1 DIVISION OF LABOR STANDARDS ENFORCEMENT Department of Industrial Relations 2 State of California By: MELANIE V. SLATON, State Bar #137565 3 300 Oceangate Boulevard, Suite 302 Long Beach, California 90807 Telephone No.: (562) 590-5461 4 5 Special Hearing Officer 6 7 BEFORE THE STATE LABOR COMMISSIONER 8 OF THE STATE OF CALIFORNIA 9 10 RICHELL RENE WRIGHT, Case No. TAC 19-03 11 (Cal Labor Code § Petitioner, 1700, 4412 DETERMINATION OF 13 CONTROVERSY vs. 14 15 GILBERT A. CABOT, 16 Respondent, 17 18 19 20 The above-entitled controversy came on regularly for 21 hearing on February 25 and 26, 2004 before the Labor Commissioner, 22 Division of Labor Standards Enforcement, State of California by 23 Melanie V. Slaton, serving as Special Hearing Officer under the 24 provisions of Labor Code Section 1700.44. 25 Petitioner, Richell Rene Wright, (hereinafter "Petitioner" or "Ms. Wright") appeared through Stokes, Bartholomew, Evans & 26 27 Petree, P.A, by Paul S. Davidson and respondent, Gilbert A. Cabot, 28 1 Determination of Controversy

1 (hereinafter "Respondent" or "Mr. Cabot") represented himself.

2 Petitioner alleges that she is an artist within the meaning of Labor Code Section 1700.4. Petitioner alleges that Respondent 3 acted in the capacity of a "talent agency" as defined in Labor 4 Code Section 1700.4 and was not duly licensed by the laws of the 5 Petitioner further alleges that she entered State of California. 6 7 into a written document in 1996 with Respondent whereby Respondent would "use his best efforts to develop, package, and market WRIGHT 81 9 as an actress in all realms of television, motion picture and video production." 10 I

Petitioner prays for a determination that the actions of 11 Respondent have violated the Talent Agencies Act; for a 12 determination that the document that is purported to constitute a 13 contract is illegal and void in its entirety from its inception 14 15 and that Respondent is not entitled to any relief pursuant to the complaint that Mr. Cabot has filed in the Superior Court Action. 16 Mr. Cabot's Superior Court complaint alleges, inter alia, breach 171 18 of contract and breach of fiduciary duty arising from his 19 purported agreement with Petitioner to market and develop her, Respondent answered the petition and denied that any acts he 20 21 undertook on behalf of the Petitioner were in the capacity of an 22 unlicensed talent agent. Petitioner also filed a request for sanctions for Respondent's alleged failure to produce documents in 23 compliance with the order of the hearing officer to produce 24 documents dated December 26, 2003. 25

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<u>ISSUES</u>

There are three issues presented:

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1	1. Did Respondent function as a talent agent within
2	the meaning of the Talent Agencies Act?
3	2. If so, to what relief, if any, is Petitioner
4	entitled?
5	3. Is Petitioner entitled to sanctions regarding the
6	hearing officer's order to produce documents dated
7	December 26, 2003?
8	DISCUSSION AND FINDINGS
9	Evidence, both oral and documentary, was introduced during
10	two days of hearing in the case. The key issue addressed by both
11	sides was the specific nature of the relationship between
12	Petitioner and Respondent. All parties stipulated at the hearing
13	that Respondent, Mr. Cabot, was not a licensed talent agent.
14	Ms. Wright began her professional singing and song writing
15	career in Nashville in approximately 1989. Ms. Wright worked in
16	Opryland, Country Music U.S.A. and signed recording contracts with
17	Polygram Music, Mercury Records, Polydor and MCA. In 1995, Ms.
18	Wright was selected the top new female vocalist of the year by the
19	Academy of Country Music.
20	The evidence revealed that Clarence Spalding was Ms. Wright's
21	talent manager from 1996 until the end of 2003. Furthermore, the
22	evidence showed that Ms. Wright was represented by the talent
23	agency of Creative Artists Agency and had Mike Vadim for her
24	business management. Ms. Wright's day to day manager was Eddie
25	Rhines.
26	In 1995, Mr. Rhines was contacted by Respondent, Mr. Cabot,
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27 concerning Mr. Cabot getting Ms Wright acting roles on television

