

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

5 Attorney for the Labor Commissioner  
6  
7

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

11 CHRISTOPHER HOLLIER, an individual,

CASE NO. TAC-51034

**DETERMINATION OF CONTROVERSY**

12  
13 Petitioner,

14 vs.

15 PAUL LANDAU, executor of the Estate of  
Susan Landau; ESTATE OF SUSAN  
16 LANDAU; and THOMPSON STREET  
17 ENTERTAINMENT, an entity of unknown  
origin,

18 Respondents.  
19

20 **I. INTRODUCTION**

21 The above-captioned matter, a Petition to Determine Controversy under Labor Code  
22 section 1700.44, came on regularly for hearing in Long Beach, California, on September 12,  
23 2019, before the undersigned attorney for the Labor Commissioner assigned to hear this case.  
24 Petitioner CHRISTOPHER HOLLIER, an individual (hereinafter, referred to as “HOLLIER” or  
25 “Petitioner”) was represented by Sean M. Hardy, Esq. of Freedman + Taitelman, LLP.  
26 Respondent PAUL LANDAU, executor of the Estate of Susan Landau; ESTATE OF SUSAN  
27 LANDAU; and THOMPSON STREET ENTERTAINMENT, an entity of unknown origin,  
28

1 (hereinafter, referred to as “LANDAU” or “Respondent”) appeared through Donald L. Zachary,  
2 Esq., Attorney at Law.

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

## 6 II. FINDINGS OF FACT

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

8 HOLLIER, is a writer and producer in the entertainment industry who performed services  
9 as a writer and co-executive producer on a television series entitled “*Once Upon a Time*”.

10 Susan LANDAU is a now-deceased individual who performed services as a talent  
11 manager. LANDAU, a veteran of the entertainment industry had more than 30 years of  
12 production experience as a producer or co-producer on television and motion picture projects.

13 In or around 2007, LANDAU met HOLLIER, read one of his scripts and became  
14 interested in representing HOLLIER as his personal manager. Sometime in 2007, under the terms  
15 of an oral agreement, HOLLIER retained LANDAU as his talent manager in exchange for 10% of  
16 HOLLIER’s earnings in the entertainment industry. During the years 2007-2009, LANDAU was  
17 HOLLIER’s sole representative in the entertainment industry, as HOLLIER was not represented  
18 by a licensed California talent agent. In 2009, HOLLIER retained United Talent Agency (UTA)  
19 as his California licensed talent agency and he continues to be represented by UTA today.

### 20 B. The Management Work (2007-2009)

21 During the years before HOLLIER obtained UTA as his talent agent, LANDAU focused  
22 primarily on three tasks.

23 First, LANDAU played a role in collecting unpaid residuals. From November 2007  
24 through October 2008, the evidence established LANDAU’s repeated attempts to collect unpaid  
25 residuals for work performed prior to LANDAU’s representation of HOLLIER.

26 Second, LANDAU assisted HOLLIER by editing his writing samples on two of  
27 HOLLIER’s projects, *Deadlocked* and *Whiskeytown*. Over a four-month period, starting in July of  
28 2009 through October 2009, LANDAU read, critiqued and edited, 12 drafts of *Deadlocked* and

1 provided similar editing and critiquing services on *Whiskeytown*. Notably, HOLLIER testified  
2 that LANDAU was an important contributor in developing his writing, as she possessed  
3 significant editing skills which improved his scripts in a very meaningful way.

4 Finally, during the years of 2007-2009, LANDAU also focused on obtaining a top-tier  
5 literary talent agent for HOLLIER. In October 2009, LANDAU obtained UTA, a top-tier agency  
6 on HOLLIER's behalf.

7 **C. The Management Work (2009-2017)**

8 Subsequent to HOLLIER signing with UTA in October 2009, and through the remainder  
9 of LANDAU's life, LANDAU worked collaboratively with UTA in representing HOLLIER. This  
10 successful collaboration significantly increased HOLLIER's earning potential in the  
11 entertainment industry. LANDAU continued to review, critique and offer editorial changes and  
12 revisions to HOLLIER's work. LANDAU also reviewed comments from producers and  
13 proofread HOLLIER's work ensuring the work was free of grammatical errors and of the highest  
14 quality prior to submission.

