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STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
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Attorney for the Labor Commissioner

BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

JESSIE GARCIA, an individual,

Petitioner,

vs.

LYNN A. BETHURUM dba MIXAGENT, an
individual; MIXAGENT INC., a corporation;
and DOES 1 through 50, inclusive,

Respondents.

CASE NO. TAC-52868

**DETERMINATION OF
CONTROVERSY**

I. INTRODUCTION

This Petition to Determine Controversy per Labor Code section 1700.44, came on regularly for hearing on August 13, 2024, via Zoom teleconference, before the undersigned attorney assigned by the Labor Commissioner to hear this matter. The matter was submitted in late September 2024 after the parties submitted closing briefs. Petitioners JESSIE GARCIA, an individual and DIANA VALVERDE, an individual appeared and were represented by Attorneys David Avagyan and Drew Musto of RUSHING MCCARL LLP. Respondents LYNN A. BETHERUM d.b.a. MIXAGENT, an individual, and MIXAGENT INC., a California corporation appeared and were represented by Allen Grodsky of GRODSKY OLECKI & PURITSKY LLP. Based on the evidence presented at hearing and on the papers on file, the Labor Commissioner hereby adopts the following decision.

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II. FINDINGS OF FACT

1. JESSIE GARCIA is a radio disc jockey whose career started in Fresno, CA. In or around 2014, GARCIA signed with POWER 106 radio station based in Los Angeles.

2. DIANA VALVERDE is GARCIA's Registered Domestic Partner (equivalent to spouse under California law), who helped GARCIA with his business affairs and often communicated on behalf of GARCIA. VALVERDE was involved in all GARCIA's business decisions and communicated with GARCIA's manager, LYNN A. BETHURUM on a regular basis about GARCIA's career.

3. LYNN A. BETHERUM was radio disc jockey performing under the name "DJ LYNNWOOD" who later pivoted his career to management of disc jockeys. BETHERUM is not, nor has he ever been, a licensed talent agent in the State of California. BETHERUM used MixAgent as a trade name once he started to work in radio sales and radio talent management. Initially, MixAgent was not a legal entity or a registered "doing business as" (dba) with any county. In January 2020, BETHERUM formed MixAgent, Inc., a California corporation which is not a party to either management agreement and to which BETHERUM was the only officer. (See Petitioner's Exs. 1 and 2.)

4. BETHERUM and GARCIA met in or around 2017 when GARCIA was seeking professional assistance in renegotiating his contract with POWER 106. Upon their third in-person meeting, on or around July 2018, BETHERUM presented GARCIA with a management contract.

5. BETHERUM represented to GARCIA that he and his business "MixAgent" (not MixAgent, Inc.) were a large company with agents, managers, lawyers, crisis management and publicists. In fact, MIXAGENT was just a trade name for BETHERUM himself acting as an individual. At hearing BETHERUM alleged that he worked with several people at MixAgent, but could not confirm basic details about his alleged company upon questioning. BETHERUM could not clearly answer who MixAgent employed, the conditions of that employment, the structure of the company, etc. Instead, and described below, BETHERUM acted alone, using aliases created as email addresses at his "company" MixAgent, to gain the confidence of GARCIA and VALVERDE,

1 in furtherance of his scheme to take advantage of them. No evidence was presented that anyone
2 other than BETHERUM himself worked at MixAgent. No evidence was presented that
3 BETHERUM managed anyone besides GARCIA. No evidence was presented that BETHERUM
4 ever worked with licensed talent agents. Instead, BETHERUM testified about people he alleged
5 worked for him. There was no evidence presented, nor could we establish that any of those people
6 ever existed. Even if they did exist, none of them were talent agents licensed in California. The
7 evidence presented and testimony at hearing instead support the conclusion that BETHERUM
8 manufactured employees to manipulate GARCIA and prevent him and VALVERDE from
9 discovering BETHERUM was acting as an unlicensed talent agent.

