

1 **STATE OF CALIFORNIA**
DEPARTMENT OF INDUSTRIAL RELATIONS
2 DIVISION OF LABOR STANDARDS ENFORCEMENT
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7 **DIVISION OF LABOR STANDARDS ENFORCEMENT**
8 **DEPARTMENT OF INDUSTRIAL RELATIONS**
9 **STATE OF CALIFORNIA**
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11 ANDREA JOY COOK, also known as A.J.
12 Cook and/or Andrea Anderson, an individual;
SCATTERED JOY PRODUCTION, INC., a
13 California Corporation;

14 *Petitioners,*

15
16 *v.*

17 NEIL MEYER, an individual; MEYER &
18 DOWNS, LLP, a California limited liability
partnership.

19 *Respondents.*
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Case No.: TAC - 52743

DETERMINATION OF CONTROVERSY

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I. INTRODUCTION

On August 23, 2023, the above-captioned matter, a Petition to Determine Controversy under Labor Code section 1700.44, came before an attorney for the Labor Commissioner assigned to hear this case. Petitioners Andrea Joy Cook, a/k/a A.J. Cook and/or Andrea Anderson, an individual (“AJ Cook”), and Scattered Joy Productions, Inc., a California Corporation (“SJP”) (hereinafter, collectively referred to as “Petitioners”) were represented by Michael J. Saltz and Lani Levine. Respondents Neil Meyer, an individual (“Meyer”), and Meyer & Downs, LLP, a California Limited Liability Partnership (“M&D”) (hereinafter, collectively referred to as “Respondents”) were represented by Christopher B. Good and Jeremy S. Berman. The original petition was filed on October 22, 2019.

The parties submitted post-hearing briefing on October 23, 2023. The matter was taken under submission. Due to the hearing officer’s unavailability because of retirement, health or otherwise prior to the issuance of the determination of the controversy, this case was transferred to the undersigned attorney for the Labor Commissioner. Due consideration having been given to the testimony, documentary evidence, and arguments presented, the Labor Commissioner hereby adopts the following determination.

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II. FINDINGS OF FACT

1. This case arises out of a dispute between Petitioners AJ Cook and SJP against Respondents Meyer and M&D regarding whether Respondents unlawfully procured AJ Cook work in violation of the Talent Agencies Act (“TAA”). The following undisputed facts were presented during the hearing and in the pre and post hearing briefs.

2. AJ Cook is an actress who had a regular role on the television series “Criminal Minds.” AJ Cook is an artist pursuant to Labor Code section 1700.4(b). At all relevant times, Petitioners were not represented by a licensed talent agent or agency.

3. Respondents are entertainment attorneys. Respondents are not licensed talent agents or talent agencies and they did not work at the direction of any person or entity holding such a license.

4. In 2013, Petitioners entered into an oral retainer agreement (“2013 Oral Retainer Agreement”) with Meyer and through his former law firm – Stone, Meyer, Genow, Smelkinson & Binder, LLP (“Stone Meyer”) to negotiate AJ Cook’s renewal contract on the television series “Criminal Minds.”

1 (“Criminal Minds 2013 Agreement”). In the 2013 Oral Retainer Agreement between Petitioners and
2 Meyer, Petitioners agreed to pay 2.5% of gross earnings from the Criminal Minds 2013 Agreement and
3 5% of any other employment in which Meyer assisted in negotiating.

4 5. In 2015, Petitioners entered into an another oral retainer agreement (“2015 Oral Retainer
5 Agreement”) with Meyer and through his law firm Stone Meyer to negotiate AJ Cook’s renewal contract
6 for the television series “Criminal Minds.” (“Criminal Minds 2015 Agreement”). In the 2015 Oral Retainer
7 Agreement between Petitioners and Meyer, Petitioners agreed to pay 2.5% of gross earnings from the
8 Criminal Minds 2015 Agreement to Meyer.

9 10 6. On or about January 2016, Meyer left Stone Meyer and formed a new law firm M&D. On
11 or about February 2016 Meyer and M&D sent over a standard retainer agreement to Petitioners that
12 included a 5% rate of compensation payable to M&D. This fee agreement was never signed by AJ Cook
13 or SJP.

14 7. On or about April 2017, ABC Studios offered AJ Cook a renewal contract for the
15 television series “Criminal Minds.” ABC Studios proposed, among other things, that AJ Cook be paid
16 \$135,000 per episode. Petitioners engaged with Meyer and M&D to negotiate on AJ Cook’s behalf. (“2017
17 Oral Retainer Agreement”).

18 8. Meyer and M&D agreed to represent AJ Cook in the renewal contract negotiation with
19 ABC Studios for the 2017 Season of Criminal Minds. AJ Cook did not sign the fee agreement with M&D
20 and instead relied on previous oral agreements where the rate of compensation was 2.5% of gross earnings
21 which was consistent with the prior oral agreements.