15 These creative services provided by LANDAU were not only meaningful as testified by  
16 HOLLIER, they took an enormous amount of time and she provided those services on a regular  
17 and continuous basis. The evidence established LANDAU performed these creative services  
18 hundreds of times over the years on dozens of projects. It was clear these creative services  
19 contributed to HOLLIER's success and provided a significant benefit to the sharpness of his  
20 writing.

21 The evidence also established that LANDAU remained committed to HOLLIER's  
22 financial well-being as she continued to diligently work on getting HOLLIER paid. She  
23 consistently propelled routine paperwork forward in an effort to keep projects moving and  
24 residuals streaming in. LANDAU wasn't afraid to take a hard position with any third party on  
25 HOLLIER's behalf if it financially benefited HOLLIER. LANDAU was also conscientious of  
26 monies spent by HOLLIER. As an example, LANDAU supported HOLLIER's use of UTA  
27 lawyers for transactional work and pushed back at UTA's suggestion HOLLIER retain private  
28 transactional counsel at his own expense.

1 The record was replete with examples of LANDAU working collaboratively with UTA in  
2 advising and developing HOLLIER's career as a professional writer. One example occurred when  
3 one of HOLLIER's projects, *Poe*, turned from a theatrical project to a television project.  
4 LANDAU recommended bringing in a television agent, which UTA did on LANDAU's request.  
5 This suggestion immediately bore fruit when UTA brought in television agent Lauren Fox (Fox)  
6 who negotiated a deal for HOLLIER to write and produce the *Poe* pilot and if picked up to write  
7 and produce the series.

8 LANDAU advised HOLLIER when to take meetings, when to submit work and worked  
9 behind the scenes in keeping up his moral when things did not go according to plans, often  
10 playing psychologist to HOLLIER when needed. In short, LANDAU acted as a conscientious and  
11 supportive personal manager to HOLLIER and it cannot be argued that he directly benefitted  
12 from LANDAU's intimate and personal involvement for more than a decade.

13 **D. Acts of Procurement (2007-2009)**

14 HOLLIER credibly testified that from 2007 to 2009, when Petitioner was not represented  
15 by any talent agent, LANDAU attempted to procure employment on his behalf. During this  
16 period, LANDAU attempted to seek employment by sending scripts to industry executives and  
17 by setting up pitch meetings between HOLLIER and entertainment industry executives.  
18 HOLLIER identified *Whiskeytown* and *Deadlocked*, as projects in which LANDAU attempted to  
19 procure employment for HOLLIER by sending scripts and arranging meetings. These actions by  
20 LANDAU were not in collaboration with a licensed talent agency.

21 **E. Acts of Procurement (2009-2017)**

22 It was established that LANDAU engaged in limited procuring, offering, promising, and  
23 attempting to procure employment for HOLLIER during the years 2009-2017, while HOLLIER  
24 was represented by UTA. HOLLIER presented testimony of his talent agents at United Talent  
25 Agency, Lauren Fox and Geoff Morley (Morley)<sup>1</sup>.

26 Fox represented HOLLIER on television projects, while Morley represented HOLLIER on  
27 motion picture projects. Fox credibly testified that LANDAU had a preexisting relationship with

---

28 <sup>1</sup> Morley's testimony came in the form of a declaration and is therefore given minimal weight.

1 Warner Brothers Television executive Matt King, and that LANDAU communicated with Mr.  
2 King without her knowledge in order to solicit work for HOLLIER. Attempted procurement of  
3 an entertainment engagement on HOLLIER's behalf was also supported by Fox's testimony that  
4 LANDAU had been sending HOLLIER's motion picture scripts to television executives in order  
5 to procure him employment without her knowledge.

