

1 DAVID L. GURLEY, State Bar No. 194298  
STATE OF CALIFORNIA  
2 DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT  
3 300 Oceangate, Suite 850  
Long Beach, California 90802  
4 Telephone: (562) 590-5461  
Facsimile: (562) 499-6438

5 Attorney for the Labor Commissioner  
6  
7

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

11 JACQUES WEBSTER p/k/a/ TRAVIS  
SCOTT, an individual,

CASE NO. TAC 48374

**DETERMINATION OF CONTROVERSY**

12  
13 Petitioners,

14 vs.

15 LCAR MANAGEMENT LLC, a Delaware  
16 Limited Liability Company,

17 Respondent.  
18

19 **I. INTRODUCTION**

20 The above-captioned matter, a Petition to Determine Controversy under Labor Code  
21 section 1700.44, came on regularly for hearing in Long Beach, California, on September 12,  
22 2019, before the undersigned attorney for the Labor Commissioner assigned to hear this case.  
23 Petitioner JAQUES WEBSTER p/k/a TRAVIS SCOTT, an individual (hereinafter, referred to as  
24 “SCOTT” or “Petitioner”) was represented by Stephen D. Rothschild, Esq. of KING, HOLMES,  
25 PATERNO & SORIANO, LLP. Respondent LCAR MANAGEMENT LLC, a Delaware limited  
26 liability company, (hereinafter, referred to as “LCAR” or “Respondent”) appeared through  
27 Michael J. Niborski, Esq. and Benjamin S. Akley, Esq. of PRYOR CASHMAN LLP.

28 ///

1 The matter was taken under submission. Based on the evidence presented at this hearing  
2 and on the other papers on file in this matter, the Labor Commissioner hereby adopts the  
3 following decision.

## 4 II. FINDINGS OF FACT

### 5 A. The Parties and the Management Agreement

6 In 2014, SCOTT was an aspiring composer and performer of rap music. Since 2014,  
7 SCOTT developed into an internationally renowned recording artist and rap superstar.

8 LCAR is an artist management company founded by music industry veteran Lyor Cohen  
9 and music manager Austen Rosen and formed for the specific purpose of managing SCOTT.  
10 Cohen has been in the music business since 1983 and managed some of raps most well-known  
11 artists, including Run-DMC, the Beastie Boys, and Jazzy Jeff & The Fresh Prince (a/k/a Will  
12 Smith), among others. He subsequently worked at Warner Music Group as the Chief Creative  
13 Officer, eventually becoming its CEO. After leaving Warner Music Group, Cohen founded his  
14 own record label, 300 Entertainment. Cohen is also the global head of music for Google and  
15 YouTube.

16 In 2014 Rosen, was introduced to SCOTT, and after seeing SCOTT perform, believed  
17 SCOTT had tremendous potential to be a successful recording and performing artist. Rosen  
18 contacted Cohen about the prospect of co-managing SCOTT and they decided to form LCAR for  
19 that purpose.

20 In or about October 2014, LCAR and SCOTT entered into a Management Contract (the  
21 “Agreement”), under which LCAR agreed, for a three-year term, to advise and counsel SCOTT in  
22 all aspects of his music career. In exchange, the Agreement required SCOTT to pay LCAR a  
23 fifteen percent (15%) commission rate on gross monies earned by SCOTT from activities in the  
24 entertainment industry. The Agreement also contains a 3-year “sunset” provision under which  
25 SCOTT remains obligated to pay all or some portion of commission to LCAR for three years  
26 following the end of the initial term and through October 2020. Specifically, under the  
27 Agreement, SCOTT is required to pay LCAR one hundred percent (100%) of the commissions  
28

1 for the first year following the end of the term, seventy five percent (75%) of the commissions for  
2 the second year, and fifty percent (50%) of the commissions for the third year.

3 The Agreement also reflects that LCAR would act only as SCOTT's manager, and not as  
4 his talent agent, by including a provision—in all caps and underlined text—that LCAR was not  
5 licensed to practice as an agent and that LCAR never induced SCOTT to sign the Agreement by  
6 promising to such procure such employment.

