BEFORE THE LABOR COMMISSIONER

STATE OF CALIFORNIA

MELANIE GREENE, an individual, and CONTACTS & CONNECTIONS, INC., a California Corporation, *Petitioners*, vs. HARRY SHEARER, an individual, and RUPERT MANIA, INC., and DOES 1 through 10 inclusive, *Respondents*.	**CASE NO.: TAC-52912** **Determination of Controversy**

I. INTRODUCTION

On November 7, 2024, 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 Melanie Greene and Contacts & Connections, Inc. (collectively hereinafter referred to as "Greene" or "Petitioner") were represented by Benjamin Kussman and Maribeth Annaguey of Annaguey McCann LLP. Respondents Harry Shearer and Rupert Mania, Inc. (hereinafter, collectively referred to as "Shearer" or "Respondent") were represented by Howard King and Heather Pickerell of King, Holmes, Paterno & Soriano, LLP. Greene was the only witness at the hearing.

The petition to determine controversy was filed on September 29, 2023. The answer and counterclaims were filed on October 25, 2023. The parties submitted post-hearing briefing on December 20, 2024. 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 Shearer and his longtime manager Greene regarding whether Greene violated the Talent Agencies Act (TAA) by procuring Shearer's contract to be a voice actor in Seasons 33 and 34 of the television show *The Simpsons*.

2. Greene has been a manager and producer in the entertainment industry since 1987. She is not a licensed talent agent.

3. Shearer is an actor who, as relevant here, voices numerous characters on *The Simpsons*.

Formation of Manager-Client Relationship

4. In 1999, Greene met Shearer through a mutual acquaintance. When they met, Shearer had already starred as a voice actor in *The Simpsons* for 10 years.

5. By the time Greene met Shearer, Shearer's relationship with his castmates on *The Simpsons* had deteriorated. Shearer and other castmates would not be in the same room during the recording of the episodes. Additionally, Shearer did not cooperate or strategize with castmates during contract negotiations.

6. Shearer sought out Greene because Greene had expertise in managing clients who had difficult relationships with castmates and employers. Specifically, Shearer knew that Greene managed another high-profile actor who had frayed relationships with castmates and was in the midst of a lawsuit regarding his contract.

7. After Shearer and Greene spoke several times, they made an oral contract for Greene to manage Shearer. They agreed Greene would receive ten percent of Shearer's compensation, bonuses, and residuals except that Greene would not receive any payment based on Shearer's *Spinal Tap* work or a radio show he hosted. Greene testified at hearing that the ten percent term was industry norm and that she specifically went over the terms with Shearer before making their oral contract. Although Respondent questioned how Greene could remember that she specifically discussed ten percent being due on all commissions, bonuses, and residuals, we find her testimony credible given her specific and uncontested recollection of the agreement, including specifics such as the *Spinal Tap* and radio carve out.

8. The managerial contract was not a limited term contract, and the parties kept the same oral contract for nearly 20 years.

Greene's role as manager during Seasons 11-32 of *The Simpsons*

9. After being hired as Shearer's manager, Greene assembled a team of attorneys and publicists to work for Shearer.

10. In addition to assembling Shearer's team, Greene's role was to be a "diplomat" for Shearer, often trying to assuage both Shearer and Shearer's employers. For example, Greene had to manage when

and where Shearer performed work for *The Simpsons* episodes as he intentionally scheduled other professional obligations for the same time as read throughs and could not be in the same room as other castmates when the episodes were recorded. As a result, Shearer often had episodes "piled up" to record. Greene balanced encouraging Shearer to record these episodes with the pressure from the studio to meet deadlines. Greene also worked extensively on publicity for Shearer along with the publicists.

11. It is undisputed that Greene did not procure any contracts for seasons 11-32 of *The Simpsons*. Instead, Shearer's attorneys negotiated his contracts, including signing bonuses, with the studio. Shearer's attorneys did not strategize or negotiate in tandem with Shearer's castmates (or their attorneys) given the strained relationships among the cast; however, because all the main actors for *The Simpsons* had "most favored nation" clauses in their contracts, the castmates received the same financial offer that Shearer negotiated.