6 Specifically, Fox testified that LANDAU directly solicited employment for HOLLIER  
7 with respect to the project *Jason and the Argonauts*. Fox persuasively testified LANDAU was  
8 shopping around HOLLIER's script for this project to entertainment executives, and setting up  
9 meetings between HOLLIER and entertainment executives. Fox also testified that LANDAU had  
10 been engaging in direct communication with Warner Bros. Television in order to secure  
11 employment for HOLLIER on the television program *666 Park Avenue* without her knowledge.

12 Fox testified that she did not request for LANDAU to send HOLLIER's scripts in order  
13 to secure employment for HOLLIER or to set up meetings for HOLLIER with third parties for  
14 the purpose of securing employment, but that LANDAU did so over the course of her  
15 representation. Fox further testified she learned LANDAU had communicated directly with  
16 ABC Television and 20<sup>TH</sup> Century Fox Studios regarding job opportunities for HOLLIER and  
17 that she had not requested LANDAU engage in these communications.

18 Finally, it was established LANDAU engaged in another instance of procurement with  
19 respect to a project called *Monster High*. LANDAU admitted this in a June 30, 2016 email to  
20 HOLLIER, with the heading "THIS IS SO HUSH HUSH THAT IF YOU MENTION EVEN TO  
21 GEOFF, I WILL HAVE TO KILL YOU!" HOLLIER testified that this email concerned  
22 LANDAU's independent solicitation of potential work for HOLLIER on *Monster High*.  
23 LANDAU warned HOLLIER not to tell his talent agent Geoff Morley that she was engaging in  
24 this procurement activity, and UTA was never told.

25 **F. "ONCE UPON A TIME"**

26 In or around April 2017, UTA procured and negotiated the ABC network television series  
27 "*Once Upon A Time*" ("*Once*"). HOLLIER began rendering services on April 24, 2017,  
28 approximately five weeks before LANDAU's death on May 31, 2017. HOLLIER paid LANDAU

1 \$650.10 as an initial commission payment for *Once* on May 18, 2017, two weeks before  
2 LANDAU's death.

3 Subsequent to LANDAU's death, HOLLIER ceased making commission payments to  
4 LANDAU for *Once*. On October 26, 2017, Respondent Paul Landau, Executor of the Estate of  
5 Susan Landau filed an action against Petitioner in the Los Angeles Superior Court, Case No.  
6 EC067521 ("the LA Superior Court Action"), asserting a single cause of action for breach of  
7 contract, seeking payment for services rendered as a "talent manager," in the form of  
8 commissions on HOLLIER's income from his work on *Once*. The Complaint in the LA Superior  
9 Court Action alleges that there was an oral agreement between HOLLIER and LANDAU for her  
10 to render talent management services in exchange for "10% of all compensation he received from  
11 all entertainment industry services performed by Mr. Hollier". The complaint seeks commissions  
12 in the amount of \$55,620.65, representing 10% of the total amount HOLLIER earned for his  
13 services in connection with *Once*.

### 14 III. LEGAL DISCUSSION

15 The Labor Commissioner interprets the provisions of this remedial statute broadly as  
16 intended by the legislature for the protection of California artists. We also recognize the  
17 legislature did not intend the Act to be used as a sword to preclude representatives from their  
18 earned commissions. With those concepts in mind, the evidence was viewed equitably, noting the  
19 financial loss potentially suffered by the Respondent for what we believe, not to be de minimis  
20 illegal activity, but also not egregious illegal behavior as reflected in prior judicial and  
21 administrative decisions. The legal issues are as follows:

22 1. Has the Respondent acted as an unlicensed talent agent and therefore violated the  
23 Talent Agencies Act (the Act) at Labor Code section 1700.5 by procuring entertainment  
24 engagements without a talent agency license?

25 2. Whether Respondent's actions on behalf of Petitioner fall within the activities  
26 described at Labor Code §1700.44(d), exempting persons conducting certain traditional talent  
27 agency functions from the licensing requirement?