10 6. BETHERUM had outside professionals help GARCIA from time to time, but none
11 of those professionals was a licensed talent agent. BETHERUM lied about having internal
12 employees working for his alleged agency, MixAgent, directly. This was a ruse and entirely
13 manufactured. The three main characters BETHERUM used to deceive GARCIA and VALVERDE
14 were: (1) alleged Chief Financial Officer, Diana Strand; (2) alleged agent and attorney for
15 MixAgent John Pierce; and, (3) alleged accounting administrator Christine. BETHERUM lied
16 about this at hearing and lied to GARCIA and VALVERDE throughout their relationship. The lies
17 were so elaborate that BETHERUM would avoid GARCIA and VALVERDE's questions by
18 having them communicate with imaginary subordinates while he told them he was too busy to
19 speak with them.

20 7. BETHERUM used multiple email addresses including email addresses for Pierce,
21 Strand and Christine (backoffice@mixagent.com) to dupe GARCIA and VALVERDE into
22 believing they were working with a full-service agency and to conceal the fact that BETHERUM
23 was acting as an unlicensed agent. VALVERDE asked BETHERUM and Christine for in person
24 or phone discussions of GARCIA's financial situation, but Christine told her "we are not available
25 for live meetings." (Petitioner's Ex. 25.) This was repeated years later by another one of
26 BETHERUM's less common aliases "Tom Sherman" in an August 2022 email to GARCIA.
27 (Petitioner's Ex. 25.)

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1 8. During the pendency of the negotiations with POWER 106, BETHERUM refused
2 to negotiate on behalf of GARCIA until GARCIA signed the PERSONAL MANAGEMENT
3 AGREEMENT. (See Petitioner’s Ex. 5, pp. 1-4 & Ex. 7.)

4 9. Despite the parties’ initial discussions being BETHERUM negotiating GARCIA’s
5 continued employment with POWER 106, the signed July 6, 2018 PERSONAL MANAGEMENT
6 AGREEMENT says different. The PERSONAL MANAGEMENT AGREEMENT states:

7 ARTIST UNDERSTANDS AND ACKNOWLEDGES THAT
8 MANAGER IS PROHIBITED FROM PROCURING, OFFERING,
9 PROMISING, OR ATTEMPTING TO PROCURE
10 EMPLOYMENT OR ENGAGEMENTS FOR ARTIST AND
11 CARRYING OUT THOSE ACTIVITIES FOR WHICH
12 APPROPRIATE LICENSES ARE REQUIRED. ARTIST
13 ACKNOWLEDGES THAT MANAGER IS NOT LICENSED TO
14 PRACTICE AS AN AGENT UNDER ANY STATUTE AND
15 THAT MANAGER HAS NOT, EITHER AS AN INDUCEMENT
16 TO ARTIST TO ENTER INTO THIS AGREEMENT, OR UNDER
17 THIS AGREEMENT, PROCURED, OFFERED, PROMISED OR
18 ATTEMPTED TO PROCURE EMPLOYMENT OR
19 ENGAGEMENTS FOR ARTIST. Artist agrees that throughout the
20 Term hereof, Artist will employ agents who are licensed to solicit
21 employment and engagements for Artist at Artist’s sole cost and
22 expense.

23 (Petitioner’s Ex. 27.) While the terms of the written contract do not reflect the intent of the parties
24 as described at hearing, it does show that BETHERUM was aware of the bar against procurement
25 of employment for artists by those not licensed as talent agents in California.

26 10. During the negotiation of GARCIA’s contract with POWER 106, communication
27 then shifted from BETHERUM and GARCIA, to GARCIA and John Pierce who introduced himself
28 only by email as an agent and lawyer employed by MixAgent on July 6, 2018. (Petitioner’s Ex. 3.)

