

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
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10 BEFORE THE LABOR COMMISSIONER
11 OF THE STATE OF CALIFORNIA
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18	NICKOLAS CARTER, HOWARD DOROUGH,)	Case No. TAC 9-00
19	BRIAN THOMAS LITTRELL, ALEXANDER)	
20	J. MCLEAN, and KEVIN RICHARDSON, all)	
21	doing business as the Backstreet Boys,)	
22)	
23	Petitioners,)	
24	vs.)	ORDER RE: RESPONDENT'S
25)	MOTION TO DISMISS
26)	PETITION TO DETERMINE
27)	CONTROVERSY FOR LACK
28	DONNA WRIGHT, an individual, and)	OF PERSONAL
29	WRIGHT STUFF PRODUCTIONS, INC.,)	JURISDICTION, OR IN
30	and DOES 1 TO 50)	THE ALTERNATIVE,
31)	MOTION TO ABATE
32	Respondents.)	
33)	
34)	

35 INTRODUCTION

36 PLEASE TAKE NOTICE that the following Order is made with
37 reference to the above-captioned request.

38 Respondents' original request was submitted on February
39 27, 2001. Petitioner in response filed their moving papers on June
40 4, 2001. Respondent's reply was filed was June 18, 2001. After
41 consideration of the moving papers filed by the parties, further
42 briefing was ordered by the Labor Commissioner. Both parties filed
43 their briefs analyzing the "conflict of laws" issue on August 7,
44

1 2001.

2 Respondents assert the Labor Commissioner does not have
3 personal jurisdiction or subject matter jurisdiction over the
4 Respondent and therefore, the Petition to Determine Controversy
5 should be dismissed.

6 Respondents' contend the petitioners resided in Florida
7 throughout the alleged violations of the Talent Agencies Act;
8 respondents were incorporated in and conducting their business in
9 Florida; the agreement in issue between the parties was negotiated
10 in and executed in Florida; the agreement provides for Florida
11 choice of laws provisions contained therein; Florida has a
12 statutory scheme designed to protect against the identical
13 allegations brought by the petitioner. And the petitioner filed a
14 case in Florida four years earlier alleging the same causes of
15 action, (i.e., procurement of engagements without a license).
16 Respondents argue that based on these facts, California does not
17 possess a legitimate state interest. Consequently, California
18 cannot assert personal jurisdiction, does not possess subject
19 matter jurisdiction and similarly fails a conflict of law analysis,
20 requiring dismissal of the petition.

21 In discussing the "conflict" analysis, petitioners devote
22 the bulk of their papers to comparing the laws of the two states
23 involved and the ultimate effect those laws would have on the
24 petitioner if applied. In short, they maintain that the California
25 statutory scheme offers the petitioner superior remedies than that
26 of its Florida counterpart, and based on those remedies in
27 conjunction with California's interest in conduct within its

1 borders, ostensibly requires California to assert jurisdiction.

2 We first address whether California has a legitimate
3 state interest. Under the long-arm statute, Code of Civil
4 Procedure section 410.10, a California court may exercise
5 jurisdiction over a nonresident defendant on any basis not
6 inconsistent with the United States or California Constitutions.
7 Case authority teaches us that this section manifests an intent to
8 exercise the broadest possible jurisdiction limited only by
9 constitutional considerations. Sibley v. Superior Court (1976) 16
10 Cal.3d 442, 445.

11 The case of International Shoe Co. V. Washington (1945)
12 326 U.S. 310, at 316 teaches as a general constitutional principle,
13 a court may exercise personal jurisdiction over a nonresident
14 individual so long as he has such "minimum contacts" with the state
15 that the maintenance of the suit does not offend the "traditional
16 notions of fair play and substantial justice."