28 ///

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

5           **A.       Did Landau Act as an Unlicensed Talent Agent?**

6           The first issue is whether based on the evidence presented at this hearing, did LANDAU  
7 operate as a “talent agency” within the meaning of Labor Code section 1700.4(a). Labor Code  
8 section 1700.4(a) defines “talent agency” as:

9                       “a person or corporation who engages in the occupation of  
10                      procuring, offering, promising, or attempting to procure  
                          employment or engagements for an artist or artists.”

11          HOLLIER is a writer of motion picture and television scripts and he is therefore an  
12 “artist” within the meaning of Labor Code section 1700.4(b). Moreover, Labor Code section  
13 1700.5 provides that “[n]o person shall engage in or carry on the occupation of a talent agency  
14 without first procuring a license....from the Labor Commissioner.” It was stipulated that  
15 LANDAU did not possess a talent agency license during the relevant period.

16          In contrast, a person may counsel and direct artists in the development of their  
17 professional careers, or otherwise “manage” artists – while avoiding any procurement activity  
18 (procuring, promising, offering, or attempting to procure artistic employment or engagements) –  
19 without the need for a talent agency license. In addition, such person may procure non-artistic  
20 employment or engagements for the artist, without the need for a license. *Styne v. Stevens* (2001)  
21 26 Cal.4th 42.

22          The Labor Commissioner has jurisdiction to hear and determine controversies, arising  
23 between an artist and an agent, pursuant to Labor Code section 1700.44(a). Indeed, the Labor  
24 Commissioner has primary and exclusive jurisdiction to hear matters arising under the Talent  
25 Agencies Act. *Buchwald v. Superior Court* (1967) 254 Cal.App 2d 347, 359.

26          In *Waisbren v. Peppercorn Production, Inc.* (1995) 41 Cal.App.4th 246, the court held  
27 that any single act of procuring employment subjects the agent to the Talent Agencies Act’s  
28 licensing requirements, thereby upholding the Labor Commissioner’s long standing interpretation

1 that a license is required for any procurement activities, no matter how incidental such activities  
2 are to the agent’s business as a whole.

3 The term “procure”, as used in this statute, means to get possession of: obtain, acquire, to  
4 cause to happen or be done: bring about.” *Wachs v. Curry* (1993) 13 Cal.App.4th 616, 628. Thus  
5 “procuring employment” under the statute includes attempting to attain employment on behalf of  
6 an artist, negotiating for employment, sending an artist’s work to prospective employers and  
7 entering into discussions regarding employment contractual terms with a prospective employer,  
8 some of which were engaged in by LANDAU. Applying *Waisbren*, it is clear respondent acted as  
9 a talent agency within the meaning of Labor Code section 1700.4(a) by directly soliciting  
10 employment for HOLLIER with respect to *Jason and the Argonauts*, *666 Park Avenue and*  
11 *Monster High*, shopping around HOLLIER’s scripts to entertainment executives, and setting up  
12 meetings between HOLLIER and entertainment executives. It is also clear that the Respondent  
13 procured employment without a license in violation of Labor Code section 1700.5 on these  
14 occasions.

15 Generally, an agreement that violates the licensing requirements of the Talent Agencies  
16 Act is illegal and unenforceable. “Since the clear object of the Act it to prevent improper persons  
17 from becoming [talent agents] and to regulate such activity for the protection of the public, a  
18 contract between and unlicensed [agent] and an artist is void.” *Buchwald, supra* at 351.

19 **B. Safe Harbor Exemption (Labor Code §1700.44(d))**

20 LANDAU argues any alleged procurement on her part was done in concert with or as part  
21 of an ongoing “rhythm” between LANDAU and UTA. LANDAU therefore argues her actions on  
22 HOLLIER’s behalf were exempt from licensure under the safe harbor provision at Labor Code  
23 section 1700.44(d). Consequently, we must examine whether LANDAU’s procurement efforts on  
24 behalf of HOLLIER fall within the activities described at Labor Code §1700.44(d), exempting  
25 persons conducting certain traditional talent agency functions from the licensing requirement.

