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6

7  
8 BEFORE THE LABOR COMMISSIONER  
9 OF THE STATE OF CALIFORNIA

10  
11 ERIC PODWALL, an individual,

12 Petitioner,

13  
14 vs.

15 WILLIAM "SMOKEY" ROBINSON, JR.,  
16 an individual,

17 Respondent.  
18

CASE NO. TAC 45605

**DETERMINATION OF  
CONTROVERSY**

19 **I. INTRODUCTION**

20 The above-captioned matter, a Petition to Determine Controversy under Labor  
21 Code section 1700.44, came on regularly for hearing in Los Angeles, California on April  
22 18, 2017 (hereinafter, referred to as the "TAC Hearing"), before the undersigned attorney  
23 for the Labor Commissioner assigned to hear this case. Petitioner ERIC PODWALL, an  
24 individual (hereinafter, referred to as "PODWALL") appeared and was represented by  
25 Jesse A. Kaplan, Esq. and Bryan J. Freedman, Esq. both of FREEDMAN +  
26 TAITELMAN, LLP. Respondent WILLIAM "SMOKEY" ROBINSON, JR., an  
27 individual (hereinafter, referred to as "ROBINSON") appeared through Rhonda H. Wills,  
28 Esq. of WILLS LAW FIRM, PLLC and Patrick Raspino, Esq. The matter was taken

1 under submission.

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

4 **II. FINDINGS OF FACT**

5 1. ROBINSON is a renowned artist who has been in the music business for  
6 over fifty years.

7 2. PODWALL is not a licensed talent agent.

8 3. The William Morris Agency (hereinafter, referred to as "WME") has  
9 represented ROBINSON as his licensed talent agent. Specifically, ROB HELLER  
10 (hereinafter, referred to as "HELLER") represented ROBINSON as his licensed talent  
11 agent. HELLER worked at WME for approximately 10 years but different firms  
12 employed him prior to that. HELLER's jobs duties and responsibilities included securing  
13 jobs for ROBINSON, and coordinating his personal appearances and career. HELLER  
14 retired from WME on December 31, 2015. David Levine (hereinafter, referred to as  
15 "LEVINE") became ROBINSON's licensed talent agent after HELLER retired.

16 4. HELLER was ROBINSON'S agent for more than 30 years and was  
17 responsible for procuring personal appearances for ROBINSON in the areas of concerts  
18 and special events. As part of WME's protocols, WME always kept HELLER apprised of  
19 jobs the agency handled for ROBINSON regardless of which WME agent may be  
20 working on a particular engagement for ROBINSON.

21 5. ROBINSON was interested in expanding his career to include more acting  
22 opportunities in the areas of television, commercial and film. Between 2011 and 2012,  
23 BRIAN FRENCH (hereinafter, referred to as "FRENCH"), ROBINSON's Production  
24 Manager, contacted PODWALL because FRENCH was aware that PODWALL worked  
25 with other famous entertainers in the music and acting industries, including Matthew  
26 Morrison from the famous television show, "Glee." In 2012, PODWALL had an initial  
27 meeting with FRENCH where FRENCH informed PODWALL that ROBINSON was  
28 interested in doing more acting roles in television, commercial, and film. During that

1 meeting, PODWALL informed FRENCH that he had connections and clients pursuing  
2 those types of roles and further informed FRENCH he believed he could open up  
3 opportunities for ROBINSON.

4 6. In late 2012, PODWALL, ROBINSON, and FRENCH held a meeting at  
5 FRENCH's house as a follow-up to the initial meeting between PODWALL and  
6 FRENCH. The parties spoke about PODWALL's client, Matthew Morrison of the show  
7 "Glee," ROBINSON's interest in doing an episode on the show, "Glee," and more  
8 generally about sponsorship with companies. Besides ROBINSON's stated interest in the  
9 possibility of appearing on the show, "Glee," no specific opportunities were discussed  
10 regarding the procurement of employment in the areas of film and television.

11 7. The second meeting concluded and the parties agreed that a contract would  
12 be drafted to memorialize the terms of the second meeting.

13 8. FRENCH and ROBINSON reviewed the agreement and raised no  
14 objections. In addition, the agreement was not inconsistent with what ROBINSON,  
15 PODWALL and FRENCH discussed during the second meeting.

16 9. On or around September 12, 2012, PODWALL and ROBINSON entered  
17 into an agreement (hereinafter, referred to as the "MANAGEMENT AGREEMENT").