 11. As discussed above, John Pierce did not exist and instead was an alias of
BETHERUM. BETHERUM used a different email labeled to be “John Pierce – Agent Major
Markets” to dupe GARCIA into thinking he was speaking to an attorney and talent agent employed
by MixAgent to negotiate and redline his contract with POWER 106. The alias was complete with
a graphic signature line with the title “Agent -Major Markets.” (*Id.*)

 12. Once GARCIA signed the PERSONAL MANAGEMENT AGREEMENT,
BETHERUM negotiated GARCIA’s employment with POWER 106 through the alias John Pierce.

1 Despite obfuscations of who did what through his duplicitous behavior, BETHERUM procured
2 employment for GARCIA. He negotiated and redlined the POWER 106 contract for GARCIA's
3 review, although he did so masquerading as his alias John Pierce, Agent Major Markets.
4 BETHERUM communicated with POWER 106 on GARCIA's behalf to negotiate the employment
5 offer and sent redlined contracts to POWER 106 on GARCIA's behalf. This contract negotiation
6 ended when iHeart Radio bought POWER 106.

7 13. Once iHeart Radio purchased POWER 106, the renegotiation of GARCIA's contract
8 continued in April and May 2019. GARCIA testified credibly at hearing that BETHERUM was
9 instrumental and intimately involved in negotiating the contract with iHeart Radio.

10 14. BETHERUM sent a redlined version of the proposed iHeart Radio agreement to
11 VALVERDE and GARCIA on May 4, 2019. (Petitioner's Ex. 4.)

12 15. BETHERUM denies involvement in procurement, weaving an elaborate tale at
13 hearing in which he did not take part in negotiations, but waited in a car outside while negotiations
14 ensued. It strains credulity that a manager or agent would leave an inexperienced artist to fend for
15 himself with the radio executives. BETHERUM's explanation is set aside as unbelievable. This is
16 partially due to the incredible nature of his story, but also because BETHERUM was not credible
17 about less relevant matters. BETHERUM lied repeatedly at hearing to hide his scheme to dupe
18 GARCIA and VALVERDE into thinking they were working with a full-service talent agency.
19 BETHERUM lacks credibility and we conclude he misrepresented his role in the central interaction
20 of procurement here. BETHERUM also lied and manipulated GARCIA and VALVERDE
21 throughout their communications. (Petitioner's Ex. 5.)

22 16. Beyond BETHERUM being unbelievable, there is evidence that he procured the
23 contract with iHeart Radio. Procurement is evidenced by an email where BETHERUM negotiates
24 with iHeart about proposed numbers, imploring GARCIA's employer to offer more money if they
25 want BETHERUM to bring GARCIA the offer. (Petitioner's Ex. 10.)

26 17. Procurement of the iHeart Radio contract was also evidenced by text messages
27 between BETHERUM and GARCIA where BETHERUM offers an update on "a call with doc
28 yesterday." (Petitioner's Ex. 8, p. 9.) Doc Wynters was who BETHERUM was negotiating with at

1 iHeart Radio. BETHERUM sent GARCIA an email where he says his team and him will “max”
2 the iHeart Radio contract out for him. (Petitioner’s Ex. 9.)

3 18. Another example of BETHERUM lying at hearing was that he insisted that John
4 Pierce was an agent and attorney who worked for MIXAGENT that redlined a proposed contract
5 for MIXAGENT and GARCIA. But the Microsoft Word document showed that it was
6 BETHERUM who redlined the document under his moniker “DJ Lynnwood.” (Reporters
7 Transcript 13:22–25.)

8 19. Beyond illegal procurement, BETHERUM was also financially abusing GARCIA
9 through the second management contract. Paragraph 4 of the second Professional Management
10 Agreement (“PMA2”) includes the following:

11 Artist agrees that the balance due to Manager of \$37,855.95 plus
12 interest (per previous contract) is payable immediately and shall be
13 paid in full not later than 10/1/2019. A late fee in the amount of
\$24.5% shall be added monthly on all late payments and/or balances.

