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DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
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DIVISION OF LABOR STANDARDS ENFORCEMENT

DEPARTMENT OF INDUSTRIAL RELATIONS

STATE OF CALIFORNIA

KELLY BLACKSTOCK p/k/a KELLY CLARKSON, an individual; FACE FACE PRODUCTIONS, INC., a Nevada corporation; and SHPANTS, INC., a Nevada corporation,

Petitioners,

v.

STARSTRUCK MANAGEMENT GROUP, LLC, a Tennessee limited liability company; STARSTRUCK ENTERTAINMENT, LLC, a Tennessee limited liability company; BRANDON BLACKSTOCK, an individual; and NARVEL BLACKSTOCK, an individual,

Respondents.

Case No.: TAC - 52781

DETERMINATION OF CONTROVERSY

I. INTRODUCTION

From March 20, 2023, to March 24, 2023, the above-captioned matter, a Petition to Determine Controversy under Labor Code section 1700.44, came before the undersigned attorney for the Labor Commissioner assigned to hear this case. Petitioners Kelly Blackstock p/k/a Kelly Clarkson[1] ("Clarkson"), Face Face Productions, Inc., and SHPants, Inc. (hereinafter, collectively referred to as "Petitioners") were represented by Edwin McPherson and Pierre Pine. Respondents Brandon Blackstock ("Blackstock"), Narvel Blackstock ("N. Blackstock"), Starstruck Management Group, LLC, and Starstruck Entertainment, LLC (hereinafter, collectively referred to as "Respondents") were represented by Bryan Freedman and Jesse Kaplan. The original petition was filed on October 20, 2020.

The parties submitted post-hearing briefing on July 18, 2023. The matter was taken under submission. Due consideration having been given to the testimony, documentary evidence, and arguments presented, the Labor Commissioner hereby adopts the following determination.

II. FINDINGS OF FACT

1. This case arises out of a dispute between Petitioner Kelly Clarkson and her longtime manager and then-husband[2] Brandon Blackstock regarding whether he unlawfully procured her work in violation of the Talent Agencies Act.

2. It is undisputed that between 2017 and 2020, Blackstock through his management firm(s) Starstruck Management Group LLC and Starstruck Entertainment LLC served as Clarkson's manager. In that role, Respondents had to coordinate Clarkson's hectic schedule with any number of professionals involved in her career, including her agents, production companies, "glam" teams for makeup and hair, and publicists. Respondents also coordinated work on her music career. Blackstock credibly testified that he provided advice and counsel on Clarkson's career in general, such as whether she should pursue being a talk show host.

3. During the same time period, Creative Artists Agency (CAA) served as Clarkson's talent agency. Clarkson had a team of agents covering various aspects of her career. As relevant here, Clarkson's lead ("responsible") agents were music agents Darryl Eaton and Rick Roskin, while Cat Carson served as

[1] Clarkson indicated she preferred to use her professional name in relation to this hearing.
[2] Clarkson and Blackstock have since divorced.

Clarkson's agent specializing in unscripted television, including game shows, competitions, documentaries, and talk shows. Carson also served since 2013 as the "covering agent" at CAA in charge of building relationships with NBC.

4. In addition to her manager and agents, Clarkson also retained David Byrnes, her longtime attorney from her time as a contestant on American Idol ("Idol"), to review all her contracts. Byrnes is not a licensed talent agent.

5. The parties dispute Blackstock's role in five procurements for Clarkson: as a judge on "The Voice" in 2017, as the host of the Kelly Clarkson Show in 2018, for a Norwegian Cruise Line Services Agreement in 2019, for Wayfair talent and brand agreements between 2018 and 2020, and as a host of the Billboard Music Awards between 2018 and 2020.

A. The Voice

6. The Voice is a reality singing competition on NBC/Universal (NBC). On May 9, 2017, Clarkson agreed in principle to become a judge on The Voice. The testimony and evidence made clear that the deal came together over a three-day period from May 7, 2017 to May 9, 2017 and that the impetus for the fast-moving deal was a promised offer from rival ABC for Clarkson to be a judge on the relaunched Idol. The evidence is less clear—and the parties sharply disagree—on the roles of Blackstock and CAA agents in procuring the deal.

7. Petitioners allege that Blackstock solicited and negotiated the initial deal for Clarkson alone, informing CAA of the main deal terms and then relying on CAA to finalize the long-form agreement. According to Petitioners, while CAA discussed the potential deal with Idol on May 8, 2017 at CAA's offices, they did not discuss a deal for The Voice at any time that day. Respondents disagree, stating that CAA agents discussed a potential deal for The Voice on May 8, 2017, developed a joint plan to approach NBC about a deal on The Voice at the NBC lot (which the parties referred to as "the compound") on May 9, 2017, and coached Blackstock in person during calls Blackstock made from the compound to NBC's president of alternative programming, Paul Telegdy, the evening of May 9, 2017.[3]

[3] Blackstock testified that Telegdy had already left the compound the evening of May 9, 2017 when he, Eaton, and Roskin sought to meet Telegdy in person. They therefore called him.

8. Although both Petitioners' and Respondents' versions are plausible, we find it more likely than not Blackstock negotiated the main terms of The Voice deal without CAA. We find as follows:

9. On Sunday, May 7, 2017, Blackstock came to Los Angeles to meet with his client Blake Shelton. Shelton was a judge on The Voice, and Blackstock planned to meet him during the taping of The Voice at the compound the following Monday and Tuesday.

10. That same Sunday, ABC[4] announced a relaunch of Idol, which Clarkson had won in its inaugural year over two decades ago. ABC's press release for the relaunched show included a picture of Clarkson although she had not agreed to be a judge. Blackstock and Clarkson's CAA agents agreed to meet on May 8, 2017 regarding the press release. In any event, all agreed that Clarkson was going to receive an offer from ABC.

11. On May 8, 2017, Blackstock met with several CAA agents at CAA's Los Angeles office. According to Carson, the May 8 meeting at CAA was attended by Eaton, Roskin, and Carson and focused on the anticipated offer for Clarkson to be a judge on Idol as well as the concern over the Idol press release. Carson testified that she also introduced Blackstock to her colleague, Jeff Frasco, who helped bring Idol to ABC in order to discuss what an acceptable offer from ABC for Clarkson to be a judge on Idol might include. During the meeting, the CAA agents requested Blackstock obtain Shelton's deal terms with The Voice to compare what other networks offered judges on reality singing competitions.

12. On the evening of May 8, Blackstock spoke with Byrnes to obtain the terms of Shelton's contract with NBC to be a judge on The Voice.[5] Byrnes forwarded the terms at 5:33pm.

13. Later that evening, Blackstock had his first contact with NBC regarding a potential deal for Clarkson to be a judge on The Voice. It is unclear who initiated contact, but, at 7:01pm, Blackstock texted Byrnes, "NBC is reaching out about Kelly & the Voice for the spring. WTF is going on!!!!," to which Byrnes replied, "Wow. Preemptive move. They must have heard about idol. See what they are offering! This is good news!!!!" CAA was not involved in the potential deal for The Voice at this point.

