well-suited for screening at the motion to dismiss stage" as plaintiffs in trademark infringement cases do not "face information asymmetries such that even viable claims will be lacking in critical information before discovery"); Jt. Ex. 5, p. 9-10. The Supreme Court indicated that such a result would be warranted where a use does not "present any plausible likelihood of confusion" because there is a "dissimilarity in the marks or various contextual considerations." *Jack Daniel's Properties, Inc.*, 599 U.S. at 157, fn. 2. Such an approach is consonant with the designation of the first of the *Lapp* factors – the degree of similarity between the owner's mark and the allegedly infringing mark – as the most significant component of the *Lapp* analysis. It also suggests that the overall context in which a mark might be used – for example, adversarial circumstances or a non-commercial use of the mark – could render dismissal at the pleadings stage

analysis regarding MTPU and AGVA's use of the words "Medieval Times" in a manner which does not constitute a "source identifier" here. See *Circle Group*, 2010 WL 11549830 at *6; *Cintas Corp.*, 601 F.Supp.2d at 579.

particularly appropriate.⁴³ And indeed, the majority of the Lanham Act claims in the cases involving labor unions discussed herein have been dismissed at the pleadings stage pursuant to Rule 12(b)(6), based in large part upon these considerations. See *Trader Joe's Company*, 2024 WL 305697 at *1, 9, and at *8, fn. 12 (denying leave to amend because there is “no plausible likelihood of confusion under these circumstances,” such that any amendment “would be futile”); *Sligan Containers, LLC*, 2018 WL 5840766 at *1, 4 *Cintas Corp.*, 601 F.Supp.2d at 574, 581; *Cellco Partnership*, 2003 WL 25888375 at *1, 8; *Circle Group*, 2010 WL 11549830 at *1, 5-6; *WHS Entertainment Ventures*, 997 F.Supp. at 947, 953; *Sodexo USA, Inc.*, 989 F.Supp. at 171-172. Finally, I note that the District Court dismissed Medieval Times’ lawsuit with prejudice. Jt. Ex. 6. In the overall context, the District Court’s dismissal of Medieval Times’ complaint with prejudice at the pleadings stage, on a motion to dismiss under Rule 12(b)(6), militates in favor of a finding that Medieval Times’ lawsuit lacked a reasonable basis pursuant to *BE&K*.⁴⁴ *Allied Mechanical Services*, 357 NLRB at 1229.

For all of the foregoing reasons, the evidence establishes that Medieval Times’ trademark infringement lawsuit initiated on October 13, 2022, lacked a reasonable basis pursuant to *BE&K Construction Co.*

The evidence also demonstrates that Medieval Times’ lawsuit was filed in order to retaliate against the Union for engaging in its successful organizing campaign involving the New Jersey and California castles. As a general matter, the lawsuit was filed after AGVA had prevailed in the election at the New Jersey castle, and bargaining for a first contract there was in its early stages. A representation election was also pending for a bargaining unit at the California castle. The evidence further establishes that the lawsuit was filed in response to the protected activities of the employees who comprised MTPU and elected AGVA as their collective bargaining representative. Prior to the filing of the lawsuit, these employees had created an MTPU website and accounts on social media platforms where they advocated for improved wages and working conditions, and exhorted one another and the general public to support their protected activities and the Union. See G.C. Ex. 2, 11, 12, 13, 24-29. It is well-settled that such conduct constitutes protected union and concerted activity. See, e.g., *North West Rural Electric Cooperative*, 366 NLRB No. 132 at p. 1, fn. 1 (2018) (employee’s

⁴³ For example, in *Jack Daniel's Properties, Inc.* the Supreme Court discusses the analysis developed to exclude “expressive works” from the reach of the Lanham Act. 599 U.S. at 151, discussing *Rogers v. Grimaldi*, 875 F.2d 994, 999 (2nd Cir. 1989).

⁴⁴ In *Allied Mechanical Services*, the respondent employer’s complaint was dismissed by the federal district court pursuant to the previously applicable standard articulated in *Conley v. Gibson*, which required that it appear “beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief” in order to dismiss a complaint pursuant to Rule 12(b)(6). *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Allied Mechanical Services*, 357 NLRB at 1225, fn. 9, and at 1229, fn. 37. As discussed above, the current standard developed in *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal* requires that the court determine whether, “accepting all of the facts alleged in the complaint as true, the plaintiff has failed to plead ‘enough facts to state a claim to relief that is plausible on its face.’” *Bell Atlantic Corp. v. Twombly*, 550 U.S. at 570; *Ashcroft v. Iqbal*, 556 U.S. at 678. This change in the standard for evaluating pleadings pursuant to a motion to dismiss does not vitiate the Board’s emphasis in *Allied Mechanical Services* on dismissal of the case at that stage as evidence that the lawsuit lacked a reasonable basis under *BE&K*.

Facebook post regarding “workplace safety concerns” protected concerted activity); *Triple Play Sports Bar and Grille*, 361 NLRB 308 (2014), enf’d. 629 Fed. Appx. 33 (2nd Cir. 2015) (Section 7 protections encompass employees’ use of “social media to communicate with each other and the public” regarding choice of collective bargaining representative and terms and conditions of employment); *Bettie Page Clothing*, 359 NLRB 777 (2013), reaffirmed and incorporated by reference 361 NLRB 876 (2014). Medieval Times contends in its lawsuit that the MTPU logo used on the website and social media accounts – which was included in Medieval Times’ complaint – constituted an infringement of its trademark. See Jt. Ex. 1, p. 15-17, 19, 21-23. Thus, “on its face” the lawsuit was initiated in order to “enjoin protected activity.” *Milum Textile Services Co.*, 357 NLRB at 2047; see also *Allied Mechanical Contractors*, 357 NLRB at 1232 (lawsuit retaliatory where “It sought an award of money damages from the unions based on their statutorily protected conduct”). In addition, the record establishes that Medieval Times engaged in a number of other unfair labor practices in response to the employees’ Union activity, as discussed herein, also evincing anti-union animus and retaliatory intent. See *Atelier Condominium & Cooper Square Realty*, 361 NLRB at 970; *Allied Mechanical Services*, 357 NLRB at 1232; *Milum Textile Services*, 357 NLRB at 2049, 2051-2052.

The nature of the relief sought by Medieval Times in the trademark infringement lawsuit constitutes further evidence of retaliatory motive. For example, as part of the relief it requested Medieval Times sought an order not only enjoining MTPU and AGVA’s use of the logo which allegedly infringed its trademark, but also prohibiting the use of the words “Medieval Times” in any subsequent formulation of the group’s name or logo. See Jt. Ex. 1, p. 28-29. As discussed above, the use of an employer name as part of the name of an employee advocacy group or labor union is not unprecedented, a circumstance known to Medieval Times, whose attorneys advertised this fact as a crucial aspect of its lawsuit with possible precedential impact. Furthermore, as the District Court noted, Medieval Times provided no caselaw in support of its contention that “the absence of ‘union’ in MTPU’s name is a relevant factor in determining likelihood of confusion.” Jt. Ex. 5, p. 7, fn. 3. And even in *Brach Van Houten Holding, Inc.*, relied upon by Medieval Times in its Opposition to the Union’s Motion to Dismiss, the district court, while enjoining the defendant coalition from using “the Brach’s logos...or any counterfeit or colorable imitation thereof,” explicitly provided that its “injunction does not prohibit the defendant from using the word ‘Brach’s.’” 856 F.Supp. at 477. Medieval Times’ deliberate attempt to use its trademark infringement lawsuit to preclude the Union from *any* use of the words “Medieval Times” in its name or logo supports a conclusion that the lawsuit was initiated for retaliatory reasons. See *Milum Textile Services Co.*, 357 NLRB at 2051 (retaliatory motivation evinced by plaintiff’s motion seeking to enjoin “all communications with its customers, even those clearly protected by the act” and “not even alleged to be unlawful in the Respondent’s complaint”).

The amount and nature of the damages sought by Medieval Times also tends to demonstrate that its lawsuit was filed with a retaliatory motive. In its lawsuit, Medieval Times not only sought an injunction, but also “an accounting of all profits, gains, and

advantages” derived as a result of the Lanham Act violations, as well as “treble damages” and “attorneys’ fees and costs.” Jt. Ex. 1, p. 29-30. § 1117(a) of the Lanham Act, to which Medieval Times refers in its Prayer for Relief, provides for the recovery of the defendant’s profits, “any damages sustained by the plaintiff,” and the costs of the action. However, § 1117(a) also permits the court to enter a judgment “for any sum above the amount found as actual damages, not exceeding three times such amount.” Thus, the treble damages Medieval Times sought represented the absolute maximum possible monetary remedy available pursuant to § 1117(a). In addition, under § 1117(a) “reasonable attorney fees” as sought by Medieval Times may be awarded to the prevailing party only in “exceptional cases” where “there is an unusual discrepancy in the merits of the positions taken by the parties,” or “the losing party litigated the case in an ‘unreasonable manner.’”⁴⁵ *Fair Wind Sailing, Inc. v. Dempster*, 764 F.3d 303, 314-316 (3rd Cir. 2014), quoting *Octane Fitness LLC v. v. ICON Health & Fitness, Inc.*, 572 U.S. at 554. Medieval Times’ attempt to secure the maximum possible discretionary relief pursuant to § 1117(a) of the Lanham Act further indicates that its lawsuit was filed with a retaliatory motive, as does its demand for attorney fees pursuant to the above standard. See *Atelier Condominium & Cooper Square Realty*, 361 NLRB at 971 (retaliatory motive demonstrated by claim for \$190 million dollars “characterized... as both compensatory and punitive...with no attempt...to justify the amount of damages alleged”). This is particularly the case given that Medieval Times’ complaint did not even survive a motion to dismiss requiring that the District Court accept as true all of the complaint’s “well-pleaded facts.”

Medieval Times contends that evidence it presented regarding other attempts to protect its trademark contravenes a conclusion that its lawsuit against MTPU and AGVA was initiated for retaliatory reasons. Post-Hearing Brief at 47-49. However, the evidence Medieval Times presented during the hearing to support this assertion is not compelling. Medieval Times’ dispute with Alcatraz Media, a “ticketing partner,” involved a situation in 2007 and 2008 where, according to Medieval Times, Alcatraz purposefully identified itself as Medieval Times to customers seeking to purchase tickets to Medieval Times performances via the internet, and redirected customers attempting to purchase tickets directly on Medieval Times’ website to Alcatraz’s website instead. Tr. 968-970, 978-979. After Medieval Times terminated its relationship with Alcatraz, Alcatraz filed a breach of contract lawsuit against it, and Medieval Times interposed a counterclaim for trademark infringement, alleging that Alcatraz used Medieval Times’ trademarks on websites and website “metatags,” and purchased “‘sponsored links’ to Alcatraz websites that appear as a result of a computer user’s search for Medieval Times trademarks.” R.S. Ex. 25; R.S. Ex. 26, p. 25-26. This evidence establishes that the conflict with Alcatraz and the ensuing litigation involved the sale of tickets to Medieval Times performances – a completely inapposite set of circumstances. The other proffered evidence regarding Medieval Times’ attempts to protect its “intellectual property” is also not persuasive. Medieval Times’ Senior Vice President of Marketing and Sales Celeste

⁴⁵ Factors to be considered include “frivolousness, motivation, objective unreasonableness (both in the factual and legal components of the case) and the need in particular circumstances to advance considerations of compensation and deterrence.” *Octane Fitness LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 554, fn. 6 (2014), quoting *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 534, fn. 19 (1994).