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1 and film. Ms. Wright testified that Mr. Cabot "guaranteed" that 2 he would be able to get Ms. Wright work as a television artist. 3 Ms. Wright stated that Mr. Cabot claimed that he had vast 4 experience and contacts in the film and television industry and 5 that he had gotten Elizabeth Shue the role in the film "Leaving 6 Las Vegas".

7 There was no evidence that Mr. Cabot acted in conjunction 8 with, and at the request of, a licensed talent agency in the 9 negotiation of an employment contract.

10 Ms. Wright testified that Mr. Cabot arranged for her to meet 11 with and audition for producers of a new network series, "Second 12 Noah." In fact, the evidence showed Mr. Cabot provided Ms. Wright 13 with a number of scripts that Ms. Wright could use to audition for 14 parts in the television and film industry.

In 1996, Mr. Cabot and Ms. Wright entered into a written agreement which identifies Mr. Cabot as a "consultant and packager in the entertainment and leisure industries..." It compensates Mr. Cabot with "twenty-five percent (25%) of gross payments under any indirect contract as reimbursement for administrative costs and fees." The agreement was signed by Ms. Wright and Mr. Cabot.

After signing the agreement, there is evidence that Mr. Cabot "pitched" Ms. Wright for the upcoming television season, including an offer for two days for \$7500.00 as a singer (on camera) and a TV movie package for five days and \$42,000. (Exhibit 11)

26 Ms. Wright testified that her sole purpose in retaining Mr.
27 Cabot was to find acting work in television and film. Mr. Cabot

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1 purchased an ad in Hollywood Reporter to advertise Ms. Wright's 2 availability as an actress. (Exhibit 45)

Additionally, the oral and documentary testimony reflected that fact that Mr. Cabot made a pitch to a potential distributor to have Ms. Wright appear on television as a celebrity to market her line of clothing. (Exhibits 13, 14 and 15)

7 Mr. Cabot was the sole witness for Respondent. Mr. Cabot 8 denied that he was involved with procuring employment for Ms. 9 Wright as an actor, describing his role as one of an entertainment 10 partnership only.

11 Counsel for Ms. Wright sought to impeach Mr. Cabot's 12 testimony with evidence of felony convictions. These felony convictions have been duly noted in evaluating Mr. Cabot's 13 credibility. Additionally, counsel for Ms. Wright, highlighted 14 15 the fact that Mr. Cabot has been found in violation of two prior determinations of controversy under the Talent Agencies Act. 16 (Exhibits 37 and 38) (Michelle Edith Martin vs. Gilbert A. Cabot, 17 TAC 21-96 and Mary-Margaret Humes vs. Margil Ventures and Gilbert 18 19 A. Cabot, TAC 19-81)

Given the above, the evidence is overwhelming that Mr. Cabot was operating as a talent agent who actively solicited employment on Ms. Wright's behalf in a manner of instances.

The remaining issue concerns Petitioner's request for sanctions for Respondent's alleged failure to comply with the hearing officer's order dated December 26, 2003. Respondent was ordered to provide documents requested by Ms. Wright's counsel in his letter of August 26, 2003. Mr. Cabot testified that his

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1 former counsel withdrew from the instant matter without ever 2 informing Mr. Cabot that Petitioner had requested documents. Mr. 3 Cabot stated that he had asked his former counsel for his legal 4 file and had not received it. Mr. Cabot said that he had never 5 received the order dated December 26, 2003 and the letter 6 requesting documents of August 26, 2003.

