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BEFORE THE LABOR COMMISSIONER

OF THE STATE OF CALIFORNIA

CHRISTOPHER WARREN, JR., an individual; and BROOK KERR, an individual, Petitioners, vs. CHRISTOPHER WARREN, SR., an individual; and THE W MANAGEMENT, an unknown business entity, Respondents.	CASE NO. TAC 44857 **DETERMINATION OF CONTROVERSY**

I. INTRODUCTION

The above-captioned matter, a Petition to Determine Controversy under Labor Code section 1700.44, came on regularly for hearing in Los Angeles, California on June 12, 2018 (hereinafter, referred to as the "TAC Hearing"), before the undersigned attorney for the Labor Commissioner assigned to hear this case.

Petitioners CHRISTOPHER WARREN, JR., an individual (hereinafter, referred to as "WARREN, JR.") and BROOK KERR (hereinafter, referred to as "KERR") (collectively referred to as "Petitioners") appeared and were represented by Andrew B.

Brettler of LAVELY & SINGER. Respondents CHRISTOPER WARREN, SR., an individual (hereinafter, referred to as "WARREN, SR.") and THE W MANAGEMENT, an unknown business entity (hereinafter, referred to as "W MANAGEMENT") (collectively referred to as "Respondents") appeared through Alexander J. Petale, Attorney at Law, and James R. Doyle of the INJURY LAW OFFICE OF JAMES R. DOYLE. The parties submitted their post-hearing briefs on September 18, 2018. The matter was taken under submission.

Based on the evidence presented at this hearing and on the other papers on file in this matter, the Labor Commissioner hereby adopts the following decision.

II. FINDINGS OF FACT

1. WARREN, SR. is the father of WARREN, JR. and former husband of KERR. KERR is the mother of WARREN, JR.

2. WARREN, SR. was the personal manager of WARREN, JR. from about 1996 to approximately 2010 or 2011. WARREN, JR. reached the age of majority in 2010.

3. No written contract existed between WARREN, SR. and WARREN, JR. for the services WARREN, SR. provided for WARREN, JR.

4. WARREN, SR. was the personal manager of KERR from about 1996 to approximately 2008 or 2009. No written contract existed between WARREN, SR. and KERR for the services WARREN, SR. provided for KERR.

5. WARREN, JR. is an actor who has worked on a range of projects, including the High School Musical franchise, other television engagements, and speaking engagements.

6. KERR is an actor who worked on the television soap opera, *Passions*, from 1999 through 2007.

7. WARREN, SR. is not a licensed talent agent.

8. WARREN, JR. has been represented by various licensed talent agencies throughout his career, including Bobby Ball Agency, Abrams Artists Agency, Innovative Artists, among others. WARREN, JR. is currently represented by Innovative Artists and

has been represented by them for 13 years. Prior to being represented by Innovative Artists, he was represented by Abrams Artists Agency. The Abrams Artists Agency represented WARREN, JR. when he was 12 to 13 years old, and represented him for up to five years.

9. The act of "submitting" consists of receiving breakdowns to see all the roles available for an actor. If there is an acting role which appears to be a fit for an actor, the actor is submitted for that role. This includes providing a headshot to the casting office and, if the casting office likes the actor's headshot, the casting office provides the actor with an audition. WARREN, SR. submitted WARREN, JR. for roles, including for commercials and films, as early as the age of six years old.

10. WARREN, SR. submitted Petitioners for auditions, set up auditions, exchanged correspondence, and communicated with people on their behalf. Early in their careers, WARREN, SR. and KERR set up AOL accounts. WARREN, SR. later created email sub-accounts on AOL for Petitioners, in part, to send and receive work-related emails on behalf of Petitioners, to see what was being scheduled, and to remain apprised of relevant events and negotiations. WARREN, SR. looked out for auditions via multiple internet casting sites. WARREN, SR. was also Petitioners' acting coach and publicist. WARREN, SR. trained, groomed, and enhanced the professional and performance opportunities of WARREN, JR.