7 After the execution of the Agreement, LCAR hired David Stromberg (“Stromberg”), who  
8 previously was employed directly by SCOTT, to assist with LCAR's management activities and  
9 to work with SCOTT on a day-to-day basis. As part of his new arrangement, Stromberg's salary  
10 was paid by LCAR.

11 **B. The Management Work Performed by LCAR**

12 From 2014 to 2016, LCAR was involved with the day-to-day work of managing SCOTT.  
13 LCAR dedicated time and money in managing SCOTT as detailed by the following events:

14 **1. Cohen Leveraged his Contacts and Experience**

15 As described above, Cohen has substantial experience in the music industry and used his  
16 personal relationships and reputation for SCOTT's benefit. As testified by Stromberg and other  
17 witnesses, SCOTT could be a “difficult artist to work with” and consequently SCOTT's  
18 relationship with his label, Epic Records (Epic), was tumultuous and often riddled with conflict.  
19 Cohen used his relationships with key executives at Epic to manage those conflicts with the label.

20 In addition, to help enhance SCOTT's standing at Epic, Cohen communicated with many  
21 people at Epic with whom he had built a relationship in the music industry, including, but not  
22 limited to, LA Reid, Epic's chairman, Sylvia Rhone, who became president of Epic, Benny Pugh,  
23 the head of promotion, and LaTrice Bennet, an Epic marketing executive. Cohen's meetings on  
24 SCOTT's behalf covered a variety of aspects, including clearances to artwork, press strategy,  
25 promotional strategy and the timing of television events and radio programming. Cohen also held  
26 meetings with people at digital service providers like Apple and Spotify.

27 ///

28 ///

1 Cohen also worked closely with Epic's press and promotional team in an effort to put  
2 SCOTT at the forefront of the record label. Cohen recognized SCOTT had the potential to reach  
3 mass audiences and he used his contacts to obtain resources from Epic.

## 4 **2. LCAR secured publishing deals for SCOTT**

5 LCAR, promoted SCOTT's work with music executives in order to increase his visibility.  
6 Rosen initiated a working relationship with Ron Perry, who owned Songs Publishing, to assist in  
7 SCOTT's publishing deals and flew to Toronto to meet with him. As a result of these meetings,  
8 Perry gave SCOTT an offer for a publishing deal. Additionally, Rosen personally took music  
9 executives, including Jody Gerson, the chairman of Universal Music Publishing Group  
10 (Universal), to SCOTT's concerts to experience his performance and understand his potential.  
11 SCOTT eventually secured a publishing deal with Universal. LCAR worked with SCOTT on  
12 securing his publishing deal.

## 13 **3. LCAR Protected SCOTT's Public Image**

14 LCAR attempted to mitigate SCOTT's mistakes made in public that could have damaged  
15 his reputation. As an example, at Lollapalooza 2015, SCOTT was arrested for disorderly  
16 conduct. LCAR reached out to a public relations firm with which Cohen had a relationship to  
17 protect SCOTT's reputation and sought to prevent the negative press reports from impeding his  
18 artistic development. Whenever an unauthorized or unflattering video of SCOTT surfaced online,  
19 Rosen would work to get it taken down. LCAR had a good relationship with YouTube, which  
20 helped Rosen remove those videos quickly.

## 21 **4. LCAR Managed SCOTT's Relationships with People in the Music** 22 **Industry**

23 LCAR, managed SCOTT's relationship with people in the music industry. During the  
24 period LCAR managed SCOTT, he could be difficult and temperamental. SCOTT often battled  
25 with executives at Epic Records. Cohen made efforts to smooth over several altercations between  
26 SCOTT and Sylvia Rhone, the president of Epic Records. Specifically, Cohen had to step in and  
27 smooth tensions after SCOTT yelled at her expressing his displeasure regarding particular album  
28 artwork. Cohen stepped in again to defuse a situation when SCOTT accused Rhone and Epic of

1 leaking his song, “Piss On Your Grave.” SCOTT refused to attend a scheduled interview with  
2 Hot 97, a well-known hip-hop radio station and Rosen had to work with the station directly to  
3 deal with SCOTT’s cancellation.