7 Counsel for Ms. Wright disputed the allegations of Mr. Cabot 8 concerning whether Mr. Cabot was properly served with the request for documents. At the conclusion of the first day of hearing, the 9 10 hearing officer requested that Mr. Cabot bring any documents 11 responsive to Petitioner's August 26, 2003 letter to the second 12 day of hearing.

At the second day of hearing, Mr. Cabot testified that he 13 14 attempted to obtain any additional documents responsive to Ms. 15 Wright's request, and that Mr. Cabot had in fact produced all 16 documents responsive to the request. Given that there is no 17 evidence that any existing documents were withheld, there is no 18 prejudice to Petitioner. Petitioner's request for sanctions is denied. 19

CONCLUSIONS OF LAW Petitioner is an "artist" within the meaning of Labor 21 1. 22 Code Section 1700.4(b) 23 2. The Labor Commissioner has jurisdiction to determine 24 this controversy pursuant to Labor Code Section

1700.44(a).

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26 3. Respondent acted as a "talent agency" within the meaning of Labor Code Section 1700.4(a). "'Talent Agency' means 27

a person or corporation who engages in the occupation of 1 2 procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists..." 3 4 The evidence in this matter goes far beyond satisfying the minimal standard requirement established in Waisbren 5 v. Peppercorn Production, Inc. (1995) 41 Cal. App. 4th 6 7 246, 255-260. The <u>Wasibren</u> court held that Labor Code Sections 1700-1700.47 require talent agency license even 8 9 where procurement activities are only incidental. The exclusion of the licensing requirement pursuant to 10 4. 11 Labor Code Section 1700.44(d) does not apply here 12 because there is no evidence that Respondent acted in conjunction with, and at the request of, a licensed 13 talent agency in the negotiation of an employment 14 15 contract. Respondent Gilbert A. Cabot violated Labor Code Section 16 5. 1700.5, in that he engaged in and carried out the 17 occupation of a talent agency without first procuring a 18 license from the Labor Commissioner. The written 19 agreement between Respondent and Petitioner is 20accordingly void <u>ab</u> <u>initio</u> and is unenforceable for all 21purposes (Waisbren v. Peppercorn Productions, Inc, 22 23 supra., 41 Cal App. 4th 246; Buchwald v. Superior Court 24 (1967) 254 Cal.App. 2d 347) 25 Respondent has no right to any commissions regarding б. Petitioner. There was no evidence presented that 26 Petitioner actually paid any commissions to Respondent. 2728 7

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Petitioner is therefore not seeking any recovery of commissions paid. Petitioner's request for sanctions is denied. 7. DETERMINATION The written contract entered into between Petitioner Ms. Wright and Respondent Mr. Cabot is void and unenforceable for all purposes. DATED: March 30, 2005 e 11. Dato Slaton e Special Hearing Officer The above determination is adopted in its entirety. Dated: April 1, 2005 By: Donna Dell Labor Commissioner Determination of Controversy

STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

> CERTIFICATION OF SERVICE BY MAIL (C.C.P. §1013a)

> > (RICHELL RENE WRIGHT v. G.A. CABOT) (TAC 19-03)

I, MARY ANN E. GALAPON, do hereby certify that I am employed in the county of San Francisco, over 18 years of age, not a party to the within action, and that I am employed at and my business address is 455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102.

On <u>April 4, 2005</u>, I served the following document:

DETERMINATION OF CONTROVERSY

by placing a true copy thereof in envelope(s) addressed as follows:

PAUL S. DAVIDSON, ESQ. MARK A. BOGDANOWICZ, ESQ. STOKES BARTHOLOMEW EVANS & PETREE, P.A. 424 Church Street, Suite 2800 Nashville, TN 37219-2386

GILBERT A. CABOT REO GROUP Post Office Box 144 Hollywood, CA 90078-0144

and then sealing the envelope with postage thereon fully prepaid, depositing it in the United States mail in the city and county of San Francisco by ordinary first class mail.

I certify under penalty of perjury that the foregoing is true and correct. Executed on <u>April 4, 2005</u>, at San Francisco, California.

Mary ann E. Galagon