

1 PATRICIA SALAZAR, State Bar No. 249935  
STATE OF CALIFORNIA  
2 DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT  
3 320 West 4th Street, Suite 600  
Los Angeles, California 90013  
4 Telephone: (213) 897-1511  
Facsimile: (213) 897-2877  
5 Attorney for the Labor Commissioner  
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7

8 BEFORE THE LABOR COMMISSIONER  
9 OF THE STATE OF CALIFORNIA

10  
11 MARTIN MOYEDA, dba SOUND MUSIC  
RECORDS,

12  
13 Petitioner,

14 vs.

15  
16 JESUS OJEDA, aka JEUS OJEDA  
CAMARENA,

17  
18 Respondent.

CASE NO. TAC 49069

**DETERMINATION OF  
CONTROVERSY**

19  
20 **I. INTRODUCTION**

21 The above-captioned matter, a Petition to Determine Controversy under Labor  
22 Code section 1700.44, came on regularly for hearing in Los Angeles, California before the  
23 undersigned attorney for the Labor Commissioner assigned to hear this case. The hearing  
24 (hereinafter, referred to as the “TAC Hearing”) commenced on November 28, 2018 and  
25 was completed on April 23, 2019. Petitioner MARTIN MOYEDA, dba SOUND MUSIC  
26 RECORDS (hereinafter, referred to as “Petitioner” or “MOYEDA”) appeared and was  
27 represented by Robert D. Lipscomb. Respondent JESUS OJEDA, aka JESUS OJEDA  
28 CAMARENA, an individual (hereinafter, referred to as “Respondent” or “OJEDA”)

1 appeared and was represented by Manuel Huerta of BAZAN HUERTA & ASSOCIATES,  
2 P.C. Armando Barrera, a certified interpreter, was also present at the TAC Hearing.

3 The parties submitted their post-hearing briefs on June 14, 2019. The matter was  
4 taken under submission. Due consideration having been given to the testimony,  
5 documentary evidence and arguments presented, the Labor Commissioner hereby adopts  
6 the following determination (hereinafter, referred to as the “Determination”).

## 7 **II. FINDINGS OF FACT**

8 1. In approximately 2011, MOYEDA served as an account executive for  
9 Liberman Broadcasting where he sold radio and television advertising. Because he had  
10 worked in the entertainment business, MOYEDA decided to pursue an opportunity and  
11 attempt to manage an artist. Around 2010 or 2011, MOYEDA became familiar with  
12 OJEDA who belonged to a music group from Mexico called *Los Parientes*. MOYEDA  
13 decided to explore the possibility of managing OJEDA.

14 2. Around 2010 or 2011, MOYEDA and OJEDA spoke by phone. During the  
15 conversation, OJEDA agreed to come to California to meet MOYEDA in person at  
16 MOYEDA’s birthday party. After MOYEDA heard OJEDA perform at his birthday party,  
17 MOYEDA spoke to OJEDA about the nature of the business, what it took to be on the  
18 radio, and what services MOYEDA could provide OJEDA. These services included  
19 “position[ing] the artist,” such as giving him access to program directors who decided  
20 which songs would be played on the radio, creating exposure for OJEDA on the radio,  
21 television and social media, and promoting any albums OJEDA would record while under  
22 contract with MOYEDA.

23 3. On September 20, 2011, MOYEDA and OJEDA signed a contract entitled,  
24 *Artist Management Agreement* (hereinafter, referred to as the “Agreement”). The original  
25 Agreement was signed in Spanish, but MOYEDA provided a translated copy during the  
26 TAC Hearing.<sup>1</sup> Per the Agreement, the parties agreed MOYEDA, or his dba, Sound Music  
27 Records, would serve as manager for OJEDA and his music group, *Jesus Ojeda y Sus*

28 <sup>1</sup> Petitioner’s Exhibits 1 and 2.