11. WARREN, SR. procured employment for KERR on the television soap opera, *Passions*, in 2007.

12. Around 2002 or 2004, WARREN, JR. was in a television pilot called *Last Chance* when he was approximately between 12 or 14 years old. WARREN, SR. procured this employment for WARREN, JR.

13. WARREN, JR. acted in the film franchise, High Musical School 1, High School Musical 2, and High School Musical 3. WARREN, JR. was cast to work in High School Musical 1 through his talent agent. Once he was cast in High School Musical 1, WARREN, JR. did not have to audition for High School Musical 3, which he acted in

around 2008. For High School Musical 3, WARREN, SR. attempted to negotiate, albeit unsuccessfully, a higher rate of compensation for WARREN, JR. with the executive producer of the High School Musical franchise.

14. Approximately between 2009 and 2011, WARREN, JR. was considered for a project called *Must be the Music*. WARREN, SR. contacted WARREN, JR., informing him that he was in communications with the producer and was attempting to get WARREN, JR. into the movie. WARREN, SR. set up multiple meetings between WARREN, SR., WARREN, JR. and the producer to try to potentially obtain a letter of intent, and to get WARREN, JR. to be part of the project. The purpose of the letter of intent was to show investors which actor(s) would have been attached to a certain movie in order to increase the likelihood the movie received funding.

15. After 2010 or 2011, WARREN, JR. testified WARREN, SR. made a pitch to Lou Rawls (hereinafter, referred to as "RAWLS") for WARREN, JR. to be in a film that RAWLS was producing. WARREN, JR. further testified they all met once at a hotel where the pitch occurred. WARREN, SR. testified he did not set up a meeting with RAWLS and WARREN, JR. for the purpose of obtaining a job with RAWLS. KERR testified she was not familiar with the specifics of this meeting.

16. Around 2010 or 2011, WARREN, SR. arranged to have WARREN, JR. appear at a seminar in London (hereinafter, referred to as the "London Speaking Engagement") to speak to young adults who were fans of the High School Musical franchise. WARREN, SR. coordinated the travel arrangements and compensation for WARREN, JR. who was paid between $10,000.00 to $15,000.00 for this personal appearance.

17. KERR filed for divorce against WARREN, SR. and the trial court in that case, Los Angeles Superior Court Case No. BD567757, (hereinafter, the "Divorce Proceedings") found that the date of separation occurred in 2009. Trial in the Divorce Proceedings was held on May 9, 10, and 17, 2016. Judgment in the Divorce Proceedings was entered in Fall 2016.

18. On or around July 11, 2012, WARREN, JR. filed a lawsuit against WARREN, SR. and KERR, Los Angeles Superior Court Case No. PC053343 (hereinafter, the "2012 Proceedings").[1]

19. On or around December 29, 2015, WARREN, SR. filed a cross-complaint in the 2012 Proceedings (hereinafter, referred to as the "Cross-Complaint"), naming KERR and WARREN, JR. as cross-defendants.

20. WARREN, SR.'s Cross-Complaint identifies five causes of action, including: (1) Breach of Oral Contract, (2) Conversion and Conspiracy to Commit Conversion, (3) Abuse of Process, (4) Breach of Fiduciary Duty, and (5) For an Accounting.

21. Regarding the first cause of action, Breach of Oral Contract, WARREN, SR. alleges:

> Furthermore it was agreed that [WARREN, SR.], would be compensated 10% of the gross earnings of [WARREN, JR.] to compensate [WARREN, SR.] for his work as the personal and general career manager of [WARREN, JR.].
>
> . . .
>
> [Petitioners] . . . also took, stole and converted 10% of the earnings of [WARREN, JR.] that was to be paid to [WARREN, SR.] by reason of his personal management of the career of [WARREN, JR.].
>
> . . .
>
> Therefore, [WARREN, SR.] has been damaged in the approximate amount of $175,000 plus the value of 10% of the earnings of [WARREN, JR.] since [WARREN, JR.] reached the age of majority . . .