#### 4 **5. LCAR Hired SCOTT’s Staff**

5 Cohen and Rosen, through Stromberg, managed SCOTT’s day-to day schedule and  
6 oversaw all the people involved in planning it. Stromberg, SCOTT’s day-to-day manager at  
7 LCAR, reported to Cohen and Rosen daily. Realizing SCOTT needed more resources in the  
8 recording studio, Rosen and Cohen negotiated with LA Reid and Sylvia Rhone at Epic Records  
9 until LCAR had approval to hire Randall “Sickamore” Medford (“Sickamore”), who Rosen had  
10 previously introduced to SCOTT and who SCOTT wanted to hire, as SCOTT’s personal A&R  
11 creative director. In addition to hiring and overseeing Sickamore and Stromberg, LCAR oversaw  
12 other people working for SCOTT, including, but not limited to, Lou Taylor, Mark Calman, and  
13 Ron Byrd, among others.

#### 14 **6. LCAR Handled Logistics, Booking Travel and Recording Sessions**

15 Rosen scheduled recording sessions in Los Angeles and organized travel logistics for  
16 performances and collaborations. Rosen booked travel arrangements and studio sessions for one  
17 of these collaborations, with the artist Lorde. Rosen organized flights to Atlanta where SCOTT  
18 was to record with artist Young Thug. SCOTT missed his flights, requiring Rosen to reschedule  
19 three times. Additionally, Rosen booked a studio house for SCOTT in Bel Air, California so  
20 SCOTT had permanent and consistent access to a recording studio.

#### 21 **7. LCAR Managed Legal and Copyright Issues**

22 Cohen and Rosen worked to obtain clearances from producers and writers for SCOTT’s  
23 recording sessions ensuring the artist benefited financially from successful songs. Due to the  
24 nature of SCOTT’s music, using dozens of artists, producers, and writers, clearing rights often  
25 became a highly complex and prolonged process. Additionally, when SCOTT set his sights on  
26 getting the rights to “Pick up the Phone,” which was originally a Young Thug song, Cohen  
27 secured those rights for SCOTT.

28 ///

1                                   **8.       LCAR Paid SCOTT’s Staff and Found Lucrative Collaborations**

2           Rosen and Cohen invested time in overseeing the finances related to SCOTT’s daily life,  
3 business expenses, and touring, even spending LCAR’s own finances to support SCOTT. Cohen  
4 and Rosen brought on Ron Byrd as tour manager, but SCOTT never paid Byrd. Cohen and Rosen  
5 paid Byrd his fee so that Byrd could pay his bills while he completed the tour with SCOTT. Until  
6 Epic later reimbursed him, Rosen organized and personally financed the guerilla marketing  
7 campaign for the rollout of the Rodeo album that SCOTT insisted occur in several different cities.  
8 Rosen worked with Lou Taylor, SCOTT’s business manager, to manage the financials related to  
9 “Rodeo,” SCOTT’s first tour with Young Thug. Back in Los Angeles, Rosen took the lead to  
10 meet with L.A. Reid, to discuss SCOTT’s studio budget generally.

11           As another avenue of financing, LCAR oversaw promotional deals with third party brands  
12 that are “ready to co-invest in visibility and promotion”. Rosen negotiated the terms of a  
13 collaboration between SCOTT and clothing designer Helmut Lang. Rosen also worked on a  
14 project between Epic Records and SCOTT related to a SCOTT action figure doll. This included  
15 extensive work clearing the licenses for all the tattoos to appear on the doll that replicated  
16 SCOTT’s own tattoos. Rosen managed the deal between SCOTT and Civil Clothing to make  
17 sure that the quality and content was in line with SCOTT’s expectations and requirements. Cohen  
18 and Rosen worked on SCOTT’s merchandising deal with Bravado. Cohen navigated the process  
19 of signing the deal with Bravado rather than Epic, at SCOTT’s request.