[4] The questioning and resulting testimony often interchanged Freemantle—which appeared to be the production company behind the relaunched Idol—and ABC. For ease of reference, the decision refers to ABC for both, as the exact entity acting on behalf of Idol is not relevant for the decision.
[5] Byrnes also worked on contracts for Shelton at the time.

14. On May 9, 2017, Blackstock followed up with Telegdy to leverage the anticipated Idol offer into a deal for Clarkson to be a judge on The Voice. After discussing the deal with Telegdy, Blackstock informed CAA of the potential deal. Carson testified that on May 9, 2017, she communicated with Blackstock on multiple occasions. According to Carson, she first spoke with Blackstock in the early afternoon. Blackstock informed her that he had called Telegdy at NBC regarding Clarkson's anticipated offer from Idol to seek a comparable deal from NBC. In other words, Blackstock informed Carson for the first time mid-day on May 9, 2017 that a deal was in the works.

15. At 3:38pm on May 9, 2017, Blackstock texted Carson to call him. On the ensuing call, Blackstock informed Carson NBC definitely would make an offer to Clarkson to be a judge on The Voice. On either this call or the previous one, Carson informed Blackstock that she had spoken with ABC and that a formal offer would be coming for Idol.

16. Telegdy and Blackstock finalized the principal terms of The Voice deal the evening of May 9, 2017, without meaningful CAA involvement. Blackstock had at least two calls with Telegdy that evening. It is undisputed no one from CAA was on the calls. On the second call, at around 6:50-6:55pm, Telegdy patched in Lee Straus, the executive vice president of business affairs at NBC. As Straus and Blackstock testified, Telegdy offered [redacted] dollars all-in per season of The Voice, and Blackstock accepted. At 6:59pm, Blackstock texted Byrnes, "Call me asap….just closed at [redacted] with the Voice." At 7:05pm, Blackstock texted Carson, "All in at [redacted]."

17. Following the deal closing, Blackstock and N. Blackstock had a celebratory dinner in West Hollywood with Eaton, Roskin, and several others, as corroborated by a receipt from Starstruck's expense file.

18. Respondents strongly disagree with this version of events, relying on Blackstock's testimony regarding the May 8, 2017 meeting and the May 9, 2017 calls to Telegdy. The dispute centers on whether Blackstock or Carson was more credible regarding The Voice deal. We find that Carson was more credible.

19. Carson was generally credible in her testimony regarding The Voice deal. While she had an interest in providing testimony on behalf of a current client, her answers were straightforward and consistent. The details she provided—such as the introduction of Blackstock to Frasco on the morning

of May 8—lend credibility to her testimony, and her testimony fits within the documents presented including the texts between Blackstock and her. Moreover, her testimony that Blackstock already sought to procure a deal by mid-day May 9, 2017, is supported by the text the night before in which Blackstock told Byrnes NBC was "reaching out" about a deal. Additionally, as admitted by Blackstock, no CAA agent was on any call with Telegdy or Straus making the deal. [6]

20. In contrast to Carson's credibility, Blackstock twice changed his testimony on critical issues when presented with contemporaneous evidence contradicting his original testimony. First, he originally testified that Carson was not part of the May 8, 2017 meetings and became involved only after he accepted the [redacted] per season offer from Telegdy on the night of May 9, 2017. Presented with contemporaneous texts from earlier on May 9 between Carson and himself, Blackstock changed his testimony and stated Carson may have been part of the May 8, 2017 CAA meetings, and that she definitely was involved before the deal was finalized. Second, Blackstock (and N. Blackstock) originally testified that Eaton, Roskin, and Byrnes coached B. Blackstock in person at the compound in his May 9, 2017 calls with Telegdy finalizing the deal, only to backtrack when showed his 6:59pm text to Byrnes informing him of the deal. These inconsistencies raise substantial questions of credibility.

21. In addition to these factual inconsistencies, Blackstock's testimony on The Voice deal, even when consistent, was not logical on several issues. Foremost, Blackstock's testimony regarding his plan with CAA to approach Telegdy in person on May 9, 2017 at the compound was puzzling. It is unclear why Blackstock, Roskin, or Eaton would approach a network executive at a taping with 40-50 other people to seek a significant financial commitment by a network or why they thought Telegdy would be open to negotiating in that atmosphere.

22. Relatedly, the text from Blackstock to Byrnes on the night of May 8, 2017 that NBC was "reaching out" regarding The Voice does not fit within Blackstock's general narrative that he strategized

[6] The one area of Carson's testimony that raised questions was why obtaining Clarkson a position on The Voice never came up in the May 8 meeting. Clarkson had been a guest on The Voice, had expressed interest in being a judge to Carson, and was represented by a manager of another judge on the show. It would be surprising for Carson, as the covering agent for NBC, to be unaware that a judge position on The Voice was open or going to open or that it could be used for leverage with a competing offer. Perhaps, the focus was on the incoming offer and not potential alternatives, as indicated by the introduction to Frasco. In any event, we did not find that the testimony on this issue eroded Carson's general credibility to the point where we found Blackstock's version more likely.

with CAA throughout. If Blackstock received news of NBC reaching out about The Voice the night of May 8 and CAA was intimately involved in the negotiations, there would have been communications between Blackstock, Eaton, Roskin, and Carson about NBC reaching out before they met at "the compound" the evening of May 9, 2017. There was not any communications presented between Blackstock and CAA during this critical period. Also, why would Blackstock need to go to The Voice to approach Telegdy if NBC was already reaching out to negotiate? And, why would the agents and Blackstock choose to approach Telegdy at the taping without warning when they could have scheduled a meeting given that NBC already reached out? The text suggests that Blackstock had started negotiations alone on May 8, whether NBC reached out to him or vice versa.

23. Finally, we find it unlikely that Telegdy wanted to speak to Blackstock rather than the agents (whether on the phone or in person). We find Blackstock's testimony that Telegdy hated dealing with agents unavailing. Per the testimony of Carson and Straus, Telegdy's job was to speak with agents, and it appears he did so at least for Shelton's contract. Carson and Straus are credible on this issue as Carson had a longstanding relationship with NBC as CAA's covering agent and Straus worked directly with Telegdy.

24. The parties' dueling narratives could have been elucidated through the testimony of Eaton, Roskin, Telegdy, or Byrnes. Neither side presented these witnesses. We therefore are left reading the tea leaves. Given the evidence and testimony presented, we find it more likely than not Blackstock leveraged Clarkson's Idol offer for a lucrative deal with NBC and only informed Eaton, Roskin, and Carson after engaging in and finalizing the negotiations.

B. The Kelly Clarkson Show

25. On April 25, 2018, Kelly Clarkson appeared as a guest on Ellen DeGeneres' talk show ("The Ellen Show"). During the appearance, Clarkson and DeGeneres switched roles, with Clarkson hosting and interviewing DeGeneres.

26. Immediately after the taping, Clarkson, Carson, and Blackstock met with the producers of The Ellen Show. The producers expressed interest in Clarkson succeeding Ellen as the host. The timing was indefinite as DeGeneres had not committed to an end date. DeGeneres would also continue to

produce the show after Clarkson started hosting. The producers suggested that an offer would be forthcoming.