26 ///

27 ///

1 Labor Code §1700.44(d) states,

2 it is not unlawful for a person or corporation which is not licensed  
3 pursuant to this chapter to act in conjunction with and at the request  
4 of a licensed talent agency in the negotiation of an employment  
5 contract.

6 Historically, the Labor Commissioner construes Labor Code section 1700.44(d) very  
7 narrowly. All elements of the statute must be independently met. The exemption is not satisfied  
8 when a licensed talent agent appears to finalize a deal after submission by the manager. The  
9 manager is only relieved of liability when he/she “negotiates an employment contract”, not  
10 solicits one, unless that solicitation is “at the request of” and “in conjunction with” a licensed  
11 talent agent. Here, the burden of proof is on the Respondent when invoking Labor Code section  
12 1700.44(d).

13 The exemption requires a two-part analysis and both parts must be satisfied for  
14 Respondent to satisfy her burden. First, we must determine whether LANDAU’s acts of sending  
15 scripts to industry executives; setting up pitch meetings between HOLLIER and entertainment  
16 industry executives; directly soliciting employment for HOLLIER with respect to *Jason and the*  
17 *Argonauts*; and engaging in direct communication with Warner Bros. Television in order to  
18 secure employment for HOLLIER on the television program *666 Park Avenue* were done “at the  
19 request of and in conjunction with” a licensed talent agent.

20 Fox testified that she learned after the fact, that LANDAU had been engaging in direct  
21 communication with Warner Bros. Television in order to secure employment for HOLLIER on  
22 the television program *666 Park Avenue*.

23 Fox also credibly testified that she had no knowledge that LANDAU had been attempting  
24 to procure employment for Petitioner on *Monster High* and that she did not request that  
25 LANDAU send HOLLIER’s scripts or request that LANDAU set up meetings for Petitioner with  
26 third parties for the purpose of securing employment, but LANDAU did so over the course of  
27 her representation.

28 ///

///

1           When analyzing the legislative intent of Labor Code section 1700.44(d) we look at both  
2 legislative history and the statutory scheme within which the statute is to be interpreted. In 1982,  
3 AB 997 established the California Entertainment Commission. Labor Code §1702 directed the  
4 Commission to report to the Governor and the Legislature as follows:

5                       “The Commission shall study the laws and practices of this state,  
6 the State of New York, and other entertainment capitals of the  
7 United States relating to the licensing of agents, and representatives  
8 of artists in the entertainment industry in general ... so as to enable  
the commission to recommend to the Legislature a model bill  
regarding this licensing.”

9           Pursuant to statutory mandate the Commission studied and analyzed the Talent Agencies  
10 Act in minute detail. The Commission concluded that the Talent Agencies Act of California is a  
11 sound and workable statute and that the recommendation contained in this report will, if enacted  
12 by the California Legislature, transform that statute into a model statute of its kind in the United  
13 States. All recommendations were reported to the Governor, accepted and subsequently signed  
14 into law.

15           The major, and philosophically the most difficult, issue before the Commission, the  
16 discussion of which consumed a substantial portion of the time was this first issue: When, if ever,  
17 may a personal manger or, for that matter, anyone other than a licensed Talent Agent, procure  
18 employment for an artist without obtaining a talent agent’s license from the Labor  
19 Commissioner? (Commission Report p. 15)

20           The Commission considered and rejected alternatives which would have allowed the  
21 personal manager to engage in “casual conversations” concerning the suitability of an artist for a  
22 role or part; and rejected the idea of allowing the personal manager to act in conjunction with the  
23 talent agent in the negotiation of employment contracts **whether or not requested to do so by**  
24 **the talent agent.** (Commission Report p. 18-19)[Emphasis added]

