1	EDNA GARCIA EARLEY, Bar No. 19566 STATE OF CALIFORNIA	51	
2	DEPARTMENT OF INDUSTRIAL RELATIONS DIVISION OF LABOR STANDARDS ENFORCEMENT		
3	320 W. 4th Street, Suite 430		
4	Los Angeles, California 90013 Telephone: (213) 897-1511 Facsimile: (213) 897-2877		
5	Attorney for the Labor Commissioner	, ; :	
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8	BEFORE THE LAE	SOR COMMISSIONER	
9	OF THE STATE	E OF CALIFORNIA	
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11	LEE JAMES,	CASE NO. TAC 4699	· · ·
12		DETERMINATION OF CONTROVERSY	
13	Petitioner,	CONTROVERSI	
14	VS.		· •
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16	DONNA BRYAN,		
17	Respondent.	· · · · · · · · · · · · · · · · · · ·	
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19	The above-captioned matter, a	Petition to Determine Controve	ersv under
20	The above-captioned matter, a Petition to Determine Controversy under Labor Code §1700.44, came on regularly for hearing on July 10, 2008 in Los Angeles,		
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22	California, before the undersigned attorney for the Labor Commissioner assigned to hear this case. Petitioner LEE JAMES ("Petitioner") appeared represented by Glen Litwak,		
23	Esq. of Law Offices of Litwak and Havkin. Respondent DONNA BRYAN, (hereinafter,		
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25	"Respondent"), who was personally served with the Petition to Determine Controversy or September 10, 2007, failed to appear but submitted an Answer to the Petition on October		
26	12, 2007, faxed a Request for Continuance on July 9, 2009 and faxed a Motion to Dismiss		
27	(based on the statute of limitations) on July 10, 2008, the date of the hearing. Respondent		
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failed to serve Petitioner with a copy of the Motion to Dismiss. As such, the Motion to Dismiss will not be considered. Richard Donato, who was subpoenaed by Petitioner, appeared as a witness.

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.

FINDINGS OF FACT

1. Petitioner, a resident of California, is a singer and recording artist who performs in his own band named "*Fear*."

9 2. Respondent is a resident of the State of Alabama. At no time relevant to 10 these proceedings has Respondent been a licensed talent agent in the State of California. 11 3. The parties entered into an Artist Management Contract ("management 12 contract") on April 20, 2005 for a two year term. The management contract is the subject 13 of a breach of contract action filed in Alabama by Respondent against Petitioner. The 14 civil action is stayed pending resolution of this matter. Petitioner seeks to void the 15 management contract on the grounds that Respondent procured work in California for him without having first obtained a talent agency license from the Labor Commissioner. 16

Specifically, Petitioner contends that Respondent telephonically procured
 and negotiated a contract with Promoter Richard "Dick" Donato of EvelDick Productions,
 for *Fear* to perform on Saturday, October 29, 2005 at the Grand Olympic Auditorium
 ("Halloween concert"). Petitioner submitted a contract for this event showing that it was
 signed by Respondent. Petitioner testified that during the time the Halloween concert was
 booked, his band did not have a booking agent.

S. Richard Donato aka Dick Donato, who was subpoenaed as a witness by
Petitioner, is a promoter who owns EvelDick Productions. Mr. Donato admitted that he
negotiated the Halloween concert contract directly with Respondent. Mr. Donato also
testified that he dealt only with Respondent on this deal because he felt Petitioner was too
difficult to deal with directly.

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6. Petitioner filed this action on July 6, 2007 in an effort to invalidate the management contract. He is not seeking any affirmative relief by way of this Petition.

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LEGAL ANALYSIS

Petitioner, a singer and recording artist is an "artist" within the meaning of
Labor Code §1700.4(b).

Labor Code §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 §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."

13 3. It is undisputed that Respondent has never been licensed as a talent agency 14 in the State of California. The evidence presented by Petitioner and his witness, 15 establishes that Respondent procured employment for Petitioner's band to perform at a 16 Halloween concert in Los Angeles, California in violation of the Talent Agencies Act ("Act").¹ Mr. Donato, the promoter for the Halloween concert, confirmed that 17 18 Respondent negotiated the deal on behalf of Petitioner. Furthermore, Petitioner submitted 19 a copy of the contract for the Halloween concert which was signed by Respondent. 20 4. While Respondent did not appear at the hearing, she did file an Answer 21 arguing that the case should be dismissed based on two grounds: (1) the statute of 22 limitations set forth at Labor Code \$1700.44(c); and (2) under the doctrine of waiver. 23 5. With regard to Respondent's statute of limitations argument, we note that 24 Petitioner is not seeking affirmative relief in this matter. Instead, Petitioner is seeking to 25 void the management contract entered into by the parties as a defense to a civil action

Personal jurisdiction over this Respondent is not at issue in this matter for the following reasons: (1) Respondent has never contested <u>the California Labor Commissioner's</u> jurisdiction; and (2) in any event, we find that there are sufficient minimum contacts in the State of California to assert jurisdiction over Respondent. *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316; *Sibley v. Superior Court* (1976) 16 Cal.3d 442.

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initiated by Respondent against Petitioner in the State of Alabama. Accordingly, we find,
 as the California Supreme Court found in *Styne v. Stevens* (2001) 26 Cal.4th 42, 54, "that
 the statute of limitations set forth in section 1700.44(c) does not bar [Petitioner's]
 assertion of his contract defense based on [Respondent's] alleged violation of the Talent
 Agencies Act."

6 6. Respondent also argues that this action is barred under the doctrine of 7 waiver because Petitioner has instituted and dismissed two prior lawsuits against 8 Respondent in the Superior Court of California during the last eighteen months. 9 Respondent claims that the first lawsuit was voluntarily dismissed by Petitioner and that 10 the second lawsuit was dismissed for lack of personal jurisdiction. We find this argument 11 to be without merit since the Labor Commissioner has exclusive jurisdiction over 12 controversies arising under the Talent Agencies Act, and this is the first time Petitioner. 13 has filed a petition against Respondent with the Labor Commissioner.

14 7. "[A]n agreement that violates the licensing requirements is illegal and
15 unenforceable..." Waisbren v. Peppercorn Productions, Inc. (1995) 41 Cal.App.4th 246,
16 262. Accordingly, the management contract between the parties is deemed void ab initio
17 based on Respondent's violation of the Act.

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DETERMINATION OF CONTROVERSY

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. 1	ORDER
2	For the reasons set forth above, IT IS HEREBY ORDERED that the Artist
. 3	Management Contract entered into between Petitioner and Respondent on April 20, 2005
4	is deemed void <i>ab initio</i> .
5	DATED: August 29, 2008 Respectfully submitted,
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7	Tolong Paragrate Open
. 8	By: <u>HAMMAUCULU</u> EDNA GARCIA EARLEY
9	Attorneys for the Labor Commissioner
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12	ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER
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14	Dated: 0 0 9 And Row And
·····	By:
15	ANGELA BRADSTREET
15	ANGELA BRADSTREET State Labor Commissioner
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