Lanuza testified that at some point a former Medieval Times employee formed a group of knights which performed sword fights and jousting at Renaissance fairs and community events in costumes similar to those worn by performers in Medieval Times' shows. Tr. 961-962, 976. While Lanuza testified that the former employee was sent a letter demanding that he cease and desist these performances, and the group subsequently stopped performing, she had no personal knowledge of the performances themselves or of the cease-and-desist letter that was sent. Tr. 976-977, 979. Nor was any evidence adduced as to the date that any of this occurred. The evidence presented regarding the former employees' activities is therefore non-probative, and such a situation is not similar in any way to the employees' activities in connection with the Union organizing campaign. For the foregoing reasons, the evidence presented by Medieval Times of other instances where it purportedly took legal action in order to protect its trademark does not tend to establish that it lacked a retaliatory motive in filing the lawsuit against MTPU and AGVA at issue here.⁴⁶

Finally, Medieval Times contends in its Post-Hearing Brief at 45-47 that its lawsuit was devoid of retaliatory motivation because the NLRB has "recognized" that an employer may act protect its trademark regardless of a consequent adverse impact on employees' protected Section 7 activities, pursuant to Memoranda issued by the Division of Advice in *Agilent Technologies*, 20-CA-32151 (March 18, 2005 and August 16, 2005). However, it is well-settled that such Advice Memoranda "have no precedential value or dispositive effect before the Board." *Longshoremen ILWU Local 12 (Southport Lumber Co.)*, 367 NLRB No. 16, p. 1, n. 1 (2018); see also *Airgas USA, LLC*, 373 NLRB No. 102, p. 1-2, 30, n. 39 (2024). And in fact, the Board has held that employer policies which may be reasonably interpreted as prohibiting the use of employer trademarks and logos in all circumstances violate Section 8(a)(1) of the Act. See, e.g. *UPMC*, 362 NLRB 1704, 1704-1705, fn. 5, 1727-1728 (2015) (policy prohibiting use of "logos or other copyrighted or trademarked materials" which did not "limit itself to violations of intellectual property law" unlawful, in that "Employees have a Section 7 right to display a logo as part of their Section 7 communications"); *Boch Honda*, 362 NLRB 706, 706-707 (2015), enf'd. 826 F.3d 558 (1st Cir. 2016) (social media policy prohibiting use of respondent logos unlawful where it could be "reasonably

⁴⁶ Medieval Times also argues that its lawsuit lacked a retaliatory motive because the defendants MTPU and AGVA were labor unions, as opposed to individual employees, based upon the Supreme Court's pronouncement in *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 532 (1992), that "by its plain terms" the Act "confers rights only on employees, not on unions." Post-Hearing Brief at 45. The record here does not establish that MTPU is a labor organization within the meaning of Section 2(5) of the Act. In addition, however, the Supreme Court has acknowledged that "the right to organize is at the very core of the purpose for which the NLRB was enacted," such that unions enjoy "derivative rights" pursuant to Section 7 "to engage in organizational activities in order to protect the employees' right to organize." *Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters*, 436 U.S. 180, 207, n. 42 (1978); *Geske & Sons, Inc. v. NLRB*, 103 F.3d 1366, 1377 (7th Cir. 1997) (internal quotations and citations omitted). Thus, the Board has repeatedly held that lawsuits initiated against unions may violate Section 8(a)(1) if they lack a reasonable basis and are filed with a retaliatory motive. See *Milum Textile Services Co.*, 357 NLRB at 2048 (motion for a temporary restraining order filed against union); *Allied Mechanical Services*, 357 NLRB at 1223-1224 (lawsuit filed against local and international labor unions).

read...to cover protected employee communications”).⁴⁷ Medieval Times’ discussion of the Advice Memoranda in *Agilent Technologies* as undermining the contention that its lawsuit was filed for retaliatory reasons is therefore not persuasive.

For all of the foregoing reasons, the evidence establishes that Medieval Times’ trademark infringement lawsuit was filed with a retaliatory motive. The evidence further establishes that the lawsuit lacked a reasonable basis. As a result, the evidence demonstrates that Medieval Times’ filing, and maintenance of the lawsuit violated Section 8(a)(1) of the Act.

E. Medieval Times’ Actions With Respect to the MTPU Social Media Accounts

The Complaint alleges that in about late January 2023, Medieval Times violated Section 8(a)(1) of the Act when CEO Pedro de Montaner sought to have the MTPU New Jersey and California TikTok accounts banned by contacting TikTok to claim that posts made to these accounts infringed Medieval Times’ trademark, in order to interfere with, restrain, and coerce employees in the exercise of their Section 7 rights. The Complaint further alleges that in late January 2023, Medieval Times violated Section 8(a)(1) by contacting Facebook seeking to block a post on the California MTPU Facebook account with that same objective. For the following reasons, the record substantiates these allegations.

It is well-settled at this point that employee activity on social media platforms such as Facebook and TikTok which pertains to wages, hours, and other terms and conditions of employment is protected pursuant to Section 7 of the Act. As the Board stated in *Triple Play Sports Bar and Grille*, Section 7 provides employees with the right to “form, join, or assist labor organizations,” “bargain collectively through representatives of their own choosing,” and “act together to improve terms and conditions of employment,” “including by using social media to communicate with each other and with the public for that purpose.” 361 NLRB at 308 (internal quotations and citations omitted); see also *North West Rural Electric Cooperative*, 366 NLRB No. 132 at p. 1, fn. 1 (employee’s Facebook post regarding “workplace safety concerns” protected concerted activity); *Bettie Page Clothing*, 359 NLRB at 783-784, 786 (employee Facebook posts regarding working hours implicating potential safety issues protected concerted activity).

The MTPU social media posts at issue here constitute protected union and concerted activity pursuant to this standard. The California MTPU Facebook post was based upon a post made by Medieval Times to its own Facebook account. Medieval Times’ post consisted of a photograph of a horse and rider in costume which was

⁴⁷ Similarly, in a Memorandum issued in *Giant Food, LLC*, 5-CA-064795, the Division of Advice concluded that an employer policy “prohibiting employees from using the Employer’s logo, trademarks or graphics is unlawful,” in that employees would understand the rule “to prohibit the use of the Employer’s logo or trademark in their online Section 7 communications,” and the policy concerns underlying trademark legislation “are not remotely implicated by employees’ non-commercial use of a name, logo, or other trademark to identify the Employer in the course of engaging in Section 7 activity.”

captioned “Awe-Inspiring horsemanship! Our horses and cast are so talented.” G.C. Ex. 28. Actor Erin Zapcic testified without contradiction that she took a “screenshot” of this Medieval Times post and posted it to the MTPU Facebook account, with the words “cast are so talented” underlined, and her own statement, “Appreciate the shout-out
 5 Medieval Times Dinner & Tournament – Buena Park! Now how about paying us a living wage?” above the picture of the horse and rider. Id. Zapcic testified that MTPU’s post also contained a “clickable hyperlink,” so that viewers who clicked on the text would be taken to Medieval Times’ own Facebook page to leave a comment, and administrators for Medieval Times’ Facebook page would be notified that its page had been mentioned
 10 in another Facebook post. Tr. 640, 648. Zapcic and her co-worker’s posts on the California MTPU TikTok account also contained a screenshot of the Medieval Times Facebook post, with the statement “If cast members ‘are so talented.’ Pay. Them.” The TikTok post also included a clickable link stating, “go tell Medieval Times what you think,” which provided users with information necessary to leave a comment on
 15 Medieval Times’ Instagram account. Tr. 643-646; G.C. Ex. 29, 30. Thus, the MTPU California Facebook and TikTok posts both protested the wages paid to Medieval Times’ employees, and provided users with a conduit to Medieval Times’ own Facebook and Instagram accounts to leave comments regarding the topic. Based upon the foregoing, the Facebook and TikTok posts made by the California MTPU employees
 20 constituted protected Section 7 activity under to the Boad caselaw discussed above.

The evidence establishes that the TikTok account created by the New Jersey MTPU employees also contained posted material constituting protected Section 7 and Union activity. Garza testified without contradiction that the TikTok account established
 25 by the New Jersey MTPU employees contained a profile picture comprised of the MTPU logo – the circle with swords emerging from it, with the yellow ring containing the words “Medieval Times Performers UNITED,” encircling a red area with a yellow fist emerging from a black castle which was surrounded by the words, “Represented by AGVA” and “Medieval Times Actors, Stunt Performers and Stable Hands.” Tr. 192; G.C. Ex. 2.
 30 Garza testified without contradiction that two videos were posted to this TikTok account which introduced MTPU and explained its goals, and a third video was posted consisting of a “meme.” Tr. 189-190.

Medieval Times acknowledges in its Post-Hearing Brief that in January 2023, it
 35 contacted Facebook and TikTok, “questioning whether these posts” to the California and New Jersey MTPU accounts “were infringing upon or otherwise violating the Company’s rights” with respect to its “protected intellectual property and marketing assets.” R.S. Post-Hearing Brief at 11. Zapcic testified that on January 28, 2023, she received a Facebook notification stating that a post on the California MTPU account had
 40 been “flagged” for trademark infringement, and the account itself contained a notification stating, “Your post has been reported for trademark infringement. No one else can see your post. It was reported by Perico Montaner.” Tr. 649, 651; G.C. Ex. 31. Beneath the notification was the photograph of the horse and rider that Zapcic had screen-shotted from Medieval Times’ Facebook account. G.C. Ex. 31. When Zapcic logged
 45 onto the California MTPU TikTok account, a notification appeared stating, “Account banned. Your account is being banned for violating TikTok’s Intellectual Property

Policy.” Tr. 651; G.C. Ex. 32. Garza testified without contradiction that the New Jersey MTPU TikTok account was suspended as of late January 2023, and remained inaccessible at the time of the hearing. Tr. 191-192, 353-354.

5 The allegation that Medieval Times violated Section 8(a)(1) by contacting the social media entities Facebook and TikTok in order to restrain and coerce the MTPU employees in the exercise of their Section 7 rights appears to present an issue of first impression. In analogous precedent, though, the Board and the Supreme Court have found violations based upon employer contacts with unrelated third parties, when such
10 conduct results in the restraint of employee Section 7 activity and is effected for retaliatory purposes. For example, in *Wild Oats Community Markets*, the Board concluded that an employer violated Section 8(a)(1) by contacting the owner of property the employer leased to “report the presence of picketers and to inquire about the owner’s policy regarding such picketing activity in the owner’s parking lot.” 336 NLRB
15 179 (2001). When the picketers there refused to relocate at the direction of the owner’s agent, the owner’s agent contacted the police, who arrived and asked the picketers to move. 336 NLRB at 179. The Board reasoned that it was “beyond cavil” that the employer would have unlawfully restrained employees in the exercise of their Section 7 rights had the employer “directly requested the police to remove” the picketers. *Wild*
20 *Oats Community Markets*, 336 NLRB at 181. The Board therefore concluded that “It would be anomalous...to permit the Respondent to accomplish the same objective by indirect means,” by involving a third party with “the intended and foreseeable consequence of interfering with employee Section 7 rights.” *Id.*; see also *Best Yet Market*, 339 NLRB 860, 860 fn. 1, 864 (2003) (employer “unlawfully informed” shopping
25 center owner of lawful picketing and handbilling in order to “interfere with such activities,” causing the owner “to issue a letter seeking to” require that the handbillers and picketers leave). As a result, as the Board stated in *Wild Oats Community Markets*, precedent supports finding an employer “responsible for violations of the Act that are the proximate and foreseeable result of the employer’s action” in contacting a third party
30 for retaliatory reasons. *Wild Oats Community Markets*, 336 NLRB at 181-182, discussing *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 894-896 (1984).

Such reasoning is equally apposite here. As discussed above, there is no dispute that in January 2023, Medieval Times contacted Facebook and TikTok,
35 “questioning whether these posts” on the California and New Jersey MTPU accounts “were infringing upon or otherwise violating the Company’s rights” with respect to its “protected intellectual property and marketing assets.” The evidence establishes that the post of the horse and rider on the California MTPU Facebook account was subsequently “flagged” with a notification stating, “Your post has been reported for
40 trademark infringement. No one else can see your post. It was reported by Perico Montaner.” The California MTPU TikTok account was marked with a notification stating, “Account banned. Your account is being banned for violating TikTok’s Intellectual Property Policy.” The evidence demonstrates that the New Jersey MTPU TikTok account was suspended at that time as well. The foregoing evidence is sufficient to
45 establish that the “flagging” and removal of the Facebook account and banning of the TikTok accounts were “a proximate and foreseeable result” of Medieval Times’ reports

to Facebook and TikTok that the California and New Jersey MTPU accounts contained material “infringing upon or otherwise violating the Company’s rights” in connection with “protected intellectual property and marketing assets.”⁴⁸

5 Having determined that sufficient legal authority and the record evidence support a conclusion that Medieval Times violated Section 8(a)(1) by contacting Facebook and TikTok to contend that material posted on the New Jersey and California MTPU accounts infringed its trademark, the next issue to be addressed is the standard for refuting the alleged violation. General Counsel asserts that Medieval Times defends
10 the allegation by contending that employee “misconduct” – the infringement of its intellectual property – engendered its action. General Counsel argues that because such “misconduct” is part of the *res gestae* of the employees’ otherwise protected activity, the only issue to be considered is whether the employees’ activity somehow lost the protection of the Act. G.C. Post-Hearing Brief at 71-72; see, e.g., *Entergy Nuclear*
15 *Operations, Inc.*, 367 NLRB No. 135 at p. 1, fn. 1, and at p. 12 (2019); *Roemer Industries, Inc.*, 362 NLRB 828, 834 fn. 15 (2015), *enfd.* 688 Fed.Appx. 340 (6th Cir. 2017). Although Medieval Times does not articulate a specific standard to be applied, it asserts that its “motivations...were, at all times, legitimate and not motivate[d] by any anti-union animus,” which evokes the standard for a respondent’s defense pursuant to
20 the Board’s burden-shifting *Wright Line* analysis. R.S. Post-Hearing Brief at 50; *Wright Line*, 251 NLRB 1083 (1980), *enf’d.* 662 F.2d 899 (1st Cir. 1981).

I find that the appropriate standard to apply here is an analysis of whether the employees’ posts on the MTPU Facebook and TikTok accounts somehow lost the Act’s
25 protection. The alleged “misconduct” forming the basis for Medieval Times’ defense here – the purported violation of the “Company’s rights” in connection with “protected intellectual property and marketing assets” – took place within the social media posts which also constituted the employees’ protected concerted activity. See *Phoenix*
30 *Transit System*, 337 NLRB 510 (2002), *enf’d.* 63 Fed.Appx. 524 (D.C. Cir. 2003) (*Wright Line* standard inapplicable where employer discharged employee based upon articles employee wrote in the union’s newsletter, which also constituted protected concerted activity). Thus, the issue to be determined is whether the Facebook and TikTok posts somehow lost the Act’s protection, or “crossed over the line separating protected and unprotected activity.” *Phoenix Transit System*, 337 NLRB at 510.