14 BETHERUM claims that GARCIA fell behind on his unlawful commission payments
15 leading to an outstanding balance of \$37,855.95. With past due amounts ballooning under this usury
16 interest rate, BETHERUM was not only collecting unlawful commissions on the second
17 management contract, but in some cases collecting the entire gross amount paid to GARCIA.
18 (Petitioner’s Ex. 8, p. 4.) When asked about this by text message BETHERUM admitted to this.
19 (*Id.* at p. 10.) “Christine” a.k.a. BETHERUM explained to VALVERDE in a September 2020 email
20 that GARCIA continues to fall behind due to the interest being charged on past due commissions.
21 (Petitioner’s Ex. 12.) BETHERUM’s billing practices are discussed in a letter emailed to GARCIA
22 on April 16, 2019. (Respondent’s Ex. 116.)

23 20. Once GARCIA and VALVERDE realized how much they owed BETHERUM due
24 to the usury interest rate on past due commissions, BETHERUM continued to obfuscate the
25 situation by blaming “his office”. BETHERUM stonewalled VALVERDE starting in October
26 2020. At that time, VALVERDE asked for an accounting of GARCIA’s debt to BETHERUM and
27 MIXAGENT from “Christine”, BETHERUM’s back-office alias. BETHERUM told VALVERDE
28 that “Christine” was out sick for a week. (Petitioner’s Ex. 31, p. 141.) On November 17, 2020,

1 VALVERDE asked GARCIA if Christine was back. BETHERUM told her that Christine would
2 not be back until January 2021. (*Id.* at p. 142-143.) At least as late as November 9, 2021,
3 BETHERUM was still putting VALVERDE off and refused to provide an accounting. (*Id.* at 160
4 [Valverde: “I still haven’t received any invoices and still don’t know what’s going on with the
5 balance or what the balance even is and how things are being applied.”])

6 21. Many months later, on July 15, 2022, “Christine” emailed a financial accounting to
7 GARCIA. (Petitioner’s Ex. 22.) The document does not reflect the percentage or manner in which
8 interest is being charged and accrued, continuously keeping GARCIA and VALVERDE in the
9 dark(*Id.*)

10 22. BETHERUM manipulated GARCIA and VALVERDE by making himself the so-
11 called good cop and fabricating other people he worked with or for to be the bad cop to take the
12 blame for GARCIA’s worsening financial situation. This arrangement allowed BETHERUM to
13 place blame on others and retain the confidence of GARCIA and VALVERDE. Reviewing the
14 email chains between BETHERUM, all his aliases, and GARCIA and VALVERDE, reveals a sad
15 tale of trusting people being taken advantage of.

16 23. This good-cop-bad-cop manipulation delayed GARCIA and VALVERDE from
17 seeking legal advice from outside counsel, at which point it would have been discovered that
18 BETHERUM was acting as an unlicensed talent agent in contravention of the Talent Agencies Act.

19 III. ISSUES

20 1. Has BETHERUM acted as an unlicensed talent agent in violation of the Talent
21 Agencies Act (“TAA”) in relation to GARCIA?

22 2. Is the appropriate remedy to void the management contracts *ab initio* or sever the
23 offending practices under *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974?

24 3. Are attorneys’ fees and interest per Labor Code section 1700.25(e) appropriate here?

25 4. If the management contracts are voided *ab initio*, is disgorgement appropriate here?

26 IV. LEGAL ANALYSIS

27 The burden of proof in actions before the Labor Commissioner is found at Evidence Code
28 section 115, which states, “[e]xcept as otherwise provided by law, the burden of proof requires

1 proof by a preponderance of the evidence.” (Evid. Code §115.) “[T]he party asserting the
2 affirmative at an administrative hearing has the burden of proof, including both the initial burden
3 of going forward and the burden of persuasion by preponderance of the evidence . . .” (*McCoy v.*
4 *Bd. of Ret.* (1986) 183 Cal.App.3d 1044, 1051-52). “[P]reponderance of the evidence standard . .
5 . simply requires the trier of fact’ to believe the existence of a fact is more probable than its
6 nonexistence.” (*In re Michael G.* (1998) 63 Cal.App.4th 700, 709, fn 6). The subject matter
7 jurisdiction of the Labor Commissioner is confined to disputes that are governed by the Talent
8 Agencies Act (“TAA”). It is not contested that GARCIA is an artist as defined under the TAA. (See
9 Lab. Code § 1700.4(b).)