18 10. The MANAGEMENT AGREEMENT provided, that PODWALL would  
19 work for ROBINSON as his personal manager for an "Initial Period of 18 months,  
20 followed by consecutive one year extensions, which [ROBINSON or PODWALL could]  
21 terminate at least 30 days before the end of the current period."

22 11. The terms of the MANAGEMENT AGREEMENT, also stated the  
23 following: "2. Commission [.] Ten percent of gross compensation derived from all  
24 products of your services initially rendered or created from and after the date you  
25 [ROBINSON] send the email response agreeing to this deal, except, I [PODWALL] will  
26 not be entitled to commission on any live performance ticket sales for engagements  
27 booked prior to the date of this agreement, nor any other live engagements performed  
28 prior to June 1, 2013 unless you [ROBINSON] and I [PODWALL] agree otherwise. For

1 avoidance of doubt, there will be no commission at any time on any royalties earned for  
2 products exploited prior to the term of this agreement and there will be no commission on  
3 publishing income for compositions not included on recordings released during the term  
4 of this agreement.”

5 12. During the time PODWALL served as ROBINSON’s personal manager,  
6 PODWALL would advise, counsel and meet with ROBINSON and establish goals. If  
7 those goals included film and television, PODWALL would engage with WME agents to  
8 speak to them about those goals, what the team would like to see in those different areas,  
9 and have the team seek opportunities for ROBINSON. PODWALL would speak to WME  
10 agents on a weekly basis.

11 13. During the time PODWALL served as ROBINSON’s personal manager,  
12 WME had a team of at least three agents for ROBINSON for television appearances.  
13 PODWALL specifically asked HELLER to assign a specific television agent to  
14 ROBINSON’s team at WME. The role of ROBINSON’s WME agents for television  
15 performances was to secure employment for ROBINSON. In addition, ROBINSON’s  
16 WME agents for commercial and television assisted PODWALL in securing employment  
17 opportunities for ROBINSON.

18 14. During the time PODWALL served as ROBINSON’s personal manager,  
19 WME procured or booked several hundred events or appearances for ROBINSON.

20 15. In 2012, ROBINSON performed at a daylong concert series at Hyde Park in  
21 London, England for a BBC engagement (hereinafter, referred to as “the BBC Hyde Park  
22 Performance”). PODWALL secured this personal appearance and negotiated the terms of  
23 the BBC Hyde Park Performance. An agent from WME’s London office helped facilitate  
24 the coordination of the signing of the contract and assisted PODWALL in coordinating  
25 the event.

26 16. In December 2012, ROBINSON made an appearance on the show, *The*  
27 *Voice*, a television show where contestants compete for a recording agreement.  
28 ROBINSON appeared with a contestant from *The Voice* and performed one of his songs.

1 Neither HELLER nor WME were involved with ROBINSON's appearance on *The Voice*.  
2 PODWALL secured this appearance for ROBINSON. Specifically, PODWALL received  
3 a call from *The Voice* and spoke to ROBINSON about the opportunity. PODWALL and  
4 his employee, Paul George (hereinafter, referred to as "GEORGE") coordinated  
5 ROBINSON's appearance on *The Voice*. GEORGE sent Courtney Barnes (hereinafter,  
6 referred to as "BARNES"), ROBINSON's publicist, a copy of ROBINSON's schedule for  
7 his appearance on *The Voice*. ROBINSON received a payment for his appearance on *The*  
8 *Voice*.

9 17. In 2013, PODWALL helped ROBINSON obtain a recording agreement with  
10 Verve Records for a duets album. PODWALL was involved in different aspects of the  
11 recording agreement, including, the negotiations of the terms of the deal with Verve  
12 Records, the recording schedule, the release of the album, and the marketing and  
13 promotions of the album. PODWALL received a commission for the album.

14 18. In 2014, PODWALL was involved with negotiating and advising  
15 ROBINSON on the Global Rights Management Copyrights Royalty Collections Contract  
16 (hereinafter, referred to as the "GRM Deal"). The GRM Deal involved a collections  
17 contract with Global Rights Management (hereinafter, referred to as "GRM"), a service  
18 provider that collects copyright royalties for musicians. Under the GRM Deal, GRM  
19 would monitor permitted use of previously recorded songs and collect copyright royalties  
20 for ROBINSON as the copyright holder. GRM would collect royalties that were  
21 generated on a going forward basis and, in turn, GRM charged ROBINSON a fee for its  
22 collections services. ROBINSON did not provide any future employment services under  
23 the GRM Deal.