35 The evidence here does not establish that the employees’ posts on the MTPU social media accounts lost the Act’s protection. The Board has repeatedly determined

⁴⁸ Respondent contends in its Post-Hearing Brief at 49-50 that its contacts with Facebook and TikTok regarding the MTPU posts did not violate the Act because Section 7 rights are only applicable with respect to employees, as opposed to labor organizations, quoting *Lechmere*, 502 U.S. at 531. This argument is not persuasive for the reasons discussed in footnote 46, above. In addition, the California MTPU and TikTok posts addressed wages, which the Board has characterized as “probably the most critical element in employment,” and “the grist on which concerted activity feeds,” such that discussion of wages is considered “inherently concerted” in nature. *Aroostook County Regional Ophthalmology Center*, 317 NLRB 218, 220 (1995), *enf. denied* in part on other grounds 81 F.3d 209 (D.C. Cir. 1996) (citations omitted); *Hoodview Vending Co.*, 359 NLRB 355, 357 (2012), *aff’d.* 362 NLRB 690 (2015), quoting *Automatic Screw Products Co.*, 306 NLRB 1072 (1992), *enf’d.* 977 F.2d 582 (6th Cir. 1992).

that “Employees have a Section 7 right to display” an employer’s “logo as part of their Section 7 communications,” so that employer policies which may be reasonably interpreted as prohibiting the use of employer trademarks and logos in the course of activity protected by Section 7 violate Section 8(a)(1) of the Act. *UPMC*, 362 NLRB at 1704-1705, fn. 5, 1727-1728 (policy prohibiting use of “logos or other copyrighted or trademarked materials” which did not “limit itself to violations of intellectual property law” unlawful); *Boch Honda*, 362 NLRB at 706-707 (social media policy prohibiting use of respondent logos unlawful where it could be “reasonably read...to cover protected employee communications”). Furthermore, Medieval Times presented no evidence to establish that the photograph of the horse and rider posted to its own Facebook account – which Zapcic and her co-worker “screen-shotted” and used as a basis for their own posts on the California MTPU’s Facebook and TikTok accounts – constituted trademarked or copyrighted material, or any other form of “intellectual property” legally protected from reproduction or use. Medieval Times also adduced no evidence regarding the material posted on the New Jersey MTPU TikTok accounts which engendered its report to TikTok “questioning whether the[] posts...were infringing upon or otherwise violating the Company’s rights” with respect to its “protected intellectual property and marketing assets.” In addition, Medieval Times’ argument that the various components of the image contained in the photograph at issue – the knight’s costume, the horse, and the castle itself – constituted protected “intellectual property” under the Lanham Act was rejected by the District Court for the reasons discussed in detail previously. Thus, the evidence does not establish that MTPU’s social media posts lost the protection of the Act by impermissibly using material protected under the Lanham Act, by copyright, or as some other form of “intellectual property and marketing assets.”⁴⁹

For all of the foregoing reasons, the evidence establishes that Medieval Times violated Section 8(a)(1) when it contacted TikTok seeking to have the MTPU New Jersey and California TikTok accounts banned by claiming that posts made to those accounts infringed Medieval Times’ trademark, in order to interfere with, restrain, and coerce employees in the exercise of their Section 7 rights. The evidence further establishes that Medieval Times violated Section 8(a)(1) when it contacted Facebook seeking to block a post on the MTPU California Facebook account by contending that the post infringed Medieval Times’ trademark, with the same objective.

F. The Alleged Retaliatory Discipline and Discharge of Christopher Lucas

1. The *Wright Line* Framework for Allegations of Retaliation

The Complaint alleges that Medieval Times disciplined Christopher Lucas on October 14, 2022, and December 15, 2022, and discharged Lucas on January 21, 2023, in retaliation for Lucas’ Union and protected activities. The Board analyzes cases

⁴⁹ Because the MTPU posts did not involve “abusive” interpersonal conduct, I need not consider the various Board decisions addressing such a theory. See generally *Lion Elastomers, LLC*, 372 NLRB No. 83 at p. 1-2 (2023), vacated and remanded 108 F.4th 252 (5th Cir. 2024), overruling *General Motors, LLC*, 369 NLRB No. 127 (2020).

involving employer motivation using the theoretical framework articulated in *Wright Line*, 251 NLRB 1083 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981); see also *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 395 (approving the *Wright Line* analysis); *Intertape Polymer Corp.* 372 NLRB No. 133 at p. 1-2, 6, 9, 11-13 (2023), enf'd. 2024 WL 2764160 (6th Cir. 2024); *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120 at p. 7 (2019). Pursuant to *Wright Line*, General Counsel must satisfy their initial burden by persuading by a preponderance of the evidence that protected employee conduct was a motivating factor in the employer's adverse employment action. In order to do so, General Counsel must adduce evidence to demonstrate that the employee or employees in question engaged in union or protected concerted activity, the employer's knowledge of that activity, and anti-union animus on the part of the employer. *Adams & Associates, Inc.*, 363 NLRB 1923, 1928 (2016), enf'd. 871 F.3d 358 (5th Cir. 2017). Proof of unlawful employer motivation may be based upon direct evidence, or may be inferred from circumstantial evidence based on the record as a whole. *Brink's, Inc.*, 360 NLRB 1206, fn. 3 (2014); *Robert Orr/Sysco Food Services*, 343 NLRB 1183, 1184 (2004), enf'd. 184 Fed.Appx. 476 (6th Cir. 2006). Indeed, the Board has stated that "More often than not, the focus in litigation...is whether circumstantial evidence of employer animus is 'sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision.'" *Tschiggfrie Properties*, 368 NLRB No. 120 at p. 1 (quoting *Wright Line*).

General Counsel's satisfaction of their initial burden pursuant to *Wright Line* establishes a violation of the Act, subject to the employer's demonstrating that "the same action would have taken place in the absence of the protected conduct." *Wright Line*, 251 NLRB at 1089. In order to meet this standard, the employer must do more than assert a legitimate basis for the adverse employment action or show that legitimate reasons affected its decision. Instead, it must "persuade...by a preponderance of the evidence" that "the action would have taken place absent protected conduct." *Weldun International*, 321 NLRB 733 (internal quotations omitted), enf'd. in relevant part 165 F.3d 28 (6th Cir. 1998); see also *NLRB v. Transportation Management Corp.*, 462 U.S. at 401. If the evidence establishes that an employer's proffered reasons are pretextual, the employer fails by definition to meet its burden to show that it would have taken the same action absent protected activity. *Ground Zero Foundation*, 370 NLRB No. 22 at p. 7 (2020); *Hard Hat Services, LLC*, 366 NLRB No. 106 at p. 7 (2018).

2. Evidence Pertinent to General Counsel's *Prima Facie* Case

There is no dispute that Lucas was a member of SAG-AFTRA and Actor's Equity and supported AGVA's organizing campaign, and the record establishes that Lucas engaged in copious activity on the Union's behalf. The record further establishes that Medieval Times was aware of Lucas' Union support and activities. Lucas testified without contradiction that his resume prominently noted his membership in SAG-AFTRA and Actor's Equity, and that he wore clothing containing the logos of both of these unions to work at least once a week. Tr. 428-432. Lucas testified without contradiction that he regularly discussed industry news involving the unions with Callahan, who acknowledged that he was aware that Lucas was a member of SAG-AFTRA and Actor's

Equity. Tr. 433, 1057-1058. The evidence further establishes that after the AGVA organizing campaign began, Lucas placed MTPU stickers on his locker in Medieval Times' locker room, on his car, and on the back of his cell phone, which he used in the locker room before and after performances. Tr. 433-438, 732-734, G.C. Ex. 14. Lucas also distributed local newspapers to other employees in Medieval Times' locker room, which contained articles regarding AGVA's organizing campaign quoting him in support of the Union. Tr. 439-443; G.C. Exs. 15, 16. In addition, Lucas placed numerous posts in support of AGVA, MTPU, and entertainment unions generally on his Facebook account, at least one of which was commented on by Head Knight Kyle Watkins. Tr. 443-451; G.C. Ex. 17(a-b), 18. Finally, Lucas spoke extensively in support of the Union, the organizing campaign, and the collective bargaining process, and advocated for better terms and conditions of employment, during the meetings Medieval Times arranged for the employees in June 2022 with labor consultant Rian Wathen, including the meeting attended by CEO Pedro de Montaner. G.C. Ex. 5(c), p. 25-26, 29, 35, 41-42, 57, 60, 68, 69; G.C. Ex. 7(c), p. 17-21, 25-30; G.C. Ex. 9(c), p. 30, 51-54.

It should also be noted that Medieval Times' management considered Lucas to have particular influence among the employees, based upon his lengthy work history as an actor in numerous stage, television and film productions. In particular, Show Cast Manager Joshua Callahan testified at the hearing that the employees "look up to [Lucas] as a leader because they know he's had years of experience in film and they look to him for resources...So they respected him, they revered his opinion in terms of acting and...the industry." Tr. 1092. And Lucas often invoked his extensive experience as an actor when countering the arguments Wathen presented against Union representation at Wathen's meetings with the employees. See, e.g., G.C. Ex. 5(c), p. 68, 69 (arguing that as a member of Actor's Equity "when you get the job, then you have somebody negotiating on your behalf"); G.C. Ex. 7(c), p. 17-20 (discussing previous experiences where he had obtained permission from SAG-AFTRA to work on productions with actors who were not union members, after Wathen asserted that AGVA would not permit the show cast to perform with Callahan and Watkins, who as managers were not permitted to join). Lucas also emphasized the importance of labor unions for performers as a matter of professional status, telling newjersey.com, for example, that "when you're in a union as a professional actor, you get that stamp of credibility," which was what the employees "wanted more than anything." G.C. Ex. 16, p. 11-12. Lucas similarly stated on his Facebook account the day of the New Jersey election that, "Our goal was simply to be recognized...as professionals...it's about joining the 200,000 other performers in the United States who are certified by virtue of their union membership as professionals who are serious about the career they chose." G.C. Ex. 17(a), p. 1. Lucas therefore repeatedly stressed in his statements supporting AGVA and MTPU that union membership was a crucial imprimatur of a serious career in acting and performance.

The timing of the discipline issued to Lucas and of Lucas' discharge also supports an inference that the discipline and discharge were effected for retaliatory reasons. As discussed above, Doris testified that as of mid-October 2022, when Lucas' written warning was issued, AGVA and Medieval Times were in the initial stages of negotiations for a first contract covering the New Jersey bargaining unit. Furthermore, a

petition for a representation election in a bargaining unit of employees at the California castle was pending; that election was conducted on November 22, 2022, three weeks before Lucas' final warning. Doris also testified that during the fall of 2022 AGVA was contacted by Medieval Times employees at Respondent's castles in Baltimore, Chicago, and Toronto. Tr. 83-84. Thus, the timing of the discipline issued to Lucas in the context of the ongoing collective bargaining negotiations in New Jersey and union organizing at other locations indicates that the action taken against Lucas was unlawfully motivated. See *Bannum Place of Saginaw, LLC*, 370 NLRB No. 117 at p. 3, fn. 12 (2021), *enf'd*, 41 F.4th 518 (6th Cir. 2022) (intervals of three to five weeks between discharge and filing of representation petition, unlawful threats and interrogation, and upcoming election evidence of animus); *Evenflow Transportation, Inc.*, 358 NLRB 695, 697 (2012), affirmed and adopted 361 NLRB 1482 (2014) (inference of animus appropriate based upon timing, where layoff occurred "within a few weeks of the renewal of the organizing campaign" and soon after unlawful interrogation).

Medieval Times' other unfair labor practices in the fall of 2022 and early 2023 also tend to support a *prima facie* showing that Lucas' discipline and discharge were motivated by anti-Union animus. On October 13, 2022, the day before the written warning was issued to Lucas, Medieval Times filed its trademark infringement lawsuit, which lacked a reasonable basis and was initiated for retaliatory reasons, as discussed above. Days after Lucas' discharge on January 23, 2023, Medieval Times contacted Facebook and TikTok in an unlawful, retaliatory attempt to have posts on the California MTPU Facebook account "flagged," and the New Jersey and California MTPU TikTok accounts banned. On February 10, 2023, a couple of weeks after Lucas' discharge, Medieval Times unlawfully threatened Vere for distributing handbills in its parking lot. Such a course of contemporaneous violations supports the contention that Lucas was disciplined and discharged for retaliatory reasons. See *Kitsap Tenant Support Services, Inc.*, 366 NLRB No. 98 at p. 11 (2018), *enf'd*, 2019 WL 12276113 (D.C. Cir. 2019) (unlawful motivation may be demonstrated via circumstantial evidence including "the presence of other unfair labor practices"); *Metro-West Ambulance Service*, 360 NLRB at 1051 (employer's additional violations evince animus in connection with discipline issued to employee); *Lucky Cab Co.*, 360 NLRB 271, 274 (2014) (employer's contemporaneous violations demonstrate anti-union animus).

Given all of the foregoing evidence, General Counsel has established a *prima facie* case that the discipline issued to Lucas on October 14, 2022, and December 15, 2022 was motivated by animus against AGVA, and that Lucas' January 21, 2023 discharge was motivated by anti-Union animus as well. As a result, the evidentiary burden shifts to Medieval Times to demonstrate that Lucas was disciplined and discharged for legitimate, non-discriminatory reasons.