[1] During the TAC Hearing, the parties raised issues subject to litigation, which Petitioners and Respondent WARREN, SR. have been involved with since at least the past seven years. These issues appear to include disputes regarding community property between KERR and WARREN, SR., and whether monies are owed between the parties. Some of the evidence introduced by the parties concerns the Divorce Proceedings and/or 2012 Proceedings, and was considered by the Hearing Officer as explained in this Determination. However, the purpose of this TAC Hearing is to determine whether Respondents violated the Talent Agencies Act and, if so, whether any agreements between Respondents and Petitioners are hereby void and unenforceable.

22. In his Cross-Complaint, WARREN, SR. raises claims concerning monies owed by KERR to him regarding community property, among other allegations. However, unlike his allegations regarding WARREN, JR., WARREN, SR. does not allege or seek in his Cross-Complaint 10% of KERR's earnings for work or services he provided for KERR in his capacity as her former personal manager.

23. On or around September 26, 2016, Petitioners filed this *Petition to Determine Controversy* (or "Petition"). Petitioners sought the following determination: 1) the agreements are void and unenforceable and Petitioners have no liability to Respondents; (2) an accounting from Respondents regarding monies or things of value received by Respondents for services rendered by Petitioners as artists in the entertainment industry; (3) disgorgement by Respondents and a return of all monies and things of value received by Respondents related to services Petitioners rendered pursuant to the applicable agreements at issue in this case; (4) a determination denying Respondents any claim or offset based on the alleged values of services rendered or monies advanced or paid by Respondents on behalf of Petitioners; and (5) such other relief the Labor Commissioner may deem just and proper.

24. In their Answer, Respondents seek the following: 1) Petitioners take nothing, the Petition be dismissed with prejudice, and the agreements be held enforceable; (2) alternatively, if Respondents are found to have violated the Talent Agencies Act (hereinafter, referred to as "TAA" or the "Act"), that the offending conduct be severed from work as personal manager of Petitioners and the remainder of the agreements remain in effect; (3) costs of suit and reasonable attorneys' fees; and (4) for other relief the Labor Commissioner deems proper.

25. In their subsequent *Petitioners Christopher Warren, Jr. and Brook Kerr's Post-Hearing Brief,* KERR and WARREN, JR. clarified they seek the following relief; (1) a declaration [from the Labor Commissioner] that the alleged agreements are void and unenforceable and that [Petitioners] do not owe any future commissions to [WARREN, SR.] pursuant to those agreements, and (2) "attorney's fees in the amount of $2,025.00

($675 per hour for three hours)" for the legal fees Petitioners "were forced to incur as a result of [Respondent's] unexcused lateness to the Hearing . . ."

III. LEGAL ANALYSIS

Issues

A. Has Respondent W Management acted as an unlicensed talent agent and therefore violated the TAA in this matter?

B. Is Petitioners' *Petition* barred by the statute of limitations pursuant to Labor Code section 1700.44(c) and *Styne v. Stevens* (2001) 26 Cal.4th 42?

C. If Petitioners' *Petition* is not barred by the statute of limitations, has Respondent WARREN, SR. acted as an unlicensed talent agent and therefore violated the TAA in relation to WARREN, JR.'s performances in the *Last Chance*, *High School Musical 3*, *Must be the Music*, the meeting with RAWLS, and/or the *London Speaking Engagement*?

D. If Petitioners' *Petition* is not barred by the statute of limitations, has Respondent WARREN, SR. acted as an unlicensed talent agent and therefore violated the TAA in relation to KERR's performance in the television soap opera, *Passions*?

E. Has Respondent WARREN, SR. acted as an unlicensed talent agent and therefore violated the TAA in relation to WARREN, JR.'s performances in the *Last Chance*, *High School Musical 3*, *Must be the Music*, the meeting with RAWLS, and/or the *London Speaking Engagement*?

