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11
12 **BEFORE THE LABOR COMMISSIONER**
13 **OF THE STATE OF CALIFORNIA**

14 ECHO LAKE MANAGEMENT, LLC, a
15 California limited liability company,

16 Petitioner,

17 v.

18 MEG DELOATCH, an individual,

19 Respondent.

Case No. TAC-52681

DETERMINATION OF CONTROVERSY

20 **I. INTRODUCTION**

21 The above-captioned matter, a Petition to Determine Controversy under Labor Code section
22 1700.44, came on regularly for hearing in Los Angeles, California on November 20, 2019 (hereinafter,
23 referred to as the “TAC Hearing”), before the undersigned attorney for the Labor Commissioner
24 assigned to hear this case. Petitioner ECHO LAKE MANAGEMENT LLC, a California limited
25 liability company, (hereinafter, referred to as “ECHO LAKE”) appeared and was represented by David
26 B. Jonelis, Esq. of LAVELY & SINGER. Respondent MEG DELOATCH, an individual (hereinafter,
27 referred to as “DELOATCH”) appeared and was represented by Max J. Sprecher, Esq. of LAW
28 OFFICES OF MAX J. SPRECHER. The matter was taken under submission on February 28, 2020,

1 after the parties submitted post-hearing briefs.

2 ECHO LAKE seeks an order determining ECHO LAKE did not engage in any unlawful
3 procurement in violation of the Talent Agencies Act that would relieve DELOATCH of her contractual
4 obligation to pay commissions to ECHO LAKE. DELOATCH claims ECHO LAKE violated the
5 Talent Agencies Act and disputes her obligation to pay ECHO LAKE commissions on entertainment
6 engagements entered into during the term of the oral management agreement.

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

9 **II. FINDINGS OF FACT**

10 At all relevant times, DELOATCH was a professional television writer and showrunner,
11 represented by Ian Greenstein (“GREENSTEIN”), who is a licensed talent agent with The Gersch
12 Agency. Based on GREENSTEIN’s referral, in July 2014, DELOATCH entered into an oral agreement
13 with ECHO LAKE, an unlicensed talent management company. Pursuant to the terms of the
14 Agreement, ECHO LAKE provided DELOATCH personal management services with respect to her
15 entertainment career. In exchange, ECHO LAKE received a commission in the amount of 10% of
16 DELOATCH’s gross monies earned from (1) her entertainment services rendered during the term of
17 the Agreement and (2) any contracts entered into or substantially negotiated during the term of the
18 Agreement.

19 ECHO LAKE and GREENSTEIN testified ECHO LAKE was brought on board to advise and
20 direct DELOATCH in her career as a professional television writer. Dave Brown (hereinafter,
21 “BROWN”), Amotz Zakai (hereinafter, “ZAKAI”), and Zadoc Angell (hereinafter, “ZADOC”)
22 (together referred to hereafter as, the “ECHO LAKE Team”) primarily managed DELOATCH for
23 ECHO LAKE. BROWN testified ECHO LAKE’s role was to “guide, advise,” and “counsel”
24 DELOATCH to help her achieve her “long term goal” of “develop[ing] her own show.” Both parties
25 testified procurement was GREENSTEIN’s main function. The ECHO LAKE Team testified that at
26 least 90% of ECHO LAKE’s time was spent helping Meg “develop over ten shows.” The ECHO
27 LAKE Team also provided GREENSTEIN support in his efforts to obtain employment for
28 DELOATCH. GREENSTEIN and the ECHO LAKE Team worked in conjunction to procure

1 employment for DELOATCH from the inception of ECHO LAKE’s oral management agreement with
2 DELOATCH until it ended in 2018.

