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8 BEFORE THE LABOR COMMISSIONER  
9 OF THE STATE OF CALIFORNIA  
10

11 TREVOR HALL, an individual,

12 Petitioner,

13 vs.

14 PAUL STEPANEK, an individual; PAUL  
15 STEPANEK MANAGEMENT, a Nevada  
Corporation,

16 Respondents.  
17

CASE NO. TAC 46165

**DETERMINATION OF  
CONTROVERSY**

18 **I. INTRODUCTION**

19 The above-captioned matter, a Petition to Determine Controversy under Labor Code section  
20 1700.44, came on regularly for hearing in Los Angeles, California on June 5, 2018 (hereinafter,  
21 referred to as the "TAC Hearing"), before the undersigned attorney for the Labor Commissioner  
22 assigned to hear this case. Petitioner TREVOR HALL, an individual (hereinafter, referred to as  
23 "HALL") appeared and was represented by Jordan Susman, Esq. of HARDER LLP. Respondents  
24 PAUL STEPANEK, an individual; and, PAUL STEPANEK MANAGEMENT, a Nevada  
25 Corporation (herein after collectively "STEPANEK") appeared and was represented by Donald V.  
26 Smiley, Esq. of LAW OFFICES OF DONALD V. SMILEY. The matter was taken under  
27 submission on June 29, 2018 after the parties submitted post-hearing briefs.  
28



1 STEPANEK procured work for HALL in violation of the Talent Agencies Act (hereinafter, referred  
2 to as “TAA”).

3 7. The allegations put forward by HALL are based off of emails introduced by counsel  
4 for HALL which HALL had received from STEPANEK. These emails may have seemed like  
5 STEPANEK was acting as a talent agent without further context, but at hearing WOLFE and  
6 STEPANEK credibly testified that they spoke multiple times per day by telephone about all of  
7 HALL’s bookings. While one can see where HALL, without this context, may have suspected  
8 STEPANEK of unlawful procurement, the evidence presented at hearing showed that STEPANEK  
9 never acted without the direction and authorization of WOLFE.

10 8. HALL did not testify at the hearing leaving much of STEPANEK and WOLFE’s  
11 testimony unrebutted and HALL’s documentary evidence unsupported.

### 12 III. ISSUES

13  
14 1. Has STEPANEK acted as an unlicensed talent agent and therefore violated the TAA  
15 in relation to HALL’s performances, or, is STEPANEK exempt from having acted as an unlicensed  
16 talent agent under the safe harbor exemption pursuant to Labor Code section 1700.44(d) due to  
17 WOLFE’s involvement here?

18 2. If STEPANEK violated the TAA, is the appropriate remedy to void the entire  
19 MANAGEMENT CONTRACT *ab initio* or sever the offending practices under *Marathon*  
20 *Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974?

### 21 IV. LEGAL ANALYSIS

22 Labor Code section 1700.4(a) defines “talent agency” as:

23  
24 [A] person or corporation who engages in the occupation of procuring, offering,  
25 promising, or attempting to procure employment or engagements for an artist or  
26 artists, except that the activities of procuring, offering, or promising to procure  
recording contracts for an artist or artists shall not of itself subject a person or  
corporation to regulation and licensing under this chapter.

27 Labor Code section 1700.4(b) defines “artist” as:

1 [A]ctors and actresses rendering services on the legitimate stage and in the  
2 production of motion pictures, radio artists, musical artists, musical organizations,  
3 directors of legitimate stage, motion picture and radio productions, musical  
4 directors, writers, cinematographers, composers, lyricists, arrangers, models, and  
5 other artists and persons rendering professional services in motion picture,  
6 theatrical, radio, television and other entertainment enterprises.

7 HALL is an "artist" within the meaning of Labor Code section 1700.4(b).

8 Moreover, Labor Code section 1700.5 provides that "[n]o person shall engage in or carry  
9 on the occupation of a talent agency without first procuring a license therefor from the Labor  
10 Commissioner." It is undisputed that STEPANEK did not possess a talent agency license during  
11 the relevant period he served as personal manager for HALL.