12. In 2019, Shearer's attorneys also negotiated a side letter for a "blind pilot"—that is, an opportunity for an actor to create their own show. The blind pilot was not part of *The Simpsons* contract or subject to the most favored nation clause. Shearer never received any money in connection to the blind pilot deal.

Negotiations for seasons 33-34 of *The Simpsons* and the blind pilot extension

13. On November 13, 2020, a Disney executive[1], Mike Giordano, called Larry Stein, Shearer's attorney at Raklaw, to begin negotiations on seasons 33 and 34 of *The Simpsons*. Giordano said Disney would offer a two-year extension of *The Simpsons* with payment per episode but without a signing bonus. Bennett Bigman, another attorney at Raklaw, informed Shearer and Greene about the conversation, asking Shearer for a meeting to discuss the upcoming negotiations.

14. Soon after receiving the email, Shearer called Greene. He was frustrated that, for years, he had spent the time and money on attorneys to negotiate when his castmates (in his perception) gained the advantage of that time and money through the most favored nation clauses. Greene testified that Shearer did not discuss the deal terms he wanted; rather, he instructed her to fire his lawyers and allow the other

[1] The emails at this time refer to Fox although Giordano has a Disney email address. For ease of reference, we refer to the employer as Disney throughout.

parties to pay for and finalize the negotiations after which he would sign a contract with the same terms based on his most favored nation clause.

15. Greene called Bigman on November 13, 2020, and fired Raklaw on Shearer's behalf.

16. On November 13, 2020, after firing Shearer's attorneys, Greene wrote Shearer: "We can continue to plot and scheme on Monday." Greene continued: "I know how much those actors on the Simpsons love their signing bonuses so for once those lazy lawyers can do their jobs and YOU can finally reap their rewards, if there are any."

17. Shearer told Greene on November 19 that he planned for Laurie Soriano, an attorney, to review the contract for legal issues and asked Greene to update Soriano on the status of the contract.

18. Around that time, Shearer instructed Greene to stay updated on the negotiations that would result (via the most favored nation clause) in his final offer.

19. Greene first tried to contact the attorneys for other castmates to get this information. Her calls went unanswered, likely due to the tension between castmates. Greene testified that she then turned to contacting Giordano several times from January through March 2021 to get information on the negotiations without weighing in on Shearer's behalf.

20. On January 21, 2021, Greene sought an update from Giordano, and then informed Shearer that Giordano "added a signing bonus of a million dollars" to the proposal and "w[as] fiddling about with the contract." Greene—as in November 2020—conveyed this information in the context of the most favored nation clause. She concluded her email: "He [Giordano] will let us know when they are finished and you will be the most favorite nations with the rest of them other than your blind pilot deal."

21. On January 27, 2021, Greene contacted Giordano to request he stop sending mail to the fired lawyers and instead send incoming mail to her. As Greene testified, Shearer wanted her to receive the mail rather than people he had fired.

22. On February 25, 2021, Greene wrote Giordano regarding how residuals of past seasons of *The Simpsons* would be compensated once they were uploaded to Disney+, to which Greene responded that SAG [union] rules governed such compensation. Greene made this communication after being asked to do so by Shearer's business manager.

23. On February 26, 2021, Giordano wrote Greene to confirm that he closed deals with the attorneys for several other actors on *The Simpsons*. He informed Greene that the contracts included a completion bonus. He concluded: "I understand that Harry [Shearer] has agreed to close on this basis too, so long as everybody closes on this basis. Thank you for all your help to get this done."

24. Greene responded the same day, asking Giordano to send the details so that she could forward them along to Shearer and his business manager. Giordano responded he "did not want all the details out there on email" but that "it's the same signing bonus and episodic fees as last time" plus additional amounts in each "Disney+ 'promotional short' in which Harry [Shearer's] voice is used."