20           In sum, SCOTT never paid LCAR anything. LCAR was never paid any monies for their  
21 significant efforts, including any commissions on SCOTT’s earnings or LCAR’s out-of-pocket  
22 expenses. Notably, LCAR’s out-of-pocket expenses included the salary of Stromberg, the  
23 individual brought in to manage SCOTT’s day-to-day activities, at SCOTT’s request and who  
24 still managed SCOTT at the time of this hearing.

25                                   **C.       LCAR’S Acts of Procurement**

26           LCAR procured or attempted to procure entertainment engagements or employment for  
27 SCOTT on eight (8) separate occasions. In 2015, SCOTT asked LCAR to find him “after-hours”  
28 engagements so SCOTT could make some extra money. SCOTT directed LCAR not to include

1 his talent agent Cara Lewis, as SCOTT did not want to pay his agent a commission on after-hours  
2 engagements. Consequently, LCAR did as they were told, and booked and negotiated six (4)  
3 after-hours shows and two (2) private parties. LCAR admits no talent agent was used in the  
4 procurement and negotiation of the after-hours shows and private parties but argue in defense,  
5 they did so only at the behest of SCOTT, in a thinly veiled argument to avoid liability under the  
6 Act. The actions by LCAR of either procuring, offering, negotiating, promising or attempting to  
7 procure engagements during the relevant time period include the following events:

8 **1. Club FLUXX**

9 On or around December 10, 2015, LCAR procured an after-hours engagement at Club  
10 FLUXX in San Diego, California for \$22,500.00. A review of text messages between Stomberg  
11 and Rosen verifies LCAR procured that engagement and negotiated the price for both SCOTT  
12 and his DJ, without involving SCOTT's talent agent. LCAR through Stromberg and Rosen,  
13 negotiated promotion contract riders, and scheduling for the engagement. Rosen admitted he "put  
14 together" the engagement, and LCAR negotiated the time and date of the event.

15 **2. Arizona Show**

16 On October 31, 2015, in a similar manner as the Club FLUXX show, LCAR negotiated  
17 the terms for an after-hours show in Tempe Arizona, for \$20,000.00. A review of text messages  
18 between Stomberg and Rosen verified LCAR attempted to procure that engagement and  
19 negotiated a price for both SCOTT and his DJ, along with free hotel rooms. Again, LCAR admits  
20 there was no talent agent involved. SCOTT declined this offer by Rosen because he was already  
21 committed to another engagement but this does not change the fact that Rosen offered to procure  
22 this engagement, without SCOTT's talent agent.

23 **3. Club Bijou**

24 On November 12, 2015, LCAR negotiated the terms for an after-hours show at Club  
25 Bijou in Boston, Massachusetts for \$12,500.00 and 4 bottles of liquor. A review of text  
26 messages between Stomberg and Rosen verified LCAR procured and negotiated this engagement  
27 without the assistance of SCOTT's talent agent. Rosen negotiated logistics and the terms of the  
28 employment, including SCOTT's fee. In addition, LCAR tasked Stromberg, with negotiating the

1 time and duration of the Bijou performance.

2 **4. Club LIV**

3 In 2015, LCAR negotiated the terms for an after-hours show at Club LIV in Miami,  
4 Florida, for \$15,000.00. A review of text messages between Stomberg and Rosen verified LCAR  
5 procured and negotiated this fee, along with free rooms and again admittedly without the  
6 assistance of SCOTT's talent agent. Rosen admitted that he negotiated a fee for the LIV show  
7 after "they lowballed us." These text messages and admissions in Rosen's testimony  
8 unequivocally established LCAR procured this engagement.

9 **5. OAK Party**

10 On or around February 15, 2016, LCAR negotiated the terms for a private party in Los  
11 Angeles, California, called the OAK party for \$35,000.00. A review of text messages between  
12 Stomberg and Rosen verified LCAR procured and negotiated this engagement, including  
13 negotiating an increase in the amount of SCOTT's fee and payment in cash as requested by  
14 SCOTT. Again, the procurement of this private party was without the assistance of SCOTT's  
15 talent agent.