27. Carson and Blackstock called Eaton from the parking lot after the meeting with The Ellen Show producers. Carson reminded Blackstock and Eaton that Clarkson had to notify NBC of any deal under her exclusivity clause with NBC. All then agreed that, assuming Clarkson's interest, they could leverage the offer from The Ellen Show for a competing talk show offer with NBC, especially given that Clarkson already starred on The Voice on NBC. It would be a similar strategy to leveraging the Idol offer for The Voice.

28. Clarkson was unsure of her interest in hosting a talk show. She expressed some preference against hosting The Ellen Show, and she was not yet convinced any talk show would be the right forum for her, even though Carson had raised the possibility for some time and Blackstock was likewise enthusiastic.

29. Between April 25, 2018 and May 2, 2018, Carson and Blackstock talked numerous times, sometimes multiple times per day, regarding the likely offer from The Ellen Show and leveraging the offer for a deal with NBC. During the same period, Blackstock and Clarkson spoke about whether Clarkson wanted to be a talk show host. Clarkson agreed to pursue it despite her initial misgivings. She, however, was still hesitant about moving their family to Los Angeles. Clarkson was also concerned that NBC would remove her from The Voice—the financial security for the family—if she also had the obligation of a daily talk show.

30. On May 2, 2018, The Ellen Show sent the formal offer for Clarkson to host.

31. Carson, Blackstock, and Eaton had a call the day they received The Ellen Show offer for Clarkson. They all considered the offer to be low, as Eaton had another client who received a higher offer for an equivalent position from the same production company. They agreed that NBC would likely be a better home for Clarkson for a talk show and decided to implement the strategy they developed in the parking lot on April 25.

32. Blackstock testified that Carson asked him to call Telegdy to inform NBC of The Ellen Show offer and express interest in Clarkson hosting a talk show for NBC. Carson testified that Blackstock stated he was going to call Telegdy and that no one from CAA objected.

33. On May 3, 2018, Blackstock called Telegdy to inform him of Clarkson's offer to host The Ellen Show and to express interest in NBC making a competing offer. In short, CAA's and Blackstock's "plan work[ed]" as expressed in emails over a 1-hour period:

- At 1:26pm, Blackstock emailed Eaton, Roskin, Carson, and Byrnes stating, "Had a great call with Paul [Telegdy]. Call for updates."
- At 2:08pm, Roskin responded, "Daryl [Eaton] and I will call you in a few […]"
- At 2:09pm, a minute later, Blackstock replied, "10-4…the bate has been set…About to receive a [sic] offer from NBC!"
- Eaton responded at 2:22pm, "Nice when a plan works."

34. Between 2:22pm and 4:00pm, Blackstock texted, "Paul's [Telegdy] team just reach [sic] out again. I have a call with Lee [Straus] at 4pm." Carson replied, "Fantastic-want me to join or take solo?" Blackstock answered, "I need to start off solo. Then add the team".[7]

35. Blackstock and Straus spoke later that evening. Blackstock expressed Clarkson's concern of losing her position as a judge on The Voice, and Straus assured that Clarkson would be able to continue as a judge. They also discussed the financial package necessary for Clarkson to move to Los Angeles for the talk show. Following his call with Straus, Blackstock called Carson to relay the conversation.

36. Blackstock and Carson recognized that the financials of a syndication model were far different than The Voice deal that Blackstock previously negotiated for Clarkson. The evening of May 3, 2018, Carson arranged a meeting for the following morning between Blackstock and Steven Lafferty, a partner and a television lead at CAA. The morning of May 4, 2018, Lafferty, Blackstock, Carson, Eaton, Byrnes, and Roskin all joined a call where Lafferty and Carson explained the syndication model.[8]

[7] While we found Caron's testimony generally credible as noted above, we reject her conclusion that Blackstock dictated to CAA how the negotiation with NBC for the talk show would occur. Carson testified that Blackstock demanded to make the calls to Telegdy and Straus alone, even though she asked to join. The one written exchange on the issue recounted above showed more nuance than Carson's testimony suggested. The text exchange reads as Carson asking whether Blackstock wanted her to join the second call, not a demand that she be part of it that he rejected.

[8] Carson stated that the call was educational given that no formal offer had come in yet from NBC. It may be true that they could not have discussed the specific terms of an offer on this call; however, given that Carson knew Blackstock was negotiating already with Straus, the meeting was connected to potential negotiations.

37. On May 4, 2018, Clarkson and Blackstock met at Capitol Records with Telegdy and other NBC executives about the talk show. Blackstock informed Carson before the meeting that it would take place. Blackstock recalled that Carson was at the meeting; Carson stated that she wanted to go but Blackstock wanted to take the meeting alone. At a minimum, Blackstock called Carson after the meeting to update her.

38. Between May 4, 2018 and May 18, 2018, Carson and Blackstock each had separate follow-up communications with Straus. On May 7, 2018, Blackstock and Straus met in person regarding the potential deal. The following day, on May 8, 2018, Carson wrote Straus separately to "check in on Kelly's offer," noting that "Brandon and I do not want to rush you, but he would like to get back to Ellen's team as soon as possible." On May 10, 2018, Straus spoke again with Blackstock, focused on the preferences for up-front compensation versus back-end compensation based on the success of syndication. According to Straus' later email to NBC colleagues, Blackstock "wasn't sure of the answer." Straus did get the sense that Clarkson's team was focused on a guarantee of a seat on The Voice to provide economic stability for a potential move out to Los Angeles for the talk show.

39. On the morning of May 18, 2018, Straus made the formal offer to Blackstock and Carson via email. The offer guaranteed Clarkson a right to be a judge on The Voice as well as a deal for the talk show. Blackstock immediately forwarded the offer to Byrnes.

40. The same day Straus sent the offer, Telegdy emailed Straus to make sure he provided context for the offer to Blackstock. Straus assured Telegdy that he had been "talking and texting" with Blackstock. Straus provided Telegdy an additional update that evening, including that he had spoken to Carson and Blackstock separately about the offer.

41. From May 18, 2018 to mid-June 2018, Carson led the long-form negotiations with Straus at NBC. While checking in with Blackstock repeatedly as well as her business affairs team, Carson provided several rounds of counter offers to Straus, with NBC making a final offer June 14. The deal was final by the end of June 2018.

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C. Norwegian Cruise Lines

42. In May 2019, Jeremy Holley, an entertainment marketing executive, approached NBC and Blackstock regarding a potential integration deal for Norwegian Cruise Lines (NCL) to be an official sponsor of the Kelly Clarkson Show as well as a side agreement for Clarkson to do a collaboration with NCL—that is, to advertise the brand in various ways. This occurred while Carnival Cruises, a potential partner for Clarkson's show, was backing away from a sponsorship deal.

43. Respondents were actively involved in initiating the NCL deal.

44. On May 14, 2019, Blackstock had an initial call with Holley regarding the potential deal.[9] On May 20, Holley requested a "follow up" call, which Blackstock's assistant confirmed for May 21, 2019.