10 **A. Did BETHERUM Act as an Unlicensed Talent Agent in Violation of the TAA?**

11 The TAA defines talent agent as “a person . . . who engages in the occupation of procuring,
12 offering, promising, or attempting to procure employment or engagements for an artist . . .” (Lab.
13 Code § 1700.4(a).) Moreover, Labor Code section 1700.5 provides that “[n]o person shall engage
14 in or carry on the occupation of a talent agency without first procuring a license therefor from the
15 Labor Commissioner.” Here, it is undisputed that BETHERUM was not a licensed talent agent but
16 instead acted as GARCIA’s manager.

17 A manager may counsel and direct artists in the development of their professional careers,
18 or otherwise “manage” artists – while avoiding any procurement activity. Such procurement
19 activity includes promising, offering, or attempting to procure employment covered by the TAA.
20 “Since the clear object of the Act is to prevent improper persons from becoming [talent agents] and
21 to regulate such activity for the protection of the public, a contract between an unlicensed [agent]
22 and an artist is void.” (*Buchwald v. Sup. Ct.* (1967) 254 Cal.App.2d 347, 351).

23 The Labor Commissioner has ruled, “[p]rocurement could include soliciting an
24 engagement; negotiating an agreement for an engagement; or accepting a negotiated instrument for
25 an engagement.” (*McDonald v. Torres*, TAC 27-04; *Gittelman v. Karolat*, TAC 24-02).
26 “Procurement” includes any active participation in a communication with a potential purchaser of
27 the artist’s services aimed at obtaining employment for the artist, regardless of who initiated the
28 communication or who finalized the deal. (*Hall v. X Management*, TAC 19-90).

1 BETHERUM managed and counseled GARCIA regarding his career as a radio disc jockey
2 and insists that he acted only as GARCIA's manager.

3 Despite that, BETHERUM attempted to procure employment for GARCIA with POWER
4 106, leading to eventually procuring him employment with iHeart Radio after they bought POWER
5 106. Sufficient evidence is identified above at length that BETHERUM procured and negotiated
6 the contract with iHeart Radio for GARCIA. GARCIA and VALVERDE offered the only credible
7 testimony at hearing, as BETHERUM continuously lied about his alleged colleagues, who were
8 just aliases.

9 Even setting aside GARCIA and VALVERDE's credible testimony, the documents
10 submitted by both parties, primarily emails and text messages, show that BETHERUM both as
11 himself and as one of his email aliases, worked to procure and negotiate the deal with POWER 106,
12 and then iHeart Radio after they bought POWER 106. This included both attempts to procure, and
13 actual procurement of employment for GARCIA with POWER 106.

14 BETHERUM did not work alongside "John Pierce" or any licensed agent, or even a lawyer.
15 At no point during the hearing or in any pleading did BETHERUM or MIXAGENT, INC. raise the
16 defense they procured work for GARCIA with the help of a licensed talent agent. Such a defense
17 would require substantiating that "John Pierce" was a real person and a licensed talent agent in
18 California. It is concluded that Pierce is neither a licensed talent agent, nor a real person.

19 BETHERUM defrauded GARCIA into believing that MixAgent was a full-service
20 management and talent agency company. In fact, MixAgent was only BETHERUM, who schemed
21 to convince GARCIA that he was working with professionals in the employ of MixAgent by
22 creating these professionals and impersonating them through email aliases. Once BETHERUM had
23 GARCIA's confidence, he used his fiduciary position to take advantage of GARCIA, applying
24 unscrupulous and usury interest rates to past due commissions, all the while hiding he was not
25 licensed to procure GARCIA employment.