1 *Parientes*. The Agreement stated MOYEDA would represent OJEDA in “all matters  
2 regarding his activities, live performances, album recordings, videos, movies, television,  
3 etc. . . . The Agreement provided MOYEDA would receive 30% of all “money profits that  
4 [OJEDA] receive[d] after operational expenses from the events performed” were paid.

5 4. OJEDA is an artist who is the lead singer and guitarist of the band, *Jesus*  
6 *Ojeda y Sus Parientes*.

7 5. MOYEDA is not a licensed talent agent.

8 6. MOYEDA testified he obtained for OJEDA a live radio event in Los  
9 Angeles which provided OJEDA a “huge boost” to his career. OJEDA was not  
10 compensated for this event.

11 7. Around 2012, OJEDA began performing at other locations around the  
12 United States. OJEDA performed at concerts every weekend throughout the United States  
13 during this time. Regarding the procuring of these events, MOYEDA testified that a  
14 booking agent named, Javier Aguilar (hereinafter, referred to as “AGUILAR”) would  
15 obtain these events for OJEDA through his company, J&M Entertainment (hereinafter,  
16 referred to as “J&M”). AGUILAR would inform MOYEDA of these events who in turn  
17 would communicate the events to OJEDA, including how much money OJEDA was being  
18 offered for the employment. OJEDA would approve the engagement, MOYEDA would  
19 communicate this information to AGUILAR, and the employment would be booked.  
20 MOYEDA testified he was the “messenger” between AGUILAR and OJEDA.

21 8. MOYEDA testified OJEDA had the “final say” when it came to money. If  
22 OJEDA did not agree with the amount he was offered, he would reject the offer and  
23 would not do the performance. MOYEDA testified AGUILAR would always negotiate  
24 with the venue owners to try to obtain more compensation for OJEDA.

25 9. MOYEDA testified he did not know if AGUILAR was a licensed talent  
26 agent. No evidence was presented to demonstrate AGUILAR was a licensed talent agent.

27 10. MOYEDA and AGUILAR were business partners of Sound Music Records,  
28 the dba or company that entered into the Agreement with OJEDA. MOYEDA is the

1 President and owner of Sound Music Records.

2 11. MOYEDA testified he has never worked for J&M in any capacity and that  
3 he was not an officer or director of J&M. MOYEDA further testified that Sound Music  
4 Records and J&M did not share the same address, employees, business accounts, bank  
5 accounts, or any other assets.

6 12. MOYEDA testified AGUILAR booked OJEDA through J&M because  
7 AGUILAR's strength was booking performers, and he had already been doing this with  
8 other performers through J&M. MOYEDA also testified AGUILAR knew how to  
9 negotiate and had the contacts to procure employment for performers.

10 13. During OJEDA's trips to perform at different venues, MOYEDA was  
11 responsible for booking OJEDA's lodging and airplane tickets. MOYEDA travelled with  
12 OJEDA on these trips and would do "anything" OJEDA needed such as, for example,  
13 ensuring OJEDA arrived safely at the hotel, conducting sound checks, and helping  
14 OJEDA communicate with others given OJEDA primarily spoke Spanish.

15 14. As part of securing the engagement, the venue operators wishing to hire  
16 OJEDA would pay AGUILAR what MOYEDA referred to as a "good faith deposit." This  
17 deposit confirmed the venue operators "were good" for the performance. The deposit  
18 reflected a percentage of the total amount to be paid to OJEDA for his performance at that  
19 venue. AGUILAR would deposit the amounts paid by the venue operators into a Chase  
20 bank account that was under the name, "MARTIN MOYEDA, DBA SOUND MUSIC  
21 ENTERTAINMENT." MOYEDA or his agents would withdraw funds from this account  
22 to pay for expenses incurred on behalf of OJEDA during the trips he took to perform at  
23 different venues. These expenses varied from car rentals, lodging, air fare, and  
24 restaurants.<sup>2</sup> MOYEDA testified these monetary amounts were deposited in his account  
25 for multiple reasons, including, the engagements were initially paid for in cash, the  
26 monies were used to pay for travel expenses while OJEDA performed, and because  
27 OJEDA was not allowed to have a bank account since he did not live in this country.

