

1 **STATE OF CALIFORNIA**
 Department of Industrial Relations
 2 Division of Labor Standards Enforcement
 BY: EDNA GARCIA EARLEY, State Bar No. 195661
 3 320 W. 4th Street, Suite 430
 Los Angeles, California 90013
 4 Tel.: (213) 897-1511
 Fax: (213) 897-2877
 5
 Attorney for the Labor Commissioner
 6

7
 8 **BEFORE THE LABOR COMMISSIONER**
 9 **OF THE STATE OF CALIFORNIA**
 10

11
 12 CHRIS LORD ALGE and THOMAS
 LORD ALGE,

13 Petitioners,
 14

15 vs.

16 MOIR/MARIE ENTERTAINMENT,
 17 LLC AND LISA MARIE,

18 Respondents.
 19

CASE NO. TAC 45-05

**ORDER ON RESPONDENTS' MOTION
 TO DISMISS**

20 **I.**

PROCEDURAL AND FACTUAL BACKGROUND

21 Petitioners CHRIS LORD ALGE and THOMAS LORD ALGE, (hereinafter,
 22 collectively referred to as "Petitioners"), filed a Petition to Determine Controversy with the
 23 Labor Commissioner's Office on November 2, 2005.

24 In 2006, Respondents MOIR/MARIE ENTERTAINMENT, LLC AND LISA
 25 MARIE, (hereinafter, collectively referred to as "Respondents"), filed a *Motion for*
 26

1 *Summary Judgment or Adjudication* on the grounds that Petitioners, “mixers,” and “re-
2 mixers,” are not “artists” within the meaning of custom and usage in the music industry or
3 within the meaning of the Talent Agencies Act (Act) and that their claims, premised on the
4 Act, have no merit. Petitioners filed a *Cross-Motion for Summary Adjudication* on the same
5 issue. After considering the briefing and arguments presented by both sides, we denied
6 Respondents’ motion and granted Petitioners’ motion ruling that Petitioners are “artists”
7 within the meaning of the Act.

8 On or about February 1, 2008, Respondents filed the instant motion to dismiss on the
9 grounds that the contracts which Petitioners contend Respondents procured for them are
10 “recording contracts” which are expressly exempt from the licensing requirements of the
11 Act. For the reasons discussed below, we agree and accordingly, grant Respondents’ motion
12 to dismiss.

13 II.

14 DISCUSSION

15 Labor Code §1700.4(a) provides:

16 “Talent Agency” means a person or corporation who engages
17 in the occupation of procuring, offering, promising, or attempting
18 to procure employment or engagements for an artist or artists,
19 **except that the activities of procuring, offering, or promising to**
20 **procure recording contracts for an artist or artist shall not of**
21 **itself subject a person or corporation to regulation and licensing**
22 **under this chapter.** Talent agencies may, in addition, counsel or
23 direct artists in the development of their professional careers.

24 [Emphasis added]. Respondents argue that the contracts which Petitioners contend
25 Respondents procured for them are “recording contracts” exempt from the licensing
26 requirements of the Act. We agree for the following reasons:

27 First, like the lead vocalist or lead guitarist in a band, we find that Petitioners mixing
28 and re-mixing talents are an equally integral part of the creative force behind the master
recordings they help to create. We further find that Petitioners services as mixers/rc-mixers,
(as described in the declarations in support of *Petitioners’ Cross-Motion for Summary*
Adjudication, previously filed with this office), are part of the collective effort that goes into

1 producing a recording. Moreover, we disagree with Petitioners that a recording contract
2 means only a contract under which a performing and recording artist agrees to deliver new
3 recordings of his or her own performances.

4 In 1982, the California Entertainment Commission (CEC) was created by the
5 California Legislature to review and make recommendations to the Governor and the
6 California Legislature of any changes deemed appropriate to the Act. One of the principal
7 issues the CEC considered was: What changes, if any, should be made in the provision of
8 the Act exempting from the Act a person who procures recording contracts for an artist?
9 *Executive Summary, Report of the California Entertainment Commission*, p.13 (December 2,
10 1985). The CEC recommended that no change should be made in the present language of
11 the Act exempting procurement of recording contracts. In its discussion, the CEC explained
12 that “[t]he purpose of the [recording] contract is a permanent and repayable showcase of the
13 talent of the artist.” *Executive Summary, Report of the California Entertainment*
14 *Commission*, p.13-14. [Emphasis added]. The CEC noted that in the recording industry,
15 many successful artists retain personal managers to act as their intermediaries, and
16 negotiations for a recording contract are commonly conducted by a personal manager, not a
17 talent agent. *Executive Summary, Report of the California Entertainment Commission*, p.14.
18 The CEC also noted that “the problems of attempting to license or otherwise regulate
19 procurement in the recording industry arise from the ambiguities, intangibles and
20 imprecisions of the activity.” *Executive Summary, Report of the California Entertainment*
21 *Commission*, p.14. The majority of the Commission then concluded that the industry would
22 best be served by resolving these ambiguities on the side of preserving the exemption of this
23 activity from the requirements of licensure. *Executive Summary, Report of the California*
24 *Entertainment Commission*, p.14.