3. Medieval Times' Asserted Non-Discriminatory Reasons for the Discipline and Discharge

a. The October 14, 2022, written warning

Medieval Times contends that Lucas was issued a written warning on October 14, 2022 based upon two incidents: (i) leaving the pre-show area 10 minutes early on October 8, 2022 without consulting the knightings desk; and (ii) making an ad lib joke during the educational matinee on October 14, 2022, regarding a Disney character, despite previous informal coachings directing him not to do so. The evidence ultimately does not substantiate these contentions, and establishes instead that Medieval Times' proffered rationales for the October 14, 2022, written warning are pretextual.

The evidence does not support Medieval Times' assertion that Lucas was legitimately disciplined for leaving the pre-show area inordinately early on October 8, 2022. As an initial matter, the evidence does not establish that a strict protocol existed for exactly when the Queen and the Lord Cedric were to leave the pre-show area prior to the start of the show itself. It is undisputed that the cast was not permitted to wear watches, and that as of the fall of 2022 there were no clocks in the pre-show area by which the actors could gauge the time. Tr. 183, 483-484. As a result, Lucas, Garza, and Quigley (who had also portrayed Lord Cedric) all testified that the pre-show period generally ended when the Lord Marshall informed the guests in the pre-show area that the arena was open and the guests could take their seats, which the cast referred to as the "table call." Tr. 181-182, 482, 595-596. If guests were still waiting for knighting ceremonies to be conducted, however, Garza and Thompson testified that these ceremonies would continue until 5 minutes before the start of the show. Tr. 181, 839-840; see also G.C. Ex. 39, p. 94 (October 1, 2021). Thus, as Quigley testified, determining the appropriate time for leaving the pre-show area on any particular evening could involve a certain amount of "guesswork." Tr. 597. Indeed, Lucas and Garza both testified that during the months prior to October 2022, Thompson and Callahan met with the show cast to address this very issue. Lucas and Garza testified that they understood based upon the discussion at this meeting that the actors should use their own judgment as to when to leave the pre-show area based upon whether there were customers were waiting for knighting ceremonies at the time – and that if there were no customers waiting for knighting ceremonies the show cast could leave. Tr. 185, 485-486. I credit Lucas and Garza's testimony in this respect, given that Thompson and Callahan did not address this meeting in their testimony, and based upon the heightened credibility afforded to Garza as a current employee of Medieval Times at the time of the hearing.

Furthermore, there is ultimately no evidence to substantiate Medieval Times' contention that Lucas somehow inappropriately left the pre-show area early on October 8, 2022. Lucas and Garza both testified that when they left the pre-show area on October 8, the "table call" had already occurred. Tr. 184, 484. Lucas testified that no one was present at the knightings desk, and Garza stated that other employees had started "breaking down" the set-up for photography "around me." Tr. 184, 484-485. Garza also testified that she could recall nothing unusual occurring with respect to the pre-show on that particular evening, "it was kind of just like every other day." Tr. 184. In addition, no evidence was presented to establish that Lucas and Garza disrupted Medieval Times' customary business operations – that, for example, they prevented knighting ceremonies from occurring – by leaving the pre-show area when they did.

Medieval Times asserts that it disciplined Lucas based upon this incident as a result of an e-mail from Food Services Manager Layne Rice to Thompson regarding Lucas' behavior on October 8, 2022. Tr. 842-844; R.S. Ex. 17. As discussed previously, Rice did not testify, the e-mail was not admitted into evidence to establish that Lucas actually engaged in the conduct it describes, and no other evidence was proffered to substantiate the e-mail's contents. See Tr. 844. However, Medieval Times argues that the e-mail formed the basis for a "reasonable belief" on Thompson's part that Lucas engaged in the conduct that it depicts. Medieval Times therefore contends that Thompson had a reasonable, good-faith belief that Lucas engaged in misconduct constituting a legitimate, non-discriminatory reason for including the alleged October 8, 2022, incident in the October 14, 2022 written warning, citing *Yuker Construction Co.*, 335 NLRB 1072 (2001), and *Lucky Stores, Inc.*, 269 NLRB 942 (1984). Post-Hearing Brief at 61.

The evidence overall, however, does not establish that Medieval Times had a reasonable, good-faith belief that Lucas engaged in the conduct described in the e-mail at the time that it issued the October 14, 2022, written warning. In particular, the evidence demonstrates that while Thompson discussed the incident with Rice and Callahan prior to issuing the written warning, Lucas was never interviewed or otherwise provided with an opportunity to explain what had happened. Tr. 844-845. The Board has repeatedly found that an employer fails to establish a reasonable belief that misconduct providing a legitimate, non-discriminatory motivation for an adverse employment action has occurred when the employer fails to question the employee regarding the purported infraction. See, e.g., *Johnston Fire Services, LLC*, 371 NLRB No. 56 at p. 3-4 (2022) (evidence did not establish that employer conducted a "bona fide investigation" to substantiate a reasonable belief regarding employee's "allegedly defective work" where the employee was "never asked...for a statement"); *Midnight Rose Hotel & Casino*, 343 NLRB 1003, 1004, 1005 (2004), *aff'd*, 198 Fed.Appx. 752 (10th Cir. 2006) (investigation inadequate to establish reasonable belief where employee was not given "an opportunity to explain" pay discrepancies which allegedly justified her discharge); compare *CP Anchorage Hotel 2 LLC*, 369 NLRB No. 92 at p. 1, fn. 2, p. 6 (2020) (reasonable belief established where the specific employee responsible was identified by "Objective evidence," and the employee then "prevaricated wildly when interviewed and ultimately offered a thoroughly implausible explanation that was contradicted by multiple sources"). Furthermore, while Thompson claimed that he discussed the October 8 incident with Garza as "part of his investigation process" prior to issuing the written warning on October 14, Garza testified that Thompson only approached her "a couple of weeks after it happened." Tr. 186, 841, 844-845. I credit Garza's testimony in this regard as more reliable than Thompson's given their relative overall credibility, and particularly considering Thompson's repeated use of the conditional – specifically references to what he "would have" done and what "would have" occurred – when describing his purported investigation and disciplinary determination. Tr. 845. Thompson's failure to even attempt to obtain evidence regarding the incident from the other show cast member involved until well *after* the written warning was issued further undermines a contention that Respondent

reasonably believed that Lucas had committed the misconduct in question. See *McKesson Drug Co.*, 337 NLRB 935, 936-937 (2002) (no reasonable belief established where sole statement supporting alleged misconduct was obtained after employer had made the decision to suspend employee). Thus, the evidence overall does not

5 substantiate Medieval Times' contention that it reasonably believed Lucas engaged in the behavior Rice described to Thompson on October 8, 2022. Such a lacuna also supports the conclusion that Medieval Times did not act on any such belief when issuing the October 14, 2022, written warning. See *Midnight Rose Hotel & Casino*. 343 NLRB at 1005.

10 The second infraction forming the basis for the October 14, , written warning involved Lucas' adding "a joke referencing a Disney character in the middle of a line" while playing Lord Cedric during the "cyber scene" in an educational matinee on that date. Lucas did not deny having made the reference in question – to a song from the

15 movie *The Nightmare Before Christmas* which is sung by the character Jack Skellington. However, the credible testimony of the show cast members regarding the interpretation of the educational matinee script at the point where Lucas made the improvisational reference, the general practice of the actors portraying Lord Cedric in the educational matinee, and the history of discipline established in the record

20 demonstrate that Medieval Times' justification for this component of the October 14, 2022, discipline was pretextual.

The evidence overall establishes that the script for the educational matinee explicitly calls for improvisation at the moment where Lucas made an ad lib reference to

25 the song from *The Nightmare Before Christmas*. In the script, after an e-mail notification sounds, the MC refers Lord Cedric to a cell phone on a table behind him, and the actor portraying Lord Cedric is directed in a parenthetical as follows: "*Chancellor [Lord Cedric] goes to table and picks up phone. He fumbles with it for a second until the MC tells him how to use it.*" G.C. Ex. 41, p. 70. Thus, the script only

30 informs the actor playing Lord Cedric to pick up the phone and "fumble[] with it for a second," and does not specify any particular words the actor is to use to convey Lord Cedric's lack of familiarity with the cell phone. In the context of the parenthetical instructions, Lucas' statement "What's this? What's this?" was logically appropriate to convey Lord Cedric's confusion or befuddlement at encountering a cell phone for the

35 first time.

All of the show cast members who addressed the issue testified to a similar interpretation of parenthetical stage directions generally, and with respect to the specific parenthetical regarding Lord Cedric's reaction to the cell phone. Lucas testified that

40 such parentheticals indicate that the actor is "given license to fill that moment in some way" to "entertain the audience" and avoid "dead silent" or "dead air." Tr. 487-488, 492-493. Quigley confirmed that where such parentheticals appear in a script "the consensus is it's up to us [actors] to convey whatever this is attempting to convey." Tr. 592. Zapcic testified that the physical and verbal elaboration of such a parenthetical is

45 "up to the actor's interpretation," as necessary to communicate its meaning to the audience given the size and configuration of the performance venue. Tr. 660-662.

Callahan did not ultimately contradict Lucas, Quigley, and Zapcic's testimony on this point. Callahan testified that parenthetical stage directions might tell an actor how to say a line in terms of where to place emphasis or what physical movements might accompany the spoken text, but do not tell the actor what to say. Tr. 1061. However, while the parenthetical set forth above does not dictate a specific spoken statement, it also does not specify that the actor remain silent in picking up the cell phone and fumbling with it. Thus, Callahan's statement that the parenthetical does not tell the actor *what* to say is not inconsistent with Lucas, Quigley, and Zapcic's testimony that the enactment of "fumbling" with an object encountered for the first time could involve spoken improvisation.

And indeed, the show cast witnesses testified that the actor portraying Lord Cedric routinely included verbal improvisation as part of their interaction with the cell phone during the educational matinee. Lucas testified, "I usually say something while I was picking up the phone," that, "I would throw the phone up in the air or fumble it" or "say something while on the phone." Tr. 489, 493. Quigley also testified that the actor playing Lord Cedric would "react verbally," with exclamations such as "What is that? Do you hear that? Is that something – what's this? Do you have any idea what's going on?" as well as "What's this thing?" followed by "any number of improvised lines." Tr. 590, 591. Zapcic also explained that "vocal cues" such as "what am I...looking at" and "this is so weird" helped to "inform the audience" in a large arena "what it is that they're looking at" and "what's happening." Tr. 660-661. By contrast, Callahan did not testify that actors only explicated the parenthetical involving the Lord Cedric's first encounter with a cell phone in a non-verbal manner, or by using movement alone. See Tr. 1060-1061. I therefore credit the mutually corroborative testimony of Lucas, Quigley, and current employee Zapcic that actors portraying Lord Cedric routinely incorporated verbal improvisation into the portion of the script involving the character's initial experience with a cell phone. There is no evidence in the record that Medieval Times disciplined any other employees for verbal improvisations or ad libs during this portion of the educational matinee. Indeed, there is no evidence in the record that actor Chris de Crescenzo was disciplined for making the same ad lib reference to *The Nightmare Before Christmas* on October 14 immediately after Lucas did, by stating "Oh, you're not Jack [Skellington]," after Lucas said, "What's this? What's this?" Tr. 494. It is well-settled that an employer's failure to discipline or discharge other employees for misconduct similar to infractions committed by an alleged discriminatee indicates that its asserted legitimate, non-discriminatory reason for the discipline or discharge is in fact pre-textual. *Pontiac Care & Rehabilitation Center*, 344 NLRB 761, 767 (2005); *New Otani Hotel & Garden*, 325 NLRB 928, fn. 2 (1998).

Furthermore, as the above testimony demonstrates, Lucas himself had incorporated verbal improvisation into the scene depicting Lord Cedric's first encounter with a cell phone for a lengthy period of time, by and large without any disciplinary repercussions. The only evidence pertaining to discipline issued to Lucas regarding his performance in the educational matinee is an informal coaching on May 30, 2022, for using a "Yoda voice" during the same scene, first documented in the October 14, 2022, written warning and described there as "Adlibbing during the show." Tr. 481, 1111-1112;

G.C. Ex. 20. Callahan asserted that Lucas used this “Yoda voice” because Knight Joe Devlin had done so earlier in the show, while Lucas testified that he “had a frog in my throat and the words came out weird;” in any event both testified that Lucas cleared his throat and then repeated the line in a normal tone of voice.⁵⁰ Tr. 481, 1087-1088, 1112.