28 <sup>2</sup> See Petitioner's Exhibits 3 and 4.

1           15.     After a performance ended, the venue operator would pay the remaining  
2 balance of what was owed. The booking agent would take his percentage, MOYEDA  
3 would then deduct expenses incurred for the trip, *e.g.*, flights, food, with the remaining  
4 balance split 70/30 between OJEDA and MOYEDA, respectively. This was a typical  
5 arrangement for most of these performances.

6           16.     OJEDA testified MOYEDA always booked the events. However, he then  
7 testified he did not know whether it was MOYEDA or someone else booking the events  
8 but that OJEDA communicated with MOYEDA about the events.

9           17.     OJEDA further testified he became aware of AGUILAR when he first began  
10 working with MOYEDA. He also testified he hardly had any contact or any type of  
11 relationship with AGUILAR, followed by testimony that it was both MOYEDA and  
12 AGUILAR who booked events for him. OJEDA then testified it was AGUILAR who  
13 booked more events for him than MOYEDA.

14           18.     As part of his promotional efforts, MOYEDA had OJEDA featured in  
15 multiple magazines, including coverage of OJEDA's nomination for song of the year by  
16 the Latin Billboard Awards, interviews, and a quote by a popular radio program director  
17 from Los Angeles regarding OJEDA's song, *Estilo Italiano* ("Italian Style"). MOYEDA  
18 also promoted OJEDA by creating 2013 calendars featuring OJEDA's image.<sup>3</sup> Several of  
19 these promotional materials contained Petitioner's logo on the cover, as well as contact  
20 information for MOYEDA and AGUILAR under the logo. If people called him to book  
21 employment for OJEDA based on this contact information, MOYEDA testified he would  
22 forward that information to AGUILAR.

23           19.     Around 2012 or 2013, MOYEDA and OJEDA conducted a Miami tour.  
24 During the tour, OJEDA appeared on numerous television shows including *El Gordo y la*  
25 *Flaca* and *Sabado Gigante*, which are popular shows among the Spanish-speaking  
26 community.<sup>4</sup> MOYEDA arranged to have OJEDA appear on all shows by paying a local

27 \_\_\_\_\_  
28 <sup>3</sup> Petitioner's Exhibits 6-8.

<sup>4</sup> Petitioner's Exhibits 10 and 11.

1 contact in Miami to secure Respondent's appearance on the shows. OJEDA was not paid  
2 for these appearances.

3 20. Around June 2014, AGUILAR communicated to MOYEDA that he would  
4 not be working as a booking agent anymore. AGUILAR then reassigned his booking  
5 duties to a person named, Jorge (last name unknown), who had already been working with  
6 him. Between approximately June 2014 to June 2015, MOYEDA worked with the  
7 booking agent, Jorge.

8 21. OJEDA stopped working with MOYEDA in June 2015. OJEDA began  
9 working directly with the booking agent who replaced AGUILAR.

10 22. On April 20, 2016, MOYEDA filed suit in Los Angeles Superior Court  
11 against OJEDA for allegations of monies owed to MOYEDA by OJEDA pursuant to the  
12 Agreement. OJEDA's Answer in the Superior Court action invoked the Talent Agencies  
13 Act (hereinafter, referred to as the "TAA" or the "Act") as a defense. After OJEDA raised  
14 the issue of the TAA at trial, the Superior Court dismissed MOYEDA's action. MOYEDA  
15 appealed the Superior Court judgment and also filed a Petition to Determine Controversy  
16 (hereinafter, referred to as "Petition") with the Labor Commissioner on September 8,  
17 2017. On February 25, 2019, the Second District Court of Appeal issued an unpublished  
18 opinion that reversed the judgment of the Superior Court and ordered MOYEDA's civil  
19 action be reinstated, but stayed the civil action pending this Determination.