25 The exemption’s reference to “artists” was left unchanged by the CEC and later by
26 the Legislature, who adopted all of the CEC’s recommendations. Such inaction is
27 significant to this analysis because the CEC was given an opportunity to narrow the
28

1 exemption to cover only those artists who deliver new recordings of *their own*
2 *performances*, as Petitioners suggest. The fact that the CEC left the language in the
3 exemption unchanged, including reference to "artists," can only mean that the CEC and
4 Legislature intended the exemption to include those artists whose talents are integral to
5 producing the final master recording, not just the lead vocalist or other performer.

6 In this case, Petitioners' creative mixing talents are fully integrated into and indeed
7 integral to the process of creating a completed sound recording. This is supported by
8 Petitioners' own declarations submitted in opposition to *Respondents' Motion for Summary*
9 *Judgment or Adjudication* and in support of *Petitioners' Cross-Motion for Summary*
10 *Adjudication*. Specifically, Petitioner Chris Lord Alge declares:

11 A typical rock or pop band will record in a studio. However,
12 they do not simply record a song from beginning to end. Each
13 band member performs separate and will perform multiple times
so that the mixer can choose among the various different "takes."
(Declaration of Chris Lord Alge, p.2, lines 4-7).

14 When I mix a recording, I typically receive from the recording artist
15 40 to 200 "tracks" or computer files of recorded musical sounds,
together with a "rough mix." One of these computer files often would
16 not be recognizable by a lay listener as a song or sometimes even as part
of a song, and may consist simply of all or a portion of a possible drum
beat for the recording. (Declaration of Chris Lord Alge, p.2, lines 17-21).

17 A "rough mix" is not a completed sound recording. Instead it is an
18 initial mix of some of the computer files into the producer's rough
interpretation of the song. The finished mixes that I create sound
19 different, often dramatically different, from the "rough mix."
(Declaration of Chris Lord Alge, p.2, lines 22-25).

20 My skill and the skill of other successful mixers lies in selecting the
21 right combination and making the right modifications and arrangements
to create a sound recording that is most likely to be appealing and,
22 hopefully, a hit record. (Declaration of Chris Lord Alge, p.5, lines
11-14).¹

23
24
25 ¹Thomas Lord Alge confirms and agrees in his declaration with Chris Lord Alge's
26 description of what is involved in creating a final mixed sound recording. See *Declaration of*
27 *Thomas Lord Alge in Opposition to Respondents' Motion for Summary Judgment or*
28 *Adjudication and in Support of Cross-Motion for Summary Adjudication*, page 1, lines 14-23.

1 Thus, just as the lead vocalist, lead guitarist, bass player, drummer, background
2 vocalists, keyboard player, synthesizer player and others who contribute to the final master
3 recording, the mixer who puts all the sounds together to create a track for the finished
4 recording could be an equally integral player. Here, Petitioners' creativity, talent and level
5 of involvement in the production of sound recording makes them as integral players as the
6 lead vocalist, for instance. As such, the contracts which Petitioners contend Respondents
7 procured for them are "recording contracts" within the meaning of Labor Code §1700.4(a).

8 To the extent the contracts for Petitioners' services as "re-mixers" are intended to
9 create a final master version of a previously recorded song, we find that the contracts for
10 those services also constitute "recording contracts" within the meaning of the Act.