F. If Respondent WARREN, SR. violated the TAA, is the appropriate remedy to void the agreements *ab initio* or to sever the offending practices under *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974?

G. If the Labor Commissioner grants Petitioners' *Petition*, would it be appropriate to award Petitioners their requested attorneys' fees of $2,025.00?

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, except that the activities of procuring, offering, or promising to procure recording contracts for an artist or artists shall not of itself subject a person or corporation to regulation and licensing under this chapter.

Labor Code section 1700.4(b) defines "artist" as:

> [A]ctors and actresses rendering services on the legitimate stage and in the production of motion pictures, radio artists, musical artists, musical organizations, directors of legitimate stage, motion picture and radio productions, musical directors, writers, cinematographers, composers, lyricists, arrangers, models, and other artists and persons rendering professional services in motion picture, theatrical, radio, television and other entertainment enterprises.

WARREN, JR. and KERR are "artists" within the meaning of Labor Code section 1700.4(b).

Moreover, 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 therefor from the Labor Commissioner." It is undisputed that WARREN, SR. did not possess a talent agency license during the relevant time period he served as personal manager for WARREN, JR. and KERR.

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 of 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)("*Styne*")).

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

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A. Has Respondent W Management acted as an unlicensed talent agent and therefore violated the TAA in this matter?

A talent agent is a corporation or person who procures, offers, promises, or attempts to procure employment or engagements for an artist or artists. (See Labor Code § 1700.4(a)). An unlicensed talent agent who performs such activities pursuant to Labor Code section 1700.4(a) is in violation of the TAA. While not specifically defined by the TAA, the different definitions for employment require an act on behalf of the employed. (See *Malloy v. Board of Education* (1894) 102 Cal. 642, 646; Industrial Welfare Commission Wage Order No. 12-2001 (hereinafter, referred to as "IWC Wage Order No. 12"), section 2(D)-(F); Black's Law Dictionary (10th ed. 2014)). The Labor Commissioner has ruled, "[p]rocurement could include soliciting an engagement; negotiating an agreement for an engagement; or accepting a negotiated instrument for an engagement." (*McDonald v. Torres*, TAC 27-04; *Gittelman v. Karolat,* TAC 24-02). Additionally, "[p]rocurement" includes any active participation in a communication with a potential purchaser of the artist's services aimed at obtaining employment for the artist, regardless of who initiated the communication or who finalized the deal. (*Hall v. X Management*, TAC 19-90).

Exceptions to the requirements under Labor Code section 1700.4(a), also known as the safe harbor exemption, can be found at Labor Code section 1700.44(d). Labor Code section 1700.4(d) provides that "[i]t is not unlawful for a person or corporation which is not licensed . . . to act in conjunction with, and at the request of, a licensed talent agency in the negotiation of an employment contract." For the safe harbor exemption under Labor Code section 1700.44(d) to apply, the manager must: (1) act in conjunction with a licensed talent agent; and (2) act at the request of a licensed talent agent; and (3) such actions are limited to the negotiation of an employment contract. (See *Shirley v. Artists' Management West, et al.*, TAC 08-01; *Tommy Lister v. Tamara Holzman*, TAC 04-00; and *Creative Artists Entertainment Group, LLC v. Jennifer O'Dell,* TAC 26-99).

i. The W Management

Petitioners named the W Management as a respondent in this matter. However, Petitioners provide no evidence to demonstrate that W Management was an unlicensed talent agent with an active role in procuring employment for either WARREN, JR. or KERR in violation of Labor Code section 1700.4(a)).

Therefore, Petitioners' *Petition to Determine Controversy* as to Respondent W Management is **dismissed** with prejudice.

The remainder of this Determination addresses whether the agreements between Petitioners should be held void and unenforceable as they pertain to Respondent WARREN, SR.