20 23. MOYEDA requests the Labor Commissioner issue a determination that  
21 MOYEDA's actions did not violate the Act and, therefore, he is entitled to receive  
22 compensation for the services he performed for OJEDA. In the alternative, MOYEDA  
23 requests the Labor Commissioner sever those services should she find a violation or  
24 violations of the TAA, but further rule MOYEDA is entitled to compensation for the  
25 remaining services MOYEDA performed.

26 24. OJEDA contends MOYEDA's actions violate the Act, and that he  
27 wrongfully seeks to recover payment from OJEDA. OJEDA further contends MOYEDA's  
28 *Petition* is barred under the statute of limitations because his *Petition* was filed on

1 September 8, 2017 but alleges OJEDA breached the Agreement in approximately June  
2 2015. OJEDA requests the Labor Commissioner void the Agreement *ab initio* and dismiss  
3 MOYEDA's *Petition* with prejudice.

4 **III. LEGAL ANALYSIS**

5 **Issues**

- 6 **A. Is Petitioner's *Petition* barred by the statute of limitations pursuant to**  
7 **Labor Code section 1700.44(c) and *Styne v. Stevens* (2001) 26 Cal.4th 42?**
- 8 **B. If Petitioner's *Petition* is not barred by the statute of limitations, has**  
9 **MOYEDA acted as an unlicensed talent agent and therefore violated the**  
10 **TAA?**
- 11 **C. Is the appropriate remedy to void the Agreement *ab initio* or sever the**  
12 **offending practices under *Marathon Entertainment, Inc. v. Blasi* (2008) 42**  
13 **Cal.4th 974 given MOYEDA's violation of the TAA for the Live Radio**  
14 **Event in Los Angeles and the Miami Tour?**

15 Labor Code section 1700.4(a) defines "talent agency" as:

16 [A] person or corporation who engages in the occupation of  
17 procuring, offering, promising, or attempting to procure  
18 employment or engagements for an artist or artists, except that the  
19 activities of procuring, offering, or promising to procure recording  
20 contracts for an artist or artists shall not of itself subject a person  
21 or corporation to regulation and licensing under this chapter.

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

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

OJEDA is an "artist" 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

1 carry on the occupation of a talent agency without first procuring a license therefor from  
2 the Labor Commissioner.”

3 It is undisputed MOYEDA did not possess a talent agency license during the  
4 relevant time period he served as a manager for OJEDA.

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

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

16 **A. Is Petitioner’s *Petition* barred by the statute of limitations pursuant to**  
17 **Labor Code section 1700.44(c) and *Styne v. Stevens* (2001) 26 Cal.4th 42?**

18 **i. The TAA’s One-Year Statute of Limitations**

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

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

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

26 Under well-established authority, a defense may be raised at  
27 any time, even if the matter alleged would be barred by a statute  
28 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



1 unenforceable, even if the same matters, alleged as grounds for  
2 restitution after rescission, would be untimely . . .

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

4 Thus, the one-year statute of limitations under Labor Code section 1700.44(c) does  
5 not bar an artist from asserting as a defense that a contract is illegal where a manager, for  
6 example, acted as an unlicensed talent agent. (See *Id.* at 53-54; see also *Hyperion*  
7 *Animation Co., Inc. v. Toltec Artists, Inc.*, TAC Case No. 7-99).

8 The procedural posture in this case presents a unique situation in that it was the  
9 manager, MOYEDA, and *not* the artist, OJEDA, who filed a petition with the Labor  
10 Commissioner. Notwithstanding, OJEDA invoked the TAA in his Answer in the Superior  
11 Court action MOYEDA filed against him. Applying *Styne*, the statute of limitations does  
12 not bar Petitioner's *Petition* where OJEDA previously raised the TAA as a defense in his  
13 Answer to the Superior Court action filed against him by MOYEDA.

14 That OJEDA is respondent here, and not the petitioner, is of no consequence to this  
15 analysis. OJEDA raised the defense of a TAA violation in his Answer and at no time  
16 during the TAC Hearing disputed or offered evidence to suggest he had done otherwise.  
17 Thus, while OJEDA now seems to reverse his position and posit the untimeliness of  
18 MOYEDA's *Petition*, this Hearing Officer finds that argument unpersuasive and  
19 questionable given OJEDA's previous action of raising the TAA as a defense in his  
20 Answer.

