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TO: JPC Authorizer Signatories to the SAG +AFTRA Commercials Contracts

FROM: Reed Smith, LLP

Re: Signatory Obligations – Successor Liability

Background: During the past year, we have received numerous inquiries from agencies and advertisers who are signatory to the SAG and AFTRA Commercials Contracts ("Commercials Contracts") asking what their signatory obligations are under the contracts in the event of a sale and/or merger of an advertiser or agency. A sale can be in the form of "asset" sale or "stock" sale and under labor law there can be different responsibilities depending on the type of sale. Section 56 of the SAG TV and AFTRA TV Commercials Contracts and Section 67 of the AFTRA Radio Commercials Contract have specific language for a signatory to follow in the event of sale, transfer, assignment or other disposition by Producer of any commercials produced under the commercials contracts. However, the language does not address what possible legal consequences a signatory may have after a potential sale, transfer, assignment or other disposition. For example: What obligations does a signatory have under the Contract? Does the Purchaser take over all of the signatory's obligations because of a sale? Who is responsible for benefit contributions?

Below are FAQs which will provide some guidance in the event of a stock or asset sale. If union signatory obligations are a concern in a merger or sale, we strongly encourage all parties to speak to a labor law specialist before finalizing any sale or transfer of a company.

Note: The term "Commercials Contracts" as used below refers to all three of the collective bargaining agreements in their entirety.

Question: Company A purchases the assets of Company B, which consists of a building, equipment, and defined intellectual property rights. Company B is a signatory to the Commercials Contracts. Is Company A bound by the Commercials Contracts to which Company B is a signatory before Company B's assets were purchased by Company A?

Answer: Generally, no. In a sale of assets, only the specified assets are sold, which may prevent certain rights and liabilities from moving to the Purchaser, including obligations under the Commercials Contracts. Company A must identify the particular assets being purchased from Company B in the agreement; if those assets do not include commercials produced under the Commercials Contracts then all obligations under the Commercials Contracts will remain with

Company B, including all union obligations, as well as obligations in regard to contributions to respective benefit funds. If and when Company B is liquidated (as is usually the case in an asset sale), the unions become creditors of Company B and must be handled in the liquidation. If the commercials produced under the Commercials Contracts are part of an asset sale, then Company B must execute a SAG and/or AFTRA Commercials Transfer of Rights-Assumption Agreement with Company A. It is important that the Transfer of Rights – Assumption Agreement be very specific as to which commercials are being transferred to Company A (by listing each commercial individually) and that it not be a broad, all encompassing assumption. Such Transfer of Rights Agreements need to be filed with the appropriate unions.

Question: Company A acquires Company B, a signatory, by purchasing all of the stock of Company B. Is Company A bound by the Commercials Contracts that Company B entered into before it sold its' stock to Company A.

Answer: Generally, yes. When Company B is sold through a stock sale, the entity's ownership changes to Company A. Company A assumes all of Company B's assets and liabilities including all outstanding contracts. Important: Company A is now bound to all obligations under the Commercials Contracts, including all future productions. Moreover, if Company B was an authorizer to the ANA-4A's Joint Policy Committee ("JPC") on Talent Union Relations, Company A would also assume the JPC Authorizer status as well. Company A becomes a signatory to the Commercials Contracts for all productions going forward (after the stock purchase from Company B) and remains a signatory to the Commercials Contracts until such time as the Commercial Contracts expire and Company A properly commences its' withdrawal from the JPC as well as notifying the respective unions' representatives that the JPC will no longer bargain on behalf of Company A.

Question: After the stock sale from Company B to Company A, when does the duty to bargain with SAG and/or AFTRA begin?

Answer: The duty to bargain does not begin until after the expiration of the Commercials Contracts. The duty to bargain attaches when SAG and/or AFTRA representatives make a demand upon Company A to bargain. This can be in any form, oral or written. The obligation to bargain if no notice is received is not a set time under federal and/or state labor law. It is based on reasonableness and the factors of each situation. For example, if Company A sends notice and does not get any response after thirty (30) days and sends another notice and still no response, one would argue the obligation to bargain ceases. Company A must prove it repeatedly made an oral and/or written

demand to SAG and/or AFTRA, and no response was received. After a reasonable amount of time (usually 60-90 days), Company A can take the position SAG and/or AFTRA has abandoned the contract, and there is no longer an obligation to bargain.

Question: Company A purchases Company B - Company B has produced commercials under the Commercials Contracts and has individual SAG and/or AFTRA employment contracts in effect with the performers who provided services in those commercials. Company A would like to assume some or all of Company B's commercials. Does Company A become a "successor" to Company B and a signatory to the unions' Commercials Contracts by assuming the performer contracts for those individual commercials?

Answer: No. Company A does not become a successor to Company B simply because it assumes signatory responsibilities for certain commercials produced under the Commercials Contracts. Company A will have to honor the terms of the acquired agreements for those commercials, but it does not become signatory to the Commercials Contracts for new productions going forward.

Question: If a company changes its' name, what is meant by an "alter ego" under labor law and when would Company A (the new name) be considered an alter ego of Company B (the original name)?

Answer: Company A will be considered an alter ego of Company B if the two enterprises have substantially identical management, business purpose, operation, equipment, customers, and supervision, as well as ownership. The determination of whether a new employer is an alter ego of a previous employer rests primarily on the continuity of ownership. If there is continuity in ownership and the new employer is an alter ego of the previous employer, the new employer inherits all of the employment obligations of the previous employer. Thus, the new employer will be bound by the Commercials Contracts for all productions including those going forward, will inherit the duty to bargain, will assume any unresolved liabilities and contractual obligations under the Commercials Contracts, and will assume Company B's JPC Authorizer status.

Question: Can Company A be held liable for Company B's unfair labor practices?

Answer: Company A is liable for Company B's unfair labor practices if it had actual or constructive knowledge of the unfair labor practices at the time of purchase. If Company A had knowledge of significant facts about Company B's relevant conduct, Company A may be liable even if charges were not actually pending against Company A at the time of the purchase. The burden would be on Company A to show it did not have the required knowledge.

This is only a sampling of possible issues in the event of a sale and/or merger. We strongly recommend that you contact your company's legal counsel for specific advice on* YOUR *particular situation.