24 19. PODWALL contacted HELLER about a performance opportunity in  
25 Barclays in Brooklyn, New York for ROBINSON (hereinafter, referred to as the  
26 "Barclays Engagement"). HELLER testified he worked in conjunction with PODWALL  
27 in obtaining this employment opportunity once "[PODWALL] turned it over to  
28 [HELLER]," which consisted of "paper[ing] it and issuing the contracts and the protocol

1 [WME] normally [does] for [ROBINSON].” As part of its protocol, WME took the time  
2 to “properly” promote the date over a span of five to six months before the event. This  
3 was WME’S “protocol” in setting shows for its clients to leave enough room for  
4 marketing and promotion.

5 20. In late 2015, PODWALL negotiated the terms of a concert date in Peoria,  
6 Illinois (hereinafter, referred to as the “Peoria Concert”). HELLER received the  
7 agreement’s terms, including the guarantee, which consisted of ROBINSON’S  
8 compensation, plus travel arrangements and accommodations. HELLER was not involved  
9 in the negotiations of the Peoria Concert nor was he involved in obtaining or procuring the  
10 Peoria Concert. HELLER and WME were brought in to issue the contracts for the Peoria  
11 Concert.

12 21. Around December 2015, Steve Disson (hereinafter, referred to as  
13 “DISSON”), a long-time acquaintance of PODWALL’S, contacted PODWALL about the  
14 possibility of having ROBINSON perform at a benefit concert for the Community  
15 Services for Autistic Adults and Children in Bethesda, Maryland (hereinafter, referred to  
16 as the “CSAAC Concert”). DISSON inquired of PODWALL whether ROBINSON could  
17 perform at the CSAAC Concert, which was already scheduled for November 2016, for the  
18 total amount of \$100,000. Between December 13, 2015 to January 2016, PODWALL  
19 and/or his employees negotiated with DISSON regarding ROBINSON’S compensation,  
20 flights and hotels, and a possible buyout for ROBINSON’S hotel and airfare. DISSON  
21 informed PODWALL he was going to recommend to the CSAAC Board they invite  
22 ROBINSON to perform at the CSAAC Concert for a total \$120,000. PODWALL’S  
23 employee represented to DISSON that ROBINSON had no “scheduled dates” for other  
24 performances and that he would communicate this engagement to ROBINSON if there  
25 were a “firm offer.”

26 22. Neither HELLER nor LEVINE, ROBINSON’S new licensed talent agent  
27 upon HELLER’S retirement, were copied on any of the email exchanges or were involved  
28 in the negotiations concerning the CSAAC Concert. In January 2016, LEVINE informed

1 DISSON that he was ROBINSON's representative and any attempts to book ROBINSON  
2 for the performance needed to go through WME and him.

3 23. On December 18, 2015, ROBINSON sent PODWALL a letter informing  
4 him that ROBINSON was terminating the MANAGEMENT AGREEMENT.

5 24. On July 15, 2016, PODWALL filed a claim in superior court against  
6 ROBINSON for unpaid commissions in the Los Angeles Superior Court, Case No.  
7 BC627335. ROBINSON subsequently removed this action to federal court. The federal  
8 court action is currently stayed pending resolution of this matter.

9 25. On or around November 7, 2016, PODWALL filed this Petition to  
10 Determine Controversy seeking a declaration from the Labor Commissioner that  
11 California's Talent Agencies Act (hereinafter, referred to as "TAA" or the "Act"),  
12 codified at California Labor Code sections 1700 et seq., is inapplicable to the services  
13 PODWALL provided for ROBINSON.

14 26. In his Petition to Determine Controversy, PODWALL seeks the following  
15 determination: 1) "there is no controversy within the meaning of this Section 1700.44"  
16 and the personal management services PODWALL provided "do not fall within the scope  
17 of the TAA or the jurisdiction of the Labor Commissioner;" or 2) an alternative  
18 declaration that PODWALL "was not required to obtain a license under the TAA" for  
19 certain personal management services and, consequently, the TAA does not apply to  
20 PODWALL's relationship with ROBINSON, and 3) "other relief as the Labor  
21 Commissioner may deem just and proper."

22 27. On or around November 29, 2016, ROBINSON filed his Answer and  
23 Counterclaim to PODWALL's Petition to Determine Controversy. In his Answer and  
24 Counterclaim, ROBINSON contends PODWALL violated the TAA by acting as an  
25 unlicensed agent.