45. Two days later, on May 23, 2019, Holley sent the "formal offer" from NCL to Blackstock. It was a [redacted] dollar deal. No one else is copied on the email. Holley stated that the NCL deal was a "better brand alignment than Carnival" with Clarkson, indicating that he and Blackstock had at least mentioned a possible competing deal on the call. Holley also set a timeline for the following week for Blackstock to "compare deals" (presumably with Carnival) and provide a formal answer on May 27. If Blackstock wanted to move forward, Holley promised to set up a call with the President of NCL. Finally, Holley stated the offer would expire on May 31 unless there was a deal in principle.[10]

46. Blackstock followed through on the timeline. On May 23, Blackstock's assistant provided his availability for a call with the President of NCL on May 27 or May 28, implying that Clarkson was interested in moving forward with the deal. Blackstock's assistant requested Bo Argentino from NBC's brand integration team be added to the call with NCL's President, presumably because the deal intersected with the sponsorship deal for the Kelly Clarkson Show on NBC. The call was scheduled for May 28, 2017.

47. The morning of the call, Argentino sent a list of questions to Holley regarding the Clarkson deal, which Holley answered. However, Holley then removed Argentino to ask Blackstock specifically

[9] A declaration from Jeremy Holley submitted by Petitioners does not mention this call; however, the request for a "follow up" call on May 20 means there was an initial call. We also note that we do not principally rely on the Holley declaration but rather the clear implication from the emails sent between Respondents and Holley.

[10] Holley's email had a typo stating the offer would expire on May 13, 2019; that, however, was before the offer was even made.

about Clarkson's deal. On May 28, 2019, the call went ahead as scheduled with NCL's President, Holley, Blackstock, and Argentino.

48. In response to follow up by Holley, on May 31, 2019, Blackstock's assistant stated that Blackstock did not have any comments on a proposed deal but asked to forward the offer to Byrnes and Clarkson's business manager. Holley responded that he "could hash through details with them and circle back if there are any material issues." Byrnes largely handled finalizing the NCL deal after that point, except that on June 13, 2019, Holley emailed Blackstock without copying Byrnes that Holley "got more of the funds allocated to you guys (per your request)…".

49. It is undisputed CAA had no role in the NCL deal.

50. Respondents maintain Blackstock played no active role in shaping the deal. Respondents' argument is not credible. The NCL deal did not create itself. Blackstock spoke twice with Holley before the formal offer, likely conveying the interest from Carnival. No one else was on those calls. After receiving the terms, Blackstock then agreed to speak with the President of NCL, in accordance with Holley's timeline, indicating that Clarkson was serious about making a deal. Even if Argentino and Byrnes played an active role in later parts of the negotiation, it is not credible that Blackstock was a passive participant listening for multiple calls alone with Holley on a potential deal.

51. We also reject the testimony that Blackstock's assistants somehow acted without his knowledge. At the outset, it is irrelevant. The assistants' actions are the actions of Respondents. It also is not credible Blackstock's assistants acted alone responding to a [redacted] dollar deal.

D. Wayfair

52. Similar to the NCL deal, Wayfair—a home furniture company—established both an integration deal with NBC for the Kelly Clarkson Show and separate side deals with Clarkson. In total, Clarkson signed three agreements with Wayfair: a talent marketing agreement in November 2019; a curated brand agreement in January 2020, as amended in late 2020; and an updated joint talent marketing and curated brand agreement in May 2021.

53. The 2019 talent marketing agreement required Clarkson to promote Wayfair in commercials, marketing, and social media in exchange for [redacted] in compensation. Under the 2020

curated brand agreement, Clarkson would establish a branded home products line and receive commissions based upon sales. Finally, the 2021 combined agreement expanded upon both the marketing agreement and the home product line.

54. As with the NCL deal, Respondents were actively involved in obtaining the Wayfair deals.

55. After initial conversations throughout 2018, the conversations for the initial 2019 talent marketing agreement started in earnest in July 2019. Miguel Rodriguez, a member of NBC's brand integration team, sent Blackstock and other members of Starstruck an initial proposal for the talent marketing agreement. In early August, Blackstock's assistant sent the proposal to Byrnes.

56. On August 12, 2019, Byrnes provided an analysis of initial proposal to Blackstock. No one else was copied on the email. Two days later—in an apparent response to a concern Blackstock or Clarkson expressed about Wayfair's reputation—Byrnes confirmed that Wayfair did not pose a reputational risk.

57. Byrnes then communicated Clarkson's views on the potential deal on August 20, 2019 to Rodriguez, including Clarkson's desired compensation as well as additional conditions giving Clarkson control over use of her image. Rodriguez from NBC responded that Wayfair accepted the terms. Blackstock was copied on these emails.

58. Parallel to the talent marketing deal negotiations, Wayfair, NBC, and Blackstock also began discussions on a potential curated brand agreement. On August 26, 2019, Blackstock held a call with Courtney Lawrie, the Director of Brand & Integrated Marketing at Wayfair, a member of NBC's integration team, and other Wayfair employees. According to its internal emails, Wayfair's goal in the call was to understand Clarkson's views on a potential branded goods line and to convince "Brandon" that Wayfair is a good partner for Clarkson.

59. It is unclear what, if any, negotiations occurred on the Wayfair deals in September 2019.

60. On October 5, 2019, Rodriguez from NBC sent Blackstock the "first pass" of the long-form talent marketing agreement, requesting feedback in the following three days. Separately, Rodriguez said Wayfair would work on finalizing the home goods curated brand agreement once the talent management contract was completed. Wayfair employees were copied on the email. Byrnes was not.

61. The following day, Blackstock's assistant responded, "We'll review this and get back to you by EOD Tuesday."

62. On October 17, 2019, Blackstock and Byrnes had a "live" conversation with Lawrie to "iron out those final points regarding the talent agreement." In a follow-up email, Lawrie also asked to discuss the "business terms for the home line." Blackstock's assistant promptly provided his availability for such a call. Later in the afternoon, on the same day, Rodriguez from NBC emailed Blackstock and Byrnes to note that Wayfair was including the changes discussed on the call and would send the revised agreement directly to Byrnes.

63. Byrnes communicated with Wayfair's legal counsel to finalize the talent management agreement. Blackstock was copied on these emails. As noted above, the 2019 talent management agreement was signed in November 2019.

64. Wayfair then turned to finalizing the curated brand agreement. Byrnes largely negotiated the contract via email with Wayfair's legal team, although Blackstock appeared to participate in a call with Wayfair and Byrnes on the agreement on December 4, 2019. The curated brand deal was finalized in January 2020.

65. Petitioners allege, and respondents do not dispute, that the 2021 combined deal functioned as an extension of the previous deals.

66. It is undisputed CAA had no role in the Wayfair deals.

67. Respondents again contend that although Blackstock was on the line for the conversations regarding the Wayfair deals, he had no role procuring the deals. As with the NCL deal, we find that contention not credible. Blackstock participated in conversations on August 26, October 17, and December 4 with the Wayfair representatives regarding the talent marketing agreement and curated brand agreement. Additionally, Respondents stated that Blackstock would provide feedback on the terms of the talent marketing agreement in an October 5, 2019 email. While Byrnes participated more actively in this deal from the beginning than the NCL deal, we find it implausible Byrnes alone discussed or commented on potential deal terms with Wayfair.