17 The Burger King court teaches, "a state may exercise
18 jurisdiction over a nonresident who purposefully avails himself or
19 herself of forum benefits, because the state has a 'manifest
20 interest' in providing its residents with a convenient forum for
21 redressing injuries inflicted by out of state actors." Burger King
22 Corp v. Rudzewicz (1985) 471 U.S. 462 at 473. California clearly
23 has a legitimate interest in alleged violations of its laws
24 occurring within its borders. And if it determined that the
25 respondent violated California laws within California's borders and
26 constitutional considerations are acknowledged, then asserting long-
27 arm jurisdiction and enveloping the respondent under California's
long-arm statutes is appropriate.

1 Assuming California has personal jurisdiction over the
2 respondent, which we believe we have, subject matter jurisdiction
3 must be evaluated. Florida and California both have legislative
4 schemes designed to protect their artists. And it is clear that
5 both California and Florida have a vested interest in this case by
6 seeing that their respective laws are applied. Florida's interest
7 also involves four years of extended litigation in Florida regarding
8 similar issues. Accordingly, it is incumbent upon California to
9 address Florida's interest and make a determination whether
10 California is invading a superceding Florida interest.

11 The Labor Commissioner is an administrative agency with
12 limited jurisdiction. Therefore, should the Labor Commissioner
13 determine that Florida's laws apply, we are without jurisdiction to
14 apply those laws. The Labor Commissioner is only authorized to
15 apply California's laws. Consequently, if the Labor Commissioner
16 determines that Florida's laws apply, we must, as a matter of law,
17 dismiss the petition based on lack of subject matter jurisdiction.
18 Of course, the petitioner pursuant to Labor Code §1700.4(a) could
19 request an appeal de novo to the California Superior Court to
20 reverse that determination.

21 Questions of choice of law are determined in California
22 by the "governmental interest analysis," under which the forum in
23 a conflicts situation must search to find the proper law to apply
24 based upon the interests of the litigants and the involved states.
25 Under this analysis, ... each of the states involved has a legitimate
26 but conflicting interest in applying its own law, the forum court
27 is confronted with a "true" conflicts case. Once a preliminary

1 analysis has identified a true conflict of the governmental
2 interests involved as applied to the parties, the "comparative
3 impairment" approach to the resolution of such conflict seeks to
4 determine which state's interest would be more impaired if its
5 policy were subordinated to the policy of the other state. This
6 analysis does not involve the court in "weighing" the conflicting
7 governmental interests in the sense of determining which conflicting
8 law manifests the "better" or the "worthier" social policy on the
9 specific issue. Zimmerman v. Allstate Insurance Company 179
10 Cal.App.3d 840, 846-47, [also see Cal.Jur.3d, Conflict of Laws, §
11 19; Am.Jur.2d, Conflict of Laws, § 1 et seq.] As the Florida and
12 California statutory schemes are markedly different, and both states
13 have an interest in enforcing their laws and deterring illegal
14 conduct within its borders, a true conflict exists. Now we must
15 determine which laws will be most impaired.

16 An analysis of California cases provides guidance on how
17 conflict issues have been resolved. The Hurtado v. Superior Court
18 maintains, "with regard to the "governmental interests" approach to
19 an apparent choice-of-law matter, California has a decided interest,
20 under its deterrent policy, in applying its own law to California
21 defendants who allegedly caused a wrongful death within its
22 borders." Hurtado v. Superior Court of Sacramento County 11
23 Cal3d.574 Hurtado emphasizes California's concern with its
24 citizens. By analogy, the traditional approach provides that a
25 state utilizing its own laws for the protection of its citizens, has
26 a greater interest than that of the foreign state. As discussed,
27 all of the parties are domiciled in Florida. Hurtado continues,
"with respect to the "governmental interests" approach to an

1 apparent choice-of-law matter, a state's legislation limiting
2 damages in a wrongful death action does not express an overriding
3 state interest in denying its own residents unlimited recovery in
4 such an action." [cite omitted] Petitioner's argue that the
5 superior remedy afforded the petitioner should be California's
6 overriding concern. We disagree. Both laws seek to deter
7 unlicensed procurement of employment. Florida provides a criminal
8 remedy complete with restitution for violators of their talent
9 agency act, while California provides a civil remedy. Petitioner's
10 argue that California allows the voiding of an illegal contract and
11 Florida does not. Thus, this superior remedy should create a
12 substantial California state interest in seeing its laws enforced.
13 It is difficult to understand how the Florida Courts could not void
14 a Florida contract between two Florida residents based on the
15 illegal conduct, of one of the parties. Consequently, petitioner's
16 argument is unconvincing.