26 28. In his Answer and Counterclaim, ROBINSON seeks the following: 1)  
27 PODWALL take nothing in this action; 2) the MANAGEMENT AGREEMENT be  
28 declared void since its inception; 3) ROBINSON's request for declaratory relief be

1 granted; 4) PODWALL's Petition to Determine Controversy be dismissed with prejudice  
2 and that judgment be entered against PODWALL and in favor of ROBINSON; 5)  
3 PODWALL be ordered to reimburse ROBINSON for all commissions paid by  
4 ROBINSON to PODWALL under the MANAGEMENT AGREEMENT; 6) PODWALL  
5 be ordered to pay ROBINSON's costs and attorneys' fees; and 7) all other relief the Labor  
6 Commissioner deems appropriate and proper.

7 29. After the conclusion of the TAC Hearing on April 18, 2017, PODWALL  
8 attempted to submit additional evidence, in particular, a series of email exchanges relating  
9 to several performances currently at issue and raised for the first time during the TAC  
10 Hearing.

11 30. After considering PODWALL's and ROBINSON's arguments, the  
12 undersigned denies PODWALL's motion to introduce additional evidence submitted after  
13 the closing of the TAC Hearing.

### 14 III. LEGAL ANALYSIS

#### 15 Issues

- 16 1. Has PODWALL acted as an unlicensed talent agent and therefore violated the  
17 TAA in relation to ROBINSON's performances in the BBC Hyde Park  
18 Performance, *The Voice*, the Barclays Engagement, the Peoria Concert, and  
19 PODWALL's role in the CSAAC Concert? Alternatively, is PODWALL  
exempt from having acted as an unlicensed talent agent under the safe harbor  
exemption pursuant to Labor Code section 1700.44(d)?
- 20 2. Is the recording agreement with Verve Records subject to the "recording  
21 contract" exemption pursuant to Labor Code section 1700.4(a)?
- 22 3. Did PODWALL violate the TAA with his involvement in the GRM Deal?
- 23 4. If PODWALL violated the TAA, is the appropriate remedy to void the entire  
24 MANAGEMENT CONTRACT *ab initio* or sever the offending practices under  
25 *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974?

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

27 [A] person or corporation who engages in the occupation of  
28 procuring, offering, promising, or attempting to procure

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

4 Labor Code section 1700.4(b) defines “artist” as:

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

11 ROBINSON is an “artist” within the meaning of Labor Code section 1700.4(b).

12 Moreover, Labor Code section 1700.5 provides that “[n]o person shall engage in or  
13 carry on the occupation of a talent agency without first procuring a license therefor from  
14 the Labor Commissioner.” It is undisputed that PODWALL did not possess a talent  
15 agency license during the relevant period he served as personal manager for ROBINSON.

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

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

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1           **A. Has PODWALL acted as an unlicensed talent agent and therefore**  
2           **violated the TAA in relation to ROBINSON’s performances in the**  
3           **BBC Hyde Park Performance, *The Voice*, the Barclays Engagement,**  
4           **the Peoria Concert, and PODWALL’s role in the CSAAC Concert?**

5           **B. Alternatively, is PODWALL exempt from having acted as an**  
6           **unlicensed talent agent under the safe harbor exemption pursuant to**  
7           **Labor Code section 1700.44(d)?**

8           A talent agent is a corporation or person who procures, offers, promises, or  
9           attempts to procure employment or engagements for an artist or artists. (See Labor Code  
10          § 1700.4(a)). An unlicensed talent agent who performs such activities pursuant to Labor  
11          Code section 1700.4(a) is in violation of the TAA. While not specifically defined by the  
12          TAA, the different definitions for employment require an act on behalf of the employed.  
13          (See *Malloy v. Board of Education* (1894) 102 Cal. 642, 646; Industrial Welfare  
14          Commission Wage Order No. 12-2001 (hereinafter, referred to as “IWC Wage Order No.  
15          12”), section 2(D)-(F); Black’s Law Dictionary (10th ed. 2014)). The Labor  
16          Commissioner has ruled, “[p]rocurement could include soliciting an engagement;  
17          negotiating an agreement for an engagement; or accepting a negotiated instrument for an  
18          engagement.” (*McDonald v. Torres*, TAC 27-04; *Gittelman v. Karolat*, TAC 24-02).  
19          Additionally, “[p]rocurement” includes any active participation in a communication with  
20          a potential purchaser of the artist’s services aimed at obtaining employment for the artist,  
21          regardless of who initiated the communication or who finalized the deal. (*Hall v. X*  
22          *Management*, TAC 19-90).

