

1 STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
2 DIVISION OF LABOR STANDARDS ENFORCEMENT  
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7

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

11 DANIEL SEAVEY, JONAH MARAIS,  
CORBYN BESSON, JACK EVERY, and  
12 ZACH HERRON, collectively  
professionally known as WHY DON'T WE  
13 (“WDW”),

14 Petitioners,

15 vs.

16  
17 SIGNATURE ENTERTAINMENT, LLC, a  
Florida limited liability company; DAVID  
18 LOEFFLER; STEVE MILLER,

19 Respondents.  
20

CASE NO. TAC 52842

**DETERMINATION OF  
CONTROVERSY**

21 The above-captioned matter, a Petition to Determine Controversy under Labor  
22 Code § 1700.44, came on regularly for hearing before the undersigned attorney for the  
23 Labor Commissioner assigned to hear this case. Petitioners Daniel Seavey (hereinafter  
24 “Seavey”), Jonah Marais Roth Frantzich (hereinafter “Frantzich”), Corbyn Besson  
25 (hereinafter “Besson”), Jack Avery (hereinafter “Avery”), and Zack Herron (hereinafter  
26 “Herron”) appeared and were represented by attorneys Allan S. Gutman and Howard E.  
27 King. Respondents Signature Entertainment, LLC, a Florida limited liability company,  
28

1 David Loeffler, and Steve Miller appeared and/or were represented by attorneys Michael  
2 R. Levin and David H. Stern.

3 Based on the evidence presented at this hearing and on the other papers on file in  
4 this matter, the Labor Commissioner hereby adopts the following decision:

5 **FINDINGS OF FACT**

6 1. In 2016, respondents David Loeffler (hereinafter “Loeffler”) and Steve Miller  
7 (hereinafter “Miller”), along with Randy Phillips (hereinafter “Phillips”) formed Signature  
8 Entertainment, LLC, (hereinafter “Signature”), a limited liability company under the laws  
9 of Florida. Signature is based out of Orange County, Florida.

10 2. Through Signature, Loeffler, Miller, and Phillips sought, auditioned, and  
11 eventually created a musical group consisting of Petitioners. Signature named the group  
12 Why Don’t We or WDW (hereinafter “WDW”).

13 3. On or about September 2016, Signature and each of the members of WDW entered  
14 into separate agreements under which Signature retained broad authority over the band,  
15 including the right to direct and control all of WDW’s recordings, personal appearances,  
16 and live performances.

17 4. Each of the agreements also contained a Florida choice of law provision and a  
18 forum selection provision designating Orange County, Florida, as the exclusive forum for  
19 actions related to the Agreements.

20 5. None of the Petitioners lived in California when they entered into the Agreements  
21 with Signature and became members of WDW.<sup>1</sup> Except for one, they were also all  
22 underage when they joined WDW. Petitioners were represented by an attorney when they  
23 entered into the Agreements with Signature. The Agreements were approved by  
24 Petitioners’ guardians. The parties also had the Agreements approved by a Florida Court.  
25

26 6. Within weeks of having joined WDW and of entering into the Agreements

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27 <sup>1</sup> Petitioner Seavey was a resident of Washington State; Petitioner Frantzich was a resident of  
28 Minnesota; Petitioner Besson was a resident of Virginia; Petitioner Avery was a resident of  
Pennsylvania; and Petitioner Herron was a resident of Texas.

1 with Signature, Petitioners were asked by Signature to come to California and stay at a  
2 house owned by Phillips. The purpose of their stay in California was to practice, create,  
3 and to get to know each other. Petitioners stayed at Phillips' house in California for a few  
4 weeks and then returned to their family homes outside California for the Thanksgiving  
5 and/or Christmas holidays. Then, from December 2016 to February 2017, Petitioners went  
6 on an east coast tour.

7 7. Petitioners and their families eventually moved to California in 2018, except for  
8 Petitioner Besson, who moved to California in 2019.