25. In the same February 26, 2021 communication, Greene asked Giordano to note the blind pilot had also been extended. Greene testified that shortly before the communication, as the blind pilot deal neared its end, Shearer told her to ask if the blind pilot deal could be extended. Greene called Marci Proietto, the head of animation, who said that Disney would extend the blind pilot deal and that Greene should inform Giordano. Consistent with Greene's communication with Proietto, Giordano confirmed that the blind pilot had been extended.

26. On March 4, 2021, Greene at Shearer's instruction emailed Giordano regarding the status of the contract. Giordano responded that he would send it later that day, which he did in the afternoon. As relevant here, Greene responded, requesting a letter confirming the blind pilot deal. Giordano replied that blind pilot script deals typically were extended over email. He then confirmed that the blind pilot deal "will commence upon Harry's signing his new voiceover agreement for Seasons 33&34."

27. Later in the evening on March 4, 2021, Greene introduced Giordano to Soriano. Greene thanked Giordano who had "navigated us through this two year Simpson's deal." Soriano handled subsequent communications regarding the contract with Giordano. She provided a final review of the contract to Shearer with a cc to Greene on March 19, 2021.

Greene's Firing

28. Shearer had an April 1, 2021 deadline to sign the contract for seasons 33 and 34.

29. The night before, on March 31, 2021, he asked Greene for a meeting. He called her with his attorney (Soriano) on the line. He told Greene he "wasn't feeling it" and fired her.

30. Shearer later signed the contract and performed in *The Simpsons* seasons 33 and 34.

III. LEGAL DISCUSSION

The issues in this case are:

- Did Greene unlawfully procure Shearer's contract for seasons 33 and 34 of *The Simpsons*?
- Did Greene unlawfully procure Shearer's side letter for a blind pilot deal?
- If Greene 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 Greene unlawfully procure Shearer's contract for seasons 33 and 34 of *The Simpsons*?

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 definition of procurement in the TAA 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).

The parties dispute whether Greene procured the work of *The Simpsons* contract. Several previous talent agency determinations addressed what type of communication by managers with employers constitutes procurement—that is, "active participation […] aimed at obtaining employment for the artist."

Danielewski v. Agon Investment et al., TAC 41-03 (2005) has the most extended discussion on the difference between a manager engaged in active participation to obtain employment rather than a passive act of communication. *Danielewski* makes clear that a manager "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. *Id.* 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.*; *see also Blackstock v. Starstruck Management et al.*, TAC-52871 (2023) at 26. *Danielewski* rejected the argument as "utterly unworkable" that a personal manager could lawfully engage as a "spokesperson" for artists in negotiations—that is, as a conduit detailing what availability and compensation the artist desired—if they could prove they did so at the direction of the artist. *Danielewski*, TAC 41-03, at 17.

Applying that framework, *Danielewski* determined that a manager who required all communications about potential employment for the artist to flow through him and who directly negotiated or offered to procure engagements violated the TAA. *Id.* at 20-21. The hearing officer concluded that the manager routed "all inquiries about potential engagement" through him "so that he would be a party to any ensuing discussions regarding potential engagements," likely because the artist owed the manager a sizeable personal debt. *Id.* at 20, 25-27.

Menefee v. Octagon, Inc., TAC 43950 (2017) similarly held that an unlicensed manager was not shielded from the TAA by labeling themselves a "conduit" for an artist after engaging in negotiations to obtain employment. In *Menefee*, a management company engaged in a six-week negotiation with an artist's employer for a renewal deal and subsequently closed the deal. *Id.* at 2. The management company admitted that it made the artist's "specific desires and demands known" to the potential employer; however, it claimed to have acted as the artist's "spokesperson" rather than his "negotiator." *Id.* at 3-4. The hearing officer again rejected this unworkable distinction, holding that the "extensive and continued negotiations" constituted procurement whatever label the management company affixed to its activity.

