I. INTRODUCTION

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

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

II. FINDINGS OF FACT

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

2. PODWALL is not a licensed talent agent.

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

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

5. ROBINSON was interested in expanding his career to include more acting opportunities in the areas of television, commercial and film. Between 2011 and 2012, BRIAN FRENCH (hereinafter, referred to as “FRENCH”), ROBINSON’s Production Manager, contacted PODWALL because FRENCH was aware that PODWALL worked with other famous entertainers in the music and acting industries, including Matthew Morrison from the famous television show, “Glee.” In 2012, PODWALL had an initial meeting with FRENCH where FRENCH informed PODWALL that ROBINSON was interested in doing more acting roles in television, commercial, and film. During that
meeting, PODWALL informed FRENCH that he had connections and clients pursuing those types of roles and further informed FRENCH he believed he could open up opportunities for ROBINSON.

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

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

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

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

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

11. The terms of the MANAGEMENT AGREEMENT, also stated the following: “2. Commission [.]. Ten percent of gross compensation derived from all products of your services initially rendered or created from and after the date you [ROBINSON] send the email response agreeing to this deal, except, I [PODWALL] will not be entitled to commission on any live performance ticket sales for engagements booked prior to the date of this agreement, nor any other live engagements performed prior to June 1, 2013 unless you [ROBINSON] and I [PODWALL] agree otherwise. For
avoidance of doubt, there will be no commission at any time on any royalties earned for products exploited prior to the term of this agreement and there will be no commission on publishing income for compositions not included on recordings released during the term of this agreement."

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

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

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

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

16. In December 2012, ROBINSON made an appearance on the show, The Voice, a television show where contestants compete for a recording agreement. ROBINSON appeared with a contestant from The Voice and performed one of his songs.
Neither HELLER nor WME were involved with ROBINSON’s appearance on The Voice. PODWALL secured this appearance for ROBINSON. Specifically, PODWALL received a call from The Voice and spoke to ROBINSON about the opportunity. PODWALL and his employee, Paul George (hereinafter, referred to as “GEORGE”) coordinated ROBINSON’s appearance on The Voice. GEORGE sent Courtney Barnes (hereinafter, referred to as “BARNES”), ROBINSON’s publicist, a copy of ROBINSON’s schedule for his appearance on The Voice. ROBINSON received a payment for his appearance on The Voice.

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

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

19. PODWALL contacted HELLER about a performance opportunity in Barclays in Brooklyn, New York for ROBINSON (hereinafter, referred to as the “Barclays Engagement”). HELLER testified he worked in conjunction with PODWALL in obtaining this employment opportunity once “[PODWALL] turned it over to [HELLER],” which consisted of “paper[ing] it and issuing the contracts and the protocol.
[WME] normally [does] for [ROBINSON].” As part of its protocol, WME took the time
to “properly” promote the date over a span of five to six months before the event. This
was WME’S “protocol” in setting shows for its clients to leave enough room for
marketing and promotion.

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

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

22. Neither HELLER nor LEVINE, ROBINSON’S new licensed talent agent
upon HELLER’S retirement, were copied on any of the email exchanges or were involved
in the negotiations concerning the CSAAC Concert. In January 2016, LEVINE informed
DISSON that he was ROBINSON’s representative and any attempts to book ROBINSON for the performance needed to go through WME and him.

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

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

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

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

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

28. In his Answer and Counterclaim, ROBINSON seeks the following: 1) PODWALL take nothing in this action; 2) the MANAGEMENT AGREEMENT be declared void since its inception; 3) ROBINSON’s request for declaratory relief be
granted; 4) PODWALL’s Petition to Determine Controversy be dismissed with prejudice and that judgment be entered against PODWALL and in favor of ROBINSON; 5) PODWALL be ordered to reimburse ROBINSON for all commissions paid by ROBINSON to PODWALL under the MANAGEMENT AGREEMENT; 6) PODWALL be ordered to pay ROBINSON’s costs and attorneys’ fees; and 7) all other relief the Labor Commissioner deems appropriate and proper.

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

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

III. LEGAL ANALYSIS

Issues

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

2. Is the recording agreement with Verve Records subject to the “recording contract” exemption pursuant to Labor Code section 1700.4(a)?

3. Did PODWALL violate the TAA with his involvement in the GRM Deal?

4. If PODWALL violated the TAA, is the appropriate remedy to void the entire MANAGEMENT CONTRACT ab initio or sever the offending practices under Marathon Entertainment, Inc. v. Blasi (2008) 42 Cal.4th 974?

Labor Code section 1700.4(a) defines “talent agency” as:

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

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

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

ROBINSON 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
carry on the occupation of a talent agency without first procuring a license therefor from
the Labor Commissioner.” It is undisputed that PODWALL did not possess a talent
agency license during the relevant period he served as personal manager for ROBINSON.

