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8 BEFORE THE LABOR COMMISSIONER
9 OF THE STATE OF CALIFORNIA
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11 JONATHAN GOLDSMITH, a/k/a "The Most
Interesting Man in the World", an individual,

12 Petitioner,
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14 vs.
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16 BUTCH KLEIN a/k/a "Tim Jordan," an
individual; JORDAN LEE, INC., a California
corporation d/b/a Gold Levin Talent,
17

18 Respondent.

CASE NO. TAC 46430

DETERMINATION OF CONTROVERSY

19
20 **I. INTRODUCTION**

21 The above-captioned matter, a Petition to Determine Controversy under Labor Code
22 §1700.44, came on regularly for hearing in Los Angeles, California, on October 12, 2017 before
23 the undersigned attorney for the Labor Commissioner assigned to hear this case. Petitioner,
24 JONATHAN GOLDSMITH, a/k/a "The Most Interesting Man in the World", an individual
25 (hereinafter "GOLDSMITH") was represented by David B. Jonelis, Esq. of LAVELY &
26 SINGER, a Professional Corporation. Respondents, BUTCH KLEIN a/k/a "Tim Jordan," an
27 individual, and JORDAN LEE, INC., a California corporation d/b/a Gold Levin Talent
28 (hereinafter "KLEIN") was represented by Bradley H. Kreshek, Esq. and Steven B. Stiglitz of

1 FREEDMAN+TAITELMAN, LLP. The matter was taken under submission and post-trial briefs
2 submitted. Based on the evidence presented at this hearing and on the other papers on file in this
3 matter, the Labor Commissioner hereby adopts the following decision.

4 5 **II. FINDINGS OF FACT**

6 1. Petitioner, GOLDSMITH is an actor performing in television shows, commercials and
7 motion pictures since the 1960s.

8 2. In the years leading up to 2002, entertainment opportunities had diminished for
9 GOLDSMITH who considered quitting the entertainment business.

10 3. In 2002, GOLDSMITH's talent agent, Barbara Buky advised GOLDSMITH to sign a
11 management agreement with Jordan Lee Inc., dba Gold Levin Talent (hereinafter JLI) in an effort
12 to revitalize GOLDSMITH's career. JLI principal, Tom Gardner, met with GOLDSMITH and
13 the two discussed ways in which JLI would try to stimulate GOLDSMITH'S diminishing career
14 opportunities. It was discussed at that meeting that one method to jumpstart GOLDSMITH'S
15 acting career was for JLI to assist in obtaining work for GOLDSMITH.

16 4. The management relationship between GOLDSMITH and JLI was initially
17 memorialized in a written agreement dated April 23, 2002, requiring GOLDSMITH to pay 15%
18 of his gross earnings to JLI for a period of six months with two additional one-year options. The
19 written agreement also enabled JLI to charge an additional 10% if, in the manager's discretion,
20 the manager determined an agent or an attorney was required to obtain engagements. After the
21 written agreement expired, the parties subsequently continued their relationship under an oral
22 agreement, pursuant to which JLI's commission was reduced from 15% to 10%.

23 5. In 2004, GOLDSMITH'S talent agent, Barbara Buky, was asked by JLI's principal,
24 KLEIN to join JLI as a talent manager. KLEIN specifically requested Ms. Buky to "get work"
25 for JLI's clients, including GOLDSMITH. In exchange for her services, KLEIN offered to pay
26 Ms. Buky fifty percent of any JLI commissions generated from her services.

27 6. After accepting KLEIN's offer and joining JLI, Ms. Buky attempted to generate
28 employment for JLI's clients, including GOLDSMITH. Her initial job was to "call casting" and

1 “pitch” JLI’s clients for work. KLEIN admits that he “allowed her to procure and negotiate
2 employment for JLI’s clients.” Ms. Buky never obtained her own California talent agency
3 license and had worked as a sub-agent under another license in her former position as a talent
4 agent. KLEIN determined that GOLDSMITH no longer required a talent agent and no talent
5 agents were used on GOLDSMITH’s behalf after 2004.

6 7. In or around 2006, Ms. Buky on behalf of JLI, solicited and obtained employment for
7 GOLDSMITH as the character “*The Most Interesting Man In The World*” in a commercial
8 campaign for Dos Equis beer (the “Dos Equis Campaign”). Specifically, Ms. Buky testified that
9 she received a breakdown for the character, “submitted” GOLDSMITH’s head shot for the role,
10 spoke with the casting director, Joe Blake, and set up an audition for GOLDSMITH. When
11 GOLDSMITH received a call back, he was subsequently “booked” through JLI for the Dos Equis
12 Campaign.