3 During all relevant periods, ECHO LAKE and the GREENSTEIN Team continuously
4 communicated with each other on matters involving DELOATCH by telephone or through email.
5 As was made evident repeatedly throughout the hearing, ECHO LAKE and GREENSTEIN worked as
6 a team with the goal of “moving the ball forward for [DELOATCH].” The ECHO LAKE Team
7 credibly testified they were constantly in communication with GREENSTEIN, at times “every day.”
8 According to their testimony, ECHO LAKE would never do anything concerning procurement without
9 GREENSTEIN and kept GREENSTEIN, at all times, “in the loop.” According to GREENSTEIN’s
10 own testimony, his request to ECHO LAKE to set up meetings was “implicit” in the overall relationship
11 between the ECHO LAKE Team and GREENSTEIN. Yet, ECHO LAKE knew “implicit” did not
12 mean the ECHO LAKE Team had free reign to act on their own.

13 In her cross examination of GREENSTEIN and ECHO LAKE, DELOATCH produced various
14 emails from ECHO LAKE to DELOATCH. GREENSTEIN was copied in every email DELOATCH
15 produced except for one email that was not originated by ECHO LAKE. In the emails, ECHO LAKE
16 informed DELOATCH of individuals in the industry, an executive producer for example, whom the
17 ECHO LAKE Team met with and whom they wanted DELOATCH to meet with for the purpose of
18 setting up a potential purchase of her services. GREENSTEIN’s primary job was to procure
19 employment for DELOATCH, but the ECHO LAKE Team “support[ed]” GREENSTEIN’s
20 procurement efforts by “reaching out to [their own] contacts in the entertainment industry.” BROWN
21 testified ECHO LAKE would be “remiss not to” support GREENSTEIN’s efforts since the ECHO
22 LAKE Team felt it was the responsibility as a manger to do “everything you can” to help further a
23 client’s career and livelihood. Likewise, GREENSTEIN admitted ECHO LAKE would set up a
24 meeting for DELOATCH if ECHO LAKE had a stronger relationship with the employer as long as he
25 was kept “in the loop.” For example, in 2014, ECHO LAKE reached out to an individual named Todd
26 Murata at Mayhem Pictures to set up a meeting for DELOATCH because Zakai and Todd went to USC
27 together. ZAKAI testified it would have been “completely inefficient” for GREENSTEIN to be the
28 initial point of contact since ZAKAI had the stronger connection.

1 During the term of the Agreement, DELOATCH entered into contracts to perform writing and
2 producing services in connection with the television programs *Family Reunion* and *Fuller House*
3 (hereinafter, referred to as the “Shows”).

4 **a. The Procurement of *Family Reunion***

5 DELOATCH met Robert Prinz (hereinafter, “PRINZ”) in 2016 after GREENSTEIN submitted
6 DELOATCH’s materials for her consideration in 2015. At the time, PRINZ worked at MTV where he
7 developed young adult focused comedy and drama series. No employment resulted. BROWN
8 explained how the meeting that actually led to DELOATCH’s employment came about. Specifically,
9 BROWN testified he and PRINZ shared football season tickets in 2017. BROWN and PRINZ
10 discussed PRINZ’s new job at Netflix. Naturally, during the conversation BROWN brought up
11 DELOATCH. The following day BROWN phoned GREENSTEIN and told him, “so I was—you
12 know, I was at the Rams game yesterday with Robert, we’ve got an opportunity here and, you know,
13 [GREENSTEIN] was like, by all means, get the meeting set.” Clearly, ECHO LAKE set the meeting
14 at the request of GREENSTEIN. Further testimony demonstrated the extent of ECHO LAKE and
15 GREENSTEIN’s collaboration. BROWN’s personal contact along with the ECHO LAKE Team and
16 GREENSTEIN’s concerted efforts ultimately led to DELOATCH’s employment in *Family Reunion*.

17 **b. The Procurement of *Fuller House***

18 GREENSTEIN set up the first meeting between DELOATCH and Warner Bros regarding
19 *Fuller House* in February 2018 after repeatedly submitting DELOATCH for the show throughout 2016.
20 ECHO LAKE credits the 2018 meeting to a subsequent meeting which it argues ultimately resulted in
21 DELOATCH being hired on *Fuller House*. ECHO LAKE offers as evidence emails illustrating
22 GREENSTEIN submitted the pilots for *Village People* and *Family Drama* beginning in 2016 and up
23 until 2018 when the meeting between Warner Bros and DELOATCH took place. However, the
24 evidence provided at hearing also show ECHO LAKE made the first introduction in 2015 by sending
25 Kyle Schmitz, an executive with Warner Bros., a sample of her writing for “upper level staffing
26 consideration on *Fuller House*.”