A person may counsel and direct artists in the development of their professional
careers, or otherwise “manage” artists – while avoiding any procurement activity
(procuring, promising, offering, or attempting to procure artistic employment of
engagements) – without the need for a talent agency license. In addition, such person may
procure non-artistic employment or engagements for the artist without the need for a

An agreement that violates the licensing requirements of the TAA is illegal and
unenforceable. “Since the clear object of the Act is to prevent improper persons from
becoming [talent agents] and to regulate such activity for the protection of the public, a
contract between an unlicensed [agent] and an artist is void.” (Buchwald v. Superior
A. Has PODWALL acted as an unlicensed talent agent and therefore violated the TAA in relation to ROBINSON’s performances in the BBC Hyde Park Performance, *The Voice*, the Barclays Engagement, the Peoria Concert, and PODWALL’s role in the CSAAC Concert?

B. 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)?

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

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

i. The BBC Hyde Park Performance

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

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

ii. The Appearance on The Voice

As we have previously noted, the proper burden of proof in actions before the Labor Commissioner is found at Evidence Code section 115, which states, "[e]xcept as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence." "[T]he party asserting the affirmative at an administrative hearing has the burden of proof, including both the initial burden of going forward and the burden of persuasion by preponderance of the evidence . . ." (McCoy v. Bd. of Ret. (1986) 183 Cal.App.3d 1044, 1051-52). "[P]reponderance of the evidence standard . . . simply requires the trier of fact to believe the existence of a fact is more probable than its nonexistence." (In re Michael G. (1998) 63 Cal.App.4th 700, 709, fn 6).
PODWALL did not meet his burden of proof with respect to ROBINSON’s appearance on *The Voice*. The evidence demonstrates ROBINSON had a dedicated team of WME agents who communicated with PODWALL regularly regarding opportunities for ROBINSON, including in the area of television. However, there was no evidence to suggest that ROBINSON’s appearance on *The Voice* was one such opportunity. In addition, PODWALL repeatedly testified he did not recall the specifics regarding how ROBINSON’s appearance was secured on *The Voice*, only to later recall specific details during a second cross-examination. ROBINSON was engaged in an employment opportunity when he appeared on *The Voice*. In addition, ROBINSON was paid for his services. The evidence here indicates PODWALL procured this employment opportunity for ROBINSON when he received the call from *The Voice*, and presented that opportunity to ROBINSON. (See *Hall v. X Management*, TAC 19-90).

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

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

iii. **The Barclays Engagement**

The evidence presented regarding the Barclays Engagement is inconclusive and conflicting at best. Specifically, the evidence indicates PODWALL contacted HELLER about this as an opportunity for ROBINSON after PODWALL spoke to a promoter from the local CBS radio station. However, HELLER admitted to working in conjunction with PODWALL in obtaining this employment opportunity for ROBINSON. While HELLER seemed to qualify his admission, the evidence proffered by his testimony demonstrates a more involved and coordinated effort by WME as it took the talent agency five to six months to promote the event. HELLER admitted this was part of WME’s “protocol” for “set[ting]” the shows “for clients” in order to leave enough room for marketing and promotion.
HELLER’s admissions and mixed testimony here, coupled with additional evidence that HELLER, and WME more generally, were primarily responsible for securing performances for ROBINSON, makes it more probable than not that PODWALL worked with HELLER to procure this engagement. Accordingly, the Labor Commissioner has insufficient evidence to determine that PODWALL violated the TAA for the Barclays Engagement.

iv. The Peoria Concert

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

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

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

v. The CSAAC Concert

Here, the evidence establishes that PODWALL violated the TAA when he attempted to procure employment for ROBINSON in violation of Labor Code section 1700.4(a). The email exchange between PODWALL and DISSON (ROBINSON’s Exhibit No. 3) is instructive. Here, the communications between DISSON and PODWALL indicate that PODWALL negotiated the price to be paid ROBINSON, and the buyout ROBINSON was to receive for his services. Neither HELLER nor LEVINE were copied on any of the email exchanges or were involved in the negotiations concerning the CSAAC Concert. It was not until an email dated, January 26, 2016, that DISSON informed PODWALL and his employees that DISSON had been advised of LEVINE’s role as ROBINSON’s representative.
Here, there was insufficient evidence presented to demonstrate that PODWALL's actions fell within the safe harbor exemption of Labor Code section 1700.44(d).

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

C. The Recording Agreement with Verve Records and the “recording contract” exemption pursuant to Labor Code section 1700.4(a)

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

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

During the 1977-1978 Legislative Session, Assembly Bill 2535 (“AB 2535”) (Chap. 1382, Stats. 1978), which was eventually adopted as the Talent Agencies Act of 1978, was introduced in order to bring Booking Agents, including Musician Booking Agencies and Personal Managers, under the jurisdiction of the Labor Commissioner; to change the name of the Act and definition of Artists’ Manager to Talent Agencies; and to license Personal Managers. (See Max Herman, President, American Federation of Musicians, Local 47 – February 27, 1978 Press Release included in Legislative History for AB 2535). In the bill, a “talent agency” was defined “to be a person or corporation who engaged in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists. Talent agencies may, in addition, counsel, or direct artists in the development of their professional careers.” (See Assembly Bill Final History for AB 2535, p.5, included in Legislative History for AB 2535). During the legislative session, the Conference of Personal Managers proposed several amendments to the bill including the following: “Any person may procure for an artist an
agreement for “recording, producing, manufacturing, distributing or selling records or
tapes or any agreement for the composing or publishing of musical compositions.” (See
Testimony before The Assembly Standing Committee for Labor, Employment and
The final bill did not include this proposed amendment. In 1982, however, the Act was
amended by Assembly Bill 997 to adopt several of the proposed amendments previously
put forth by the Conference of Personal Managers.