17 In Reich v. Purcell 67 Cal.2d551, "Missouri is concerned
18 with conduct within her borders and as to such conduct she has the
19 predominant interest of the states involved. Limitations of damages
20 for wrongful death, however, have little or nothing to do with
21 conduct. They are concerned not with how people should behave but
22 with how survivors should be compensated. The state of the place of
23 the wrong has little or no interest in such compensation when none
24 of the parties reside there....A defendant cannot reasonably
25 complain when compensatory damages are assessed in accordance with
26 the law of his domicile and plaintiffs receive no more than they
27 would had they been injured at home." (See Cavers, op. cit., supra,
pp. 153-157.) Like Reich, both states seek deter illegal conduct.

1 The ability for the petitioner to obtain a more favorable remedy in
2 California does not provide California with a more substantial
3 interest than that of its sister state.

4 In Arno v. Club Med. Inc., although virtually all of the
5 relevant conduct occurred outside California, that court agreed, "we
6 still must apply California's choice of law rules in deciding which
7 jurisdiction's law governs Arno's state-law claims. Klaxon Co. v.
8 Stentor Electric Mfg., Co., 313 U.S. 487, 496, 61 S.Ct. 1020,
9 1021-22, 85 L.Ed. 1477 (1941); Ledesma v. Jack Stewart Produce,
10 Inc., 816 F.2d 482, 484 (9th Cir.1987). California has jettisoned
11 the relatively predictable choice of law rules based on the place
12 where the transaction occurred (lex locus) in favor of a three-part
13 governmental interest test. Reich v. Purcell, 67 Cal.2d 551, 63
14 Cal.Rptr. 31, 432 P.2d 727 (1967). The comparison and "choice of
15 law" is required. Here, this case was initiated by petitioner in
16 the Florida courts in 1997 and has been continuously litigated since
17 that time. The allegations in that case provide that the
18 respondents procured performing engagements for the petitioner
19 without a license. Florida law provides a licensing scheme enacted
20 by Florida's legislature for the protection of Florida's artists.
21 Consequently, Florida has a superceding interest in the protection
22 of her own citizens, determining the respondent's liability under
23 their own statutes and completing this ongoing litigation.

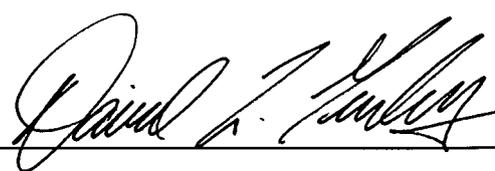
24 Additionally, the duration of the relationship between the
25 parties and the relatively obscure and limited allegations of
26 illegal conduct, based on two alleged procurement acts within
27 California's borders, coupled with the substantial violations that
likely occurred in the parties home state, leaves no alternative but

1 to conclude, that Florida has more of a substantial interest in
2 seeing its laws applied and enforced, in this very specific set of
3 facts, than that of California.

4 Petitioners rely heavily on James Breuer v. Top Draw
5 Entertainment, Inc. TAC 18-95. Unlike here, that case did not
6 present a conflict of laws issue.

7 Consequently, the Labor Commissioner is without subject
8 matter jurisdiction and the respondent's Motion to Dismiss the
9 Petition is granted.

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11 Dated: October 11, 2001'



12 DAVID L. GURLEY
13 Special Hearing Officer
14 for the Labor Commissioner

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