21 **B. If MOYEDA's *Petition* is not barred by the statute of limitations, has**  
22 **MOYEDA acted as an unlicensed talent agent and therefore violated the**  
23 **TAA?**

24 A talent agent is a corporation or person who procures, offers, promises, or  
25 attempts to procure employment or engagements for an artist or artists. (See Labor Code  
26 § 1700.4(a)). An unlicensed talent agent who performs such activities pursuant to Labor  
27 Code section 1700.4(a) is in violation of the TAA. While not specifically defined by the  
28 TAA, the different definitions for employment require an act on behalf of the employed.

1 (See *Malloy v. Board of Education* (1894) 102 Cal. 642, 646; Industrial Welfare  
2 Commission Wage Order No. 12-2001 (hereinafter, referred to as “IWC Wage Order No.  
3 12”), section 2(D)-(F)).

4 The Labor Commissioner has ruled, “[p]rocurement could include soliciting an  
5 engagement; negotiating an agreement for an engagement; or accepting a negotiated  
6 instrument for an engagement.” (*McDonald v. Torres*, TAC 27-04; *Gittelman v. Karolat*,  
7 TAC 24-02). Additionally, “[p]rocurement” includes any active participation in a  
8 communication with a potential purchaser of the artist’s services aimed at obtaining  
9 employment for the artist, regardless of who initiated the communication or who finalized  
10 the deal. (*Hall v. X Management*, TAC 19-90). Furthermore, the word “procure” is  
11 defined as “1. To obtain (something, esp[ecially] by special effort or means. 2. To achieve  
12 or bring about (a result). . . .” (Black’s Law Dictionary (11th Ed. 2019)). The fact a  
13 manager receives no commission from an event they procured does not mean the event is  
14 exempted from the Act. (See *Park v. Deftones* (1999) 71 Cal.App.4th 1465, 1466-1467)(.  
15 . “the [A]ct does not expressly include or exempt procurement when no compensation is  
16 paid.”)).

#### 17 **i. The Live Radio Event in Los Angeles**

18 During the TAC Hearing, MOYEDA testified he obtained a live radio event for  
19 OJEDA in Los Angeles, which provided OJEDA a “huge boost” to his career. While  
20 OJEDA was not compensated for this event and, therefore, MOYEDA received no  
21 commissions, Petitioner ultimately intended that such efforts to obtain this event for  
22 OJEDA would yield other performance opportunities for Respondent. (*Id.*). Hence, it is  
23 irrelevant OJEDA was not paid for this event or that MOYEDA received no commissions  
24 when the ultimate goal from this “huge boost” was to generate future income or  
25 compensation for MOYEDA. (*Id.*).

#### 26 **ii. The Miami Tour**

27 MOYEDA also testified that they conducted a Miami tour around 2012 or 2013.  
28 During that tour, OJEDA appeared on numerous television shows including *El Gordo y la*

1 *Flaca* and *Sabado Gigante*. MOYEDA testified he arranged to have OJEDA appear on  
2 these television shows by paying a local contact in Miami to secure Respondent's  
3 appearance on the shows. OJEDA was not paid for these appearances.

4 As with the Live Radio Event in Los Angeles, Petitioner's ultimate goal was to  
5 receive compensation for performance opportunities, future recording albums, and other  
6 events that would result from OJEDA's appearances on the television shows. Because  
7 MOYEDA arranged for OJEDA's appearances on these television shows, this act is  
8 subject to the TAA, albeit the fact MOYEDA received no compensation for it. (*Id.*).

9 Based on the above, MOYEDA violated the TAA with respect to the Live Radio  
10 Event in Los Angeles and for OJEDA's television appearances during the Miami Tour.