26 BETHERUM unlawfully procured employment and attempted to procure employment
27 covered by the TAA for GARCIA. BETHERUM continued his scheme for years preventing
28 GARCIA and VALVERDE from discovering that they were not working with a full-service

1 agency, but an unlicensed talent agent, so he could continue to extract unlawful commissions.

2 **B. Is the Appropriate Remedy Here Voiding the Management Agreements *Ab Initio***
3 **or To Sever the Offending Practices?**

4 In accord with *Marathon*, BETHERUM urges us to apply the doctrine of severability.
5 In *Marathon*, the court recognized the Labor Commissioner may invalidate an entire contract
6 when there is a violation of the Act. The court left it to the sound discretion of the Labor
7 Commissioner to apply the doctrine of severability to preserve and enforce the lawful portions of
8 the parties' contract where the facts so warrant. As the Supreme Court explained in *Marathon*:

9 Courts are to look to the various purposes of the contract. If the
10 central purpose of the contract is tainted with illegality, then the
11 contract as a whole cannot be enforced. If the illegality is collateral
12 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].

13 (*Marathon, supra*, 42 Cal.4th at 996).

14 We find that the interests of justice would not be furthered by severance. (*Id.*) The doctrine
15 of severability is “equitable and fact specific, and its application is appropriately directed to the
16 sound discretion of the Labor Commissioner and the trial courts in the first instance.” (*Id.* at 998.)

17 Here, BETHERUM argues that isolated incidents of procurement should be severed per
18 *Marathon* rather than the management contracts being voided *ab initio*. BETHERUM’s assertion
19 that severance is appropriate here rings hollow. While the burden of proof is squarely on GARCIA
20 to prove that BETHERUM violated the TAA by engaging in illegal procurement, severance is an
21 affirmative defense, for which BETHERUM has the burden.

22 As discussed above, the evidence provided at hearing shows significant illegal procurement
23 central to the relationship. GARCIA’s intended purpose for entering into the agreement with
24 BETHERUM, to have his employment contracts negotiated by professionals, was frustrated by
25 BETHERUM’s unlawful acts as an unlicensed agent. “If the central purpose of the contract is
26 tainted with illegality, then the contract as a whole cannot be enforced.” (*Marathon Entertainment,*
27 *Inc. v. Blasi* (2008) 42 Cal.4th 974, 996.) Here, the central purpose of the relationship for GARCIA
28 was frustrated by BETHERUM’s false representations, making severance not appropriate here.

1 **C. Is An Award of Attorneys' Fees Per Labor Code section 1700.25 Appropriate**
2 **Here?**

3 Labor Code section 1700.25, sub. (e) provides:

4 If the Labor Commissioner finds, in proceedings under Section
5 1700.44, that the licensee's failure to disburse funds to an artist
6 within the time required by subdivision (a) was a willful violation,
7 the Labor Commissioner may, in addition to other relief under
8 Section 1700.44, order the following:

9 (1) Award reasonable attorney's fees to the prevailing artist.

10 (2) Award interest to the prevailing artist on the funds wrongfully
11 withheld at the rate of 10 percent per annum during the period of the
12 violation.

13 (Lab. Code §1700.25(e).)

14 Underlying BETHERUM's failure to disburse funds to GARCIA was a complicated scheme
15 to defraud GARCIA. Not only was BETHERUM hiding his unlicensed status, but in the second
16 management contract BETHERUM recharacterized \$37,855.95 in alleged past due commissions
17 as a loan from BETHERUM to GARCIA with a 24.5% interest rate. After that GARCIA was not
18 only paying subsequent unlawful commissions, but interest on past due unlawful commissions from
19 the first management contract. GARCIA was not aware of this arrangement, as evidenced by
20 questions he and VALVERDE asked BETHERUM. (See Petitioner's Ex. 5.) When GARCIA
21 received a commission paid through BETHERUM, BETHERUM would sometimes take the entire
22 gross amount, attributing the non-commission portions taken as satisfying the alleged past due
23 balance that continued to grow with usury interest. In doing so, BETHERUM was willfully
24 withholding GARCIA's wages on a consistent basis.