Blackstock likewise applied *Danielewski* in holding that a manager procured three separate deals for an artist. In *Blackstock*, the manager contended that he never engaged in negotiations for these three deals, but rather immediately passed off such communication to the artist's attorney. TAC-52781 at 12, 14, 16. The hearing officer found the manager lacked credibility on the issue, determining that, for each engagement, the manager's actions showed he solicited the deal and/or negotiated terms of the deal. *Id.* at 12 (finding the manager engaged in an "active role shaping the deal" when the manager spoke with employer, including the employer's President, multiple times with no one else on the phone before a formal offer came in); 13-14 (finding it "implausible" manager did not procure work when manager participated in three calls where the deal terms were discussed and promised to provide feedback on the terms); 15 (finding manager lacked credibility that he did not discuss key deal terms with employer before the official offer).

The Labor Commissioner also has issued several decisions in which the manager communicated with an artist's employers but did not cross the line into unlawful procurement. In *Moyeda v. Ojeda,* TAC 49069 (2020), the hearing officer found in relevant part that the manager communicated to the artist "what events or performances were available to him" and "[t]hat, standing alone, does not rise to a level of 'procurement' as contemplated by the TAA." *Id.* at 12. This is consistent with *Danielewski*'s analysis that a manager passing along potential engagements does not in itself violate the TAA.

Gibson v. Dorfman, TAC 36861 (2017) is the most permissive decision the Labor Commissioner has issued on the actions a manager may take before crossing the line into procurement. In *Gibson*, a network sent a letter to a manager[2] regarding a potential extension of an actor's employment deal. *Id.* at 6-7. The manager informed the network that the actor would take the same deal as another actor and had the other actor's agents negotiate the deal. *Id.* at 7. Once the deal was completed, the manager informed the actor's business manager, "We made a new agreement for an additional year [. . .]." *Id.* at 6. In other words,

[2] It is unclear if the letter also went to the actor directly.

although there was no "most favored nation" clause, the manager agreed on behalf of the actor that the actor would accept the same amount as a co-star and then allowed the co-star's agents to negotiate the deal. The hearing officer found that the issue of "procurement or of un-requested (by Mr. Gibson's agent) negotiation a close question," but could not "conclude it was more likely than not" the manager procured the work. *Id.* at 16.

We ultimately agree with most of Petitioner's "workable test" that emerges out of these cases: "managers do not violate the TAA by simply passing information (even initial job opportunities) from a studio to the client outside the context of active negotiations. Several recent decisions have provided color as to what *does* amount to 'active negotiations': securing an engagement and setting a rate of compensation (*Danielewski*), making the client's 'specific desires and demands known' (*Menefee*), or engaging in multiple, pre-offer discussions with the purchaser about possible terms for employment (*Blackstock*)."[3]

Here, Greene's case is distinguishable from past cases where we found procurement. Greene did not provide Shearer's availability, set a rate of compensation, or make Shearer's specific desires and demands known. While she asked that Shearer's mail be sent to her, she did so in contrast to *Danielewski* because the studio was sending mail to Shearer's previous attorneys, not because she wanted to control all negotiations. Unlike the manager in *Menefee* she was not negotiating and closing contracts and then seeking to avoid liability by labeling herself Shearer's spokesperson with the studio. Finally, Greene did not engage in direct negotiations on multiple phone calls with employers like the manager in *Blackstock*.

Given that Greene's actions do not resemble previous cases in which we found procurement and under the unique facts of this case, we find that Greene did not engage in procurement activities for *The*

[3] Petitioner also urges us to adopt a bright-line rule from *Gibson* that a manager "communicating that the artist will accept the terms negotiated by another cast member's agent is not 'negotiation.'" We do not need to adopt such a far-reaching rule. As described above, the manager in *Gibson* essentially set a term similar to a "most favored nation" clause. This arguably puts *Gibson* in tension with *Danielewski* as confirming a client would take the same amount as a castmate could be setting a term of compensation. Here, in contrast, the most favored nation clause—i.e. the arguable term of compensation—was previously negotiated and served as the background for the manager requesting updates. Additionally, *Gibson* noted that its analysis was close and based on a party failing to meet its burden, suggesting a fact-specific inquiry in such borderline cases.