### 11 **iii. OJEDA's Performances on Different Trips**

12 The majority of the evidence presented during the TAC Hearing centered on the  
13 different trips MOYEDA, or agents on his behalf, took with OJEDA while he performed  
14 at different venues throughout the United States. MOYEDA testified it was AGUILAR, a  
15 booking agent who procured employment for OJEDA through his separate entity, J&M  
16 Entertainment, even though AGUILAR and MOYEDA were business partners of Sound  
17 Music Records. MOYEDA further testified he did not procure employment for OJEDA  
18 and was, instead, a conduit between OJEDA and AGUILAR because he would convey to  
19 OJEDA any offers of employment procured by AGUILAR and what compensation was  
20 offered to OJEDA. MOYEDA further testified his primary purpose was to promote  
21 OJEDA, position him as an artist in the United States and, among other duties, book his  
22 travel arrangements and lodging while on these trips. AGUILAR would deposit funds he  
23 received from the venue operators once an event for OJEDA had been booked into an  
24 account that was under the name of MOYEDA, "DBA SOUND MUSIC  
25 ENTERTAINMENT." MOYEDA would then use those funds to pay for the expenses  
26 related to these trips. Once OJEDA finished the performance and was paid, MOYEDA  
27 would take those funds, provide AGUILAR with his percentage, deduct the expenses  
28 incurred for the trip, and the remaining balance would be split 70/30 between OJEDA and

1 MOYEDA, respectively.

2 OJEDA's testimony regarding whether MOYEDA procured any employment for  
3 him was mixed and confusing. OJEDA testified MOYEDA always booked the events, but  
4 later testified he did not know whether it was MOYEDA or someone else who booked the  
5 events. He also testified he hardly had any contact or any type of relationship with  
6 AGUILAR, followed by testimony it was both MOYEDA and AGUILAR who booked  
7 the events for him. OJEDA then testified AGUILAR booked more events for him than did  
8 MOYEDA.

9 AGUILAR's and MOYEDA's actions – *i.e.*, acting as business partners under the  
10 same company, AGUILAR procuring events under J&M, the deposits of monies from  
11 procured events into MOYEDA's bank account, listing both MOYEDA and AGUILAR as  
12 contacts under Sound Music Records's logo in promotional materials - raise questions  
13 regarding the propriety of the arrangement between them as it relates to OJEDA. OJEDA  
14 indeed contends such actions demonstrate MOYEDA procured employment for OJEDA.  
15 However, OJEDA's own testimony is confusing and mixed as to his personal knowledge  
16 regarding who procured employment for him. What is consistent and undisputed by both  
17 parties is that MOYEDA would communicate to OJEDA what events or performances  
18 were available to him. That, standing alone, does not rise to a level of "procurement" as  
19 contemplated by the TAA.

20 Respondent failed to provide additional and adequate evidence to support his  
21 defense that MOYEDA violated the TAA when he procured employment for him. For  
22 example, he failed to provide any corroborating testimony from AGUILAR who may  
23 have clarified it was MOYEDA who procured employment for OJEDA. In addition,  
24 Respondent provided no documentary evidence such as correspondence, contracts or any  
25 other written communications to support his defense that MOYEDA procured  
26 employment for him. Respondent's scant evidence failed to demonstrate how MOYEDA  
27 negotiated an agreement to procure an event or what active participation or  
28 communication MOYEDA engaged in with the venue operators to procure employment.

1 The evidence regarding MOYEDA’s withdrawal of funds from his bank account to pay  
2 for travel-related expenses do not rise to a level of procuring employment “by special  
3 effort or means” or to achieve the result of such procurement. (See Black’s Law  
4 Dictionary (11th Ed. 2019)). MOYEDA’s testimony here simply shows he used the funds  
5 to pay for travel-related expenses for events that had already been achieved or brought  
6 about vis-à-vis AGUILAR. (*Id.*).

7 Because the evidence fails to sufficiently show MOYEDA procured employment  
8 for OJEDA, it follows Petitioner did not violate the TAA as it relates to trips OJEDA took  
9 to perform at different engagements around the country.