B. Is Petitioners' *Petition* barred by the statute of limitations pursuant to Labor Code section 1700.44(c) and *Styne v. Stevens* (2001) 26 Cal.4th 42?

i. The TAA's One-Year Statute of Limitations

California Labor Code section 1700.44(c) states the following:

> No action or proceeding shall be brought pursuant to this chapter with respect to any violation which is alleged to have occurred more than one year prior to commencement of the action or proceeding.

The one-year statute of limitations provision in Labor Code section 1700.44(c) was addressed in the *Styne* decision. The *Styne* court held the following:

> Under well-established authority, a defense may be raised at any time, even if the matter alleged would be barred by a statute of limitations if asserted as the basis for affirmative relief. The rule applies in particular to contract actions. One sued on a contract may urge defenses that render the contract unenforceable, even if the same matters, alleged as grounds for restitution after rescission, would be untimely . . .

(*Styne*, *supra*, 26 Cal.4th at 51-52).

Thus, the one-year statute of limitations under Labor Code section 1700.44(c) does not bar a petitioner artist from asserting as a defense that a contract is illegal where a respondent acted as an unlicensed talent agent. (See *Id*. at 53-54; see also *Hyperion*

Animation Co., Inc. v. Toltec Artists, Inc., TAC Case No. 7-99). The one-year statute of limitations applies to affirmative relief that is sought by a party.

C. If Petitioners' *Petition* is not barred by the statute of limitations, has Respondent WARREN, SR. acted as an unlicensed talent agent and therefore violated the TAA in relation to WARREN, JR.'s performances in the *Last Chance*, *High School Musical 3*, *Must be the Music*, the meeting with RAWLS, and/or the *London Speaking Engagement*?

D. If Petitioners' *Petition* is not barred by the statute of limitations, has Respondent WARREN, SR. acted as an unlicensed talent agent and therefore violated the TAA in relation to KERR's performance in the television soap opera, *Passions*?

i. <u>RESPONDENT WARREN, JR.</u>

WARREN, SR.'s Cross-Complaint identifies as the first cause of action, Breach of Oral Contract. Specifically, WARREN, SR. alleges in his Cross-Complaint that he is entitled to 10% of WARREN, JR.'s gross earnings for work WARREN, SR. performed as his personal and general career manager. WARREN, SR. further alleges he has been damaged for the value of the 10% of WARREN, JR.'s earnings which he, WARREN, SR., was entitled to since the day WARREN, JR. reached the age of majority.

In his Petition, WARREN, JR. raises as a defense the illegality of a contract between WARREN, SR. and himself, further claiming the latter violated the TAA when he performed work as an unlicensed talent agent. This argument is a defense to WARREN, SR.'s claim in his Cross-Complaint that WARREN, JR. owes him 10% of his earnings for work WARREN, SR. performed on WARREN, JR.'s behalf in his capacity as his personal manager.

WARREN, SR. was the personal manager of WARREN, JR. from about 1996 to approximately 2010 to 2011. While the events in question occurred between this timeframe and when WARREN, JR. filed his Petition in 2016, his Petition is timely under *Styne* because he raised violations of the TAA *in response to* WARREN, SR.'s claims as described in his Cross-Complaint.

ii. RESPONDENT KERR

The Cross-Complaint alleges various causes of action against KERR. However, unlike WARREN, JR., nowhere in WARREN, SR.'s Cross-Complaint does he raise any similar claim specific to KERR regarding alleged earnings she owes him for work he performed as her former personal manager (or any other argument that could be interpreted as damages arising from a breach of contracting relating to services WARREN, SR. performed for KERR while he was her personal manager). Because WARREN, SR. does not raise this argument regarding KERR in his Cross-Complaint, KERR has no resulting defense to raise in the Petition.