16 **6. Private L.A. Birthday Party**

17 On or around October 16, 2015, LCAR negotiated the terms for a performance at another  
18 private birthday party for the son of Cohen's friend, billionaire Leonard Blavatnik in New York,  
19 New York for \$50,000.00. A review of text messages between Stomberg and Rosen, coupled  
20 with Rosen's direct testimony, established LCAR procured this engagement. Rosen negotiated  
21 its terms, including SCOTT's use of a private jet furnished by Blavatnik, and again, without the  
22 assistance of SCOTT's talent agent.

23 **7. South by Southwest Music Festival**

24 In 2015, SCOTT performed at the South by Southwest (SXSW) music festival in Austin,  
25 Texas. The performance was intended to showcase musical artists signed to Cohen's record  
26 label, 300 Entertainment. Initially, SCOTT's talent agent was not involved in this performance.  
27 When Scott learned that other artists signed to Cohen's record label were performing at SXSW  
28 he became very unhappy and as a result, SCOTT's talent agent Cara Lewis became involved



1 with this performance and closed the deal by finalizing the negotiations. This does not change  
2 the fact that this performance was offered to SCOTT without the talent agent's knowledge.

### 3 **8. Billboard Show**

4 On or around May 16, 2016, LCAR negotiated the material terms on SCOTT's behalf for  
5 a Billboard Sponsored Show, in Houston, Texas, for \$60,000.00. SCOTT's talent agent was  
6 brought in after the material terms were negotiated by LCAR, including an increase in the fee to  
7 finalize the deal. Notably, when SCOTT's talent agent, Victoria Marfan was pressed whether  
8 the agency knew about the material terms of the Billboard show in Houston, she indicated the  
9 agency did not know of the material terms and she testified that was inconsistent with how the  
10 agency typically works. Consequently, the evidence established this engagement was not  
11 procured in conjunction and at the request of SCOTT's licensed talent agent.

12 Generally, SCOTT's licensed talent agents were involved by either procuring or working  
13 in conjunction with LCAR on all other entertainment engagements, including SCOTT's concert  
14 tours. In conclusion, LCAR's procurement related activity was limited to these eight  
15 engagements.

## 16 **III. LEGAL DISCUSSION**

17 1. Has the Respondent acted as an unlicensed talent agent and therefore violated the  
18 Talent Agencies Act at Labor Code section 1700.00 et seq. (the Act) by procuring entertainment  
19 engagements without a talent agency license?

20 2. If Respondent violated the Act, is the appropriate remedy to void the entire  
21 contract *ab initio*, or sever the offending practices under the principles articulated in *Marathon*  
22 *Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974.

23 The first issue is whether based on the evidence presented at this hearing, did LCAR  
24 operate as a "talent agency" within the meaning of Labor Code section 1700.4(a). Labor Code  
25 section 1700.4(a) defines "talent agency" as:

26 "a person or corporation who engages in the occupation of  
27 procuring, offering, promising, or attempting to procure  
28 employment or engagements for an artist or artists."

///  
28

1 SCOTT is a songwriter and recording artist and he is therefore an “artist” within the  
2 meaning of Labor Code section 1700.4(b). Moreover, Labor Code section 1700.5 provides that  
3 “[n]o person shall engage in or carry on the occupation of a talent agency without first procuring  
4 a license....from the Labor Commissioner.” It was stipulated that LCAR did not possess a talent  
5 agency license during the relevant period.

6 In contrast, a person may counsel and direct artists in the development of their  
7 professional careers, or otherwise “manage” artists – while avoiding any procurement activity  
8 (procuring, promising, offering, or attempting to procure artistic employment or engagements) –  
9 without the need for a talent agency license. In addition, such person may procure non-artistic  
10 employment or engagements for the artist, without the need for a license. *Styne v. Stevens* (2001)  
11 26 Cal.4th 42.