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1 **III. LEGAL ANALYSIS**

2 The Talent Agencies Act, Cal. Lab. Code §1700, et seq. (hereinafter, “TAA”) was enacted
3 to regulate talent agencies in the State, and to ensure that those functioning as talent agencies are
4 licensed by the Labor Commissioner. Remedial in nature, the TAA’s purpose is to protect artists from
5 the abuse of unscrupulous talent agencies. *Styne v. Stevens* (2001), 26 Cal.4th 42, 51. Specifically, the
6 TAA prohibits unlicensed agents procuring employment for artists. An agreement that violates the
7 licensing requirements of the TAA is illegal and unenforceable. *Buckwald v. Sup. Ct.* (1967) 254
8 Cal.App.2d 347, 351.

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

14 The burden of proof in actions before the Labor Commissioner is found at Evidence Code
15 section 115, which states, “[e]xcept as otherwise provided by law, the burden of proof requires proof
16 by a preponderance of evidence.” Evidence Code §115. “[T]he party asserting the affirmative at an
17 administrative hearing has the burden of proof, including both the initial burden of going forward and
18 the burden of persuasion by preponderance of the evidence...” *McCoy v. Board of Retirement of the*
19 *County of Los Angeles* (1986) 183 Cal.App.3d 1044, 1051-52.

20 The following facts are undisputed: 1) DELOATCH is an artist as defined by Labor Code
21 section 1700.4(b); 2) GREENSTEIN and ECHO LAKE engaged in procurement activities for
22 DELOATCH as defined by Labor Code section 1700.4(a); 3) GREENSTEIN is licensed as a talent
23 agent; and 4) ECHO LAKE is not a licensed agent. ECHO LAKE posits that two exemptions to the
24 bar against procurement exist: The “safe harbor provision” and the doctrine of severance. *See*
25 *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974.

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1 **A. Echo Lake Fails to Meet its Burden in Establishing the Exemption under the “Safe Harbor” Provision.**

2 The safe harbor exemption provides that “[it] is not unlawful for a person or corporation which
3 is not licensed pursuant to this chapter to act in conjunction with, and at the request of, a licensed talent
4 agency in the negotiation of an employment contract.” Cal. Lab. Code §1700.44(d). As most recently
5 addressed in *Podwall, supra*, TAC 45605, p.10, for the exemption to apply, a manager has to satisfy
6 three elements: “(1) act in conjunction with a licensed talent agent; and (2) act at the request of a
7 licensed talent agent; and (3) such actions are limited to the negotiation of an employment contract.”
8 *Ibid.*, citing *Shirley v. Artists’ Management West*, TAC 08-01, *Lister v. Holzman*, TAC 04-00 and
9 *Creative Artists Entertainment Group, LLC, supra*, TAC 26-99. All three prongs must be met in order
10 to benefit from the safe harbor provision.

11 Here, ECHO LAKE satisfies prongs one and two of the safe harbor provision. It is
12 unquestionable, ECHO LAKE acted in conjunction with GREENSTEIN. ECHO LAKE AND
13 GREENSTEIN stipulated to that fact. And, as was made evident repeatedly throughout the hearing,
14 ECHO LAKE and GREENSTEIN worked as a team with the goal of “moving the ball forward for
15 [DELOATCH].” ECHO LAKE acted at the request of GREENSTEIN, and would never do anything
16 concerning procurement without GREENSTEIN.