Labor Code section 1700.44 and the *Styne* decision make clear that the one-year statute of limitations does **not** apply if an artist raises as a defense the illegality of a contract where a representative acts as an unlicensed talent agent. Here, KERR improperly attempts to raise a defense that simply does not exist. Specifically, WARREN, SR. does not claim in his Cross-Complaint that KERR breached a contract, entitling him to 10% of KERR's earnings derived from work she performed while WARREN, SR. was her personal manager. And contrary to the relief he seeks from WARREN, JR., WARREN, SR. does not seek relief in his Cross-Complaint from KERR for damages relating to a contract dispute for services he performed for KERR as her former personal manager. This defense is timely for WARREN, JR. but not for KERR. KERR seems to concede as much in her Post-Hearing Brief where she indicates that WARREN, SR.'s Cross-Complaint alleges claims for the 10% he states he is entitled to as to WARREN, JR. but does not include the same type of claim for KERR. The only petitioner then who timely raised the affirmative defense to WARREN, SR's contract claims is WARREN, JR., not KERR.

Here, KERR claims WARREN, SR. acted as an unlicensed talent agent when he procured her employment on the television soap opera, *Passions* and, accordingly, any agreements between WARREN, SR. and KERR must be held void and unenforceable. KERR worked on the television soap opera, *Passions*, from 1999 through 2007, but did

not file her Petition until 2016, **nine years** after she stopped working on *Passions*.

Based on the above, KERR's *Petition to Determine Controversy* is untimely. Thus, KERR's request that the agreement between WARREN, SR. and her be deemed void and unenforceable is hereby denied.

The remainder of this Determination addresses whether the oral agreement between WARREN, JR. and WARREN, SR. should be deemed void and unenforceable because of claims that WARREN, SR. acted as an unlicensed talent agent.

E. Has Respondent WARREN, SR. acted as an unlicensed talent agent and therefore violated the TAA in relation to WARREN, JR.'s performances in the *Last Chance*, *High School Musical 3*, *Must be the Music*, the meeting with RAWLS, and/or the *London Speaking Engagement*?

i. <u>Last Chance</u>

As we have previously noted, the proper burden of proof in actions before the Labor Commissioner is found at Evidence Code section 115, which states, "[e]xcept as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence." "[T]he party asserting the affirmative at an administrative hearing has the burden of proof, including both the initial burden of going forward and the burden of persuasion by preponderance of the evidence . . ." (*McCoy v. Bd. of Ret.* (1986) 183 Cal.App.3d 1044, 1051-52). "'[P]reponderance of the evidence standard . . . simply requires the trier of fact' to believe the existence of a fact is more probable than its nonexistence.'" (*In re Michael G.* (1998) 63 Cal.App.4th 700, 709, fn 6).

While WARREN, JR. was only 12 or 14 years old at the time, both KERR and WARREN, JR. testified that WARREN, SR. procured this employment for WARREN, JR. Specifically, WARREN, JR. testified WARREN, SR. and the two main producers of this television pilot were in contact with each other and that it was WARREN, SR. who got him this job.

The totality of the evidence demonstrates WARREN, SR. procured this

employment for WARREN, JR.

In addition, for those engagements addressed below where it is found he violated the TAA, WARREN SR. failed to provide sufficient evidence to demonstrate his actions fell within the safe harbor exemption of Labor Code section 1700.44(d).

ii. High School Musical 3

The Labor Commissioner has ruled that procurement could include negotiating an agreement for an engagement. (See *McDonald v. Torres*, TAC 27-04; *Gittelman v. Karolat,* TAC 24-02). WARREN, JR. acted in the High School Musical franchise. The testimony of all witnesses was that WARREN, SR. did not obtain employment for WARREN, JR. in High School Musical 3 because he had already worked in the previous two movies. However, the preponderance of the evidence shows WARREN, SR attempted to negotiate a higher rate for WARREN, JR. with the executive producer of High School Musical 3.