22 9. Respondents engaged in contract negotiations with ABC Studios for several months on
23 behalf of AJ Cook. Through the negotiations, ABC Studios and Petitioners entered into a written renewal
24 contract for the television series “Criminal Minds” with a compensation of \$190,000 per episode.
25 (“Criminal Minds 2017 Agreement”).
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1 10. In or about July 24, 2017, Respondents negotiated an agreement for Petitioners with Back
2 Fork LCC for AJ Cook’s services in relation to a motion picture tentatively titled “Back Fork” (“Back
3 Fork Agreement”).

4 11. It is the Back Fork Agreement and the Criminal Minds 2017 Agreement that are presently
5 in front of the Labor Commissioner.

6 12. On or about November 17, 2017, the Petitioners terminated the 2017 Oral Retainer
7 Agreement and stopped paying a commission of 5% for the 2017 Criminal Minds Agreement and the
8 Back Fork Agreement. AJ Cook testified that she was unaware that Respondents were being charged the
9 5% commission rather than the agreed upon 2.5% commission for her work on Criminal Minds.

10 13. On June 15, 2018, Respondent M&D filed a civil suit against the Petitioners in Los Angeles
11 Superior Court for damages, alleging the following causes of action: (1) breach of contract; (2) open book
12 account; (3) account stated; (4) promissory estoppel; (5) quantum meruit; (6) accounting and (7)
13 declaratory relief.

14 14. On August 7, 2018, Petitioners filed their Answer to the Complaint.

15 15. On August 19, 2019, the Los Angeles Superior Court granted Petitioners’ motion for a
16 judgment on the pleadings. The Court dismissed causes of actions 1, 2, 3, 4, and 7. The only surviving
17 causes of action are (5) quantum meruit and (6) accounting.

18 16. On October 22, 2019, the Petitioners filed a Petition to Determine Controversy with the
19 California Labor Commissioner seeking a determination that Respondents have violated the Talent
20 Agencies Act (“TAA”) and Respondents’ Agreements with the Petitioners are illegal, unenforceable and
21 void *ab initio*, and that Petitioners have no liability to the Respondents.

22 17. The civil suit in Los Angeles Superior Court has been stayed pending a decision by the
23 Labor Commissioner’s Office on the remaining causes of action.

24 **III. LEGAL DISCUSSION**

25 The issues in this case are:

- 26 • Did the Respondents timely file the Petition to Determine Controversy with the Labor
27 Commissioner?
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- 1 • Did Respondents unlawfully procure employment in violation of the TAA when they negotiated
2 on behalf of Petitioners' the 2017 Criminal Minds Agreement and the Back Fork Agreement?

3 **A. Did the Respondents timely file the Petition to Determine Controversy with the Labor**
4 **Commissioner?**

5 Labor Code section 1700.44(c) provides “that no action or proceeding shall be brought pursuant
6 to this chapter with respect to any violation which is alleged to have occurred more than one year prior
7 to the commencement of the action or proceedings. However, the Labor Commissioner has consistently
8 determined that the one year statute of limitations does not apply when the TAA is being raised as a
9 defense. The plain reading of Labor Code section 1700.44(c) suggests that it was not intended to bar a
10 defense to a claim for relief initiated by another. *See also, Styne v. Stevens* 26 Cal.4th 42 (2001).

11 Here, the Respondents' filed this Petition to Determine Controversy as an affirmative defense in
12 its Answer in the civil suit between the Petitioners and Respondents. The statute of limitations does not
13 apply when the TAA is invoked as a defense during a contract dispute.

14 **B. Did Respondents unlawfully procure employment in violation of the TAA when they**
15 **negotiated on behalf of Petitioners' the 2017 Criminal Minds Agreement and the Back**
16 **Fork Agreement?**

17 Under the TAA, “no person shall engage in or carry on the occupation of talent agency without
18 first procuring a license therefor from the Labor Commissioner.” Labor Code section 1700.5.

19 The TAA further defines a talent agency as a “person or corporation who engages in the
20 occupation of procuring, offering, promising, or attempting to procure employment or engagements for
21 an artist or artists, except that the activities of procuring, offering, or promising to procure recording
22 contracts for an artist or artist shall not of itself subject a person or corporation to regulation and licensing
23 under this chapter. Talent agencies may, in addition, counsel or direct artist in the development of their
24 professional career.” Labor Code section 1700.4.

25 Labor Code section 1700.4(b) defines “[a]rtists as actors or actresses rendering services on the
26 legitimate stage and in the production of motion pictures, radio artist, musical artist, musical organizations,
27 directors of legitimate stage, motion picture, cinematographers, composers, lyricist, arrangers, models, and
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1 other artist and persons rendering professional services in motion picture, theatrical, radio, television and
2 other entertainment enterprises.”