25           As noted, all of these alternatives were rejected by the Commission. The Commission  
26 concluded:

27                       “[I]n searching for the permissible limits to activities in which an  
28 unlicensed personal manger or anyone could engage in procuring  
employment for an artist without being license as a talent agent,...  
there is no such activity, there are no such permissible limits, and

1 that the prohibitions of the Act over the activities of anyone  
2 procuring employment for an artist without being licensed as a  
3 talent agent must remain, as they are today, total. Exceptions in the  
4 nature of incidental, occasional or infrequent activities relating in  
5 any way to procuring employment for an artist cannot be permitted:  
6 one either is, or is not, licensed as a talent agent, and, if not so  
7 licensed, one cannot expect to engage, with impunity, in any  
8 activity relating to the service which a talent agent is licensed to  
9 render. There can be no ‘sometimes’ talent agent, just as there can  
10 be no ‘sometimes’ doctor or lawyer or any other licensed  
11 professional.” (Commission Report p. 19-20)

12  
13 The Commission was very clear in their conclusion that a personal manager may not  
14 negotiate an employment contract unless that negotiation is done “at the request” of a licensed  
15 talent agent. The agent must advise the manager or request the manager’s activity for each and  
16 every submission. At the very minimum an agent must be aware of the manager’s procurement  
17 activity. In our case, the testimony was clear that at times LANDAU submitted HOLLIER’s  
18 scripts and attempted to secure employment without the knowledge, and therefore, not “at the  
19 request of” Respondent’s licensed talent agent.

20 The evidence established that sometimes UTA was aware and even encouraged LANDAU  
21 talking to industry executives and submitting HOLLIER for work, and other times UTA was not  
22 aware of LANDAU’s efforts on HOLLIER’s behalf. An artist’s manager may not participate in  
23 an arrangement where the manager is free to submit an artist for work wherever and whenever the  
24 manager decides it is appropriate, without the talent agent’s knowledge. To allow LANDAU to  
25 send scripts and submit HOLLIER for work whenever she decided, as occurred at times here,  
26 would create a gaping hole in the Act’s licensing requirement resulting in a subterfuge and  
27 evading the Act’s licensing requirements defeating obvious legislative intent. In short,  
28 LANDAU’s argument that her actions on behalf of HOLLIER were always done in conjunction  
with and at the request of UTA as part of an overall “rhythm” is unconvincing.

### **C. Appropriate Remedy for Landau’s Procuring of Employment**

In *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974 (*Marathon*) the Supreme Court held that a violation of the Act does not automatically require invalidation of the entire contract. More particularly, the court explained that the Act does not prohibit application of the

1 equitable doctrine of severability and that therefore, in appropriate cases, a court is authorized to  
2 sever the illegal parts of a contract from the legal ones and enforce the parts of the contract that  
3 are legal. (*Id.* at pp. 990-996.)

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

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

13 "Courts are to look to the various purposes of the contract.  
14 If the central purpose of the contract is tainted with illegality, then  
15 the contract as a whole cannot be enforced. If the illegality is  
16 collateral to the main purpose of the contract, and the illegal  
17 provision can be extirpated from the contract by means of  
18 severance or restriction, then such severance and restriction are  
19 appropriate." [Citations omitted]. *Marathon, supra* at p.996.

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

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

As a threshold matter, it is clear that the management agreement between HOLLIER and  
LANDAU was not pervaded by illegality. In this case, as is evident from the testimony, the  
primary purpose of the management agreement was not the illegal procurement of engagements.  
Rather, the primary purpose was for LANDAU to edit, critique and polish HOLLIER's work;  
advance his career; assist HOLLIER in managing his financial affairs; collect debt; and obtain a

1 talent agency for HOLLIER, all of which LANDAU did. LANDAU was not primarily  
2 functioning for the purpose of procuring entertainment engagements on HOLLIER's behalf. That  
3 was the job of his licensed talent agent which comprised the vast majority of the parties'  
4 relationship. In short, LANDAU was a dedicated representative and worked extremely hard for  
5 HOLLIER and LANDAU's primary purpose was not to procure entertainment engagements as  
6 Petitioner argues.