12 The Labor Commissioner has jurisdiction to hear and determine controversies,  
13 arising between an artist and an agent, pursuant to Labor Code section 1700.44(a). Indeed, the  
14 Labor Commissioner has primary and exclusive jurisdiction to hear matters arising under the  
15 Talent Agencies Act. *Buchwald v. Superior Court* (1967)

16 **A. Procurement**

17 Labor Code section 1700.40(a) defines “talent agency” as: “a person or corporation who  
18 engages in the occupation of procuring, offering, promising, or attempting to procure employment  
19 or engagements for an artist or artists.” In *Waisbren v. Peppercorn Production, Inc.* (1995) 41  
20 Cal.App.4th 246, the court held that any single act of procuring employment subjects the agent to  
21 the Talent Agencies Act’s licensing requirements, thereby upholding the Labor Commissioner’s  
22 long standing interpretation that a license is required for any procurement activities, no matter  
23 how incidental such activities are to the agent’s business as a whole.

24 The term “procure”, as used in this statute, means to get possession of: obtain, acquire, to  
25 cause to happen or be done: bring about.” *Wachs v. Curry* (1993) 13 Cal.App.4th 616, 628. Thus  
26 “procuring employment” under the statute includes negotiating for employment, and entering into  
27 discussions regarding employment contractual terms with a prospective employer, all of which  
28 were engaged in by LCAR as described. Applying *Waisbren*, it is clear respondent acted as a

1 talent agency within the meaning of Labor Code section 1700.4(a) and it is clear that the  
2 Respondent procured employment without a license in violation of Labor Code section 1700.5 on  
3 the eight occasions described.

4 Generally, an agreement that violates the licensing requirements of the Talent Agencies  
5 Act is illegal and unenforceable. “Since the clear object of the Act it to prevent improper persons  
6 from becoming [talent agents] and to regulate such activity for the protection of the public, a  
7 contract between and unlicensed [agent] and an artist is void.” *Buchwald v. Superior Court*  
8 (1967) 245 Cal.App.2d 347, 351.

9 **B. Appropriate Remedy for the Eight Violations of Section 1700.5**

10 In *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974 (*Marathon*) the Supreme  
11 Court held that a violation of the Act does not automatically require invalidation of the entire  
12 contract. More particularly, the court explained that the Act does not prohibit application of the  
13 equitable doctrine of severability and that therefore, in appropriate cases, a court is authorized to  
14 sever the illegal parts of a contract from the legal ones and enforce the parts of the contract that  
15 are legal. (*Id.* at pp. 990-996.)

16 In accord with *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974, 991,  
17 Respondent urges us to apply the doctrine of severability if we find that they violated the Act in  
18 any of the identified engagements at issue herein.

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

25 “Courts are to look to the various purposes of the contract.  
26 If the central purpose of the contract is tainted with illegality, then  
27 the contract as a whole cannot be enforced. If the illegality is  
28 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.” [Citations omitted]. *Marathon, supra* at p.996.

1           No verbal formulation can precisely capture the full  
2 contours of the range of cases in which severability properly should  
3 be applied, or rejected. The doctrine is equitable and fact specific  
4 and its application is appropriately directed to the sound discretion  
5 of the Labor Commissioner and trial court in the first instance.  
6 *Marathon, supra*, at p.998.

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

11           As a threshold matter, it is clear that the management agreement between SCOTT and  
12 LCAR was not pervaded by illegality. In this case, as is evident from the testimony, the primary  
13 purpose of the management agreement was not the illegal procurement of engagements. Rather,  
14 the primary purpose was for Cohen to use his connections in the recording industry, to secure a  
15 publishing deal, to hire support staff, handle travel and logistics, licensing and copyright deals  
16 and assist SCOTT in managing his financial affairs. LCAR was not functioning for the purpose  
17 of procuring entertainment engagements on SCOTT's behalf. That was the job of his licensed  
18 talent agent. In short, LCAR's primary purpose was to provide managerial guidance, advice,  
19 direction, and assistance in an effort to catapult SCOTT's burgeoning career into musical and rap  
20 superstardom. And while the evidence did not support the argument that LCAR was primarily  
21 responsible for SCOTT's meteoric rise, as SCOTT's success appears to stem from his own talent,  
22 LCAR steadied the ship. LCAR did what they were supposed to do. According to Stromberg,  
23 SCOTT wanted a titan in the industry and that's what he got in Cohen. In short, Stromberg, Rosen  
24 and Cohen (collectively LCAR), worked hard for SCOTT and LCAR's primary purpose was not  
25 to procure entertainment engagements as Petitioner argues.