11 Second, the contracts which Petitioners allege were procured by Respondents without
12 a talent agency license are actual recording contracts between Petitioners and various
13 recording companies: The following is a short list of some of the recording contracts
14 submitted to the hearing officer in connection with *Respondents' Motion for Summary*
15 *Judgment or Adjudication and in Support of Cross-Motion for Summary Adjudication*,
16 previously considered:

- 17 • April 10, 2005 - contract entered into between Chris Lord Alge and Maverick
18 Recording Company Inc. for Mr. Alge to perform "mixing" services for *The*
19 *Shore*.
- 20 • April 4, 2005 - contract entered into between Chris Lord Alge and Warner
21 Bros. Records, Inc. for Mr. Alge to perform "mixing" services for *Green Day*.
- 22 • August 23, 2004 - contract entered into between Chris Lord Alge and Sony
23 Music Entertainment with respect to a remix of the track "This is Your Life"
24 embodying the performance of *Switchfoot*.
- 25 • June 17, 2004 - contract entered into between Tom Lord Alge and Warner
26 Bros. Records, Inc. for Mr. Alge to perform "mixing" services for *The Used*.

27
28

1 Third, it is undisputed that Petitioners received not only substantial initial payments
2 for their services as mixers, but like the recording artists, also received royalties on sales of
3 the sound recordings Petitioners helped create.²

4 Fourth, it is also undisputed that as mixers, like the recording artists, Petitioners could
5 potentially claim a copyright interest in the mixed or re-mixed sound recordings they helped
6 to create.³

7 The foregoing supports our finding that the contracts for Petitioners' mixing and re-
8 mixing services constitute "recording contracts" under the Act. Our conclusion that
9 Petitioners' contracts are "recording contracts" within the meaning of the Act is limited to
10 the facts of this case. We recognize that not every individual who is involved in the
11 production of a final master recording may fall under the recording contract exemption. In
12 this case, however, the detail and creativity Petitioners put forth into the compilation of a
13 master recording of a song, as explained by Petitioners in their declarations submitted in
14 support of why they are considered "artists," established how integral their services were in
15 producing the final master recording. Furthermore, the fact that Petitioners signed recording
16 contracts with recording companies, received royalties on the songs they helped to create
17 and could potentially have copyright interests in the sound recordings they worked on, also
18 supports a finding that the contracts at issue are "recording contracts" within the meaning of
19 the Act.

22 ² See (Declaration of Tamara Milagros-Butler, in *Opposition to Respondents' Motion for*
23 *Summary Judgment or Adjudication and in Support of Cross-Motion for Summary Adjudication*
24 *, p. 2, lines 12-14)*

25 ³ See Declaration of Tamara Milagros-Butler, in *Opposition to Respondents' Motion for*
26 *Summary Judgment or Adjudication and in Support of Cross-Motion for Summary*
27 *Adjudication, p.2, 19-20)*

1 Thus, we find that the contracts allegedly procured for Petitioners' mixing services
2 are recording contracts for purposes of Section 1700.4(a) of the Act. As such, the Petition to
3 Determine Controversy is dismissed.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: June 3, 2008


EDNA GARCIA EARLEY
Attorney for the Labor Commissioner

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA))
COUNTY OF LOS ANGELES)) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is DIVISION OF LABOR STANDARDS ENFORCEMENT, Department of Industrial Relations, 320 W. 4th Street, Suite 430, Los Angeles, CA 90013.

On June 4, 2008, I served the following document described as:

NOTICE OF HEARING

on the interested parties in this action [TAC 45-05] by placing

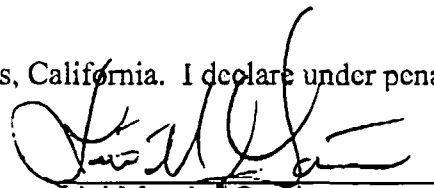
- the originals
- a true copy thereof enclosed in a sealed envelope addressed as follows:

Jeffrey Huron
Huron Law Group
1875 Century Park East, Suite 1000
Los Angeles, CA 90067

Peter J. Anderson
Law Offices of Peter J. Anderson
100 Wilshire Boulevard, Suite 2010
Santa Monica, CA 90401

- BY MAIL I am readily familiar with the firm's business practice of collection and processing of correspondence for mailing with the United States Postal Service and said correspondence is deposited with the United States Postal Service the same day.
- BY FACSIMILE I sent a copy of said document by fax machine for instantaneous transmittal via telephone line to the offices of the addressee(s) listed above using the following telephone number(s):
- BY PERSONAL SERVICE I delivered a copy of said document to the parties set forth above, as follows:

Executed on June 4, 2008, at Los Angeles, California. I declare under penalty of perjury the foregoing is true and correct.


Lici Morales Garcia