13 8. In or around 2006, Ms. Buky married GOLDSMITH. JLI describes the husband and
14 wife’s testimony as self-serving. Contrary to JLI’s assertion, however, we find the testimony of
15 Ms. Buky and GOLDSMITH very credible.

16 9. In 2007, GOLDSMITH entered into an initial deal memo with Heineken USA
17 (“Heineken”) in connection with his services as “*The Most Interesting Man in the World*” for the
18 Dos Equis Campaign. This deal memo enabled GOLDSMITH to receive “SAG over-scale”
19 compensation, and there were no negotiations in connection with this deal memo.

20 10. In or about May 21, 2007 to October 20, 2007, KLEIN obtained a California talent
21 agency license from the California Labor Commissioner. It is undisputed that JLI never utilized a
22 Labor Commissioner approved talent agency contract as required under California law with
23 GOLDSMITH and by all accounts, nothing changed during this five-month period. In short,
24 there was no evidence presented demonstrating that KLEIN ever formally acted as
25 GOLDSMITH’S lawful talent agent during this five-month period. KLEIN’s agreement with
26 GOLDSMITH was to perform management services under the terms of the oral management
27 contract, and not as KLEIN now argues, to provide lawful talent agency services. Moreover,
28 there was no credible evidence submitted that KLEIN complied with the laws and regulations

1 governing talent agents during his relationship with GOLDSMITH. In sum, the presence of
2 KLEIN'S talent agency license during a 5-month period in 2007 is nothing more than a
3 coincidence and not relevant to the issues here.

4 11. In 2008, after KLEIN's talent agency license expired and after the initial success of
5 the Dos Equis Campaign, Heineken's ad agency contacted JLI to discuss further engaging
6 GOLDSMITH's services for the campaign. The Dos Equis campaign was very successful and, as
7 a result, GOLDSMITH now had negotiating leverage. Consequently, GOLDSMITH's managers,
8 Barbara Buky (now Barbara Goldsmith) and KLEIN brought in entertainment attorney, Brad
9 Small, to assist in negotiating a long-form agreement with Heineken. Notably, no California
10 licensed talent agent was involved in the negotiation of the 2008 Heineken long-form agreement.

11 12. Mrs. Goldsmith, Mr. Small, and KLEIN worked together on the negotiation of the
12 long-form agreement for GOLDSMITH's further services in connection with the Dos Equis
13 Campaign. Mrs. Goldsmith and KLEIN also negotiated the compensation for GOLDSMITH's
14 services, including negotiating "additional fees" for "radio spots" and "personal appearances."
15 The resulting long-form agreement between Heineken and GOLDSMITH, dated September 11,
16 2008 ("2008 Agreement"), was executed by GOLDSMITH on December 11, 2008. JLI received
17 10% of the monies that GOLDSMITH received for those services.

18 13. In late 2011 and/or early 2012, KLEIN entered into further negotiations with
19 Heineken in order to obtain "more monies" for GOLDSMITH in connection with the Dos Equis
20 Campaign. Mrs. Goldsmith was no longer working for JLI, so KLEIN was GOLDSMITH's sole
21 representative at JLI. Brad Small assisted in the negotiations as GOLDSMITH'S transactional
22 attorney.

23 14. As a result of the late 2011/early 2012 negotiations between JLI and Heineken,
24 GOLDSMITH entered into another long-form agreement with Heineken, dated January 1, 2012
25 ("2012 Agreement"). Petitioner signed the 2012 Agreement on January 19, 2012.
26 GOLDSMITH performed under the 2012 Agreement, was paid for his performance, and JLI
27 received 10% of those monies.

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1 15. On May 11, 2012, nearly four months after the negotiations of the 2012 Agreement
2 were concluded and the agreement was executed, JLI became licensed as a talent agency.

3 16. The Dos Equis Campaign continued to be a huge success and GOLDSMITH was due
4 for a significant jump in compensation. GOLDSMITH terminated the relationship with JLI on
5 December 11, 2014. After the management agreement with JLI was terminated, on or around
6 December 15, 2014, GOLDSMITH entered into a subsequent agreement with Heineken to render
7 additional services in connection with the Dos Equis Campaign (“2014 Agreement”).
8 GOLDSMITH’s compensation in the 2014 Agreement, negotiated by new counsel and a new
9 manager, was significantly higher than what he had received under his prior agreements. Soon
10 thereafter, GOLDSMITH ceased paying commissions to JLI.