26           Thus, as a preliminary matter, it is clear that the "primary purpose" standard does not  
27 require invalidation of the entire management agreement.

28           The second question is whether the illegal portions of the contract can be readily separated  
from the legal portions. In many instances, this line of inquiry will require consideration of two  
subsidiary questions. The first is whether, on the one hand, the illegal activities are separable and

1 distinct from the legal activities, or whether, on the other hand, the illegal and legal activities are  
2 inextricably intertwined. (*Branca v. Tohme* TAC-26372 at pg. 21) Here, it is clear that LCAR'S  
3 illegal activities, namely the procurement and attempted procurement of the two private parties,  
4 the four after-hours, the South by Southwest and Billboard gigs procured without any  
5 involvement by SCOTT's talent agent, are separate and distinct from his legal activities. LCAR's  
6 primary efforts were conducted with the intent to guide SCOTT's considerable talent in hopes of  
7 taking that talent to the next level.

8 The second question is whether the revenues from the illegal activities can be reasonably  
9 separated from the revenues derived from the legal activities. In general, income that is generated  
10 under the provisions of an illegally procured engagement contract cannot be the source for  
11 payment of an earned commission to the manager that procured the engagement. In other words,  
12 income payable to an artist under the provisions of an illegally procured engagement must be  
13 completely excluded from the payment of any commissions under the management agreement,  
14 even if the manager retains the right to receive some commissions or revenues that are not  
15 derived from illegal procurements. (*Branca, supra.* at pg. 21)

16 In this case, the revenues from LCAR's illegal procurement activities are severable from  
17 any other revenues that may be commissionable under the management agreement. Indeed, in  
18 this case while there are revenues received by SCOTT from these eight illegal procured  
19 engagements, LCAR isn't seeking commissions from these engagements nor has LCAR been  
20 paid any monies from these engagements. And in light of the illegal procurement, they clearly are  
21 not entitled to any commissions for these eight engagements. Since LCAR is not entitled, nor do  
22 they seek the illegal commission revenues from the eight engagements in which they illegally  
23 procured engagements for SCOTT, there are no such revenues collected or claimed to be severed  
24 from the legal revenues for purposes of applying the severability doctrine.

25 The question now becomes what is the appropriate method of implementing severance in  
26 the circumstances of this case. In its current lawsuit against Petitioners, LCAR is seeking to  
27 recover 15% of the gross compensation received by SCOTT for the services rendered by SCOTT  
28 within the entertainment industry for the initial three-year term and the "sunset" period. This

1 15% in commissions claimed by LCAR is not based on any specific service rendered by LCAR,  
2 but rather constitutes undifferentiated compensation payable to LCAR as consideration for the  
3 undifferentiated services LCAR rendered to SCOTT under the contract. The undifferentiated  
4 services provided by LCAR to SCOTT include both legal managerial services and illegal talent  
5 agency services. However, LCAR is not entitled to receive compensation for their illegal  
6 services. In such circumstances, the proper approach is to deduct the value of the illegal services  
7 and permit recovery only for the value of the legal services. (*Marathon*, supra, 42 Cal. 4th at p.  
8 997; *Birbrower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal. 4th 119, 139-140;  
9 *Whorton v. Dillingham* (1988) 202 Cal. Ap.3d 447.452-454.) (*Branca*, supra. at pg. 23)

10 In the present case, it is determined that the illegal activities engaged in by LCAR were  
11 more than incidental and were indeed significant, although they did not permeate the relationship.  
12 It was determined that for a short period of time, LCAR procured after-hours gigs and private  
13 parties with impunity. These quick and easy performances typically paid by cash were separate  
14 and apart from the concert tours and other engagements procured by SCOTT's licensed talent  
15 agent.