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

9 The second question is whether the illegal portions of the contract can be readily separated  
10 from the legal portions. In many instances, this line of inquiry will require consideration of two  
11 subsidiary questions. The first is whether, on the one hand, the illegal activities are separable and  
12 distinct from the legal activities, or whether, on the other hand, the illegal and legal activities are  
13 inextricably intertwined. (*Branca v. Tohme* TAC-26372 at p. 21) Here, it is clear that  
14 LANDAU's illegal activities, namely the attempted procurement of *Whiskeytown* and *Deadlocked*  
15 during 2007-2009; directly soliciting employment for HOLLIER with respect to *Jason and the*  
16 *Argonauts*, *666 Park Avenue* and *Monster High*; shopping around HOLLIER's scripts to  
17 entertainment executives, and setting up meetings between HOLLIER and entertainment  
18 executives without involvement by HOLLIER's talent agent, are separate and distinct from his  
19 legal activities.

20 Those legal activities included constant reviewing, critiquing and offering editorial  
21 changes and revisions to HOLLIER's work; reviewing comments from producers and  
22 proofreading HOLLIER's work ensuring the work was free of grammatical errors and of the  
23 highest quality prior to submission and a steadfast commitment to HOLLIER's financial and  
24 emotional well-being.

25 The second question is whether the revenues from the illegal activities can be reasonably  
26 separated from the revenues derived from the legal activities. In general, income that is generated  
27 under the provisions of an illegally procured engagement contract cannot be the source for  
28 payment of an earned commission to the manager that procured the engagement. In other words,

1 income payable to an artist under the provisions of an illegally procured engagement must be  
2 completely excluded from the payment of any commissions under the management agreement,  
3 even if the manager retains the right to receive some commissions or revenues that are not  
4 derived from illegal procurements. (*Branca*, supra. at p. 21)

5 In this case, the revenues from LANDAU's illegal procurement activities are severable  
6 from any other revenues that may be commissionable under the management agreement. Indeed,  
7 in this case there are no revenues received by LANDAU within the statute of limitations<sup>2</sup> from  
8 any illegal procured engagements. LANDAU isn't seeking commissions from these engagements  
9 nor is there any evidence that LANDAU was paid any monies from these engagements within the  
10 one-year statute of limitations prescribed by Labor Code section 1700.44(c), and HOLLIER is not  
11 seeking disgorgement for any unlawfully procured engagements. Since LANDAU is not seeking  
12 commission revenues from the illegally procured engagements, there are no such revenues to  
13 sever from the legal revenues for purposes of applying the severability doctrine.

14 HOLLIER contends that income from the series, "*Once Upon a Time*" should be treated  
15 as illegally procured and therefore excluded from any commissions LANDAU might still be  
16 entitled to receive under the management agreement. This contention lacks merit. In this case  
17 there was no evidence presented that LANDAU was involved in procuring *Once*.

18 In other words, income from *Once* is commissionable under the management agreement  
19 requiring a payment of a 10% commission. LANDAU's death does not extinguish this right nor  
20 has the Petitioner provided any persuasive legal argument that LANDAU's death extinguishes her  
21 right to payment of commissions earned in connection with *Once*.

22 Since *Once* was not produced pursuant to an illegally procured contract, there is no basis  
23 under the Talent Agencies Act for excluding revenues from being subject to commissions in favor  
24 of LANDAU. Enforcement of the policies underlying the Talent Agencies Act do not require the  
25 exclusion of commissionable revenues that do not have their source in payments due under an  
26

---

27 <sup>2</sup> Labor Code §1700.44(c) provides that "no action or proceeding shall be brought pursuant to [the Talent Agencies  
28 Act] with respect to any violation which is alleged to have occurred more than one year prior to the commencement  
of this action or proceeding."