9 8. On or about July 14, 2021, Loeffler and Miller had a falling out with Phillips  
10 resulting in Phillips being removed from Signature's board of managers.

11 9. On or about August 17, 2021, Signature sued Petitioners for breach of  
12 the Agreements, and Phillips for tortious interference, in the County of Orange, Florida.

13 10. Petitioners filed the instant Petition to Determine Controversy on September 8,  
14 2021, seeking, *inter alia*, an order determining that Signature violated the California  
15 Talent Agencies Act (TAA), and the Agreements between Signature and Petitioners are  
16 void *ab initio*.

17 11. In January 2022 and/or soon thereafter, Petitioners filed and answer and counter  
18 claims in the Florida action. Petitioners allege, in part, that Signature operates a talent  
19 agency as defined by the Florida Talent Agencies Act ("FTAA"), that Signature is not  
20 licensed under that FTAA, and that the Agreements are unenforceable under the FTAA. In  
21 January 2022, Petitioner Seavey also filed a complaint with Florida's Department of  
22 Business and Professional Regulation, the entity that enforces the FTAA alleging that  
23 Signature operated as an unlicensed talent agent in Florida and requesting that Signature  
24 and/or Loeffler be prosecuted in Florida. On or about December 21, 2022, Petitioner  
25 Seavey also filed a separate court action in Florida seeking to enjoin Signature from  
26 enforcing the agreement as illegal under the FTAA.  
27

28 12. In the instant proceeding, Signature argues that the Labor Commissioner lacks

1 jurisdiction, *inter alia*, because the Agreements at issue are subject to a Florida choice of  
2 law provision and a forum selection clause selecting Orange County, Florida as the  
3 parties' choice of forum. As discussed in more detail below, because we agree with  
4 Signature that the parties' choice of law and forum selection provisions are controlling in  
5 this particular case, we do not address the substantive arguments raised by the parties.

## 6 LEGAL ANALYSIS

### 7 **A. Personal Jurisdiction**

8 Our jurisdictional analysis begins with addressing whether California has a  
9 legitimate state interest. California's long arm statute allows a California Court to exercise  
10 jurisdiction over a nonresident on any basis not inconsistent with United States and  
11 California Constitutions. C.C.P. section 410.10. Thus, California Courts can exercise the  
12 broadest possible jurisdiction limited only by constitutional considerations. *Sibley v.*  
13 *Superior Court* (1976) 16 Cal.3d 442, 445.

14 As a general constitutional requirement, the individual must have such "minimum  
15 contacts" with the state that maintenance of the suit does not offend "traditional notions of  
16 fair play and substantial justice." *International Shoe Co. v. Washington* (1945) 326 U.S.  
17 310, 316. Thus, "a state may exercise jurisdiction over a nonresident who purposefully  
18 avails himself or herself of forum benefits, because the state has a 'manifest interest' in  
19 providing its residents with a convenient forum for redressing injuries inflicted by out of  
20 state actors." *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 473. It is clear  
21 California has a legitimate interest in remedying violations of its laws occurring within its  
22 borders. Thus, if it is found that Respondents violated California law within California's  
23 border, and constitutional considerations are satisfied, exercising jurisdiction over  
24 Respondents pursuant to California's long-arm statute would be appropriate.

25 Assuming California can exercise personal jurisdiction over Respondents, we must  
26 also analyze whether California has subject matter jurisdiction.

### 26 **B. Subject Matter Jurisdiction**

27 The Labor Commissioner can only apply California law. Thus, because we find  
28 that the Florida choice of law and Florida county forum selection provisions apply to the

1 particular facts of this case, we dismiss the Petition for lack of subject matter jurisdiction.

2 *1. Choice of Law Provisions*

3 Section 31 of the Agreements provide in relevant part “...the validity,  
4 interpretation and legal effect of this Agreement shall be governed by the laws of the  
5 Florida applicable to contracts entered into and performed entirely within Florida.” As  
6 discussed in 10 above, Petitioners seek an order from the Labor Commissioner  
7 determining the Agreements void *ab initio*.