Simpsons seasons 33 and 34. Greene's actions followed Shearer's plan set the day he fired his attorneys: instead of Shearer spending time and money negotiating the contract for his castmates to adopt under the most favored nation clauses, Shearer would let his castmates spend the time and money on negotiations. In other words, Shearer would not be involved but rather just monitor castmates' negotiations. We find Greene's unrebutted testimony that she did not convey specific demands or amounts from Shearer credible based on both her demeanor and the accompanying exhibits. While Greene agreed to "plot and scheme" with Shearer after he fired his attorneys, she wrote in the subsequent sentences that they would let the castmates' "lazy lawyers [. . .] do their jobs and YOU [Shearer] can finally reap the rewards, *if there are any*." (emphasis added). Similarly, we do not find the references to bonuses in Greene's communications with Giordano to betray that she in fact requested or demanded a bonus as part of Shearer's contract.[4]

In sum, Greene asking for updates on the negotiations between the studio and castmates from an employer was not *active* participation aimed at obtaining his employment. A manager can ask for updates on negotiations without crossing the line into procurement. This is the rare case where the manager had multiple communications with a prospective employer but the context of those communications (here—the most favored nation clause and Shearer's decision to not negotiate) supports the manager's position that she did not procure work through those communications.

B. <u>Did Greene unlawfully procure Shearer's contract for the blind pilot deal?</u>

Shearer maintains that Greene unlawfully procured the blind pilot deal by reaching out to the head of Disney's animation group to extend the blind pilot. Greene disagrees, contending that she did not negotiate or discuss specific terms of the deal but merely reached out "to confirm the blind pilot deal was being extended."

[4] Shearer also cites Greene's February 25, 2021 email to Giordano regarding how residuals of past seasons of *The Simpsons* would be compensated to show a back door attempt to negotiate the deal. There appeared to be two separate Disney+ issues: residuals from past seasons playing on Disney+, which was not part of the contract, and promotional shorts, which were. Greene's communication appeared to be addressed to the former, although it was not clear from Greene's testimony. In any event, we do not interpret the Disney+ question to be an attempt to solicit, obtain, or negotiate deal terms.

We agree with Shearer that Greene engaged in procurement of the blind pilot extension. The blind pilot deal was expiring. Shearer initiated contact with the head of Disney animation to request an extension of the deal. Soliciting employment, even if it is an extension, constitutes procurement. Because Greene was not a licensed talent agent, her procurement of the blind pilot extension violated the TAA.

C. If Greene 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)?

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.
>
> [. . . .]
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> 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.

At the outset, the parties disagree about the scope of the severance based on unlawful procurement of the blind pilot. Greene contends that the blind pilot was a separate agreement from the agreement for *The Simpsons* seasons 33 and 34, meaning that the blind pilot alone could be severed from the management agreement. Shearer responds that the blind pilot was linked to, and part of the same deal as, *The Simpsons* seasons 33 and 34; therefore, any severance would have to include a finding that the deal for *The Simpsons* seasons was unlawfully procured under the TAA as well.

We agree with Greene. The blind pilot deal involved different employment with the studio than *The Simpsons* contract and was negotiated separately from *The Simpsons*. Although Giordano stated that the blind pilot deal would start on the same day as *The Simpsons* deal, the studio's linkage of the two deals does not mean it was a single contract. The blind pilot was a side agreement—not subject to the most favored nation clause and unrelated to *The Simpsons*.

We further hold that the blind pilot deal can be severed from the remainder of the management agreement. The call to Disney's head of animation and the few follow up emails constituted a miniscule part of Greene's twenty-year management of Shearer; it did not taint the entire contract.

IV. ORDER

For the above stated reasons, the petition to determine in controversy seeking declaratory relief is granted in part as follows:

- Petitioner did not unlawfully procure *The Simpsons* seasons 11-34 under the TAA; and
- Petitioner's unlawful procurement of the blind pilot deal is severed from the management contract.

Respondent's counterclaim is denied.

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Dated: 1/28/2025

Casey L. Raymond

Casey Raymond
Special Hearing Officer for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: 1/27/2025

LILIA GARCIA-BROWER
State Labor Commissioner

STATE OF CALIFORNIA
Department of Industrial Relations
DIVISION OF LABOR STANDARDS ENFORCEMENT