5 The record does not contain any other discipline issued to Lucas for improvising or ad libs prior to October 14, 2022. All of the other “informal coachings,” as the October 14 written warning terms it, “attached” to the warning itself are in fact notes from Cordner or Callahan directed to the entire show cast. See G.C. Ex. 39, p. 95-98, 103, 106, 112-114.⁵¹ Many are incompletely dated, and it is impossible to determine when they were
10 created. See G.C. Ex. 39, p. 103-108, 110, 112. Where the notes might be applicable to Lucas’ performance, they are directed to all actors portraying Lord Cedric, and not to Lucas specifically. Furthermore, they pertain to the announcements portion of the show, and not to the educational matinee’s scene where Lord Cedric initially encounters the cell phone. See G.C. Ex. 39, p. 103, 112, 113, 114. As a result, the evidence does
15 not indicate that these show notes constituted “informal coachings” issued to Lucas within the context of Medieval Times’ disciplinary system. It is well-settled that the imposition of discipline or the discharge of an employee for misconduct which the employer has previously condoned supports a conclusion that such a purported legitimate, non-discriminatory reason for the adverse employment action is in fact
20 pretextual. See, e.g. *David Saxe Productions and V Theater Group, LLC*, 370 NLRB No. 103 at p. 35 (2021) (unlawful motivation established where employer claimed employee was discharged based upon “conduct that it had long condoned”); *Deep Distributors of Greater New York d/b/a The Imperial Sales, Inc.*, 365 NLRB 947, 948, 965 (2017), *enf’d*. 740 Fed.Appx. 216 (2nd Cir. 2018); *California Gas Transport, Inc.*, 347
25 NLRB 1314, 1320 fn. 9, 1352 (2006), *enf’d*. 507 F.3d 847 (5th Cir. 2007).

The show notes contained in Lucas’ personnel file are also pertinent because they contrast dramatically with an e-mail Callahan sent Lucas dated October 8, 2022, regarding his performance “in the last show” that Callahan had watched. This e-mail
30 consists of eight individual points critiquing Lucas’ performance as Lord Cedric in extensive detail. R.S. Ex. 10. There is no evidence that Lucas – or any other show cast member – had ever previously received such an e-mail with extensive criticisms specifically tailored to the particular actor’s performance. Callahan’s October 8, 2022, e-mail therefore corroborates Lucas’ testimony that from mid-October until December
35 15, 2022, he observed managers watching “every show” in which he performed, whereas previously managers had observed the show on an occasional basis. Tr. 505-506. It further substantiates Lucas’ testimony that beginning in October 2022, he received individual verbal notes from Callahan for “almost every show,” as opposed to show notes communicated to the entire show cast at meetings or rehearsals. Tr. 506-
40 507. Although not alleged as an independent violation, this evidence of increased

⁵⁰ In addition, although Callahan testified that he saw and heard actor Joe Devlin using the “Yoda voice” in the same educational matinee as Lucas, there is no evidence that Devlin was disciplined for doing so. Tr. 1087-1088, 1111-1112.

⁵¹ Medieval Times also introduced into evidence an August 28, 2022, e-mail from Callahan to Lucas stating “please be careful with any ad libs. The script is there as it has been and will remain the true guide for the definition of what to say and how to understand any of the scenes.” R.S. Ex. 9. However, in this e-mail Callahan states that he intends to give this note to the rest of the show cast as well. *Id.*

scrutiny trained on Lucas indicates that Medieval Times' rationale for the "ad lib" component of the October 14 written warning was in fact pretextual. See *International Carolina Glass Corp.*, 319 NLRB 171, 174 (1995) ("Focused surveillance...designed to find an excuse for...discharge" indicates unlawful motivation); *Shamrock Foods Co.*, 366 NLRB No. 107 at p. 1, fn. 1, 11-13 (2018), enf'd. 779 Fed.Appx. 752 (D.C. Cir. 2019) (unlawful closer supervision of employee evidence of animus with respect to subsequent verbal discipline). The conflation of show notes issued to the entire cast – including all actors portraying Lord Cedric – with disciplinary "informal coachings" further supports the conclusion that this aspect of the October 14 written warning constituted pretext. *Parker Seal Co.*, 233 NLRB 332, 351-352, 354 (1977) (unlawful motivation established where employer "construed a nondisciplinary procedure counseling...as a warning" to support "a pretextual discharge").

For all of the foregoing reasons, the evidence fails to substantiate Medieval Times' purportedly legitimate, non-discriminatory reasons for the written warning issued to Lucas on October 14, 2022. Instead, the evidence establishes that the rationales advanced by Medieval Times for issuing the warning were pretextual. As a result, the evidence overall establishes that Medieval Times issued the October 14, 2022, written warning to Lucas in retaliation for Lucas' Union support and activities, and protected concerted activities, in violation of Sections 8(a)(1) and (3) of the Act.

b. The December 15, 2022, final warning

Medieval Times asserts that Lucas was issued a final warning on December 15, 2022, for "insubordination" in the form of adding three ad lib jokes to the announcements portion of the evening show on December 10, 2022, one of which referred to the character Bruno from the Disney film *Encanto*. The evidence pertaining to the performance of the announcements segment of the show and Medieval Times' past disciplinary practice ultimately establishes that this proffered non-discriminatory rationale is pretextual as well.

The record evidence establishes that the announcements were not scripted, and that improvisations or ad libs were a customary aspect of the announcements segment of the show. I credit Lucas and Quigley's testimony, corroborated by Callahan, that the actor portraying Lord Cedric or the Lord Marshall was given a scroll containing information, in the form of a chart or spreadsheet, which listed the names of the guests who had purchased each announcement and the event that those guests were celebrating. Tr. 496, 570-572, 1064-1066. While the scroll sometimes contained specific text provided by the guest who purchased the announcement for the actor to read verbatim, often only a few words appeared to describe the occasion, such as "birthday 35." Tr. 571-572, 578-579, 1066. I credit Lucas and Quigley's testimony that in the latter case, the actor playing Lord Cedric or the Lord Marshall was "expected to elaborate" on the information listed on the chart, or embellish the information with "banter". Tr. 496, 571-572, 578-579. Callahan acknowledged that, as the actors testified, such improvisations were necessary "as a tool of interacting with the audience" to make the experience "more exciting" and entertaining, and to prevent the show from

becoming “very slow” and “stagnant” by “just reading off a list of names and saying Happy Birthday.” Tr. 497, 499, 580, 655; see Tr. 1072-1073. In addition, as Quigley testified, if the audience lost interest because the announcements were performed in a monotonous manner, a guest might miss the announcement they had purchased and request a refund. Tr. 497, 655. The length of the announcements segment of the show inevitably varied depending upon how many announcements were purchased for a particular performance. Tr. 496, 612-613. Thus, while show notes from Cordner and Callahan directed the actors to “move through the announcements quickly” and “keep it moving” on days when multiple shows would be performed, they also specifically acknowledged that the actors had “leeway” with the announcements, particularly when only one performance was scheduled or when the list of announcements was short. G.C. Ex. 39, p. 103, 112, 115. The evidence therefore establishes that the announcements portion of the show required the actors playing Lord Cedric and the Lord Marshall to use their professional abilities – including improvisation or ad libs – to maintain audience engagement and enthusiasm while presenting the material in an efficient manner.

Consequently, the record demonstrates that Lucas and other actors who portrayed Lord Cedric and the Lord Marshall routinely included improvisations or ad libs, some of which referred to contemporary popular culture, when they performed the announcements. Lucas and Quigley, and current employees Garza and Zapcic, all testified that each of the actors portraying Lord Cedric, and the Lord Marshall used ad libs referring to pop culture during the announcements on a continuous basis. Tr. 174-177, 496-497, 576-579, 616-617, 657-658. Lucas testified that he had made spontaneous references to contemporary pop culture in virtually every show since he began his employment at Medieval Times, and Zapcic testified that in her experience actors performing the announcements used ad libs “pretty much every day.” Tr. 494-495, 496-497, 657-658; see also Tr. 174-177, 584-587. Lucas, Quigley, and Zapcic testified that Callahan himself made pop culture references when performing the announcements, to characters from Harry Potter and Game of Thrones, as well as Disney characters such as Mickey Mouse or Goofy. Tr. 495, 498-499, 582-583, 657. Furthermore, the actors testified that it was common for guests to attend the show dressed in costumes portraying characters from popular television programs such as Game of Thrones, and video games such as the Legend of Zelda. Tr. 497, 575-577, 656. Thus, as Callahan himself acknowledged, the announcements scroll itself often contained pop culture references to be read or remarked upon by the actor playing Lord Cedric or the Lord Marshall, which had been specifically phrased by the guests. Tr. 1072, 1074-1075.

Given the foregoing evidence, I credit the mutually corroborative testimony of Lucas and Quigley – and current employees Garza and Zapcic – that ad libs involving references to contemporary pop culture routinely occurred during the announcements portion of the show. I further credit the actors’ testimony that Callahan incorporated such ad libs into the announcements when he was performing them himself. Indeed, Callahan’s repeated references in his show notes dated June 19, 2022, and October 29, 2022, to “leeway” for ad libs or “banter” during the announcements establishes that he

was aware of the practice, and that such improvisation was necessary to modulate the pacing of the show for both the audience and the other performers. In some of his show notes, Callahan also cautioned the actors to “be careful with the runtime for announcements” engendered by “back-and-forth between Cedric and MCI.” See G.C. Ex. 39, p. 113 (February 16, 2019); G.C. Ex. 39, p. 114 (June 19, 2022). Quigley confirmed Callahan’s assertion that Callahan often informed the show cast in rehearsals and show notes to limit pop culture references because “announcements are taking too long.” Tr. 587-588; see also Tr. 1097. Quigley testified that when Callahan admonished the show cast in this manner, he stopped making pop culture references until he heard another actor do so, “Oftentimes...Josh [Callahan] himself,” which Quigley interpreted as a “signal” that “we’re okay to do that again.” Tr. 588.

Based upon the testimony and documentary evidence described above, I find Callahan’s testimony addressing the actors’ practice regarding ad libs and references to popular culture during the announcements portion of the show to be incredible, in a manner which undermines the overall reliability of his testimony. In particular, Callahan’s inability to describe any specific incidents where an actor included ad libs during the announcements – other than Lucas’ reference to Bruno and the incidents involving Satirios Limitsios and Alexander Nunes discussed below – is patently incredible. Tr. 1076. Callahan’s claim that he himself only made pop culture references during the announcements if they were specifically included in the material which appeared on the scroll is similarly unconvincing, as is Watkins’ testimony echoing this contention. Tr. 1002-1003, 1075-1076.

Furthermore, the evidence overall establishes that despite regular, if not daily, ad libs referring to pop culture during the announcements portion of the show, none of the actors who portrayed Lord Cedric or the Lord Marshall were disciplined for this reason prior to Lucas’ December 14, 2022, final warning. The four incidents of discipline based upon ad libs contained in the record do not contravene such a conclusion. The testimony and the formal coaching issued to Satirios Limitsios establish that Limitsios included an ad lib pop culture reference “at the end of the Green Knight intro,” and not during the announcements. Tr. 864-866, 1076, 1103; G.C. Ex. 45, p. 1; see also G.C. Ex. 41, p. 28-29. Furthermore, Limitsios was issued the formal coaching on September 3, 2023, nine months after Lucas’ final warning. *Id.* The ad libs during announcements that were the subject of written and final warnings issued to Alexander Nunes were sexually suggestive remarks, and the warnings specifically describe the nature of the infraction as undermining the “family environment” or “family show” that Medieval Times sought to present, admonishing Nunes to apply “more mature judgment.” G.C. Ex. 45, p. 23; R.S. Ex. 19. Furthermore, these written and final warnings were issued to Nunes on July 19, 2013, and May 23, 2015. *Id.* The formal coaching issued to Erik Tobiason on February 15, 2018, involved Tobiason’s disregard of specific instructions from Operations Manager Kim Paul to limit a particular announcement for a group of guests associated with Tobiason to the material printed on the scroll. R.S. Ex. 18. Thus, the three incidents of discipline prior to Lucas’ final warning involved inappropriate sexual innuendo and the disregard of explicit instructions regarding a specific announcement contained on the scroll, and not ad libs based on pop culture references. By contrast,

the one incident involving a pop culture reference took place well after Lucas' final warning, and did not involve ad libs during the announcements. Against the backdrop of the actors' credible testimony, this evidence does not establish a consistent practice of discipline for including ad libs referring to pop culture in the announcements portion of the show. The absence of such a consistently enforced standard ultimately supports a conclusion that Medieval Times' asserted legitimate rationale for the final warning issued to Lucas was in fact pretextual.⁵² *Pontiac Care & Rehabilitation Center*, 344 NLRB at 767; *New Otani Hotel & Garden*, 325 NLRB at 928, fn. 2.

In addition, the evidence establishes that Lucas' continuous use of ad libs involving references to contemporary pop culture during the announcements portion of the show was tolerated by Medieval Times – until Lucas became active in the Union's organizing campaign. As discussed above, Lucas testified that he had made improvised pop culture references in virtually every show since his employment at Medieval Times began. Callahan acknowledged that Lucas had made pop culture references during the show earlier in his employment, but testified that from the "installation" of the show after the pandemic, during the summer of 2021, Lucas "saw a desire in the character of Cedric to make it an opportunity for him to be a standout, to draw attention to himself, and would be a ham, and ham things up to get laughs" using ad libs. Tr. 1101. Nevertheless, Lucas never received any specific discipline for improvisation or ad libs during the announcements until the December 15, 2022, final warning. Instead, his ad libs during the announcements were tolerated for years – and for a full year after Medieval Times' post-pandemic reopening – until Lucas openly expressed his support for the Union's successful organizing campaign. This evidence also supports a finding that Medieval Times' rationale for the December 15, 2022, final warning was pretextual. See, e.g. *David Saxe Productions and V Theater Group, LLC*, 370 NLRB No. 103 at p. 35; *Deep Distributors of Greater New York d/b/a The Imperial Sales, Inc.*, 365 NLRB at 948, 965; *California Gas Transport, Inc.*, 347 NLRB at 1320 fn. 9, 1352.