E. Billboard Music Awards

68. Clarkson hosted the Billboard Music Awards in 2018, 2019, and 2020. The show aired on NBC and was produced by Dick Clark Productions.

69. As with the NCL and Wayfair deals, Respondents were actively involved in obtaining Clarkson's employment to host the Billboard Music Awards.

70. It is unclear from the testimony how the conversations for Clarkson to host began. Blackstock testified that Telegdy from NBC originally approached Clarkson to host the show. Responding to Petitioners' questioning, he also testified that he knew the producers from Dick Clark Productions, implying the producers may have approached Blackstock.

71. However the conversations began, Michael Kohn from Dick Clark Productions sent an initial offer to Blackstock on April 16, 2018 for Clarkson to host in 2018. The email does not read like the first time Blackstock and Kohn had discussed the topic. Instead, Kohn's email included an offer with the "key deal terms" and a request for a 2019 option. The offer also acknowledged that Clarkson would do press around her obligations for The Voice. Based on this email, it is more likely than not Blackstock and Kohn had an initial conversation regarding Clarkson being host of the Billboard Music Awards before the offer. Why else would Kohn email Blackstock (without a copy to Byrnes or CAA) with terms of the deal tailored in part to Clarkson?

72. Blackstock forwarded the offer to Byrnes soon after receiving it from Kohn. Blackstock copied Kohn and introduced Byrnes as "Kelly[']s lawyer" to Kohn, remarking "[t]his is going to be exciting." Byrnes negotiated the long form agreement.

73. After the May 2018 awards ceremony, Dick Clark Productions decided to exercise its option for Clarkson to host the Billboard Music Awards again in 2019. It also wanted Clarkson to continue hosting not only in 2019 but also 2020 and 2021 as well. At the end of August 2018, Kohn followed up on a previous conversation with Blackstock checking in on that requested extension. Following a conversation between Blackstock and a different Dick Clark Productions' employee, Kohn wrote on September 17, 2018 regarding "the extension proposal," to which Blackstock replied, "Kelly's good to confirm, but we need to clear her from the Voice."

74. On October 2, 2018, Kohn emailed Blackstock again—this time with a copy to Byrnes—with the formal exercise of the option for the 2019 show as well as the "draft amendment for [Blackstock's] review . . . per our discussion."

75. On April 8, 2019, Kohn emailed a copy of the 2019 Billboard Music Awards contract to Blackstock with a copy to Byrnes. Blackstock responded that he and Byrnes would "review/discuss" and get back to Kohn. At some point in April 2019,[11] the parties finalized the 2019 agreement, which included a Performers' option for 2020 and 2021.

76. In the fall of 2019, Dick Clark Productions sought clarification on whether Clarkson would exercise her Performer's options for 2020 or 2021. On October 25, 2019, Kohn emailed Blackstock with a copy to Byrnes that he heard Clarkson was interested in continuing to host. On November 5, 2019, Blackstock's personal assistant responded, "I'm reaching out on behalf of Brandon Blackstock re: the below. He's in agreeance of the terms below[;] however, please confirm that this will not lock Kelly into 2021." Kohn replied to clarify that Clarkson was committing for 2020 but not 2021. Blackstock's assistant confirmed again. The parties later finalized the agreement for Clarkson to host in 2020.

77. While Respondents downplay the responses by Blackstock's assistant, we find it unlikely that an assistant would confirm or reject a performance on behalf of a talent manager without consulting with the talent manager; regardless, the assistant was still an agent of Respondents acting clearly within her duties.

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[11] The dates of SAG-AFTRA contracts for the shows do not appear to match when they were actually signed based on the email discussions.

III. LEGAL DISCUSSION

The issues in this case are:

- Did Respondents act at the request of and in conjunction with CAA for the negotiation of Clarkson's employment contracts with The Voice and the Kelly Clarkson Show under Labor Code section 1700.44(d)?
- Did Respondents unlawfully procure Clarkson's contracts with NCL, Wayfair, and the Billboard Music Awards or did they simply forward along these opportunities without engaging in any procurement activity?
- If Respondents violated the Act, is the appropriate remedy to void the contracts ab initio or to sever the offending practices under the principles articulated in *Marathon Entertainment, Inc. v. Blasi*, 42 Cal.4th 974 (2008)?

A. Did Respondents act at the request of and in conjunction with CAA for the negotiation of Clarkson's employment contracts with The Voice and the Kelly Clarkson Show under Labor Code section 1700.44(d)?

Under the Talent Agencies Act (TAA), a manager, like any person without a talent agency license, cannot procure or attempt to procure employment for artists. Labor Code sections 1700.4; 1700.5; *see also Marathon Ent., Inc. v. Blasi*, 42 Cal. 4th 974, 985, 989 (2008), *as modified* (Mar. 12, 2008). The Labor Code provides a "safe harbor" from this rule if the manager: (1) acts in conjunction with a licensed talent agent; (2) acts at the request of a licensed talent agent; and (3) such actions are limited to the negotiations of the contract. Labor Code section 1700.44(d)[12]; *See, e.g., Echo Lake Management, LLC v. Deloatch*, TAC-52681, at 6 (2021) (hereinafter *Echo Lake*); *Podwall v. Robinson*, TAC 45605, at 10-11 (2018). A manager must prove all three prongs for the safe harbor to apply. *Id.* We address each prong below in reverse order.

[12] This subdivision states, "It is not unlawful for a person or corporation which is not licensed pursuant to this chapter to act in conjunction with, and at the request of, a licensed talent agency in the negotiation of an employment contract."

1. Whether Blackstock engaged in negotiations under the TAA when procuring The Voice and the Kelly Clarkson Show.

We start where the Petitioners want this case to end: Blackstock's admission that he made the first call to NBC for both The Voice and the Kelly Clarkson Show. According to Petitioners, even if Blackstock's testimony were credited and he acted at the request of and in conjunction with CAA, his admissions show that he solicited rather than negotiated the procurement of The Voice and the Kelly Clarkson show, removing him from the safe harbor.

We disagree and hold that the phrase "negotiation of an employment contract" in the safe harbor includes a manager leveraging a competing offer to start negotiations with an employer for an equivalent position, particularly when there is an exclusivity contract requiring that such offers be brought to the competitor.

In interpreting the TAA, we "look first to the language of the statute, giving effect to its plain meaning." *Waisbren v. Peppercorn Prods., Inc.*, 41 Cal. App. 4th 246, 253 (1995). Here, leveraging an existing offer for an equivalent position to negotiate with a competing studio or employer fits within the commonsense definition of negotiation under the TAA. When Blackstock called Telegdy with news of an impending offer from ABC for Idol, it opened a frenzied negotiation with a [redacted] per season offer for The Voice coming from NBC days later. Similarly, when Blackstock called Telegdy regarding a talk show for Clarkson at NBC with the Ellen Show offer in hand, it opened a negotiation that quickly culminated in a deal. Assuming Blackstock's testimony to be true[13], both of these strategies were part of a negotiation "plan" to obtain Clarkson her desired employment. Leveraging a competing offer is quintessential negotiations, even if it is the opening gambit of a negotiation.

