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 November 20, 2019 (hereinafter, referred to as the “TAC Hearing”), before the undersigned attorney for the Labor Commissioner assigned to hear this case. Petitioner ECHO LAKE MANAGEMENT LLC, a California limited liability company, (hereinafter, referred to as “ECHO LAKE”) appeared and was represented by David B. Jonelis, Esq. of LAVELY & SINGER. Respondent MEG DELOATCH, an individual (hereinafter, referred to as “DELOATCH”) appeared and was represented by Max J. Sprecher, Esq. of LAW OFFICES OF MAX J. SPRECHER. The matter was taken under submission on February 28, 2020,
after the parties submitted post-hearing briefs.

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

Based on 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

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

ECHO LAKE and GREENSTEIN testified ECHO LAKE was brought on board to advise and direct DELOATCH in her career as a professional television writer. Dave Brown (hereinafter, “BROWN”), Amotz Zakai (hereinafter, “ZAKAI”), and Zadoc Angell (hereinafter, “ZADOC”) (together referred to hereafter as, the “ECHO LAKE Team”) primarily managed DELOATCH for ECHO LAKE. BROWN testified ECHO LAKE’s role was to “guide, advise,” and “counsel” DELOATCH to help her achieve her “long term goal” of “develop[ing] her own show.” Both parties testified procurement was GREENSTEIN’s main function. The ECHO LAKE Team testified that at least 90% of ECHO LAKE’s time was spent helping Meg “develop over ten shows.” The ECHO LAKE Team also provided GREENSTEIN support in his efforts to obtain employment for DELOATCH. GREENSTEIN and the ECHO LAKE Team worked in conjunction to procure
employment for DELOATCH from the inception of ECHO LAKE’s oral management agreement with DELOATCH until it ended in 2018.

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

In her cross examination of GREENSTEIN and ECHO LAKE, DELOATCH produced various emails from ECHO LAKE to DELOATCH. GREENSTEIN was copied in every email DELOATCH produced except for one email that was not originated by ECHO LAKE. In the emails, ECHO LAKE informed DELOATCH of individuals in the industry, an executive producer for example, whom the ECHO LAKE Team met with and whom they wanted DELOATCH to meet with for the purpose of setting up a potential purchase of her services. GREENSTEIN’s primary job was to procure employment for DELOATCH, but the ECHO LAKE Team “support[ed]” GREENSTEIN’s procurement efforts by “reaching out to [their own] contacts in the entertainment industry.” BROWN testified ECHO LAKE would be “remiss not to” support GREENSTEIN’s efforts since the ECHO LAKE Team felt it was the responsibility as a manager to do “everything you can” to help further a client’s career and livelihood. Likewise, GREENSTEIN admitted ECHO LAKE would set up a meeting for DELOATCH if ECHO LAKE had a stronger relationship with the employer as long as he was kept “in the loop.” For example, in 2014, ECHO LAKE reached out to an individual named Todd Murata at Mayhem Pictures to set up a meeting for DELOATCH because Zakai and Todd went to USC together. ZAKAI testified it would have been “completely inefficient” for GREENSTEIN to be the initial point of contact since ZAKAI had the stronger connection.
During the term of the Agreement, DELOATCH entered into contracts to perform writing and producing services in connection with the television programs *Family Reunion* and *Fuller House* (hereinafter, referred to as the “Shows”).

**a. The Procurement of Family Reunion**

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

**b. The Procurement of Fuller House**

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

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

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 a person may procure non-artistic employment or engagements for the artist without the need for a license. *Id.*

The 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 evidence.” Evidence Code §115. “[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. Board of Retirement of the County of Los Angeles* (1986) 183 Cal.App.3d 1044, 1051-52.

The following facts are undisputed: 1) DELOATCH is an artist as defined by Labor Code section 1700.4(b); 2) GREENSTEIN and ECHO LAKE engaged in procurement activities for DELOATCH as defined by Labor Code section 1700.4(a); 3) GREENSTEIN is licensed as a talent agent; and 4) ECHO LAKE is not a licensed agent. ECHO LAKE posits that two exemptions to the bar against procurement exist: The “safe harbor provision” and the doctrine of severance. *See Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974.
A. Echo Lake Fails to Meet its Burden in Establishing the Exemption under the “Safe Harbor” Provision.

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

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

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

- Discussion with the producers or casting directors in an attempt to obtain auditions for an artist exceed the scope of this statute. Creative Artists Entertainment Group, LLC, TAC 26-99 Id. at 11-12; see also Shirley v. Artists’ Management West, TAC 08-01.
- Approaching third parties and soliciting them to offer engagements to an artist except at the request of the licensed agent. Todd v. Meagher, TAC 13418, p.22.
- Communicating with casting directors to promote the actor for potential roles, not discussions concerning the terms of the engagement. Massey v. Landis, TAC 42-03.
• Pre-offer solicitations, the promotional efforts, and/or securing the initial offers. See Podwall v. Robinson, supra, citing Shirley, Lister, and Creative Artists.

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

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

B. Severance is Inappropriate

The doctrine of severability is applicable to agreements under the TAA. Marathon (2000) 42 Cal.4th 83. However, if the central purpose of the contract is “tainted with illegality,” then the illegality is not severable and the contract is unenforceable. (Id. at 124.) Here, the central purpose of the agreement was procurement. Although ECHO LAKE and GREENSTEIN were successful in obtaining employment for DELOATCH, the primary purpose of the Agreement was unlawful, and ECHO LAKE went beyond the limited scope of negotiating the employment contract. The procurement of Family Reunion and Fuller House are not severable. In both instances, the evidence showed both (i) a continuous and pervasive pattern of unlawful procurement activities, tainting the entire relationship
and precluding any severance; and (ii) unlawful procurement activities in connection with both of the
subject engagements that do not meet the safe harbor provisions. Therefore, severance is not
appropriate in this case.

IV. ORDER

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

Dated: 05/07/2021

Jessenia Y. Hernandez
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: 05/07/2021

Lilia Garcia-Brower
Labor Commissioner
PROOF OF SERVICE

STATE OF CALIFORNIA )
COUNTY OF LOS ANGELES )

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 and not a party to the within action; my business address is: 1500 Hughes Way, Suite C-202, Long Beach, CA 90810.

On May 10, 2021, 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:

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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 10th day of May 2021, at Long Beach, California.

Lindsey Lara
Declarant