12 A person may counsel and direct artists in the development of their professional careers, or  
13 otherwise "manage" artists – while avoiding any procurement activity (procuring, promising,  
14 offering, or attempting to procure artistic employment or engagements) – without the need for a  
15 talent agency license. In addition, such person may procure non-artistic employment or  
16 engagements for the artist without the need for a license. (*Styne v. Stevens* (2001) 26 Cal.4th 42).

17 An agreement that violates the licensing requirements of the TAA is illegal and  
18 unenforceable. "Since the clear object of the Act is to prevent improper persons from becoming  
19 [talent agents] and to regulate such activity for the protection of the public, a contract between an  
20 unlicensed [agent] and an artist is void." (*Buchwald v. Sup. Ct.* (1967) 254 Cal.App.2d 347, 351).

21 **A. Has STEPANEK Acted as an Unlicensed Talent Agent and Therefore Violated the  
22 TAA in Relation to HALL's Performances, or, is STEPANEK Exempt From  
23 Having Acted as an Unlicensed Talent Agent Under the Safe Harbor Exemption  
24 pursuant to Labor Code section 1700.44(d) Due to WOLFE's Involvement Here?**

25 A talent agent is a corporation or person who procures, offers, promises, or attempts to  
26 procure employment or engagements for an artist or artists. (See Labor Code § 1700.4(a)). An  
27 unlicensed talent agent who performs such activities pursuant to Labor Code section 1700.4(a) is  
28 in violation of the TAA. While not specifically defined by the TAA, the different definitions for  
employment require an act on behalf of the employed. (See *Malloy v. Board of Education* (1894)  
102 Cal. 642, 646; Industrial Welfare Commission Wage Order No. 12-2001 (hereinafter, referred

1 to as “IWC Wage Order No. 12”), section 2(D)-(F); Black’s Law Dictionary (10th ed. 2014)). The  
2 Labor Commissioner has ruled, “[p]rocurement could include soliciting an engagement;  
3 negotiating an agreement for an engagement; or accepting a negotiated instrument for an  
4 engagement.” (*McDonald v. Torres*, TAC 27-04; *Gittelman v. Karolat*, TAC 24-02). Additionally,  
5 “[p]rocurement” includes any active participation in a communication with a potential purchaser  
6 of the artist’s services aimed at obtaining employment for the artist, regardless of who initiated the  
7 communication or who finalized the deal. (*Hall v. X Management*, TAC 19-90).

8 Labor Code section 1700.44(d), an exception to this requirement also known as the safe  
9 harbor exemption, provides that “[i]t is not unlawful for a person or corporation which is not  
10 licensed . . . to act in conjunction with, and at the request of, a licensed talent agency in the  
11 negotiation of an employment contract.” For the safe harbor exemption under Labor Code section  
12 1700.44(d) to apply, the manager must: (1) act in conjunction with a licensed talent agent; and (2)  
13 act at the request of a licensed talent agent; and (3) such actions are limited to the negotiation of an  
14 employment contract. (See *Shirley v. Artists’ Management West, et al.*, TAC 08-01; *Tommy Lister*  
15 *v. Tamara Holzman*, TAC 04-00; and *Creative Artists Entertainment Group, LLC v. Jennifer*  
16 *O’Dell*, TAC 26-99).

17 The burden of proof in actions before the Labor Commissioner is found at Evidence Code  
18 section 115, which states, “[e]xcept as otherwise provided by law, the burden of proof requires  
19 proof by a preponderance of the evidence.” Evidence Code §115. “[T]he party asserting the  
20 affirmative at an administrative hearing has the burden of proof, including both the initial burden  
21 of going forward and the burden of persuasion by preponderance of the evidence . . .” (*McCoy v.*  
22 *Bd. of Ret.* (1986) 183 Cal.App.3d 1044, 1051-52). “[P]reponderance of the evidence standard . .  
23 . simply requires the trier of fact’ to believe the existence of a fact is more probable than its  
24 nonexistence.” (*In re Michael G.* (1998) 63 Cal.App.4th 700, 709, fn 6).