25 When confronted by GARCIA or VALVERDE with questions about their financial
26 situation, BETHERUM would explain away the huge amounts due to GARCIA by passing blame
27 off to his "office" or one of his aliases. But BETHERUM had no office, either in Florida or New
28 York or Los Angeles. BETHERUM promised VALVERDE and GARCIA he would get to the
 bottom of the financial issues they inquired about and then took great efforts to avoid providing a
 financial accounting for more than a year.

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1 Further, when BETHERUM was confronted with GARCIA's Petition to Determine
2 controversy, no accounting was made by BETHERUM for GARCIA, nor was evidence provided
3 at hearing of any amounts being deposited into a trust account for the pendency of the dispute.
4 Thus, it is appropriate here to award Petitioner reasonable attorneys' fees in the amount of
5 \$10,000.00 for prosecuting the matter and interest on the withheld amount at 10% per annum.

6 **D. Does DIANA VALVERDE Have Standing?**

7 DIANA VALVERDE is the domestic partner of the artist JESSIE GARCIA. Petitioners
8 seek a ruling that VALVERDE has standing here despite admittedly not being an "artist" under the
9 act. The undersigned finds no reason why such a finding is necessary here. VALVERDE credibly
10 testified at the hearing about her role in helping her domestic partner GARCIA with his business
11 affairs. Text message conversations between BETHERUM and VALVERDE are relevant herein.
12 But VALVERDE is not an artist, thus is without standing here and is dismissed as a party.

13 **E. If the Management Contracts Are Voided *Ab Initio*, Is Disgorgement Appropriate?**

14 GARCIA demands disgorgement and repayment of all monies earned by GARCIA and
15 received or held by BETHERUM and/or MIXAGENT, INC. in the amount of \$365,864.60.

16 "No action or proceeding shall be brought pursuant to this chapter with respect to any
17 violation which is alleged to have occurred more than one year prior to commencement of the action
18 or proceeding." (Lab. Code §1700.44(c).) Section 1700.44(c) "explicitly bars any claim
19 for affirmative relief based on a violation which occurred more than one year prior to the filing of
20 the petition." (*McDonald v Torres*, TAC Case No. 27-04, at 6.) [Emphasis in original.]
21 "Accordingly, if a violation of the Act is found, the one-year statute of limitations
22 limits disgorgement to commissions paid within one year of the filing of the [p]etition." (*Id.*)
23 [Emphasis in original.] This Petition was initiated when Petitioner filed a Petition on September
24 18, 2022, thus disgorgement only has a look back period to September 18, 2021.

25 GARCIA argues in his closing brief that equitable tolling of the one year look back period
26 is appropriate here, based upon the doctrine of continuous accrual. GARCIA is not wrong that the
27 Labor Commissioner is empowered to use equitable doctrines. (See *Marathon, supra*, 42 Cal.4th
28

1 at 995 [“nothing in the Entertainment Commission’s description of the available remedies suggests
2 she is obligated to do so, or that the Labor Commissioner's power is untempered by the ability to
3 apply equitable doctrines such as severance to achieve a more measured and appropriate remedy
4 where the facts so warrant.”].) The Court of Appeal explained in *Blanks v. Seyfarth Shaw LLP*:

5 In retrospect, it is evident that Blanks's strategy is weakened by the
6 holding in *Marathon, supra*, 42 Cal.4th 974, that the doctrine of
7 severability applies to TAA claims. But, at the time Blanks pursued
8 his trial strategy, *Marathon* had not been decided and Blanks's
9 position was supported by some Labor Commissioner decisions that
10 had concluded "severance is never available to permit partial
11 recovery of commissions for managerial services that required no
12 talent agency license. [Citations.]" (42 Cal.4th at pp. 995-996.) It was
only when the Supreme Court decided *Marathon* that Blanks's trial
strategy was totally undermined. (*Id.* at p. 996 ["the Labor
Commissioner's assessment . . . is mistaken. . . . And any view that it
would be better policy if the Act stripped the Labor Commissioner
(and the superior courts in subsequent trials de novo) of the power to
apply equitable doctrines such as severance would be squarely at
odds with the Act's text, which contains no such limitation."].)