Significantly, the definition of “talent agent” was amended to provide 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 or licensing under
this chapter.” (See Report of the California Entertainment Commission dated 5/23/1985,
p. 9 included in Legislative History for AB 2535). The Legislature rejected the
Conference of Personal Manager’s request to broaden the definition to include
“producing, manufacturing, distributing or selling records or tapes or any agreement for
the composing or publishing of musical compositions.” Consequently, its intent to limit
the exemption to “recording,” is clear.

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

D. PODWALL’s involvement with the GRM Deal

PODWALL was involved with negotiating and advising ROBINSON on the GRM
Deal. The GRM Deal involved a collections contract with Global Rights Management, a
service provider that collects copyright royalties for musicians. Under the GRM Deal,
GRM would monitor permitted use of previously recorded songs, and collect copyright
royalties for ROBINSON as the copyright holder. GRM would collect royalties that were
generated on a going forward basis and, in turn, GRM charged ROBINSON a fee for its
collections services. ROBINSON testified that GRM was a collection agency, and
HELLER testified he would never get involved with negotiating such agreements on behalf of any of his clients.

Employment is not defined under the TAA. The Supreme Court case of *Malloy*, *supra*, 102 Cal. at 646 defined employment to mean, "[e]mployment implies a contract on the part of the employer to hire, and on the part of the employee to perform services . . ."

IWC Wage Order No. 12, section 2(D), regulating the wages, hours and working conditions in the motion picture industry defines "employ" as a "means to engage, suffer, or permit to work." Furthermore, Black's Law Dictionary (10th ed. 2014) defines employment as "[t]he act of employing" or the "quality, state, or condition of being employed . . ." Each definition of employment requires an act on behalf of the employed.

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

E. Appropriate Remedy for Violations of the Act

In accord with *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974 ("*Marathon*"), PODWALL urges us to apply the doctrine of severability if we find that he violated the TAA in any of the identified engagements at issue herein. In *Marathon*, the court recognized that the Labor Commissioner may invalidate an entire contract when there is a violation of the Act. The court left it to the discretion of the Labor Commissioner to apply the doctrine of severability to preserve and enforce the lawful portions of the parties' contract where the facts so warrant. As the Supreme Court explained in *Marathon*:
Courts are to look to the various purposes of the contract. If the central purpose of the contract is tainted with illegality, then the contract as a whole cannot be enforced. If the illegality is collateral to the main purpose of the contract, and the illegal provision can be extirpated from the contract by means of severance or restriction, then such severance and restriction are appropriate. [Citations omitted].

(Marathon, supra at 996).

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

Based on the above, we find that PODWALL was primarily engaged in management duties while representing ROBINSON. We conclude that PODWALL violated the TAA on four occasions, the BBC Hyde Park Performance, The Voice, the Peoria Concert, and the CSAAC Concert. These can hardly be enough to invalidate an entire contract. We further conclude that the illegality of these four acts was certainly collateral to the main purpose of the parties’ management relationship. Accordingly, under the doctrine of severability, we sever those four acts of illegal procurement. The
MANAGEMENT AGREEMENT is not invalidated due to illegality.

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

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

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

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

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

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

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

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

ROBINSON further seeks disgorgement of all commissions paid to PODWALL under the MANAGEMENT AGREEMENT. However, for the reasons stated above, we
find that the MANAGEMENT AGREEMENT is not void. Thus, ROBINSON’s request for disgorgement as to all commissions under the MANAGEMENT AGREEMENT is also denied.

IV. ORDER

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

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

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

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

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

Dated: June 22, 2018
Respectfully submitted,

PATRICIA SALAZAR
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER
Dated: June 22, 2018

JULIE A. SU
State Labor Commissioner
PROOF OF SERVICE

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

I, Lindsey Lara, declare and state as follows:

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

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

Bryan J. Freedman, Esq. bfreedman@ftllp.com          Rhonda H. Wills, Esq. rwills@rwillslawfirm.com
Jesse A. Kaplan, Esq. jkaplan@ftllp.com              Patrick Raspino, Esq. praspino@rwillslawfirm.com
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(By Certified Mail) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with fully prepaid postage thereon for certified mail with the United States Postal Service this same day in the ordinary course of business at our office address in Long Beach, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

(By E-mail Service) I caused such document(s) to be delivered electronically via e-mail to the e-mail address of the addressee(s) set forth above.

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

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

Lindsey Lara
Declarant