The evidence here demonstrates WARREN, SR. violated the TAA when he attempted to negotiate a higher rate for WARREN, JR. in High School Musical 3.

iii. Must be the Music

Approximately between 2009 and 2011, WARREN, JR. was considered for a project called *Must be the Music*. WARREN, SR. informed WARREN, JR. that he was in contact with the producer and was attempting to get WARREN, JR. into the movie. WARREN, SR. set up multiple meetings between WARREN, SR., WARREN, JR. and the producer to try to potentially obtain a letter of intent, and to get WARREN, JR. to be part of the project.

Here, the evidence demonstrates WARREN, SR. undertook efforts to secure a role for WARREN, JR. in this project. Accordingly, WARREN, SR. acted as an unlicensed talent agent here when he *attempted* to procure employment for WARREN, JR. in *Must be the Music.*

iv. The Meeting with Lou Rawls

The evidence presented regarding the meeting with RAWLS is inconclusive and conflicting at best. Specifically, WARREN, JR. testified that a meeting occurred between WARREN, SR., RAWLS, and WARREN, JR. to discuss a movie RAWLS was involved with. WARREN, JR. could not specifically remember where the parties met, who the other producer was, or the name of the movie. KERR testified she was not involved nor familiar with this meeting. WARREN, SR. testified RAWLS was his producer and acting partner, but that he did not attend a meeting with WARREN, JR. or RAWLS to attempt to procure a job for his son. WARREN, SR. also testified his intent was to introduce WARREN, JR. to the possibility of producing.

The mixed testimony here makes it more probable than not that no such meeting between WARREN, JR., WARREN, SR. and RAWLS occurred for the purpose of procuring employment for WARREN, JR. If such a meeting occurred, the evidence does not sufficiently demonstrate that it was for the purpose of securing employment by WARREN, SR. for WARREN, JR.

Accordingly, the Labor Commissioner has insufficient evidence to determine that WARREN, SR. violated the TAA here.

v. The London Speaking Engagement

Here, the evidence establishes WARREN, SR. violated the TAA when he procured employment for WARREN, JR. as a speaker for a seminar in London around 2010 or 2011. The collective testimony offered by WARREN, JR. and KERR indicate that WARREN, SR. acted as the contact for the organizers of the engagement, coordinated the travel arrangements, and also coordinated the compensation WARREN, JR. was paid. The evidence further shows WARREN, JR. was paid between $10,000.00 to $15,000.00 for this personal appearance.

For these reasons, we find a violation of the TAA with respect to the London Speaking Engagement.

F. If Respondent WARREN, SR. violated the TAA, is the appropriate remedy to void the agreements *ab initio* or sever the offending practices under *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974?

i. <u>Appropriate Remedy for Violations of the Act</u>

In accord with *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974 ("*Marathon*"), WARREN, SR. urges us to apply the doctrine of severability if we find that he violated the TAA in any of the identified engagements at issue herein. In *Marathon*, the court recognized that the Labor Commissioner may invalidate an entire contract when there is a violation of the Act. The court left it to the discretion of the Labor Commissioner to apply the doctrine of severability to preserve and enforce the lawful portions of the parties' contract where the facts so warrant. As the Supreme Court explained in *Marathon:*

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

(*Marathon, supra* at 996).

In this case, we find that "'the interests of justice…would be furthered' by severance.'" (*Id*.). The evidence shows WARREN, SR. performed a combination of various duties in his capacity as personal manager for WARREN, JR. This included submitting him for acting roles, communicating with people on his behalf, setting up email accounts early in his management of WARREN, JR. to see what was being scheduled and to remain apprised of relevant events and negotiations. The evidence further demonstrates WARREN, SR., in his capacity as personal manager, was WARREN, JR.'s acting coach and publicist. WARREN, SR. also trained and groomed WARREN, JR. to enhance his professional development and performance opportunities as

an actor. It was clear from the evidence there were a combination of tasks WARREN, SR. performed for WARREN, JR. Some of these tasks related to the procurement of employment, while the other tasks were for the purpose of helping steer the direction and growth of WARREN, JR.'s acting career – the latter of which are not covered by the Act. (See *Styne*, *supra*, 26 Cal.4th at 50-51).