We find this particularly true when talent has an exclusivity contract with one employer and receives a competing offer from another, as occurred when Clarkson received The Ellen Show offer. With

[13] As noted in the factual findings section, we do not credit Blackstock's testimony regarding the plan to negotiate The Voice. For the purposes of this prong, however, Petitioners argue that even if Blackstock's testimony were credited, his actions would still not fall under the safe harbor.

an exclusivity clause, an artist must contact the employer with whom they have an exclusivity provision. Indeed, as Carson reminded Eaton and Blackstock, they had to approach NBC about The Ellen Show offer. We fail to see how a manager usurps their role in "negotiating" a contract when an artist must, by contract, report the offer to their existing employer, which naturally begins a negotiation.

Petitioners respond that, by making the initial contact with NBC for The Voice and Kelly Clarkson Show deals, Blackstock engaged in solicitation, not negotiation, and therefore fell outside the safe harbor. Respondents cite past Labor Commissioner decisions making this distinction. *See, e.g.*, *Shirley v. Artists' Management West*, TAC 08-01 (2002); *Todd v. Meagher*, TAC-13418 (2012); *Massey v. Landis*, TAC 42-03 (2005).

At the outset, we must "begin with the language of the Act"—as relevant here, the meaning of the term negotiation. *Marathon*, 42 Cal. 4th at 986. The term "solicitation" is not in the TAA. Although previous decisions have contrasted solicitation with negotiation, this does not mean that any initial call—even with a competing offer—must be solicitation and not negotiation because solicitation always covers the first contact with a potential employer. Such a reading would not only negate the plain meaning of negotiation as discussed above but also ignore the context of past hearing officer's decisions regarding when a manager's actions do not constitute negotiation.

Indeed, our past cases holding that a manager's conduct did not constitute negotiation for the purposes of the safe harbor involved managers' cold calling employers after receiving a script or breakdown, not taking a competing offer to a direct competitor.

In *Shirley,* a manager would review the available roles in breakdowns daily and contact the casting director for the advertised role. TAC 08-01 at 3. The hearing officer held that the manager's activity was not protected by the safe harbor, reiterating the longstanding position that direct discussions to obtain auditions are not negotiations under the TAA. *Id.* at 9-10; *see also Massey*, TAC 42-03 (finding that a manager who, on at least ten occasions, learned of a role for an actor through scripts or sides sent to her and

contacted the producer directly did not fall under the safe harbor because, *inter alia*, she was not negotiating a contract); *Creative Artists Entertainment Group v. O'Dell*, TAC 26-99, at 11-12 (2000) (stating same in dicta).

Similarly, in *Todd*, the hearing officer found that a manager unlawfully procured work and did not fall under the safe harbor when the manager planned an entire Japan tour for the artist, "approaching promoters and other interested parties and soliciting them to offer [talent] an engagement to perform publicly in Japan." TAC-13418 at 21-22. Calling up locations to inquire about potential work, with no comparable offer in the wings, would not be considered negotiations under the plain meaning of the term; a manager would be hard pressed to claim they were "negotiating" when looking for an initial place for the artist to perform or when seeking an audition.

Most recently, in *Echo Lake*, the hearing officer found the safe harbor did not apply when a manager set up an initial meeting for a writer to sell their work. Specifically, the management team worked closely with the agent to procure work for a television writer. *Echo Lake*, TAC-52681 at 3. While the management team kept the agent informed at all times, the managers admitted that they reached out to their contacts in the industry and set up initial meetings when they had a better relationship with a potential employer. *Id.* Although the manager worked in conjunction with and at the request of the agent, the hearing officer held that the manager was not engaged in negotiation of a contract as required for the safe harbor because the manager set up the initial meeting to obtain an audition. *Id.* at 7.

In sum, these cases involve the manager cold calling a potential employer for an exploratory conversation, an activity that cannot plausibly be considered a negotiation. In contrast, when an artist has a competing offer (or a promised one) from a direct competitor for an equivalent position, contacting the potential employer starts a negotiation for the equivalent position.

Petitioners next suggest that reading the term negotiation in the safe harbor to encompass Blackstock's initial communications with NBC runs afoul of previous decisions requiring a strict reading of the safe harbor. *See, e.g., Echo Lake*, TAC-52681, at 7; *O'Dell*, TAC 26-99, at 11-12; *Massey*, TAC 42-03, at 11-12. Strict does not mean fatal. We find that the commonsense definition of negotiation, an express

term in the statute, includes a manager leveraging a competing offer to open negotiations with an employer. *Massey*, TAC 42-03, at 11 (limiting the exception to the express language of the statute). Our interpretative gloss cannot overrule the express language of the statute.

We acknowledge that this holding leaves some line-drawing for future cases regarding what constitutes a competing offer for an equivalent position. Here, however, no such line-drawing is necessary. Blackstock leveraged an impending competing offer for Clarkson to be a judge for a reality singing competition for a position as a judge in a reality singing competition on a rival network. A year later, Blackstock leveraged an offer to be a talk show host for a position as a talk show host on a rival network. Assuming Blackstock's testimony to be true, both strategies qualified as negotiations under Labor Code section 1700.44(d). Respondents therefore met their burden on this prong of the safe harbor for both The Voice and the Kelly Clarkson show. [14]

2. Whether Blackstock acted in conjunction with and at the request of Clarkson's Agents When Procuring The Voice and the Kelly Clarkson Show.

Even if a manager is negotiating a contract, they are "walking a very thin line" when communicating with potential employers of an artist. *Shirley*, TAC 08-01, at 8. For the safe harbor to apply, a manager must prove that in each negotiation, they acted in conjunction with and at the request of the agent. *Id.* at 8-9; *see also Bacall v. Shumway,* 61 Cal. App. 5th 950, 960 (2021), *review denied* (June 30, 2021).

"A manager who obtained the talent agent's overall permission" to negotiate a contract does not fall within the safe harbor. *Shirley*, TAC 08-01, at 8. Such a large loophole would allow managers to become

[14] As a separate basis to find Blackstock's actions to be negotiations for the safe harbor, Respondents also argue that under the "extremely broad interpretation" of the term negotiation in *Plana v. Quinn et al.*, TAC-15652 (2012), at 6, Blackstock's actions constituted negotiations. In *Plana*, the hearing officer credited an agent's testimony that the agent granted permission to the manager to follow up with casting after the agent had already initiated conversations for that particular role and the agent was rebuffed. *Id.* at 3-4. In that context, the hearing officer defined negotiations as "acts completed in furtherance of securing employment." *Id.* at 6. The holding in context was thus that a manager can attempt to procure employment in conjunction with and at the request of the agent after an agent started the procurement process, an uncontroversial proposition. We decline to adopt the out of context reading proffered by Respondents as a separate basis for this decision. *See Echo Lake*, TAC-52681 (rejecting the broad reading of *Plana*).

de facto agents, subject to none of the restrictions meant to protect artists, with a single email from an agent giving them overall permission to negotiate. Instead, "the agent must advise the manager or request the manager's activity for each and every submission. At the very minimum an agent must be aware of the manager's procurement activity." *Id.; see also id.* at 6-8 (detailing the legislative history from the 1980s in which a legislatively-created Entertainment Commission considered and rejected softening this requirement).

