

1 **STATE OF CALIFORNIA**
Department of Industrial Relations
2 Division of Labor Standards Enforcement
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7
8 **BEFORE THE LABOR COMMISSIONER**
9 **OF THE STATE OF CALIFORNIA**
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11
12 BRANDON FLOWERS, An Individual;) CASE NO. TAC 10-06
RONNIE VANNUCCI, JR., An)
13 Individual; DAVE KEUNING, An) **ORDER ON RESPONDENTS' MOTION**
Individual; MARK STOERMER, An) **TO DISMISS FIRST AMENDED**
14 Individual, collectively and professionally) **PETITION TO DETERMINE**
known as "THE KILLERS,") **CONTROVERSY; NOTICE OF**
15) **HEARING**
Petitioners,
16
17 vs.
18 FROM THE FUTURE, LLC, A California)
19 limited liability company; BRADEN)
MERRIK, An Individual,)
20 Respondents.
21

1 *Allegations 19-27 of Petitioners' First Amended Petition to Determine Controversy.*) For
2 the reasons stated herein, we hold that the Labor Commissioner has jurisdiction to enforce
3 the Talent Agencies Act, (hereinafter, referred to as "Act"). This includes determining
4 whether Respondents procured employment in violation of the Act. However, we agree
5 with Respondents that the Labor Commissioner does not have jurisdiction to rule on whether
6 Respondents materially breached the management agreement.

7 **1. Allegations that Respondents are in Violation of the Talent Agency Act**

8 On April 8, 2003, the parties entered into an Exclusive Management Agreement
9 (hereinafter, referred to as "Management Agreement") which provided that Respondents
10 would serve as Petitioners' sole and exclusive personal managers in the entertainment
11 industry. (See ¶11 of the First Amended Petition (hereinafter, referred to as "FAP").
12 Petitioners allege that Respondents performed unlawful activities as unlicensed talent agents
13 seeking to solicit and procure employment in the State of California without being licensed
14 to do so. (See ¶13 of FAP).

15 As the Court of Appeal has recently held in *Alex E. Ferrer v. Arnold Preston* (2006)
16 145 Cal.App.4th 440, 444-445, Labor Code "section 1700.44, subdivision (a), vests
17 exclusive original jurisdiction in the Commissioner to resolve issues arising under the Act-
18 including the issue of whether or not an individual such as [defendant] is a personal manager
19 or an unlicensed talent agent." See also *Styne v. Stevens* (2001) 26 Cal.4th 42. Our exclusive
20 jurisdiction is limited *in this case*, to a determination of whether there has been a violation of
21 the Act by a California Personal Manager. To find that we don't have jurisdiction to
22 determine whether there has been a violation of the Act based on a choice of law provision
23 included in a management agreement, would completely erode the deterrent effects on
24 unlicensed activity. Managers wishing to procure employment without having to obtain a
25 license as a talent agent, as they are required to do so in California, could do so by including
26 a choice of law provision in their contracts, such as the one in this case mandating

1 application of Nevada law.

2 **2. Allegations that Respondents Materially Breached the Agreement**

3 The Labor Commissioner does not have jurisdiction to determine whether a personal
4 management agreement was materially breached by one of the parties. Personal managers,
5 who advise and direct artists in the development of their careers, are not subject to any
6 licensing requirements. *Waisbren v. Peppercorn Productions, Inc.* (1995) 41 Cal.App.4th
7 246, 250. Our jurisdiction is limited to contract disputes involving licensed talent agents.
8 Thus, the Labor Commissioner lacks jurisdiction to rule on whether Respondents materially
9 breached the Management Agreement, as Petitioners allege in their First Amended Petition
10 to Determine Controversy.

11 For the foregoing reasons, Respondents' Motion to Dismiss Petitioners First
12 Amended Petition to Determine Controversy is denied with regard to allegations that the
13 Talent Agencies Act has been violated. However, the motion is granted with regard to any
14 allegations that Respondents materially breached the Management Agreement.

15
16 **NOTICE OF HEARING**

17 PLEASE TAKE NOTICE that the above-captioned matter has been scheduled for
18 hearing before the undersigned attorney for the Labor Commissioner on **Monday,**
19 **July 23, 2007**, at 9:00 a.m., at 320 W. 4th Street, Suite 430, Los Angeles, Ca. 90013.

20 At this hearing, the parties will be permitted to testify, present evidence, and question
21 witnesses. The Labor Commissioner's determination of this controversy will be based upon
22 the evidence and testimony presented at this hearing.

23 Dated: January 19, 2007

24 
25 EDNA GARCIA EARLEY, Attorney
26 for the Labor Commissioner
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1 **PROOF OF SERVICE**

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

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
5 not a party to the within action. My business address is DIVISION OF LABOR STANDARDS
6 ENFORCEMENT, Department of Industrial Relations, 320 W. 4th Street, Suite 430, Los Angeles, CA
7 90013.

8 On January 19, 2007, I served the following document described as:

9 **ORDER ON RESPONDENTS' MOTION TO DISMISS FIRST AMENDED PETITION TO DETERMINE
10 CONTROVERSY; NOTICE OF HEARING**

11 on the interested parties in this action by placing

12 the originals

13 a true copy thereof enclosed in a sealed envelope addressed as follows:

14 PROSKAUER ROSE LLP
15 Bert H. Deixler, Esq.
16 Navid Soleymani, Esq.
17 2049 Century Park East, 32nd Floor
18 Los Angeles, California 90067-3206
19 Fax No.: 310-557-2193

20 KING, HOLMES, PATERNO & BERLINER LLP
21 Stephen D. Rothschild, Esq.
22 1900 Avenue of the Stars, 25th Floor
23 Los Angeles, California 90067-4506
24 Fax No.: 310-282-8903

25 BY MAIL I deposited such envelope in the United States Mail at Los Angeles, California,
26 postage prepaid.

27 BY MAIL I am readily familiar with the firm's business practice of collection and processing
28 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): See above.

Executed on January 19, 2007, at Los Angeles, California. I declare under penalty of perjury
the foregoing is true and correct.

Edna Garcia Earley