1 illegally procured contract. Nor does the equitable doctrine of severability require such a result in  
2 the circumstances of this case. (*Branca*, supra. at p. 23)

3 The question now becomes what is the appropriate method of implementing severance in  
4 the circumstances of this case. In its current lawsuit against Petitioners, LANDAU is seeking to  
5 recover 10% of the gross compensation received by HOLLIER for his services rendered in  
6 connection with *Once*. This 10% in commissions claimed by LANDAU is not based on any  
7 specific service rendered by LANDAU in connection with *Once*, but rather constitutes  
8 undifferentiated compensation payable to LANDAU as consideration for the undifferentiated  
9 services LANDAU rendered to HOLLIER under the contract. The undifferentiated services  
10 provided by LANDAU to HOLLIER include both legal managerial services and illegal talent  
11 agency services. However, LANDAU is not entitled to receive compensation for her illegal  
12 services. In such circumstances, the proper approach is to deduct the value of the illegal services  
13 and permit recovery only for the value of the legal services. (*Marathon*, supra, 42 Cal. 4th at p.  
14 997; *Birbrower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal. 4th 119, 139-140;  
15 *Whorton v. Dillingham* (1988) 202 Cal. Ap.3d 447.452-454.) (*Branca*, supra. at pg. 23)

16 In the present case, it is determined that the illegal activities engaged in by LANDAU  
17 were more than incidental, although they did not permeate the relationship. It was determined  
18 that for a short period of time and on a few occasions, in relation to the entirety of LANDAU's  
19 work, LANDAU attempted to procure employment without a talent agency in violation of Labor  
20 Code section 1700.5. Notably, the vast majority of HOLLIER's employment was procured by  
21 UTA.

22 When the illegal activities are measured against the totality of LANDAU's activities, and  
23 compared with the activities that were legal, one is led to the conclusion that the illegal services  
24 provided by LANDAU to HOLLIER amounted to roughly 50% of the total services provided  
25 under the contract. Put another way, the value of the services that were legal represents only 50%  
26 of the 10% in commissions that was to be paid for the full value of LANDAU'S services during  
27 the term of the oral agreement and therefore the commissions payable to LANDAU for her  
28 services must be reduced to 5%.

1 To conclude, in this case, we find that “the interests of justice...would be furthered by  
2 severance.” *Id.* Based on the application of the doctrine of severability, it is concluded that  
3 LANDAU can recover for her legal services under the Agreement. However, since the lawful  
4 services represent only 50% of the value of all the services furnished under the Agreement, the  
5 compensation due pursuant to the terms of the Agreement must be reduced by 50%, such that the  
6 commissions payable to LANDAU shall be limited to 5% of those amounts payable to HOLLIER  
7 that constitute "gross compensation" for *Once* under the terms of the Agreement.

#### 8 IV. DISPOSITION

9 Accordingly, it is hereby ordered as follows:

10 1. The Management Agreement that HOLLIER entered into with LANDAU is  
11 determined to be partially illegal, and it is further determined that the illegal parts of the  
12 Agreement are severable from the remainder of the Agreement.

13 2. Severance of the illegal portions of the Agreement requires a 50% reduction in the  
14 commissions due to LANDAU under the Oral Agreement, and by virtue of such reduction the  
15 commissions to which LANDAU is entitled under the Oral Agreement shall be limited to 5% of  
16 the earnings generated by HOLLIER that constitute "gross compensation" for *Once* under the  
17 terms of the Agreement.

18 3. LANDAU is entitled to 50% commissions of the \$55,620.65 claimed in the amount of  
19 \$27,810.33, representing 5% of the total amount HOLLIER earned for his services on *Once*.

20 Respectfully submitted,

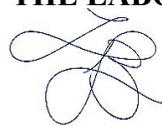
21 DATED: October 21, 2020

22 By: 

23 DAVID L. GURLEY  
24 Attorney for the Labor Commissioner

25 **ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER**

26 Dated: October 21, 2020

27 By:   
28 LILIA GARCIA-BROWER  
State Labor Commissioner