23          Exceptions to the requirements under Labor Code section 1700.4(a), also known as  
24          the safe harbor exemption, can be found at Labor Code section 1700.44(d). Labor Code  
25          section 1700.4(d) provides that “[i]t is not unlawful for a person or corporation which is  
26          not licensed . . . to act in conjunction with, and at the request of, a licensed talent agency  
27          in the negotiation of an employment contract.” For the safe harbor exemption under  
28          Labor Code section 1700.44(d) to apply, the manager must: (1) act in conjunction with a  
29          licensed talent agent; and (2) act at the request of a licensed talent agent; and (3) such

1 actions are limited to the negotiation of an employment contract. (See *Shirley v. Artists'*  
2 *Management West, et al.*, TAC 08-01; *Tommy Lister v. Tamara Holzman*, TAC 04-00;  
3 and *Creative Artists Entertainment Group, LLC v. Jennifer O'Dell*, TAC 26-99).

4 **i. The BBC Hyde Park Performance**

5 ROBINSON performed at a daylong concert series at Hyde Park in London,  
6 England. The evidence demonstrates that PODWALL secured the personal appearance  
7 for ROBINSON, as well as negotiated the terms of the BBC Hyde Park Performance.  
8 However, the evidence also shows that HELLER and WME's London office helped  
9 facilitate the signing of the contract and assisted PODWALL in coordinating this event.  
10 The evidence presented throughout the TAC Hearing further demonstrates HELLER (or  
11 WME) was generally responsible for procuring personal appearances for ROBINSON in  
12 the areas of concerts and special events and, as part of WME's protocols, HELLER was  
13 always kept apprised of jobs being handled by WME.

14 Notwithstanding, there was insufficient evidence presented at the TAC Hearing to  
15 demonstrate that PODWALL's actions fell within the safe harbor exemption of Labor  
16 Code section 1700.44(d). For these reasons, we find a violation of the TAA with respect  
17 to the BBC Hyde Park Performance.

18 **ii. The Appearance on *The Voice***

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

28

1           PODWALL did not meet his burden of proof with respect to ROBINSON's  
2 appearance on *The Voice*. The evidence demonstrates ROBINSON had a dedicated team  
3 of WME agents who communicated with PODWALL regularly regarding opportunities  
4 for ROBINSON, including in the area of television. However, there was no evidence to  
5 suggest that ROBINSON's appearance on *The Voice* was one such opportunity. In  
6 addition, PODWALL repeatedly testified he did not recall the specifics regarding how  
7 ROBINSON's appearance was secured on *The Voice*, only to later recall specific details  
8 during a second cross-examination. ROBINSON was engaged in an employment  
9 opportunity when he appeared on *The Voice*. In addition, ROBINSON was paid for his  
10 services. The evidence here indicates PODWALL procured this employment opportunity  
11 for ROBINSON when he received the call from *The Voice*, and presented that opportunity  
12 to ROBINSON. (See *Hall v. X Management*, TAC 19-90).

13           PODWALL failed to present any evidence that his actions fell within the safe  
14 harbor exemption of Labor Code section 1700.44(d).

15           For these reasons, we find a violation of the TAA with respect to ROBINSON's  
16 appearance on *The Voice*.

17                           **iii. The Barclays Engagement**

18           The evidence presented regarding the Barclays Engagement is inconclusive and  
19 conflicting at best. Specifically, the evidence indicates PODWALL contacted HELLER  
20 about this as an opportunity for ROBINSON after PODWALL spoke to a promoter from  
21 the local CBS radio station. However, HELLER admitted to working in conjunction with  
22 PODWALL in obtaining this employment opportunity for ROBINSON. While HELLER  
23 seemed to qualify his admission, the evidence proffered by his testimony demonstrates a  
24 more involved and coordinated effort by WME as it took the talent agency five to six  
25 months to promote the event. HELLER admitted this was part of WME's "protocol" for  
26 "set[ting]" the shows "for clients" in order to leave enough room for marketing and  
27 promotion.

28           ///

1 HELLER's admissions and mixed testimony here, coupled with additional  
2 evidence that HELLER, and WME more generally, were primarily responsible for  
3 securing performances for ROBINSON, makes it more probable than not that PODWALL  
4 worked with HELLER to procure this engagement. Accordingly, the Labor  
5 Commissioner has insufficient evidence to determine that PODWALL violated the TAA  
6 for the Barclays Engagement.

7 **iv. The Peoria Concert**

8 PODWALL did not meet his burden of proof with respect to ROBINSON's  
9 appearance at the Peoria Concert. The evidence indicates PODWALL (not HELLER)  
10 negotiated the terms this event, and HELLER and WME were brought in to issue the  
11 contracts for the Peoria Concert. HELLER further testified he was not involved in  
12 obtaining or procuring the Peoria Concert.