Other aspects of the December 15, 2022, final warning further undermine its legitimacy. The final warning refers to the unprecedented October 8, 2022, notes that Callahan sent to Lucas regarding his individual performance as part of his enhanced scrutiny directed toward Lucas, as discussed above. Both the October 8, 2022, notes and the final warning itself state that Lucas' reference to the character Bruno from *Encanto* was inappropriate because it constituted a "copyright reference," a gratuitous contention not seriously pursued by Medieval Times in this proceeding. Although Callahan contends in the December 15 final warning that his October 8, 2022, notes admonished Lucas against using material which "does not fit the Medieval theme," that is not in fact the case. G.C. Ex. 21, p. 2; see R.S. Ex. 10. Furthermore, the final

⁵² It should also be noted that Thompson initially testified that Lucas was issued the December 15, 2022, final warning for ad libs during the performance, and only identified "insubordination" as the basis for the final warning after specific prompting by Medieval Times' counsel. See Tr. 851-854; G.C. Ex. 39, p. 99. Thompson's confusion in this regard tends to support a conclusion that Lucas' use of ad libs and/or references to popular culture did not constitute insubordination contravening a binding directive, but were instead a common practice.

warning refers to notes Callahan sent the entire show cast on November 16, 2022, directing the actors to “avoid any references to modern pop-culture or technology” when “on mic or in costume.” G.C. Ex. 21, p. 2; G.C. Ex. 10, p. 2. Callahan’s November 16, 2022, notes, however, are dubious in and of themselves.⁵³ As discussed above, the “cyber scene” in the educational matinee explicitly addresses “modern pop-culture” and “technology,” when Lord Cedric encounters a cell phone for the first time, and the characters are confronted with a social media account. Thus, far from “creating” a “journey to the past,” the script itself directly addresses contemporary technology, and its narrative impact is contingent upon the historical characters’ engagement with the cell phone and social media platforms. Furthermore, all of the witnesses who had portrayed Lord Cedric or the Lord Marshall testified that guests frequently attended the show dressed up as characters from contemporary television series and video game franchises, and that it was not uncommon for the material on the scroll that they were given to explicitly direct that the actor refer to the specific pop culture characters that the guests portrayed. Indeed, the evidence establishes that Medieval Times’ gift shop sold merchandise such as weapons and armor based upon such contemporary pop culture vehicles. These factors contravene the legitimacy of Callahan’s instruction that the actors refrain from pop culture references because the show was intended exclusively as a “journey to the past.” The evidence further establishes that every previous directive that the actors playing Lord Cedric or the Lord Marshall limit ad libs and other forms of improvisation was directed solely to moderate the length of the announcements. Concern with maintaining the audience’s “escapism” to “enjoy the splendors of the past” emerged only after the Union prevailed in the election at the New Jersey castle. And given Lucas’ acknowledged flair for precisely this type of improvisation, it is not unreasonable to infer that Callahan’s unprecedented November 16, 2022, directive was aimed at Lucas specifically.

For all of the foregoing reasons, the evidence fails to substantiate Medieval Times’ purportedly legitimate, non-discriminatory reason for Lucas’ December 15, 2022, final warning. Instead, the evidence establishes that the rationale advanced by Medieval Times for the final warning was pretextual. As a result, the evidence overall establishes that Medieval Times issued the December 15, 2022, final warning to Lucas in retaliation for Lucas’ Union support and activities, and protected concerted activities, in violation of Sections 8(a)(1) and (3) of the Act.

c. Lucas’ discharge on January 21, 2023

Medieval Times contends that Lucas was legitimately discharged on January 21, 2023, because he was late for the start of a matinee shift that week, and he was, as Thompson put it, “on his final notice,” referring to the December 15, 2022, final warning. G.C. Ex. 39, p. 120; G.C. Ex. 45, p. 32. The evidence overall does not substantiate this assertion, demonstrating instead that Medieval Times’ proffered justification for Lucas’ discharge was pretextual.

⁵³ There is no allegation that Callahan’s November 16, 2022, show notes constitute an independent violation of the Act.

First of all, there is no dispute that Lucas' discharge was premised on the October 14, 2022, written warning and the December 15, 2022 final warning, both of which were issued in violation of Sections 8(a)(1) and (3) of the Act for the reasons discussed above. It is well-settled that "an employer cannot establish a legitimate basis for discharge through the use of unlawful disciplinary warnings." *Dynamics Corp. of America*, 296 NLRB 920, 922 (1987); see also *Caribe Ford*, 348 NLRB 1108, 1110, 1130 (2006) ("an employer may not justify a discharge on the basis of prior unlawfully issued disciplinary warnings"); *Care Manor of Farmington*, 318 NLRB 725, 726 (1995). Because Lucas was purportedly discharged for arriving late for his shift while on a "final notice" based upon written and final warnings which were unlawfully motivated, Medieval Times has failed to establish a legitimate, non-discriminatory reason for Lucas' discharge as well.

Aside from the unlawfully motivated nature of the written and final warnings issued to Lucas on October 14, 2022, and December 15, 2022, however, the evidence demonstrates that a single incidence of lateness was not typically considered by Medieval Times management to be worthy of even a formal, documented coaching. Thompson testified that performance issues, including attendance, were generally reported to him by a manager for a formal coaching only when they became an "ongoing" or "persistent" issue with a particular employee. Tr. 822-823, 867-869. Furthermore, Thompson and Callahan did not contradict Quigley's testimony that the actors were only disciplined for lateness if a "direct impact on operations" or "other people's work schedule" ensued because, for example, an actor appearing in the show needed to be replaced. Tr. 610-611. Perhaps for this reason, Thompson attempted to contradict his own e-mail asserting that he discharged Lucas because Lucas "was late for his shift on Thursday and was on his final notice" by claiming in his testimony that "in writing here it's saying tardiness, but really it's overall performance."⁵⁴ Tr. 859; G.C. Ex. 39, p. 120; see also G.C. Ex. 45, p. 32. Such testimony is palpably implausible, and constitutes significant evidence of pretext with respect to Lucas' discharge in and of itself.

Consequently, the evidence establishes that Medieval Times had a lengthy history of tolerating an employee's failure to report for their shift on time – including Lucas' own – prior to Lucas' Union activity. Quigley, for example, testified that since mid-2018 he himself had been half an hour late for his scheduled shift on numerous occasions. Tr. 597-598, 605-607, 608-610; see also G.C. Ex. 42(a-b). However, the evidence establishes that Quigley was never issued any discipline for lateness – only a formal coaching for an unexcused absence (no-call, no-show) on January 6, 2023, which noted that "Over a period of 10 weeks, Sean called out for close to half of his scheduled shifts." Tr. 598-599; G.C. Ex. 43. Similarly, Knight Marcus Vere testified that he was repeatedly late for his scheduled shift during his employment, but only received

⁵⁴ It should be noted that Medieval Times does not address Thompson and Callahan's testimony regarding management's practices with respect to employee lateness, or the evidence discussed below relating to individual employees, in the portions of its Post-Hearing Brief regarding Lucas' discharge, at pages 52 to 62.

one informal coaching regarding the issue.⁵⁵ Tr. 296-303, 318-319; G.C. Ex. 38. Medieval Times' immediate discharge of Lucas for misconduct tolerated with respect to other employees, including show cast members, indicates that its purportedly legitimate, non-discriminatory reason for the discharge was in fact pretextual. *Pontiac Care & Rehabilitation Center*, 344 NLRB at 767; *New Otani Hotel & Garden*, 325 NLRB at 928, fn. 2.

The evidence establishes that Lucas' own lateness prior to the Union's organizing campaign was treated in a similar manner. Discipline issued to Lucas in 2016 and 2021 focuses on Lucas' arriving late for the pre-show opening of the photo tower and using the same entrance as the guests, as opposed to simply arriving late for the start of his shift. See G.C. Ex. 39, p. 1-2, 3-4, 88-89. In addition, documentary evidence ultimately corroborates Lucas' testimony that he was late for his shift on multiple occasions during calendar 2022, but never received so much as an informal coaching regarding the issue during that period. See Tr. 715-720; G.C. Exs. 39, p. 91-92, 99-101, 40(a), 42(b). Medieval Times' discharge of Lucas for conduct it had repeatedly condoned during the preceding year indicates that the discharge was pretextual. *David Saxe Productions and V Theater Group, LLC*, 370 NLRB No. 103 at p. 35; *Deep Distributors of Greater New York d/b/a The Imperial Sales, Inc.*, 365 NLRB at 948, 965; *California Gas Transport, Inc.*, 347 NLRB at 1320 fn. 9, 1352.

For all of the foregoing reasons, the evidence fails to substantiate Medieval Times' contention that it discharged Lucas for legitimate, non-discriminatory reasons. As a result, the evidence establishes that Medieval Times discharged Lucas on January 21, 2023, in retaliation for his support for and activities on behalf of the Union, and protected concerted activities.

G. The Alleged Threat to Discipline Marcus Vere for Handbilling

The Complaint alleges that on or about February 10, 2023, General Manager Nate Thompson threatened employee Marcus Vere with discipline for handbilling on Medieval Times property, in violation of Section 8(a)(1) of the Act. The record evidence substantiates this allegation.

The peaceful distribution of handbills to consumers regarding wages and other labor issues constitutes protected Section 7 activity. See *NLRB v. Fruit and Vegetable Packers and Warehousemen, Local 760*, 377 U.S. 58, 71-72 (1964); *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. and Const. Trades Council*, 485 U.S. 568 (1988). In addition, it is well-established that employees are permitted to distribute union literature during non-working time and in non-working areas, absent a showing of "special circumstances" necessary for the employer to "maintain production or discipline." *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 797, 801, 805 (1945); *Shamrock Foods Co.*, 366 NLRB No. 117 at p. 2, 23 (2018), enf'd. 779 Fed.Appx. 752

⁵⁵ Although Thompson testified that Vere's lateness was not addressed via discipline because it involved a family issue, there is no evidence to establish when Vere's recurring lateness was initially evaluated by management for potential disciplinary consequences. Tr. 318-319, 890-892.

(D.C. Cir. 2019). The Board has stated that, “Interference with employee circulation of protected material in nonworking areas during off-duty periods is presumptively a violation of the Act unless the employer can affirmatively demonstrate the restriction is necessary to protect its proper interest.” *Waste Management of Arizona, Inc.*, 345 NLRB 1339, 1339 fn. 2, 1346 (2005), quoting *Champion International Corp.*, 303 NLRB 102, 105 (1991). Thus, threats of adverse action against an employee for distributing handbills on non-work time and in a non-work area violate Section 8(a)(1). See *Acqua-Aston Hospitality, LLC*, 365 NLRB 592, 601-602 (2017) (threats of unspecified reprisals for distribution of handbills in non-work area of hotel “lower lobby” violated Section 8(a)(1)); *North Hills Office Services*, 346 NLRB 1099, 1099 fn. 7, 1101-1102 (2006) (employer’s direction to cease handbilling in non-work area violated Section 8(a)(1), and retaliatory discipline of employees violated Sections 8(a)(1) and (3)); *Beverly California Corp.*, 326 NLRB 153, 196-197 (1998), enf’d. in relevant part 227 F.3d 817 (7th Cir. 2000) (threat of “disciplinary action” for distributing handbills unlawful).

The evidence here establishes that on February 10, 2023, Thompson unlawfully threatened Vere with discipline for distributing Union handbills. There is no dispute that Vere was on non-work time at the time that he was distributing handbills, and Medieval Times does not contend that the parking lot where Vere was distributing handbills is a work area. There is also no dispute that Vere’s distribution of handbills was peaceful in nature. I credit Vere’s testimony that he asked Thompson after Thompson had spoken to AGVA representative Chris Johnson, “can I continue hand billing in the parking lot?” and Thompson responded, “If you continue hand billing in the parking lot, we are going to have a sit down with disciplinary action.” Tr. 293-294, 317-318. Thompson conveniently elided his mention of discipline during his direct testimony regarding this conversation with Vere, only to admit on cross-examination that he did in fact use the word “discipline” at the time. Tr. 885-887, 900. Furthermore, Vere was employed by Medieval Times at the time that he gave testimony adverse to Respondent’s interests, so that his testimony may be considered particularly reliable pursuant to Board caselaw. *Avenue Care & Rehabilitation Center*, 360 NLRB at 152, fn. 2. Thus, Vere’s testimony is more credible than Thompson’s regarding their interaction, and the evidence as a result establishes that Thompson threatened Vere with discipline for distributing Union handbills during non-work time and in a non-work area, in violation of Section 8(a)(1). *Beverly California Corp.*, 326 NLRB at 196-197; *North Hills Office Services*, 346 NLRB at 1099 fn. 7, 1101-1102.