i. The Voice

Respondents failed to prove that Blackstock acted in conjunction with and at the request of Clarkson's agent during the procurement of The Voice. Blackstock acted alone in contacting Telegdy at NBC with the anticipated Idol offer and conducted initial negotiations without informing Clarkson's agents. His later texts and calls to Carson kept her updated as the deal developed on May 9, 2017, but he was informing her of his conversations about past negotiations rather than acting on a joint plan in conjunction with Carson and at her request. Carson finalized the long-form agreement after the deal in principle, but her involvement was too late for Blackstock to fall under the safe harbor. In procuring The Voice, Blackstock did what the act prohibits: he acted as an agent without being subject to the law's corresponding requirements ensuring agents protect the health and safety of artists.

ii. The Kelly Clarkson Show

Blackstock clearly worked in conjunction with Clarkson's licensed agents in procuring the Kelly Clarkson Show. Blackstock and Carson attended the initial meeting at The Ellen Show together, called Eaton together from the parking lot afterward, talked numerous times in the week until Clarkson received the formal offer from The Ellen Show, and strategized together on how to approach NBC. Clarkson's agents and Blackstock were in constant communication after Blackstock contacted Telegdy to leverage The Ellen Show offer, with Eaton stating that the joint "plan" had worked when Blackstock informed him an NBC offer was likely coming. The day after Blackstock contacted NBC and began negotiations, Carson, along with a high-level CAA partner, educated Blackstock about the syndication model to assist

his understanding of the negotiations. Although Blackstock and Carson contacted Straus separately in ensuing negotiations, they updated each other on their communications, with Carson speaking for both of them in an email to Straus seeking an answer on the status of the NBC offer. Unlike the negotiations for The Voice, Carson and Blackstock worked together from start to finish on Clarkson's talk show deal with NBC.

The much closer question is whether Blackstock procured the talk show at the request of CAA. According to Petitioners, Blackstock directed the negotiations, including demanding to start negotiations with Telegdy and taking the follow-up phone call with Straus. He therefore did not work "at the request of" the agents because he dictated the course of negotiations. Respondents maintain, *inter alia*, that CAA's consent on multiple team planning calls to Blackstock calling Telegdy and Straus constituted an implied request.

We agree with Respondents that Blackstock's role procuring the talk show at NBC was at the request of CAA. Blackstock, Carson, and Eaton actively planned each step of the negotiation together. It seems likely that during planning, in addition to discussing the best terms for Clarkson, the parties discussed who would be best positioned to make the calls to Telegdy and Straus. Blackstock volunteered himself and no one objected on either call. Eaton's confirmation that "the plan" worked after the initial call with Telegdy, shows CAA took ownership over "the plan"—that is, the manager was acting with CAA's permission and at its request.

A rule to the contrary would wash away the safe harbor altogether. When a manager strategizes with the agent during a negotiation and does not approach the potential employer without the agent's permission, they are doing exactly what the TAA demands of them: They are engaging the agent who is regulated to ensure that talent is not sent to unsafe or unfair situations. *See Marathon,* 42 Cal. 4th at 984 (noting the Legislature's concern that "those representing aspiring artists might take advantage of them"). The TAA, however, still allows the manager to express their views on the strategy calls with the agent. It

cannot be that after every time agents agree to a strategy proposed by the manager, the manager has to ask whether such agreement constitutes the agent's request.[15]

Petitioners contend that the manager must advise the agent regarding each specific employment they seek on behalf of the manager. That is true, as far as it goes, but Respondents did not violate that rule here. In *Shirley*, a hearing officer found that a manager could not claim the safe harbor when the agent gave the manager "overall permission" to seek auditions on behalf of the artist even though the agent "was very busy." TAC 08-01 at 4, 8. Similarly, in *O'Dell*, a hearing officer again rejected the argument that a manager had overall permission to submit for roles, particularly where the agent was unaware of particular submissions. TAC 26-99 at 5. *Id.* at 5, 9. Unlike *Shirley* and *O'Dell*, Blackstock did seek permission from CAA to speak with NBC regarding the Kelly Clarkson Show. This is not a situation where Blackstock claims CAA granted him carte blanche to act as a de facto agent procuring employment; instead, the talk show was a single negotiation that CAA was both aware of and deeply involved in its procurement.

Citing our previous decision in *Massey*, Petitioners next argue that Carson's failure to object to Blackstock's initial call to Telegdy does not mean that Carson requested Blackstock's procurement activity as required under the safe harbor. Petitioners, however, ignore the context of *Massey*, which was similar to *Shirley* and *O'Dell*. In *Massey*, a manager repeatedly submitted talent for auditions and only afterward informed the agent of the submissions. TAC 42-03 at 5. While the agent did not give active permission for such a practice (as in *Shirley*), the manager "never demanded [the manager] discontinue the practice"

[15] This is a different rejection of a "Mother May I" requirement than in *Snipes v. Robinson et al.*, TAC 36-96 at 6 n.2 (1998). In *Snipes*, the manager would often negotiate "prerequisites" or requests by the talent in the course of a larger negotiation by the agent. *Id.* at 5-6. The hearing officer found that after numerous cases where the manager negotiated these prerequisites with the agent's express consent, the agent's consent was implied in later negotiations. *Id.* at 6 n.2. The hearing officer explained, "The requirements of the statute cannot be construed to call for a game of 'Mother May I?' every time an artist manager takes some action during a long term relationship of the nature reflected in this case." *Id.* While we decline to join the *Shirley* hearing officer in limiting *Snipes* to its facts, we note that this case presents a narrower question of whether, in regard to a single employment, the "Mother May I" requirement applies to a manager having to rephrase all their strategy ideas in a conversation with the agent as a request for permission. *Cf. Shirley*, TAC 08-01 at 9.

either. *Id.* at 5-6. The hearing officer held that an agent's failure to object to a manager seeking auditions without the agent's prior permission had the same outcome as when the agent explicitly granted such overall authority: it was unlawful procurement that did not fall under the safe harbor. *Id.* at 11-12. It was in that context the hearing officer held, "The fact that [the agent] did not object to [manager's] efforts to procure employment for [talent] does not satisfy the statutory prerequisites for the exception." *Id.* at 12.

This case is markedly different than *Massey*. We hold that in the context of a single strategy decision in a single negotiation, a manager can treat the agent's failure to object to the manager's suggested strategy as the agent adopting this strategy and requesting the manager's participation. Respondents do not claim, and we do not hold, that managers may act as a de facto agent procuring multiple employment opportunities for talent without informing an agent.

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In sum, we find that Blackstock unlawfully procured Clarkson's employment with The Voice because he did not act in conjunction with and at the request of CAA. Blackstock, however, lawfully procured the Kelly Clarkson Show because his procurement fell under the safe harbor in Labor Code section 1700.44(d).

B. Did Respondents unlawfully procure Clarkson's contracts with NCL, Wayfair, and the Billboard Music Awards or did they simply forward along these opportunities without engaging in any procurement activity?

Petitioners and Respondents agree that a licensed talent agent did not procure the NCL, Wayfair, and Billboard Music Awards employments for Clarkson. Petitioners allege Respondents engaged in unlawful procurement of these deals whereas Respondents maintain that Blackstock simply received communications regarding these employments and passed them on to others, who engaged in the procurement activity. We agree with Petitioners.