8 The California Supreme Court has set out the framework for California courts  
9 when analyzing whether a choice of law provision should be enforced: 1) whether the  
10 chosen state has a substantial relationship to the parties or their transaction, or 2) whether  
11 there is any other reasonable basis for the parties’ “choice of law.” *Nedlloyd Lines B.W. v.*  
12 *Superior Court* (1992) 3 Cal.App.4<sup>th</sup> 459, 466-67. If neither test is met, the parties’ choice  
13 of law need not be enforced. *Id.* However, if either test is satisfied, then the Court must  
14 determine whether the chosen state’s laws are contrary to a fundamental policy of the state  
15 of California. *Id.* If no such conflict is found, then the Court must enforce the choice of  
16 law. *Id.* If the Court finds a fundamental conflict with California law, then the Court must  
17 determine if California has a *materially greater* interest than the state chosen. *Id.*

18 In this case, the evidence supports a finding of a substantial relationship between  
19 the parties or their transaction, and Florida. It was undisputed that Signature was created  
20 under the laws of the state of Florida. Signature’s is also based out of Orange County,  
21 Florida. The Agreements were executed in Florida. The parties had the Agreements  
22 confirmed and approved by a Florida court soon after executing them. Some of the alleged  
23 unlawfully procured engagements were performed by WDW in Florida. There is also  
24 reasonable basis for the parties’ choice of Florida law. As discussed previously, none of  
25 the Petitioners were residents of California when Signature created WDW. In fact, with  
26 the exception of one, all Petitioners were minors and residents of other states when they  
27 entered the agreements with Signature joining WDW. Although none of them were  
28 residents of Florida, it was reasonable for the Parties to agree to the law of Signature’s  
state of incorporation and principal place of business, instead of the law five different

1 states where Petitioners resided, or even California, where none of them did. Thus, both  
2 tests set out by the California Supreme Court *Nedlloyd* are actually met in this case.

3 However, even assuming that neither test was satisfied, based on the record before  
4 us in this case, it cannot be said that Florida's laws are contrary to a fundamental policy of  
5 the State of California. It is clear that the policy behind the Talent Agencies Act is to  
6 protect artists, and that this is an important California state interest. *Marathon*  
7 *Entertainment, Inc. v. Blasi* (2008) 42 Cal.4<sup>th</sup> 974, 984. However, as we have noted  
8 previously, Florida also has its talent-agent licensing scheme for the protection of artists.  
9 *Carter, et al. v. Wright, et al.* (2001) Case No. TAC-9-00. Based on the record before us  
10 in this case, we cannot find that Florida law is contrary to the California TAA. In fact, as  
11 discussed in 11 above, similarly to what they seek in this proceeding, Petitioners seek to  
12 have the agreements declared void and unenforceable under the Florida TAA in the  
13 Florida state court litigation. Petitioner Seavey also filed a complaint with Florida's  
14 Department of Business and Professional Regulation, the entity that enforces the FTAA,  
15 alleging that Signature and Loeffler operated as an unlicensed talent agent in Florida, and  
16 requesting that they be prosecuted.

17 Finally, and assuming a conflict between the TAA and Florida law, we cannot find  
18 that California would have a *materially greater* interest than Florida based on the  
19 particular facts of this case. As already discussed, none of the Petitioners were residents of  
20 California when they entered into the Agreements with Signature. Although they came to  
21 California soon after entering into the agreements with Signature and becoming members  
22 of WDW, their stay in California was temporary, and limited to a few weeks. All but one  
23 of the Petitioners were minors and soon returned to their families who remained in their  
24 home states. Thereafter, at the end of 2016 and beginning of 2017, they went on a 20-  
25 show tour across the country, with only 2 shows performed in California. Petitioners did  
26 not become residents of California until late 2017 or early 2018, after a significant number  
27 of the alleged unlawfully procured engagements were performed by WDW.