11 17. On October, 2, 2015, JLI commenced an action in the Superior Court of California,
12 County of Los Angeles, L.A.S.C. Case No. BC 596371 to recover unpaid commissions stemming
13 from GOLDMSITH’S earning in connection with the 2014 Agreement (“the Complaint”).

14 18. On February 9, 2016, GOLDSMITH filed his answer to the Complaint alleging JLI
15 violated the California Talent Agencies Act (Labor Code §1700.00, et seq.) by procuring work for
16 GOLDSMITH without a talent agency license.

17 19. On January 27, 2017, GOLDSMITH filed this Petition to Determine Controversy
18 with the Labor Commissioner’s office. GOLDSMITH seeks the following Order: (1) that JLI
19 violated the Talent Agencies Act; (2) a determination that JLI’s Agreement with GOLDSMITH is
20 void *ab initio*, unenforceable and that GOLDSMITH has no liability thereunder and JLI has no
21 rights or privileges; (3) a determination that JLI have no entitlement to commissions under the
22 2008 Agreement; (4) a determination that the 2014 Agreement is not an extension or renewal of
23 the 2008 Agreement; (5) costs and attorney fees incurred; (6) and such other and further relief as
24 the Labor Commissioner may deem just and proper.

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III. LEGAL DISCUSSION

1. Has JLI acted as an unlicensed talent agent and therefore violated the Talent Agencies Act?

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

Analysis

One issue is whether based on the evidence presented at this hearing, did JLI operate as a “talent agency” within the meaning of Labor Code section 1700.4(a). Labor Code section 1700.4(a) defines “talent agency” as “a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists.”

GOLDSMITH, an actor, is an “artist” within the meaning of Labor Code section 1700.4(b). Labor Code section 1700.5 provides that “[n]o person shall engage in or carry on the occupation of a talent agency without first procuring a license....from the Labor Commissioner.” JLI did not possess a talent agency license during the relevant period, albeit for five months in 2007, which has been determined not to be relevant for these proceedings.

In contrast, a person may counsel and direct artists in the development of their professional careers, or otherwise “manage” artists – while avoiding any procurement activity (procuring, promising, offering, or attempting to procure artistic employment or engagements) – without the need for a talent agency license. In addition, such person may procure non-artistic employment or engagements for the artist, without the need for a license. *Styne v. Stevens* (2001) 26 Cal.4th 42. There was minimal evidence presented that JLI counseled or directed GOLDSMITH in the development of his professional career or did any other typical or standard management responsibilities. The evidence presented at the hearing, established that JLI primarily oversaw the Dos Equis campaign on behalf of GOLDSMITH throughout the parties’ relationship.

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1 An agreement that violates the licensing requirements of the Talent Agencies Act is illegal
2 and unenforceable. “Since the clear object of the Act is to prevent improper persons from
3 becoming [talent agents] and to regulate such activity for the protection of the public, a contract
4 between and unlicensed [agent] and an artist is void.” *Buchwald v. Superior Court* (1967) 254
5 Cal.App.2d 347, 351.

6 **A. Promises, Offers, Attempts and Procurement**

7 In 2006, as demonstrated by the evidence in the record, Ms. Buky on behalf of JLI,
8 received a breakdown for “The Most Interesting Man in the World” character, “submitted”
9 GOLDSMITH’s head shot for the role, spoke with the casting director, Joe Blake, and set up the
10 audition for GOLDSMITH. When GOLDSMITH received a call back, he was “booked” through
11 JLI for the Dos Equis Campaign.

12 In 2008, Mrs. Goldsmith, Mr. Small, and KLEIN worked together on the negotiation of
13 the long-form agreement for GOLDSMITH’s further services in connection with the Dos Equis
14 Campaign. In addition, Mrs. Goldsmith and KLEIN negotiated the compensation for
15 GOLDSMITH’s services, including negotiating “additional fees” for “radio spots” and “personal
16 appearances” culminating in the “2008 Agreement”.

17 In late 2011 and/or early 2012, KLEIN entered into further negotiations with Heineken in
18 order to obtain “more monies” for GOLDSMITH in connection with the Dos Equis Campaign
19 resulting in the “2012 Agreement”.

20 These actions taken by KLEIN and Ms. Bucky were promises, offers, attempts and actual
21 procurement of employment and entertainment engagements within the meaning of Labor Code
22 sections 1700.4(b) and 1700.5. In fact, the Dos Equis campaign was GOLDSMITH’s only
23 significant employment. Promises, offers and attempts to procure employment without a talent
24 agency license are violations of the Talent Agencies Act.