10 **C. Is the appropriate remedy to void the Agreement *ab initio* or sever the**  
11 **offending practices under *Marathon Entertainment, Inc. v. Blasi* (2008) 42**  
12 **Cal.4th 974 given MOYEDA’s violation of the TAA for the Live Radio**  
13 **Event in Los Angeles and the Miami Tour?**

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

22 Courts are to look to the various purposes of the contract. If the  
23 central purpose of the contract is tainted with illegality, then the  
24 contract as a whole cannot be enforced. If the illegality is  
25 collateral to the main purpose of the contract, and the illegal  
26 provision can be extirpated from the contract by means of  
27 severance or restriction, then such severance and restriction are  
28 appropriate. [Citations omitted].

(*Marathon, supra* at 996).

In this case, we find that “the interests of justice...would be furthered’ by

1 severance.” (Id.). The evidence shows MOYEDA performed a combination of various  
2 duties in his capacity as manager for OJEDA. These services included positioning him as  
3 an artist, providing him access to program directors of different radio stations, creating  
4 exposure for him on the radio, television and social media, promoting any albums OJEDA  
5 would record while under contract with MOYEDA, and booking OJEDA’s travel  
6 arrangements and lodging while he was on tour. The evidence shows there were a  
7 combination of tasks MOYEDA performed for OJEDA.

8 Of note here is the additional fact that the evidence shows MOYEDA violated the  
9 TAA in two engagements, specifically, for the Live Radio Event in Los Angeles and for  
10 OJEDA’s television appearances during the Miami Tour. These can hardly be enough to  
11 invalidate an entire contract or management relationship that lasted approximately four  
12 years. We further conclude the illegality of these two acts was certainly collateral to the  
13 main purpose of the parties’ management relationship. Accordingly, under the doctrine of  
14 severability, we sever those two acts of illegal procurement. The Agreement between  
15 MOYEDA and OJEDA is not invalidated due to illegality.

16 We in no way condone the unlawful activity undertaken by MOYEDA; however,  
17 we do not find it to be “substantial” in comparison to the other management  
18 responsibilities undertaken by MOYEDA. Consequently, MOYEDA’s violations of the  
19 Act, as discussed herein, are severed.  
20

#### 21 **IV. ORDER**

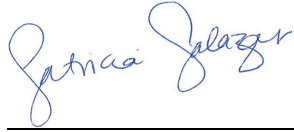
22 For the reasons set forth above, IT IS HEREBY ORDERED that:

- 23 1. The Agreement between Petitioner MOYEDA and Respondent OJEDA is  
24 not invalid under the Talent Agencies Act.
- 25 2. The Agreement between Petitioner MOYEDA and Respondent OJEDA is  
26 not unenforceable under the Talent Agencies Act.  
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Dated: January 10, 2020

Respectfully submitted,

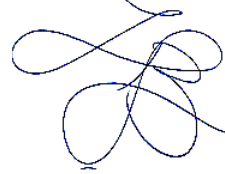


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PATRICIA SALAZAR  
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: January 10, 2020



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LILIA GARCIA-BROWER  
State Labor Commissioner

1 **PROOF OF SERVICE**

2 (Code of Civil Procedure § 1013A(3))

3 STATE OF CALIFORNIA )  
4 COUNTY OF LOS ANGELES ) S.S.

5 I, Lindsey Lara, declare and state as follows:

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

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

<p>10 Robert D. Lipscomb, Esq. 11 4725 Placidia Avenue Toluca Lake, CA 91602</p> <p>12 <b>Attorney for Petitioner</b></p>	<p>John F. Bazan, Esq. Manuel Huerta, Esq. BAZAN HUERTA &amp; ASSOCIATES, P.C. Los Angeles – East Law Building 5345 East Olympic Boulevard Los Angeles, CA 90022</p> <p><b>Attorneys for Respondent</b></p>
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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  
20 e-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 that the above is true and correct.

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

23 

24 \_\_\_\_\_  
25 Lindsey Lara  
26 Declarant