The definition of procurement in the Talent Agencies Act is broad. The Labor Commissioner has held the term "procure" means:

> to initiate a proceeding; to cause a thing to be done; to instigate; to contrive, bring about, effect or cause[,] [t]o persuade, induce, prevail upon, or cause a person to do something. Procurement also includes the solicitation, negotiation or acceptance of a negotiated instrument for the engagements at issue. Additionally, procurement includes an active participation in a communication with a potential purchaser of the artist's services aimed at obtaining employment for the artist, regardless of who initiated the communication.

Gersh Agency v. Grant, TAC 52726, at 5-6 (2021) (internal brackets, quotations, and citations omitted).

A manager, however, "does not engage in the procurement of employment for an artist by merely taking a phone call[,] receiving a fax," or reviewing an email from a network or producer expressing interest in the artist performing. *Danielewski*, TAC 41-03, at 16. In those situations, the manager can inform the agent or the artist of the potential employment, "leaving it to the [artist or agent] to enter into communications with the [network] regarding availability and terms of compensation." *Id.* The manager crosses the line into procurement if, rather than forwarding the message to the artist or agent, the manager takes it upon themselves to follow up with the potential employer about deal terms, availability, or compensation. *Id.*

As detailed in the factual findings, Respondents crossed this line and engaged in procurement activity for the NCL, Wayfair, and Billboard Music Awards employments. For the NCL deal, Blackstock engaged in clear procurement activity by speaking multiple times to Holley before the offer came in regarding the potential offer and then participating in a follow up call with NCL's president. Similarly, with the Wayfair deal, Blackstock did <u>not</u> simply hand off a potential offer negotiated primarily by NBC for Byrnes to finalize; instead, Blackstock participated in at least three conversations with Respondents and promised to review the terms of the offer. Finally, Blackstock more likely than not participated in discussions about Clarkson hosting the Billboard Music Awards with Dick Clark Productions *before* the initial offer came in, even if he forwarded those terms to Byrnes once they came in. Additionally, Blackstock negotiated and confirmed the extensions of the hosting contracts.

Respondents contend that Blackstock's artistic input on behalf of Clarkson for the NCL and Wayfair deals did not constitute procurement. For example, Respondents allege that Blackstock's conversation with Wayfair regarding their reputation or his input on the library named after his children incorporated in the NCL deal were not aimed at "obtaining employment" but rather were artistic or reputational concerns. Respondents raise a difficult issue regarding whether a manager's discussions with potential employers regarding ethics or artistic choices—which could eventually result in a contract being signed or specific terms added to a contract—constitute procurement activity. Because we find that Blackstock engaged in clear procurement activity, we do not need to resolve this dispute here.

C. If Respondents violated the Act, is the appropriate remedy to void the contracts ab initio or to sever the offending practices under the principles articulated in *Marathon Entertainment, Inc. v. Blas*i, 42 Cal.4th 974 (2008)?

In *Marathon*, the Supreme Court held that a violation of the Talent Agencies Act does not automatically require invalidation of the entire contract. The Court explained that the Act does not prohibit application of the equitable doctrine of severability and that therefore, in appropriate cases, a court is authorized to sever the illegal parts of a contract from the legal ones and enforce the parts of the contract that are legal. *Id.* at 990-96.

In discussing how severability should be applied in Talent Agencies Act cases involving disputes between managers and artists as to the legality of a contract, the Court in *Marathon* recognized that the Labor Commissioner may invalidate an entire contract when the Act is violated. The Court left it to the discretion of the Labor Commissioner to apply the doctrine of severability to preserve and enforce the lawful portions of the parties' contract where the facts so warrant. As the Supreme Court explained in *Marathon:*

> Courts are to look to the various purposes of the contract. If the central purpose of the contract is tainted with illegality, then the contract as a whole cannot be enforced. If the illegality is collateral to the main purpose of the contract, and the illegal provision can be extirpated from the contract by means of severance or restriction, then such severance and restriction are appropriate.
>
> [. . . .]
> Inevitably, no verbal formulation can precisely capture the full contours of the range of cases in which severability properly should be applied, or

> rejected. The doctrine is equitable and fact specific and its application is appropriately directed to the sound discretion of the Labor Commissioner and trial court in the first instance.

Marathon, 42 Cal.4th at 996, 998.

In assessing the appropriateness of severance, two important considerations are (1) whether the central purpose of the contract was pervaded by illegality and (2) if not, whether the illegal portions of the contract are such that they can be readily separated from those portions that are legal.

In accord with *Marathon*, Respondents urge the Commissioner to apply the doctrine of severability if the Commissioner concludes Respondents violated the Act in any of the identified engagements at issue while Petitioners maintain that severability does not apply in this case.

We agree with Respondents and sever the contract. Respondents' central role over the relevant time period was to coordinate the many professionals involved in Clarkson's life with her schedule and personal life as well as to provide advice and counsel to Clarkson.

Petitioners respond that the vast majority of Clarkson's time was spent on the allegedly unlawfully procured employments described above and that the contract must therefore be tainted with illegality. We disagree on three grounds.

First, as discussed above, the managerial work involved far more than the five engagements above. Petitioners incorrectly discount the time-consuming work Respondents provided in furtherance of Clarkson's career unrelated to the five named employments.

Second, Respondents did not violate the Talent Agencies Act in helping procure the Kelly Clarkson Show. Even under Petitioners' logic, this would require severability as the daily talk show consumed much of Clarkson's time in the later years of the contract.

Finally, we reject Petitioners' broader legal argument that simply because an employment was procured unlawfully, all time spent on that employment must be considered as time engaging in unlawful activity for the severability analysis under *Marathon. Marathon* dictates the opposite. In explaining the applicability of severability, *Marathon* examines what <u>percentage of time</u> a manager spends "procuring or soliciting" versus the amount of time they spend "engaged in counseling a client and organizing the client's affairs." *Marathon,* 42 Cal.4th at 998-98. In other words, while a manager is not entitled to proceeds from

employment they unlawfully procured for an artist, the question of whether the entire contract is tainted with illegality is different—it looks to the totality of the manager's actions and what percentage of that time or effort was allocated to unlawful activities. Here, Blackstock spent significant amounts of time on non-procurement activities even for the engagements he unlawfully procured. While he is not entitled to commissions for those particular employments, the management time he spent on those employments still counts toward his total percentage of time spent on management activities for the severability analysis. Applying this rule, Respondents overall spent far more time on management work than procuring or soliciting employment. The contract is therefore not tainted by illegality.

IV. ORDER

For the above stated reasons, it is hereby ordered Respondents must disgorge to Petitioners $2,641,374 previously paid in commissions on or after October 20, 2019, broken down as:

1. $1,983,155.70 for The Voice;
2. $208,125 for NCL;
3. $450,000 for Wayfair; and
4. $93.30 for the Billboard Music Awards.

Dated: 11/21/2023

Casey L. Raymond

Casey Raymond
Special Hearing Officer for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: 11/21/2023

LILIA GARCIA-BROWER
State Labor Commissioner