Medieval Times contends in its Post-Hearing Brief that it subsequently repudiated any violation committed by Thompson during his conversation with Vere on February 10, 2023, so that further remedial action is unnecessary. Post-Hearing Brief at 64-65; see, e.g., *Passavant Memorial Area Hospital*, 237 NLRB 138, 138-139 (1987). Pursuant to *Passavant Memorial Area Hospital*, in order to effectively repudiate unlawful conduct and thereby relieve itself of liability, an employer must disavow the conduct in question in a timely and unambiguous manner, “specific in nature to the coercive conduct” itself. 237 NLRB at 138-139, quoting *Douglas Division, The Scott & Fetzer Company*, 228 NLRB 1016 (1977); see also *T-Mobile USA, Inc.*, 369 NLRB No. 50 at p. 1 (2020); *Ark Las Vegas Rest. Corp. v. NLRB*, 334 F.3d 99, 108 (D.C. Cir. 2003).

Repudiation further requires “adequate publication...to the employees involved,” and “no proscribed conduct on the employer’s part after the publication.” *Passavant Memorial Area Hospital*, 237 NLRB at 138. Finally, “assurances to employees” that the employer will not interfere with Section 7 activity in the future are also a component of an effective repudiation. *Passavant Memorial Area Hospital*, 237 NLRB 138-139.

Medieval Times’ purported repudiation of Thompson’s threat to discipline Vere did not satisfy this standard. The evidence establishes that on February 13, 2023, Medieval Times attorney Daniel Sobol, Esq. sent an e-mail to AGVA attorney Eric Greene stating that Respondent “will not prohibit Marcus Vere, while off duty, from peaceably distributing union literature in the castle parking lot,” and “will not prohibit any bargaining unit members, while off duty, from peaceably distributing union literature in the castle parking lot.” R.S. Ex. 5. This statement did not acknowledge Thompson’s unlawful threat to discipline Vere for handbilling during non-work time and in a non-work area, nor did it specifically disavow that threat. See *Beverly California Corp.*, 326 NLRB at 197 (repudiation ineffective where it did not “identify and repudiate” employer’s earlier memo or “acknowledge the unlawful prohibitions on handbilling contained therein”); see also *Pacific Coast M.S. Industries Co.*, 355 NLRB 1422, 1422-1423, fn. 9 (2010) (purported repudiation which “did not admit wrongdoing” insufficient to satisfy *Passavant* standard); *Robert Orr/Sysco Food Services*, 343 NLR 1183, 1192 (2004) (same). Furthermore, Medieval Times published or provided its purported repudiation not to Vere or other bargaining unit employees, but only to counsel for the Union. See *CL Frank Management, LLC*, 358 NLRB 954, 960 (2012) (alleged repudiation ineffective pursuant to *Passavant* where it was communicated solely to “the Union’s president,” without any “straightforward notice to employees” that they could engage in protected conduct). Finally, the evidence establishes that Medieval Times committed several other violations of the Act intended to hamper or extinguish the employees’ communications amongst themselves and with the public regarding the Union organizing campaign and collective bargaining. See *Robert Orr/Sysco Food Services*, 343 NLRB at 1192; *Ark Las Vegas Restaurant Corp.*, 335 NLRB 1284, 1289 (2001). For all of the foregoing reasons, Medieval Times’ February 13, 2023, e-mail to AGVA’s counsel did not constitute an effective repudiation of Thompson’s threat to discipline Vere pursuant to *Passavant* and its progeny.

For all of the foregoing reasons, the evidence establishes that on February 10, 2023, Medieval Times threatened employees with discipline for peaceably distributing handbills to the public while on non-work time and in a non-work area, in violation of Section 8(a)(1). The evidence further establishes that Medieval Times failed to effectively repudiate this violation pursuant to the standards articulated in *Passavant Memorial Area Hospital* and subsequent cases.

H. The Subpoenas *Duces Tecum* Served on Employees Prior to the Hearing

The Complaint alleges that Medieval Times violated Section 8(a)(1) when it served employees with Subpoenas *Duces Tecum* in the instant proceeding in order

coerce and discourage them from exercising their Section 7 rights. The evidence overall substantiates this allegation.

It is well-settled that the rights encompassed by Section 7 include the prerogative to assist in the agency's investigation and litigation of unfair labor practice charges. See, e.g., *Tracy Auto, L.P. d/b/a Tracy Toyota*, 372 NLRB No. 101 at p. 6 (2023), citing *Interstate Management Co., LLC*, 369 NLRB No. 84 at p. 2 (2020), and *Hoover, Inc.*, 240 NLRB 593, 605 (1979). As a result, the service of a subpoena seeking information provided to the Board's Regional office during the course of an unfair labor practice investigation violates Section 8(a)(1). See, e.g., *Starbucks Corp.*, 373 NLRB No. 101 at p. 1, fn. 3, and at p. 6 (2024) (subpoena unlawfully required the production of "statements, declarations, or affidavits" including "any drafts thereof" "prepared" or "taken...by Board personnel, a representative of the Union, or any other person relating in any way concerning the allegations contained in the complaint," as well as "documents...sent by you or received by you from any Board official, employee or personnel"); *Santa Barbara News-Press*, 358 NLRB 1539, 1539-1542 (2012), affirmed and incorporated by reference, 361 NLRB 903 (2014), enf'd. 2017 WL 1314946 (D.C. Cir. 2017) (subpoena seeking employee affidavits or statements provided to the Board unlawful); *Inter-Disciplinary Advantage*, 349 NLRB 480, 505 (2007) ("employer requests for copies" of Board affidavits "inherently coercive and unlawful").

The Board has also concluded that the service of subpoenas requiring the production of information regarding employee union and concerted activities protected pursuant to Section 7 violates the Act. *Starbucks Corp.*, 373 NLRB No. 101 at p. 7; *Chino Valley Medical Center*, 362 NLRB 283, fn. 1 (2015), enf'd. in relevant part 871 F.3d 767 (9th Cir. 2017). The Board has long considered employee "confidentiality interests" in engaging in union and protected concerted activity to be of "overriding concern," so that employer attempts to obtain such information violate the Act given their potentially "chilling effect" on employee Section 7 activity. *National Telephone Directory Corp.*, 319 NLRB 420, 421 (1995); see also *United Nurses Association of California v. NLRB*, 871 F.3d at 785-786; *Chino Valley Medical Center*, 362 NLRB at 283, fn. 1; *Starbucks Corp.*, 373 NLRB No. 101 at p. 7.⁵⁶

The Subpoenas *Duces Tecum* in this case, served by Medieval Times upon the employees and Lucas in early January 2024, required the production of information provided to the Region in connection with the investigation of the instant charges, as well as materials disclosing the Union and protected concerted activities of Medieval Times employees. Requests 5 and 12 contained in the Documents to be Produced

⁵⁶ General Counsel argues in her Post-Hearing Brief that the Subpoenas *Duces Tecum* served by Medieval Times also violated Section 8(a)(1) pursuant to the Board's decision in *Guess?, Inc.*, 339 NLRB 432, 434 (2003). Post-Hearing Brief at 89-94. In *Starbucks Corp.*, the Board affirmed the ALJ's analysis declining to apply the *Guess?, Inc.* standard to subpoenas served in the underlying unfair labor practice proceeding before the Board, as opposed to discovery requests that originated in a separate proceeding. *Starbucks Corp.*, 373 NLRB No. 101 at p. 7; see also *Pain Relief Centers*, 371 NLRB No. 143 at p. 2 (2022) (describing the *Guess?, Inc.* decision as establishing criteria for "whether discovery requests in a separate proceeding" violate Section 8(a)(1)). As a result, the *Guess?* standard appears to be inapposite here, although the application of its factors would warrant the finding of a violation as well.

section of the Attachment required the production of “any and all e-mails, text messages, social media commentary, correspondence and other documents” pertaining to meetings “held by and/or with” Pedro de Montaner and Rian Wathen. Thus, these requests encompassed affidavits and materials provided to the Board regarding the meetings with Montaner and Wathen, as well as communications with Board personnel, the Union, and other employees. Request 14 required the production of information regarding the creation of the Medieval Times Performers United logo, including “The individual(s) who designed the Logo,” “The process by which the Logo was decided upon and/or agreed upon,” and “emails, text messages, social media commentary, correspondence and other documents regarding the Logo.” Request 14 therefore required the disclosure of information regarding employee activity protected pursuant to Section 7 as well. Requests 24 through 28 sought information regarding the identities and activities of individuals who created, controlled, monitored, and generated posts on the MTPU TikTok and Facebook accounts, and communications by Union members to TikTok and Facebook regarding the accounts. Given that, as discussed previously, the social media accounts and postings they contained involved Union and protected concerted activity pursuant to Section 7, these Requests also required the disclosure of employee Union and protected concerted activity. Requests 23 and 31 similarly required the disclosure of employee Union activity, as they required the production of “internal communications among and between the Union’s members, officers, agents, and representatives,” pertaining to Lucas, and documents “exchanged by and between Marcus Vere and Union representative Chris Johnson,” respectively. Furthermore, it should be noted that Medieval Times does not argue in its Post-Hearing Brief that the information sought in the contested Requests was necessary in order to present its defenses. See Post-Hearing Brief at 65-69. Because the Subpoenas *Duces Tecum* required the production of materials provided to the Region during the investigation of the instant charges – including employee affidavits – and sought information regarding employee Union and protected concerted activity, Medieval Times’ service of the Subpoenas on the various employees the week before the hearing was to begin violated Section 8(a)(1) of the Act.

Medieval Times contends that it effectively repudiated any violation of Section 8(a)(1) by serving revised Subpoenas *Duces Tecum* on employees Garza, Vere, Beckas, Devlin, and Thompson on or about January 12, 2024, which explicitly excluded materials submitted to the Board and “information pertaining to employees’ Section 7 activity.” R.S. Exs. 3, 6, 8. The revised Subpoenas were served with a notification in the general form of a Board Notice, stating that Medieval Times would not seek information related to employees’ Section 7 rights or information provided to the Board, and rescinding the Subpoenas previously served upon the employees. *Id.*; see also R.S. Ex. 4. Medieval Times also posted this notification near the time clock at the New Jersey castle. R.S. Ex. 4. Medieval Times contends that the notification, together with the revised Subpoenas *Duces Tecum*, was sufficient to repudiate any violation committed by the service of the original Subpoenas pursuant to *Passavant Memorial Area Hospital*, discussed previously.

The evidence here does not establish that Medieval Times effectively repudiated its violation of Section 8(a)(1) via service of the revised Subpoenas *Duces Tecum* and posted notification. The record demonstrates that the employee witnesses had already reviewed the initial Subpoenas and begun searching for responsive materials before the second Subpoenas were served. See Tr. 195-196, 262-263, 306-307, 419-420. In addition, there was no “unambiguous” acknowledgement of the unlawful nature of the initial Subpoenas – simply a statement that Medieval Times would not “seek documents and information through a government issued subpoena” which is “related to employees’ Section 7 rights” or “provided to the National Labor Relations Board.” See, e.g., *Pacific Coast M.S. Industries Co.*, 355 NLRB at 1422-1423; *Beverly California Corp.*, 326 NLRB at 197. In cases where the Board has found an effective repudiation, the notice or notification provided to employees more specifically identified and conceded the unlawful nature of the conduct involved. See, e.g., *Stanton Industries*, 313 NLRB 838, 848-849 (1994) (repudiation effective where notice specifically described the alleged violation and expressed “regret” in the event that the contested statements “were made by a lead person”); *Gaines Electric Co.*, 309 NLRB 1077, 1080-1081 (1992) (notice adequately “unambiguous” and “specific” where owner represented that “It is unlawful for me to threaten to close or sell the Company because of employees’ union activities,” and directed employees to “disregard all statements.. which even created an impression in your mind that I was threatening you” in such a manner); *Agri-International, Inc.*, 271 NLRB 925, 926-927, 976-977 (1984) (repudiation effective where notice contained “acknowledgement” that supervisors “had asked employees how they were going to vote in the election” at Superintendent’s direction, and expressed “regret” regarding management’s conduct); see generally *Webco Industries, Inc.*, 327 NLRB 172, 173 (1998), enf’d. 217 F.3d 1306 (10th Cir. 2000) (effective repudiation “signals unambiguously to the other employees that the Respondent recognizes that it has acted wrongfully, that it respects their Section 7 rights, and that it will not interfere with those rights again”). By contrast, the notification served and posted by Medieval Times, while asserting that Respondent had “rescinded and given no effect to any prior subpoenas” requiring the production of such materials, also stated that the initial Subpoenas “remain unresolved.” See R.S. Exs. 3, 4, 6, 8.

Furthermore, in addressing these issues it is important to note that the unlawful conduct at issue here involves the service and language of Subpoenas *Duces Tecum*, an element of the Board’s proceedings involving legal terminology and a conceptual framework with parameters that are often contested even by experienced attorneys. Therefore, the legal vocabulary and syntax involved are substantially more esoteric than the threats of closure, threats of discharge, and interrogations addressed in the cases discussed above, and more confusing for employees who, like the performers in the instant case, have no specialized legal training. In addition, the record demonstrates that *both* the initial and the revised Subpoenas *Duces Tecum* were served upon several of the employees at Medieval Times’ New Jersey castle, in the presence of their co-workers. See Tr. 194-197, 305-306, 368-369. The employees would reasonably assume as a result that involvement with the Union or the instant Board proceeding would engender additional legal entanglements, particularly in the context of Medieval Times’ trademark infringement lawsuit and its efforts to block specific posts which

appeared on MTPU social media accounts, or to have the accounts banned in their entirety. Thus, the evidence overall does not establish that Medieval Times' purported repudiation of its initial Subpoenas *Duces Tecum* was "unambiguous" pursuant to the *Passavant* standard.