28 Based on the evidence before us in this case, we find the parties' choice of Florida  
law applies.

1           2. *Forum Selection Provisions*

2           The Agreements also provide in relevant part that “Venue for all actions shall be in  
3 Orange County, Florida.” Forum selection clauses are generally enforced unless the  
4 opposing party shows the clause is unreasonable or contrary to public policy. *CQL*  
5 *Original Products, Inc. v. Nat’l Hockey League Players’ Assn.* (1995) 39 Cal.App.4<sup>th</sup>  
6 1347, 1353-54 (citing *Smith, Valentino & Smith, Inc. v. Superior Court* (1976) 17 Cal.3d  
7 491, 495. Because of the importance given to forum selection clauses, the party seeking to  
8 defeat it has a “substantial burden” of demonstrating enforcement of the clause “...would  
9 be unreasonable under the circumstances of the case.” (*Id.*)

10           The parties’ selection of Orange County, Florida as a forum for all claims relating  
11 to the Agreements in this case is not unreasonable or contrary to public policy.  
12 Reasonableness requires a showing of some rational basis for the parties’ choice of forum.  
13 As discussed in 1 above, Signature is a Florida corporation, with its principal place of  
14 business located in Orange County, Florida. See *Verdugo v. Alliantgroup, L.P.* (2015) 237  
15 Cal.App.4<sup>th</sup> 141, 147 (holding that a forum selection “...clause is reasonable if it has a  
16 logical connection with at least one of parties or their transaction.”) Although none of  
17 Petitioners were residents of Florida when they entered into the Agreements with  
18 Signature, they were all residents of different states, and thus it made sense for the parties  
19 to agree to a Florida forum. In *CQL, supra*, the Court found that the forum choice was  
20 reasonable because it allowed the party seeking to enforce it uniformity of interpretation  
21 by the locality of its incorporation –Ontario, Canada—instead of having to deal with the  
22 myriad of other state, international, and local forums. *Id* at 1355. Similarly in this case, the  
23 parties’ choice of Orange County, Florida as the forum is reasonable given that each of the  
24 Respondents was a resident from a different state, and that Signature was created under  
25 Florida law, and based out of Orange County, Florida.

26           Enforcing the parties’ forum selection clause is also not against California public  
27 policy based on the record before us of this case. It is clear that California has a strong  
28 interest in protecting its citizens from violations of its laws, including protecting artists  
from unlawful procurement under the TAA. As discussed previously, however, none of

1 the Petitioners were residents of California when they entered into the Agreements with  
2 Signature. They were also not residents of California when a significant number of the  
3 alleged unlawful procurement took place.


4 Petitioners did not meet their burden of showing that the Orange County, Florida  
5 forum selection in the parties' Agreements was unreasonable or contrary to public policy.

6 **ORDER**

7 Due to the parties' choice of law and forum selection clauses and based on the  
8 record before us in this particular case, we find that the Labor Commissioner does not  
9 have subject matter jurisdiction over this matter. Accordingly, the Petition is dismissed.

10  
11 Respectfully submitted,

12  
13 Dated: 8/11/2023

14 By:   
15 ABDEL NASSAR  
16 Attorney for the Labor Commissioner

17  
18 **ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER**

19  
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21 Dated: 8-11-2023

22 By:   
23 LILIA GARCIA-BROWER  
24 State Labor Commissioner  
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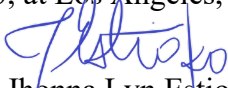


1  **(BY CERTIFIED MAIL)** I am readily familiar with the business practice for collection  
2 and processing of correspondence for mailing with the United States Postal Service. This  
3 correspondence shall be deposited with fully prepare postage thereon for *Certified Mail*  
4 with the United States Postal Service this same day in the ordinary course of business at  
5 our office address in Los Angeles, 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.

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

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

9 Executed this 11 August 2023, at Los Angeles, California.

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11 Jhonna Lyn Estioko  
12 Declarant  
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