13 There was insufficient evidence presented at the TAC Hearing to demonstrate that  
14 PODWALL's actions fell within the safe harbor exemption of Labor Code section  
15 1700.44(d).

16 For these reasons, we find a violation of the TAA with respect to the Peoria  
17 Concert.

18 **v. The CSAAC Concert**

19 Here, the evidence establishes that PODWALL violated the TAA when he  
20 attempted to procure employment for ROBINSON in violation of Labor Code section  
21 1700.4(a). The email exchange between PODWALL and DISSON (ROBINSON's  
22 Exhibit No. 3) is instructive. Here, the communications between DISSON and  
23 PODWALL indicate that PODWALL negotiated the price to be paid ROBINSON, and  
24 the buyout ROBINSON was to receive for his services. Neither HELLER nor LEVINE  
25 were copied on any of the email exchanges or were involved in the negotiations  
26 concerning the CSAAC Concert. It was not until an email dated, January 26, 2016, that  
27 DISSON informed PODWALL and his employees that DISSON had been advised of  
28 LEVINE's role as ROBINSON's representative.

1 Here, there was insufficient evidence presented to demonstrate that PODWALL's  
2 actions fell within the safe harbor exemption of Labor Code section 1700.44(d).

3 For these reasons, we find a violation of the TAA with respect to the CSAAC  
4 Concert.

5 **C. The Recording Agreement with Verve Records and the "recording**  
6 **contract" exemption pursuant to Labor Code section 1700.4(a)**

7 In approximately 2013, PODWALL helped ROBINSON obtain a recording  
8 agreement with Verve Records for a duets album. PODWALL was involved in different  
9 aspects of the recording agreement, including, the negotiations of the terms of the deal  
10 with Verve Records, the recording schedule, the release of the album, and the marketing  
11 and promotions of the album.

12 Labor Code section 1700.4(a) exempts the activities of "procuring, offering, or  
13 promising to procure recording contracts for an artist or artists..." from the definition of a  
14 "talent agency."

15 During the 1977-1978 Legislative Session, Assembly Bill 2535 ("AB 2535")  
16 (Chap. 1382, Stats. 1978), which was eventually adopted as the Talent Agencies Act of  
17 1978, was introduced in order to bring Booking Agents, including Musician Booking  
18 Agencies and Personal Managers, under the jurisdiction of the Labor Commissioner; to  
19 change the name of the Act and definition of Artists' Manager to Talent Agencies; and to  
20 license Personal Managers. (See *Max Herman, President, American Federation of*  
21 *Musicians, Local 47 – February 27, 1978 Press Release* included in Legislative History  
22 for AB 2535). In the bill, a "talent agency" was defined "to be a person or corporation  
23 who engaged in the occupation of procuring, offering, promising, or attempting to procure  
24 employment or engagements for an artist or artists. Talent agencies may, in addition,  
25 counsel, or direct artists in the development of their professional careers." (See *Assembly*  
26 *Bill Final History for AB 2535, p. 5, included in Legislative History for AB 2535*). During  
27 the legislative session, the Conference of Personal Managers proposed several  
28 amendments to the bill including the following: "Any person may procure for an artist an

1 agreement for “recording, producing, manufacturing, distributing or selling records or  
2 tapes or any agreement for the composing or publishing of musical compositions.” (See  
3 *Testimony before The Assembly Standing Committee for Labor, Employment and*  
4 *Consumer Affairs on April 25, 1978, p. 180* included in Legislative History for AB 2535).  
5 The final bill did not include this proposed amendment. In 1982, however, the Act was  
6 amended by Assembly Bill 997 to adopt several of the proposed amendments previously  
7 put forth by the Conference of Personal Managers.

8         Significantly, the definition of “talent agent” was amended to provide that “the  
9 activities of procuring, offering, or promising to procure recording contracts for an artist  
10 or artists shall not of itself subject a person or corporation to regulation or licensing under  
11 this chapter.” (See *Report of the California Entertainment Commission dated 5/23/1985,*  
12 *p. 9* included in Legislative History for AB 2535). The Legislature rejected the  
13 Conference of Personal Manager’s request to broaden the definition to include  
14 “producing, manufacturing, distributing or selling records or tapes or any agreement for  
15 the composing or publishing of musical compositions.” Consequently, its intent to limit  
16 the exemption to “recording,” is clear.