Finally, as discussed previously, an important component of the *Passavant* analysis involves the extent to which the respondent has committed other unfair labor practices in addition to or after the repudiated conduct. See, e.g., *Robert Orr/Sysco Food Services, LLC*, 343 NLRB at 1183, fn. 4, 1192; *Stanton Industries, Inc.*, 313 NLRB at 849; *The Broyhill Company*, 260 NLRB at 1366, 1372. Here, Medieval Times committed a number of other unfair labor practices, as discussed at length herein. It is true that none of these violations took place after service of the initial Subpoenas *Duces Tecum* on the employees. However, that is because those Subpoenas were served the week before the hearing in this case was scheduled to begin. As a result, the other unfair labor practices committed in connection with AGVA's organizing campaign militate against a finding that Medieval Times successfully repudiated the violation of Section 8(a)(1) committed when it served its initial Subpoenas *Duces Tecum*.

For all of the foregoing reasons, the evidence establishes that Medieval Times violated Section 8(a)(1) of the Act by serving Subpoenas *Duces Tecum* on employees in late December 2023, and early January 2024, which required the production of materials provided to the National Labor Relations Board during the investigation of the instant unfair labor practice charges and information pertaining to employees' Union and protected concerted activities, in order to coerce the employees and discourage them from exercising their Section 7 rights.

Conclusions of Law

1. Respondent Medieval Times U.S.A., Inc. and Medieval Knights, LLC (Medieval Times) is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. American Guild of Variety Artists ("AGVA") is a labor organization within the meaning of Section 2(5) of the Act.

3. In mid-June 2022, Medieval Times, by its Chief Executive Officer Pedro de Montaner, made statements threatening that employees at non-unionized Medieval Times facilities could not receive a wage increase because employees at the New Jersey castle had filed a petition for a representation election, and blaming the Union for Respondent's failure to provide mid-year wage increases, in violation of Section 8(a)(1) of the Act.

4. On October 13, 2022, Medieval Times initiated, and maintained thereafter, a trademark infringement lawsuit against Medieval Times Performers United ("MTPU") and AGVA in the United States District Court for the District of New Jersey which was

not reasonably based and was filed with a retaliatory motive, in violation of Section 8(a)(1) of the Act.

5. In or around late January 2023, Medieval Times contacted TikTok seeking to have the California and New Jersey MTPU TikTok accounts banned by claiming that posts made to these accounts infringed Medieval Times' trademark, in order to interfere with, restrain, and coerce employees in the exercise of their Section 7 rights, in violation of Section 8(a)(1) of the Act.

6. In or around late January 2023, Medieval Times contacted Facebook seeking to block a post on the California MTPU Facebook account by claiming that the post infringed Medieval Times' trademark, in order to interfere with, restrain, and coerce employees in the exercise of their Section 7 rights, in violation of Section 8(a)(1) of the Act.

7. On February 10, 2023, Medieval Times threatened employees with discipline for peaceably distributing handbills to the public while on non-work time and in a non-work area, in violation of Section 8(a)(1) of the Act.

8. In or around late December 2023, and early January 2024, Medieval Times served Subpoenas *Duces Tecum* in the instant proceeding on employees which required the production of materials provided to the National Labor Relations Board during the investigation of the instant unfair labor practice charges, and required the production of information pertaining to employees' Union and protected concerted activities, in order to coerce employees and discourage them from exercising their Section 7 rights, in violation of Section 8(a)(1) of the Act.

9. On October 14, 2022, Medieval Times issued a written warning to Christopher Lucas in retaliation for Lucas' support for and activities on behalf of AGVA and protected concerted activities, in violation of Sections 8(a)(1) and (3) of the Act.

10. On December 15, 2022, Medieval Times issued a final warning to Christopher Lucas in retaliation for Lucas' support for and activities on behalf of AGVA and protected concerted activities, in violation of Sections 8(a)(1) and (3) of the Act.

11. On January 21, 2023, Medieval Times discharged Christopher Lucas in retaliation for Lucas' support for and activities on behalf of AGVA and protected concerted activities, in violation of Sections 8(a)(1) and (3) of the Act.

12. Medieval Times has not violated the Act in any other manner.

13. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Respondent Medieval Times engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the Act's policies.

Respondent, having unlawfully discharged Christopher Lucas on January 21, 2023, shall offer Lucas reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges he previously enjoyed. Respondent shall also make Lucas whole for any loss of earnings and other benefits he may have suffered as a result of his unlawful discharge. The make-whole remedy shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Respondent shall further compensate Lucas for any other direct or foreseeable pecuniary harms incurred as a result of his unlawful discharge, including reasonable search-for-work and interim employment expenses, regardless of whether those expenses exceed Lucas's interim earnings. *Thryv, Inc.*, 372 NLRB No. 22 at p. 14 (2022), enf. denied on other grounds 102 F.4th 727 (5th Cir. 2024); *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enf'd. in pertinent part 859 F.3d 23 (D.C. Cir. 2017). Compensation for such harms shall be calculated separately from taxable net back pay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. Respondent shall further compensate Lucas for the adverse tax consequences, if any, of receiving a lump sum back pay award, and file a report allocating backpay to appropriate years, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration as appropriate. In addition to the backpay-allocation report, Respondent shall file with the Regional Director copies of corresponding W-2 forms reflecting the backpay award. *Cascades Containerboard Packing—Niagra*, 370 NLRB No. 76 (2021).

Respondent shall also be required to remove from its files any reference to Lucas's unlawful discharge on January 21, 2023, as well as the unlawful final warning issued on December 15, 2022, and the unlawful written warning issued on October 14, 2022, and to notify Lucas in writing that this has been done and that the discharge, final warning, and written warning will not be used against him in any way.

In addition, Respondent shall be ordered to reimburse AGVA and MTPU for all legal and other expenses incurred in the defense of Respondent's trademark infringement lawsuit filed in the United States District Court for the District of New Jersey, Case No. 2:22-cv-06050, with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). See *Allied Mechanical Services*, 357 NLRB at 1235, 1242, 1243, 1247; *Milum Textile Services*, 357 NLRB at 2056.

Respondent shall also post an appropriate information notice, as described in the attached Appendix. This notice shall be posted in the Respondent's facilities at 149 Polito Avenue, Lyndhurst, New Jersey and 7662 Beach Boulevard, Buena Park,

California, wherever notices to employees are regularly posted, for 60 days, without anything covering the notice or defacing its contents. In addition to the physical posting of paper notices, notices shall be distributed electronically, posted on an intranet or an internet site, and/or other using electronic means, to the extent Respondent customarily communicates with its employees in such a manner. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed its facilities at 149 Polito Avenue, Lyndhurst, New Jersey and/or 7662 Beach Boulevard, Buena Park, California, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at those locations at any time since June 1, 2022.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended:⁵⁷

Order

Medieval Times U.S.A., Inc. and Medieval Knights, LLC, its officers, agents, successors and assigns shall

1. Cease and desist from

(a) Threatening that employees at non-unionized Medieval Times facilities cannot receive a wage increase because employees at the New Jersey castle had filed a petition for a representation election, and blaming the Union for Respondent's failure to provide mid-year wage increases

(b) Initiating and maintaining trademark infringement lawsuits against Medieval Times Performers United ("MTPU") and AGVA which are not reasonably based and are filed with a retaliatory motive.

(c) Contacting TikTok seeking to have MTPU TikTok accounts banned by claiming that posts made to these accounts infringe Medieval Times' trademark, in order to interfere with, restrain, and coerce employees in the exercise of their Section 7 rights.

(d) Contacting Facebook seeking to block posts on the California MTPU Facebook account by claiming that posts made to the account infringe Medieval Times' trademark, in order to interfere with, restrain, and coerce employees in the exercise of their Section 7 rights.

(e) Threatening employees with discipline for peaceably distributing handbills to the public while on non-work time and in a non-work area.

⁵⁷ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(f) Serving employees with Subpoenas *Duces Tecum* which require the production of materials provided to the National Labor Relations Board during the investigation of unfair labor practice charges, and require the production of information pertaining to employees' Union and protected concerted activities, in order to coerce employees and discourage them from exercising their Section 7 rights.

(g) Issuing discipline to employees in retaliation for their support for and activities on behalf of AGVA and other protected concerted activities.

(h) Discharging or otherwise discriminating against employees in retaliation for their support for and activities on behalf of AGVA and other protected concerted activities.

(i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Reimburse AGVA and MTPU for all legal and other expenses incurred in the defense of Respondent's trademark infringement lawsuit filed in the United States District Court for the District of New Jersey, Case No. 2:22-cv-06050, with interest, as discussed in the Remedy section of this Decision.

(b) Within 14 days from the date of the Board's Order, offer Christopher Lucas full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges enjoyed.

(c) Make Christopher Lucas whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of the discrimination against him, in the manner set forth in the Remedy section of this decision.

(d) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharge of Christopher Lucas on January 21, 2023, the unlawful final warning issued to Lucas on December 15, 2023, and the unlawful written warning issued to Lucas on October 14, 2023, and within 3 days thereafter, notify Lucas in writing that this has been done and that the discharge, final warning, and written warning will not be used against him in any way.

(e) Make Christopher Lucas whole for reasonable search-for-work and interim employment expenses, in the manner set forth in the Remedy section above.

(f) Compensate Christopher Lucas for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 22,

within 21 days of the date the amount of backpay is fixed, either by agreement or by a Board order, a report allocating the backpay award to the appropriate calendar year(s).

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this order.

(h) Within 14 days after service by the Region, post at its facilities at 149 Polito Avenue, Lyndhurst, New Jersey and 7662 Beach Boulevard, Buena Park, California, copies of the attached notice marked "Appendix."⁵⁸ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If Respondent has gone out of business or closed its facilities at 149 Polito Avenue, Lyndhurst, New Jersey and 7662 Beach Boulevard, Buena Park, California, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at those locations at any time since June 1, 2022.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 22 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent have taken to comply.

Dated, Washington, D.C. February 13, 2025



Lauren Esposito
Administrative Law Judge

⁵⁸ If the facilities involved in these proceedings are open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facilities involved in these proceedings are closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facilities reopen and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, Respondent are communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of the United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT threaten that employees at non-unionized Medieval Times facilities cannot receive a wage increase because employees at our New Jersey castle filed a petition for a representation election, and blame the Union for our failure to provide mid-year wage increases

WE WILL NOT initiate and maintain trademark infringement lawsuits against Medieval Times Performers United ("MTPU") and American Guild of Variety Artists ("AGVA") which are not reasonably based and are filed with a retaliatory motive.

WE WILL NOT contact TikTok seeking to have MTPU TikTok accounts banned by claiming that posts made to these accounts infringe Medieval Times' trademark, in order to interfere with, restrain, and coerce employees in the exercise of their Section 7 rights.

WE WILL NOT contact Facebook seeking to block posts on the California MTPU Facebook account by claiming that posts made to the account infringe Medieval Times' trademark, in order to interfere with, restrain, and coerce employees in the exercise of their Section 7 rights.

WE WILL NOT threaten you with discipline for peaceably distributing handbills to the public while on non-work time and in a non-work area.

WE WILL NOT serve you with Subpoenas *Duces Tecum* which require the production of materials provided to the National Labor Relations Board during the investigation of unfair labor practice charges, and require the production of information pertaining to employees' Union and protected concerted activities, in order to coerce you and discourage you from exercising your Section 7 rights.

WE WILL NOT discharge or otherwise discriminate against you in retaliation for your activities on behalf of the Union or your other protected concerted activities.

WE WILL NOT issue written warnings or other discipline to you in retaliation for your activities on behalf of the Union or your other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL reimburse AGVA and MTPU for all legal and other expenses incurred in the defense of our trademark infringement lawsuit filed in the United States District Court for the District of New Jersey, Case No. 2:22-cv-06050, with interest.

WE WILL within 14 days from the date of the Board's Order, offer Christopher Lucas full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges enjoyed.

WE WILL make Christopher Lucas whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms suffered as a result of the discrimination against him, less interim earnings, plus interest.

WE WILL compensate Christopher Lucas for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 22, within 21 days of the of the date that the amount of backpay is fixed by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

WE WILL within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Christopher Lucas on January 21, 2023, the unlawful final warning issued on to Lucas December 15, 2022, and the unlawful written warning issued to Lucas on October 14, 2022, and WE WILL within 3 days thereafter, notify Lucas in writing that this has been done and that the discharge, final warning, and written warning will not be used against him in any way.

MEDIEVAL TIMES U.S.A., LLC AND MEDIEVAL KNIGHTS, LLC

Dated: _____ By: _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Veterans Administration Building, 20 Washington Place, 5th Floor, Newark, New Jersey 07102
(973)645-2100, Hours: 8:30 a.m. to 5:00 p.m.

The Administrative Law Judge's decision can be found at <https://www.nlrb.gov/case/22-CA-301865> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (973)645-2100.