17 However, ECHO LAKE fails to meet its burden with regard to the third prong: their actions
18 were not limited to the negotiation of an employment contract. The safe harbor provision is only
19 applicable to the activities of an unlicensed person consisting of “the negotiation of the contract.” *Todd*
20 *v. Meagher*, TAC 13418, p.22. Negotiation has been interpreted narrowly – the following activities in
21 this case exceed the scope of the safe harbor provision:

- 22 • Discussion with the producers or casting directors in an attempt to obtain auditions for an artist
23 exceed the scope of this statute. *Creative Artists Entertainment Group, LLC*, TAC 26-99 *Id.* at
24 11-12; *see also Shirley v. Artists’ Management West*, TAC 08-01.
- 25 • Approaching third parties and soliciting them to offer engagements to an artist except at the
26 request of the licensed agent. *Todd v. Meagher*, TAC 13418, p.22.
- 27 • Communicating with casting directors to promote the actor for potential roles, not discussions
28 concerning the terms of the engagement. *Massey v. Landis*, TAC 42-03.

- 1 • Pre-offer solicitations, the promotional efforts, and/or securing the initial offers. *See Podwall*
2 *v. Robinson, supra*, citing *Shirley, Lister, and Creative Artists*.

3 Citing *Plana v. Quinn*, TAC 15652, ECHO LAKE argues for a broader interpretation of the
4 term “negotiation,” on the premise that the “process of ‘securing employment’ is a necessary
5 component of ‘negotiation.’” ECHO LAKE argues that “negotiation of an employment contract” goes
6 beyond the discussions regarding the terms of an engagement to include marketing and promotional
7 efforts leading to an offer of employment. ECHO LAKE claims the meaning of negotiation under the
8 safe harbor exception includes pre-offer procurement activity because procurement “is considered part
9 of the ‘negotiation’ process.”

10 At the hearing, the ECHO LAKE Team testified as to their belief that procurement is “extremely
11 broad” and that negotiations occur *after* an offer is made. Their testimony and the countless emails
12 introduced at the hearing leave no doubt the ECHO LAKE Team, used all the resources at their disposal
13 and, in conjunction with GREENSTEIN, successfully helped DELOATCH find employment. As noted
14 above, however, the meaning of negotiation of an employment contract must be narrowly construed.
15 As such, this hearing officer finds ECHO LAKES’s activities, do not fall within the provisions of the
16 safe harbor exemption. We are unwilling, as ECHO LAKE argues, to expand our interpretation that all
17 communications with prospective employers constitutes the negotiation of an employment contract
18 within the meaning of Labor Code section 1700.44(d). This interpretation applies to these specific set
19 of facts.

20 **B. Severance is Inappropriate**

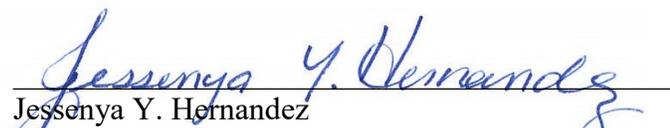
21 The doctrine of severability is applicable to agreements under the TAA. *Marathon* (2000) 42
22 Cal.4th 83. However, if the central purpose of the contract is “tainted with illegality,” then the illegality
23 is not severable and the contract is unenforceable. (*Id.* at 124.) Here, the central purpose of the
24 agreement was procurement. Although ECHO LAKE and GREENSTEIN were successful in obtaining
25 employment for DELOATCH, the primary purpose of the Agreement was unlawful, and ECHO LAKE
26 went beyond the limited scope of negotiating the employment contract. The procurement of *Family*
27 *Reunion* and *Fuller House* are not severable. In both instances, the evidence showed both (i) a
28 continuous and pervasive pattern of unlawful procurement activities, tainting the entire relationship

1 and precluding any severance; and (ii) unlawful procurement activities in connection with both of the
2 subject engagements that do not meet the safe harbor provisions. Therefore, severance is not
3 appropriate in this case.

4 **IV. ORDER**

5 For the above-stated reasons, IT IS HEREBY ORDERED that the oral Agreement between
6 ECHO LAKE and DELOATCH is unlawful and void *ab initio*. As such, ECHO LAKE has no
7 enforceable rights under the contract and ECHO LAKE cannot recover commissions in connection
8 with *Family Reunion* and *Fuller House*.

9
10 Dated: 05/07/2021

11 
12 Jessenya Y. Hernandez
13 Attorney for the Labor Commissioner

14 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

15 Dated: 05/07/2021

16 
17 Lilia Garcia-Brower
18 Labor Commissioner