13 (*Blanks v. Seyfarth Shaw LLP* (2009) 171 Cal.App.4th 336.)

14 GARCIA suggests that such equitable tolling is appropriate here per the doctrine of
15 continuous accrual, “[t]he common law theory . . . that a cause of action challenging a recurring
16 wrong may accrue not once but each time a new wrong is committed.” (*Aryeh v. Canon Bus. Sol.,*
17 *Inc.* (2013) 55 Cal.4th 1185, 1189.) The continuous accrual doctrine aggregates a series of wrongs
18 or injuries for purposes of the statute of limitations, treating the limitations period as accruing for
19 all of them upon commission or sufferance of the last of them. (*Id.* at 1192.) But here, the voiding
20 of the two management contracts discussed at length above is based upon BETHERUM’s unlawful
21 procurement, not his financial abuse of GARCIA.

22 Instead, the discovery doctrine which “postpones accrual of a cause of action until the
23 plaintiff discovers, or has reason to discover, the cause of action” is appropriate here to equitably
24 toll the lookback limitation period. (*Id.* citing *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397.)
25 BETHERUM’s use of the alias “John Pierce” amounted to him impersonating a licensed talent
26 agent. At the outset of BETHERUM’s relationship with GARCIA, John Pierce was held out as an
27 “Agent, Major Markets” through his email signature graphic. GARCIA had a reasonable belief that
28 BETHERUM had cover for the procurement handled by his agency. But there was no agency and

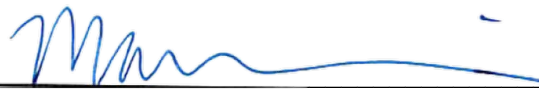
1 BETHERUM went to great lengths to deceive GARCIA into believing he was working with a full-
2 service talent agency. GARCIA only discovered illegal procurement once he went to outside
3 counsel for advice. Equitable tolling is applied from the inception of the relationship between
4 GARCIA and BETHERUM until the filing of the petition¹. GARCIA is awarded disgorgement in
5 the amount of \$365,864.60.

6 **IV. ORDER**

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

- 8 1. LYNN A. BETHURUM dba MIXAGENT, violated the Talent Agencies Act by acting as
9 an unlicensed talent agent in his procurement of employment for artist JESSE GARCIA.
- 10 2. Both management agreements between JESSE GARCIA and LYNN A. BETHURUM dba
11 MIXAGENT, and/or MIXAGENT, INC. are ruled *void ab initio*.
- 12 3. It is ruled that severance is not appropriate here.
- 13 4. GARCIA is awarded reasonable attorneys' fees in the amount of \$10,000.00 and interest
14 on the withheld amounts per Labor Code section 1700.25(e).
- 15 5. Disgorgement is ordered in the amount of \$365,864.60, plus interest at 10% per annum
16 from September 18, 2022, through April 1, 2025, or an additional \$92,819.35.

17
18 Dated: May 14, 2025



MAX NORRIS
Attorney for the Labor Commissioner

20
21 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

22
23 Dated: May 14, 2025



LILIA GARCIA-BROWER
California State Labor Commissioner

24
25
26 ¹ The doctrine of fraudulent concealment may also be relevant here, as that doctrine “tolls the statute of
27 limitations where a defendant, through deceptive conduct, has caused a claim to grow stale.” (*Aryeh, supra*, 55
28 Cal.4th at 1189, citing *Regents of University of California v. Superior Court* (1999) 20 Cal.4th 509, 533.) We need
not reach analysis on fraudulent concealment, as the discovery doctrine is sufficient to equitably toll the statute of
limitations.