17         Based on the Legislative History for the “recording contract exemption,” we hold  
18 in this case that the exemption is narrowly interpreted to include “recording” of a musical  
19 contract. Thus, PODWALL’s involvement with difference aspects of the “recording” of  
20 the Verve Records agreement is covered by the “recording contract” exemption.

#### 21                   **D. PODWALL’s involvement with the GRM Deal**

22         PODWALL was involved with negotiating and advising ROBINSON on the GRM  
23 Deal. The GRM Deal involved a collections contract with Global Rights Management, a  
24 service provider that collects copyright royalties for musicians. Under the GRM Deal,  
25 GRM would monitor permitted use of previously recorded songs, and collect copyright  
26 royalties for ROBINSON as the copyright holder. GRM would collect royalties that were  
27 generated on a going forward basis and, in turn, GRM charged ROBINSON a fee for its  
28 collections services. ROBINSON testified that GRM was a collection agency, and

1 HELLER testified he would never get involved with negotiating such agreements on  
2 behalf of any of his clients.

3 Employment is not defined under the TAA. The Supreme Court case of *Malloy*,  
4 *supra*, 102 Cal. at 646 defined employment to mean, “[e]mployment implies a contract on  
5 the part of the employer to hire, and on the part of the employee to perform services . . .”  
6 IWC Wage Order No. 12, section 2(D), regulating the wages, hours and working  
7 conditions in the motion picture industry defines “employ” as a “means to engage, suffer,  
8 or permit to work.” Furthermore, Black’s Law Dictionary (10th ed. 2014) defines  
9 employment as “[t]he act of employing” or the “quality, state, or condition of being  
10 employed. . .” Each definition of employment requires an act on behalf of the employed.

11 Here, it is undisputed that GRM, not PODWALL, provided the services on behalf  
12 of ROBINSON. Specifically, GRM would monitor the use of ROBINSON’s recorded  
13 songs and collect copyright royalties for ROBINSON. ROBINSON did not provide any  
14 future employment services under the GRM Deal. Therefore, because the GRM Deal did  
15 not contemplate the rendering of future services, it is not “employment” within the  
16 meaning of Labor Code section 1700.4(a). (See *Kilcher v. Vainshtein*, TAC 02-99, at 23  
17 (“*Kilcher*”). Like the publishing deal in the *Kilcher* TAC decision, the collection of  
18 copyright rights for pre-recorded music does not implicate the TAA where the agreement  
19 in question does not contemplate future services by the artist. (*Id.* at 21-23).

#### 20 **E. Appropriate Remedy for Violations of the Act**

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

1 Courts are to look to the various purposes of the contract. If the  
2 central purpose of the contract is tainted with illegality, then the  
3 contract as a whole cannot be enforced. If the illegality is  
4 collateral to the main purpose of the contract, and the illegal  
5 provision can be extirpated from the contract by means of  
severance or restriction, then such severance and restriction are  
appropriate. [Citations omitted].

6 (*Marathon, supra* at 996).

7 In this case, we find that “the interests of justice...would be furthered’ by  
8 severance.” (*Id.*). First, the weight of the evidence supports a finding that PODWALL  
9 did not appear to offer or promise to procure a specific employment opportunity during  
10 the meetings that led to the formation of the MANAGEMENT AGREEMENT. Rather,  
11 the evidence suggests FRENCH, PODWALL, and ROBINSON discussed opportunities  
12 for ROBINSON more generally. The meetings, what was discussed at the meetings, and  
13 the formation of the MANAGEMENT AGREEMENT were more akin to the counseling  
14 and directing of ROBINSON in the development of his professional career in the areas of  
15 commercial, film and television. Such actions do not require a talent agency license.  
16 Second, the overwhelming weight of the evidence offered by ROBINSON and  
17 PODWALL alike demonstrate that the four engagements found to be in violation here are  
18 not representative of the hundreds of events HELLER (or WME), not PODWALL,  
19 secured for ROBINSON during the three years PODWALL served as personal manager  
20 for ROBINSON.

21 Based on the above, we find that PODWALL was primarily engaged in  
22 management duties while representing ROBINSON. We conclude that PODWALL  
23 violated the TAA on four occasions, the BBC Hyde Park Performance, *The Voice*, the  
24 Peoria Concert, and the CSAAC Concert. These can hardly be enough to invalidate an  
25 entire contract. We further conclude that the illegality of these four acts was certainly  
26 collateral to the main purpose of the parties’ management relationship. Accordingly,  
27 under the doctrine of severability, we sever those four acts of illegal procurement. The  
28

1 MANAGEMENT AGREEMENT is not invalidated due to illegality.

2 We in no way condone the unlawful activity undertaken by PODWALL; however,  
3 we do not find it to be “substantial” in comparison to the other management  
4 responsibilities undertaken by PODWALL. Consequently, PODWALL’s violations of the  
5 Act, as discussed herein, are severed.