25 As discussed above, HALL points to a handful of emails in his possession that when read  
26 alone without any further context could lead one to believe that STEPANEK was acting as an  
27 unlicensed agent. But the credible testimony of STEPANEK and HALL’s licensed talent agent  
28 WOLFE added much needed context here. STEPANEK and WOLFE credibly testified that they

1 were in constant communication in regards to HALL's bookings, speaking multiple times per day  
2 by telephone, and that STEPANEK tended to handle all direct communication with HALL. This  
3 explains the emails where WOLFE is not carbon copied therein, and thus procurement seems to be  
4 happening without his knowledge. STEPANEK and WOLFE further credibly testified that on rare  
5 occasions, around a dozen or so times out of roughly three hundred procurements, WOLFE would  
6 direct STEPANEK to act at his behest to negotiate employment contracts.

7 HALL did not meet his burden of proof here as the evidence demonstrates HALL had a  
8 dedicated agent, WOLFE, who communicated with STEPANEK regularly regarding opportunities  
9 for HALL, and on occasion would direct STEPANEK to handle the negotiation of employment  
10 contracts. HALL presented no evidence to suggest that his appearances were secured by  
11 STEPANEK without WOLFE's direction and knowledge, as he did not testify at the hearing, but  
12 only presented the emails discussed above without further context.

13 Based on the evidence presented at hearing, STEPANEK's actions fell within the safe  
14 harbor exemption of Labor Code section 1700.44(d). As the TAA was not violated, the question  
15 of whether severance is appropriate under *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th  
16 974, is moot.

17 For these reasons, we find no violation of the TAA as alleged here.

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IV. ORDER

For the reasons set forth above, IT IS HEREBY ORDERED that:

1. The MANAGEMENT AGREEMENTS between Petitioner TREVOR HALL and Respondents PAUL STEPANEK, an individual; PAUL STEPANEK MANAGEMENT, a Nevada Corporation, is not invalid under the Talent Agencies Act.


2. The MANAGEMENT AGREEMENTS between Petitioner TREVOR HALL and Respondents PAUL STEPANEK, an individual; PAUL STEPANEK MANAGEMENT, a Nevada Corporation, is not unenforceable under the Talent Agencies Act.

Dated: ~~August~~ October 9<sup>th</sup>, 2018

  
\_\_\_\_\_  
MAX D. NORRIS  
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: October 8, 2018

  
\_\_\_\_\_  
JULIE A. SU  
State Labor Commissioner



1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA** )  
3 **COUNTY OF LOS ANGELES** ) S.S.

4 I, Lindsey Lara, declare and state as follows:

5 I am employed in the State of California, County of Los Angeles. I am over the age of  
6 eighteen years old and not a party to the within action; my business address is: 300 Oceangate,  
Suite 850, Long Beach, CA 90802.

7 On October 10, 2018, I served the foregoing document described as: **DETERMINATION**  
8 **OF CONTROVERSY**, on all interested parties in this action by placing a true copy thereof  
enclosed in a sealed envelope addressed as follows:

9 Jordan Susman, Esq.  
10 HARDER LLP  
11 132 South Rodeo Drive, Fourth Floor  
Beverly Hills, CA 90212  
12 Tel: (424) 203-1600 Fax: (424) 203-1601  
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13 Attorney for Petitioner


Attorney for Respondents

14  **(BY CERTIFIED MAIL)** I am readily familiar with the business practice for collection  
15 and processing of correspondence for mailing with the United States Postal Service. This  
16 correspondence shall be deposited with fully prepaid postage thereon for certified mail with  
17 the United States Postal Service this same day in the ordinary course of business at our  
office address in Long Beach, California. Service made pursuant to this paragraph, upon  
motion of a party served, shall be presumed invalid if the postal cancellation date of postage  
meter date on the envelope is more than one day after the date of deposit for mailing  
contained in this affidavit.

18  **(BY EMAIL SERVICE)** I caused the above-referenced document(s) to be delivered  
19 electronically via email to the email address of the addressee(s) set forth above.

20  **(STATE)** I declare under penalty of perjury, under the laws of the State of  
California that the above is true and correct.

21 Executed this 10th day of October 2018, at Long Beach, California.

22  
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24 \_\_\_\_\_  
Lindsey Lara  
25 Declarant  
26  
27  
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