25 In *Waisbren v. Peppercorn Production, Inc.* (1995) 41 Cal.App.4th 246, the court held
26 that any single act of procuring employment subjects the agent to the Talent Agencies Act’s
27 licensing requirement, thereby upholding the Labor Commissioner’s long-standing interpretation
28 that a license is required for any procurement activities, no matter how incidental such activities

1 are to the agent's business as a whole. Applying *Waisbren*, it is clear JLI acted in the capacity of
2 a talent agency within the meaning of Labor Code section 1700.4(a) and it is clear that JLI
3 procured employment without a license in violation of Labor Code section 1700.5 in their
4 negotiating efforts on behalf GOLDSMITH throughout the Dos Equis campaign. Notably, the
5 unlawful procurement engaged in by KLEIN does not include the 2014 Agreement, which
6 GOLDSMITH'S new talent manager and transactional attorney negotiated.

7 **B. Appropriate Remedy for Violations of the Act**

8 In accord with *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974, 991, we
9 examine the doctrine of severability. In *Marathon*, the court recognized that the Labor
10 Commissioner may invalidate an entire contract when the Act is violated. The court left it to the
11 discretion of the Labor Commissioner to apply the doctrine of severability to preserve and
12 enforce the lawful portions of the parties' contract where the facts so warrant. As the Supreme
13 Court explained in *Marathon*:

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

21 In this case, we find that the interests of justice would not be furthered by severance.
22 Specifically, we find that JLI offered, promised, attempted, and procured employment and
23 entertainment engagements throughout the relationship of the parties. There was no evidence that
24 JLI's primary function was talent management. The only significant source of income to this
25 relationship was the Dos Equis campaign, which was unlawfully procured, negotiated and
26 renegotiated.

27 We therefore conclude that the totality of the illegal acts is not collateral to the main
28 purpose of the parties' management relationship but rather the core of the relationship.
Accordingly, we choose not to apply the doctrine of severability. The management agreement is
void *ab initio* due to pervasive illegality.

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IV. ORDER

For the reasons set forth above, IT IS HEREBY ORDERED that the oral management agreement between Petitioner, JONATHAN GOLDSMITH and Respondent, BUTCH KLEIN a/k/a "Tim Jordan," an individual; JORDAN LEE, INC., a California corporation d/b/a Gold Levin Talent, is invalid and unenforceable under the Talent Agencies Act. Furthermore, JLI and KLEIN have no rights or entitlements to any monies arising from such engagements.

DATED: May 23, 2018

Respectfully submitted,



DAVID L. GURLEY
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: May 24, 2018



JULIE A. SU
State Labor Commissioner

1. **PROOF OF SERVICE**

2. **STATE OF CALIFORNIA**)
3. **COUNTY OF LOS ANGELES**) S.S.

4. I, Lindsey Lara, declare and state as follows:

5. I am employed in the State of California, County of Los Angeles. I am over the age of
6. eighteen years old and not a party to the within action; my business address is: 300 Oceangate,
Suite 850, Long Beach, CA 90802.

7. On May 24, 2018, I served the foregoing document described as: **DETERMINATION**
8. **OF CONTROVERSY**, on all interested parties in this action by placing a true copy thereof
enclosed in a sealed envelope addressed as follows:

9. Martin D. Singer, Esq.
David B. Jonelis, Esq.
10. **LAVELY & SINGER**
2049 Century Park East, Suite 2400
11. Los Angeles, CA 90067
mdsinger@lavelysinger.com
12. djonelis@lavelysinger.com

Bryan J. Freedman, Esq.
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13. Attorneys for Petitioner


Attorneys for Respondents

14. **(BY CERTIFIED MAIL)** I am readily familiar with the business practice for collection
15. and processing of correspondence for mailing with the United States Postal Service. This
16. correspondence shall be deposited with fully prepaid postage thereon for certified mail
with the United States Postal Service this same day in the ordinary course of business at
17. our office address in Long Beach, California. Service made pursuant to this paragraph,
upon motion of a party served, shall be presumed invalid if the postal cancellation date of
18. postage meter date on the envelope is more than one day after the date of deposit for
mailing contained in this affidavit.

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

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

23. Executed this 24th day of May 2018, at Long Beach, California.

24.
25. 
26. Lindsey Lara
Declarant

27.
28.