3 In the present case, there is no dispute that AJ Cook is an artist as defined by the TAA and that
4 Respondents were not a licensed talent agent or talent agency at all relevant times of this dispute. The
5 critical issue here is whether in negotiating the Criminal Minds 2017 Agreement and the Back Fork
6 Agreement the Respondents “engage in the occupation of procuring, offering, promising, or attempting
7 to procure employment or engagements,” as defined by section 1700.4(a).
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9 To determine this question we must look to the conduct of the Respondents. Here, the
10 Respondents are attorneys who practice in the area of entertainment law and perform no other services
11 than legal services, in the form of contract negotiation. The Respondents engaged in months of
12 negotiations with ABC Studios to increase the per episode compensation from \$135,000 to \$190,000 an
13 episode. The Respondents also engaged in contract negotiations for the Back Fork Agreement.
14 Respondents assert in their closing brief that legal services such as “reviewing, interpreting and negotiating
15 contracts are the fundamental underpinning of being a practicing attorney.”
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17 The Labor Commissioner has determined in its past decisions that the negotiation of an agreement
18 for the employment of an artist is “procuring . . . or attempting to procure employment or engagements”
19 within the meaning of section 1700.4(a)

20 The term “procure” as used in Labor Code §1700.4(a), means “to get
21 possession of: obtain, acquire, to cause to happen or be done: bring
22 about. Thus “procuring employment” under the Talent Agencies Act
23 is not limited to initiating discussions with potential purchasers of the
24 artist’s professional services or otherwise soliciting employment; rather
25 “procurement” includes any active participation in the communication
26 with a potential purchaser of the artist’s services aimed at obtaining
27 employment for the artist, regardless of who initiated the
28 communication. (Citations omitted) *Solis v. Blancarte*, (Cal.Lab.Com.,
September 30, 2013) TAC No. 27089, pages 6-7.

1 The Labor Commissioner has also determined that being a licensed attorney does not provide an
2 exemption from the TAA’s requirements that a person who procures or attempts to procure employment
3 for an artist be licensed as a talent agent.

4 It is evident that the functional scope of the TAA admits of no
5 exceptions and encompasses the procurement activities of respondent,
6 even though he is an attorney. In this regard, it is of no moment that
7 some of the skills respondents may have brought to the negotiations on
8 behalf of petitioner are the result of skills for which he has been licensed
9 as an attorney. As Labor Code section 1700.44 makes unequivocally
10 clear, when someone who is not licensed under the TAA wishes to bring
11 such skills to bear on negotiation of an artist’s contract, he must do so
12 “in conjunction with, and at the request of, a licensed talent agency.”
13 *Solis*, TAC 27089, at 8.

14 In *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974, 986, the Supreme Court has interpreted
15 the TAA as follows:

16 The Act establishes its scope through the functional, not titular,
17 definition. It regulates conduct, not labels; it is the act of procuring
18 (soliciting), not the title of one’s business, that qualifies one as a talent
19 agency and subjects one to the Act’s licensure and related
20 requirements. (1700.4., subd. (a).) Any person who procures
21 employment – any individual, any corporation, any manager – is a
22 talent agency subject to regulation (§§1700.4, subd. (a).)

23 When the TAC decision in *Solis* is read in conjunction with *Marathon* it is clear that negotiations
24 of contracts, even when performed by licensed attorneys would fall under the purview of the TAA and
25 subject attorneys to the regulations of the TAA.

26 In 1982, Assembly Bill 997 established the California Entertainment Commission. Labor Code
27 section 1702 directed the Commission to report to the Governor and Legislature as follows:

28 The Commission shall study the laws and practices of this state, State
of New York, and other entertainment capitals of the United States
relating to the licensing of agents, and representatives of artists in the
entertainment industry in general ... so as to enable the commission
to recommend to the Legislature a model bill regarding this licensing.

The Commission concluded:

[I]n searching for the permissible limits to activities in which an
unlicensed personal manager **or anyone** could engage in procuring
employment for an artist without being license as a talent agent,... there

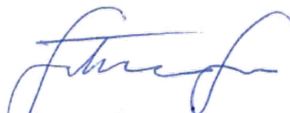
1 is no such activity, there are no such permissible limits, and that the
2 prohibitions of the Act over the activities of anyone procuring
3 employment for an artist without being licensed as a talent agent must
4 remain, as they are today, total. Exceptions in the nature of the
5 incidental, occasional, or infrequent activities relating in any way to
6 procuring employment for an artist cannot be permitted: one either is,
7 or is not, licensed as a talent agent, and, if not so licensed, one cannot
8 expect to engage, with impunity, in any activity relating to the service
9 which a talent agent is licensed to render. There can be no 'sometimes'
10 talent agent, just as there can be no 'sometimes' doctor or lawyer or
11 any other licensed professional. (Commission Report page 19-
12 20)[Emphasis added]

8 **IV. ORDER**

9 For the above stated reasons, it is hereby ordered as follows:

10 The 2017 Oral Retainer Agreement between the Petitioners and Respondents is declared to be
11 illegal, unenforceable and void. The Respondents are barred from enforcing or seeking to enforce the
12 2017 Oral Retainer Agreement against Petitioners in any manner.

13 Dated: **MAY 29, 2024**



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15 Sotivear Sim
16 Special Hearing Officer for the Labor Commissioner

17 **ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER**



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20 Dated: May 29, 2024

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22 LILIA GARCIA-BROWER
23 State Labor Commissioner