6 In addition, we find that PODWALL was not required to obtain a license under the  
7 TAA for the recording agreement with Verve Records or the GRM Deal.

8 **F. The TAA’s One-Year Statute of Limitations**

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

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

13 ROBINSON filed his Counterclaim to PODWALL’s Petition to Determine  
14 Controversy on or around November 29, 2016. Thus, any claim for affirmative relief, *i.e.*,  
15 reimbursement of paid commissions to ROBINSON, must be for commissions paid to  
16 PODWALL between November 29, 2015 to November 29, 2016.

17 There was no evidence presented during the TAC Hearing that PODWALL  
18 received commissions between November 29, 2015 to November 29, 2016 for the BBC  
19 Hyde Park Performance, *The Voice*, the Peoria Concert, or the CSAAC Concert.  
20 Therefore, ROBINSON’s request for reimbursement of commissions for the four events  
21 found here to be in violation of the TAA is denied.

22 Furthermore, ROBINSON is not entitled to a reimbursement of commissions  
23 PODWALL may have earned for the Verve Records and GRM Deals because the  
24 evidence shows that the services PODWALL provided for ROBINSON under the Verve  
25 Records and GRM Deals did not violate the TAA.

26 ROBINSON further seeks disgorgement of all commissions paid to PODWALL  
27 under the MANAGEMENT AGREEMENT. However, for the reasons stated above, we  
28

1 find that the MANAGEMENT AGREEMENT is not void. Thus, ROBINSON's request  
2 for disgorgement as to all commissions under the MANAGEMENT AGREEMENT is  
3 also denied.

4 **IV. ORDER**

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

6 1. The MANAGEMENT AGREEMENT between Petitioner ERIC  
7 PODWALL and Respondent WILLIAM "SMOKEY" ROBINSON, JR., is not invalid  
8 under the Talent Agencies Act.

9 2. The MANAGEMENT AGREEMENT between Petitioner ERIC  
10 PODWALL and Respondent WILLIAM "SMOKEY" ROBINSON, JR., is not  
11 unenforceable under the Talent Agencies Act.

12 3. PODWALL was not required to obtain a license under the TAA for the  
13 recording agreement with Verve Records.

14 4. PODWALL was not required to obtain a license under the TAA for the  
15 GRM Deal.

16 Dated: June 22, 2018

17 Respectfully submitted,

18   
19 \_\_\_\_\_  
20 PATRICIA SALAZAR  
21 Attorney for the Labor Commissioner

22 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

23 Dated: June 22, 2018

24   
25 \_\_\_\_\_  
26 JULIE A. SU  
27 State Labor Commissioner  
28

1 **PROOF OF SERVICE**

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

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

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

7 On June 25, 2018, I served the foregoing document described as: **DETERMINATION**  
8 **OF CONTROVERSY**, on all interested parties in this action by placing a true copy thereof  
enclosed in a sealed envelope addressed as follows:

9 Bryan J. Freedman, Esq. [bfreedman@ftllp.com](mailto:bfreedman@ftllp.com) Rhonda H. Wills, Esq. [rwills@rwillslawfirm.com](mailto:rwills@rwillslawfirm.com)  
10 Jesse A. Kaplan, Esq. [jkaplan@ftllp.com](mailto:jkaplan@ftllp.com) Patrick Raspino, Esq. [praspino@rwillslawfirm.com](mailto:praspino@rwillslawfirm.com)  
11 FREEDMAN + TAITELMAN, LLP WILLS LAW FIRM, PLLC  
12 1901 Avenue of the Stars, Suite 500 1776 Yorktown Street, Suite 570  
13 Los Angeles, CA 90067 Houston, TX 77056  
14 Tel: (310) 201-0005 Fax: (310) 201-0045 Tel: (713) 528-4455 Fax: (713) 528-2047

12  **(BY CERTIFIED MAIL)** I am readily familiar with the business practice for collection  
13 and processing of correspondence for mailing with the United States Postal Service. This  
14 correspondence shall be deposited with fully prepaid postage thereon for certified mail  
15 with the United States Postal Service this same day in the ordinary course of business at  
16 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.

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

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

21 Executed this 25th day of June 2018, at Long Beach, California.

22  
23   
24 \_\_\_\_\_  
Lindsey Lara  
25 Declarant  
26  
27  
28