Of note here is the additional fact that WARREN, SR. violated the TAA in four of the engagements proffered by Petitioners, specifically, for the pilot, *Last Chance*, *High School Musical 3*, *Must be the Music*, and the London Speaking Engagement. These can hardly be enough to invalidate an entire contract that lasted 14 to 15 years from the time WARREN, JR. was six years old until the time he reached the age of majority. We further conclude the illegality of these four acts was certainly collateral to the main purpose of the parties' management relationship. Accordingly, under the doctrine of severability, we sever those four acts of illegal procurement. The oral agreement between WARREN, JR. and WARREN, SR. is not invalidated due to illegality.

We in no way condone the unlawful activity undertaken by WARREN, SR.; however, we do not find it to be "substantial" in comparison to the other management responsibilities undertaken by WARREN, SR. Consequently, WARREN, SR.'s violations of the Act, as discussed herein, are severed.

G. If the Labor Commissioner grants Petitioners' *Petition to Determine Controversy*, would it be appropriate to award Petitioners their requested attorneys' fees of $2,025.00?

A request for attorneys' fees relating to violations of Labor Code section 1700.44 is addressed under Labor Code section 1700.25(e). This section provides:

> (e) If the Labor Commissioner finds, in proceedings under Section 1700.44, that the licensee's failure to disburse funds to an artist within the time required by subdivision (a) was a willful violation, the Labor Commissioner may, in addition to other relief under Section 1700.44, order the following:
>
> (1) Award reasonable attorneys' fees to the prevailing

artist.

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

Labor Code section 1700.25(e), in its clear and unambiguous language only contemplates such relief for artists whose licensed talent agents withhold money from them willfully. The requirements of Labor Code section 1700.25(e) do not apply here. As such, no such relief can be awarded to Petitioners herein.

IV. ORDER

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

1. Petitioners' *Petition to Determine Controversy* as to Respondent W Management is **dismissed** with prejudice.

2. Petitioner KERR's request that the agreement between Respondent WARREN, SR. and KERR be deemed void and unenforceable is **denied** as untimely.

3. Petitioner KERR's request that the Labor Commissioner declare no future commissions are owed to Respondent WARREN, SR. pursuant to their agreement is also **denied**.

4. The agreement between Petitioner WARREN, JR. and WARREN, SR. is not invalid under the Talent Agencies Act.

5. The agreement between Petitioner WARREN, JR. and WARREN, SR. is not unenforceable under the Talent Agencies Act.

6. No award of attorneys' fees and costs as requested by Petitioners is contemplated under Labor Code section 1700.25(e) and, as such, cannot be awarded to Petitioners.

Dated: January 10, 2020

Respectfully submitted,

PATRICIA SALAZAR
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: January 10, 2020

LILIA GARCIA-BROWER
State Labor Commissioner

PROOF OF SERVICE

(Code of Civil Procedure § 1013A(3))

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

I, Lindsey Lara, declare and state as follows:

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

On January 13, 2020, I served the foregoing document described as: **DETERMINATION OF CONTROVERSY,** on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Andrew B. Brettler, Esq. Melissa Y. Lerner, Esq. LAVELY & SINGER PROFESSIONAL CORPORATION 2049 Century Park East, Suite 2400 Los Angeles, CA 90067-2906 **Attorneys for Petitioner**	James R. Doyle, Esq. Injury Law Office of James R. Doyle 8335 Sunset Boulevard, Suite 333 West Hollywood, CA 90069 Alexander J. Petale, Esq. Law Offices of Alexander J. Petale 504 S. Alvarado Street, Suite 207 Los Angeles, CA 90057 **Attorneys for Respondent**

☑ **(BY CERTIFIED MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This 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 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 postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

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

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

Executed this 13th day of January 2020, at Long Beach, California.

L Lara
Lindsey Lara
Declarant