16 LCAR argues the after-hours and private parties were procured at the insistence of  
17 SCOTT, who refused to pay his agent for these engagements and sought quick cash in hand.  
18 LCAR believes they should not be held responsible for those acts. The rule is well established in  
19 this state that "when the Legislature enacts a statute forbidding certain conduct for the purpose of  
20 protecting one class of persons from the activities of another, a member of the protected class  
21 may maintain an action notwithstanding the fact that he has shared in the illegal transaction. The  
22 protective purpose of the legislation is realized by allowing the plaintiff to maintain his action  
23 against a defendant within the class primarily to be deterred. In this situation it is said that the  
24 plaintiff is not in *pari delicto*." *Lewis & Queen v. N. M. Ball Sons*, 48 Cal.2d 141, 308 P.2d 713,  
25 720. Therefore, regardless of the fact that SCOTT sought to pay only one commission and  
26 requested LCAR conduct a dual illegal role for his benefit does not alter LCAR's legal  
27 responsibilities under the Act and does not absolve LCAR of their illegalities.

28



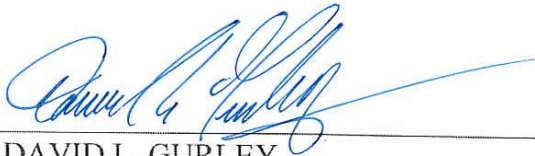
1 "gross compensation" under the terms of the Agreement. In addition, LCAR is not entitled to any  
2 commissions stemming from the eight illegally procured engagements and earnings from those  
3 eight engagements shall be deducted from SCOTT's "gross compensation" under the Agreement.

4 3. We specifically do not render an opinion on the issue of whether LCAR is entitled to  
5 commissions under the three-year "sunset" provision of the Management Agreement and limit  
6 this disposition to the Agreement's initial term of October 2014 through October 2017.

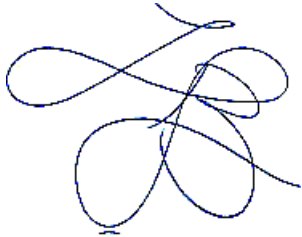
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: March 30, 2020

Respectfully submitted,

By:   
DAVID L. GURLEY  
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER



Dated: March 30, 2020

LILIA GARCIA-BROWER  
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 April 1, 2020, 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 Howard E. King, Esq.  
10 Stephen D. Rothschild, Esq.  
11 KING HOLMES PATERNO & SORIANO  
12 1900 Avenue of the Stars, 25<sup>th</sup> Fl.  
13 Los Angeles, CA 90067  
14 [srothschild@khpslaw.com](mailto:srothschild@khpslaw.com)

15 Attorneys for Petitioner

Michael J. Niborski, Esq.  
Benjamin S. Akley, Esq.  
PRYOR CASHMAN LLP  
1801 Century Park East, 24<sup>th</sup> Fl.  
Los Angeles, CA 90067  
[mniborski@pryorcashman.com](mailto:mniborski@pryorcashman.com)  
[boakley@pryorcashman.com](mailto:boakley@pryorcashman.com)

Donal S. Zakarin, Esq.  
PRYOR CASHMAN LLP  
7 Times Square  
New York, NY 10036  
[dzakarin@pryorcashman.com](mailto:dzakarin@pryorcashman.com)

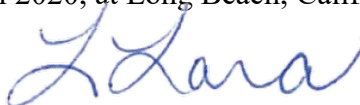
Attorneys for Respondents

17  **(BY CERTIFIED MAIL)** I am readily familiar with the business practice for collection  
18 and processing of correspondence for mailing with the United States Postal Service. This  
19 correspondence shall be deposited with fully prepaid postage thereon for certified mail  
20 with the United States Postal Service this same day in the ordinary course of business at  
21 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.

22  **(BY E-MAIL SERVICE)** I caused such document(s) to be delivered electronically via e-  
23 mail to the e-mail address of the addressee(s) set forth above.

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

26 Executed this 1st day of April 2020, at Long Beach, California.

27 

28 Lindsey Lara  
Declarant