

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
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12 **BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT**
13 **DEPARTMENT OF INDUSTRIAL RELATIONS**
14 **STATE OF CALIFORNIA**

15 THOMAS GIBSON, an individual,
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17 Petitioner,
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19 v.
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21 CRAIG DORFMAN, an individual; and
22 FRONTLINE ENTERTAINMENT
23 MANAGEMENT, INC., a California corporation,
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25 Respondents.
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Case No.: TAC 36861
**DETERMINATION OF
CONTROVERSY (LABOR CODE §
1700.44(a))**

1 **DETERMINATION**

2 **I.**

3 **INTRODUCTION**

4 On August 22, 2014, Thomas Gibson filed a petition for determination of controversy
5 (the "Petition") against Craig Dorfman; and Frontline Entertainment Management, Inc.
6 ("Frontline"), a California corporation (Mr. Dorfman and Frontline collectively
7 "Respondents") (Mr. Gibson and Respondents collectively the "Parties") pursuant to Section
8 1700.44 of the Labor Code¹. Hearing on the Petition took place July 13, 2015 in the Los
9 Angeles office of the Labor Commissioner (the "Labor Commissioner"), Division of Labor
10 Standards Enforcement, Department of Industrial Relations, State of California.
11 Barton L. Jacka, an attorney for the Labor Commissioner from the Sacramento office, heard the
12 matter on assignment by the Labor Commissioner.

13 Witnesses for Mr. Gibson were Mr. Dorfman (called by Mr. Gibson as an adverse
14 witness) and Mr. Gibson; Mr. Gibson was represented by Joseph D. Schleimer.²

15 Witnesses for Respondents were Mr. Dorfman, Alisa Adler and (by telephone,
16 following stipulation of the Parties) Bob Gersh; Respondents were represented by Jordan
17 Susman, of Freedman & Taitelman, LLP.

18 Following the hearing, a transcript of the hearing was prepared and submitted; in
19 addition, the Parties engaged in extensive briefing on issues raised by the Petition and during
20 the hearing.

21 **II.**

22 **PLEADINGS AND HEARING**

23 **A. Allegations of the Petition.**

24 The Petition alleges the following, as pertinent to this Determination:
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28 ¹ Unless otherwise specified, all statutory references are to the Labor Code.

² Following the hearing, Grodsky & Olecki, LLP, substituted in for Mr. Schleimer as counsel for Mr. Gibson.

- 1 • Mr. Gibson is employed in Los Angeles, California as a lead performer in the television
2 series “Criminal Minds” and performs in other acting engagements; he is an “artist” as
3 defined in Section 1700.4. Respondents “promote themselves as artists’ managers” but
4 “are engaged de facto and de jure in the occupation of talent agents in Los Angeles,
5 even though neither is so licensed.”
- 6 • On August 20, 2014, Respondents filed suit (the Los Angeles Lawsuit”) against Mr.
7 Gibson in Los Angeles County Superior Court to recover commissions allegedly due
8 from him to them under an oral agreement (the “Agreement”) for them to serve as Mr.
9 Gibson’s managers. The allegations are false and Mr. Dorfman has used the existence
10 of this suit to harm Mr. Gibson’s reputation.
- 11 • As a result of the Los Angeles Lawsuit, a controversy has arisen between Mr. Gibson
12 and Respondents over the legality of the Agreement, which should be declared void ab
13 initio for the following reasons: (a) Respondents misled Mr. Gibson by stating they
14 would procure work for him as an Artist, which misrepresentation went to the “heart of
15 the contractual relationship” and violated Section 1700.5; (b) Respondents solicited and
16 procured or attempted to procure work for Mr. Gibson as an artist, in violation of
17 Section 1700.5; (c) Respondents failed to obtain the Labor Commissioner’s approval of
18 the form of a written agreement between Mr. Gibson and Respondents as required by
19 Section 1700.23, the lack of which has enabled them to make false allegations against
20 Mr. Gibson in the Lawsuit; (d) Respondents failed to post the \$50,000 bond required by
21 Section 1700.15 of talent agents and therefore may be unable to satisfy a judgment by
22 Mr. Gibson against them; and (e) Respondents breached their fiduciary duties to Mr.
23 Gibson by violating his confidences, smearing him and acting in furtherance of their
24 own interests without regard to his.
- 25 • For several years and at least for the 12 months prior to Mr. Gibson’s filing of the
26 Petition, Respondents collected illegal commissions from Mr. Gibson; because the
27 Agreement is unenforceable, those commissions should be disgorged by Respondents
28 and returned to Mr. Gibson.

1 Mr. Gibson seeks a declaration the Agreement is null and void ab initio; an order
2 commanding disgorgement of all commissions received by Respondents from Petition; and
3 costs, including attorneys' fees.

4 Respondents answered the Petition with a general denial and the assertion of several
5 affirmative defenses, including but not limited to: the statute of limitations set forth in Section
6 1700.44(c); the severability of the Agreement (i.e., the limited disgorgement of commissions) if
7 and to the extent Respondents acted under the Agreement in some instances that constituted
8 acting as an unlicensed talent agent and in some instances that did not; unjust enrichment; and
9 the "safe harbor rule" of Section 1700.44(d) if and to the extent Respondents procured work for
10 Mr. Gibson "in conjunction with, and at the request of" Mr. Gibson's licensed talent agent.

11 The Los Angeles Lawsuit (a copy of the pertinent August 20, 2014 complaint by
12 Respondents against Mr. Gibson in Los Angeles County Superior Court, Central District, case
13 number BC 555285 was attached to the Petition) seeks to recover commissions from
14 Mr. Gibson under the Agreement and through other legal theories (e.g., quantum meruit) and to
15 obtain a declaration of Respondents' and Mr. Gibson's respective rights under the Agreement.

16 **B. Mr. Dorfman's testimony.**

17 Mr. Dorfman testified he currently was a talent manager who, until December 31, 2003,
18 had been a licensed talent agent operating Alliance Talent, Inc.; and Craig Dorfman &
19 Associates. During that period, he was Mr. Gibson's agent and had procured for him a role on
20 the television show "Dharma & Greg" – pitching him for the role, negotiating his agreement
21 and closing the deal. Mr. Gibson's role on "Dharma & Greg" ended with the series' finale in
22 2002.

23 When "Dharma & Greg" ended, Mr. Dorfman and Mr. Gibson agreed Mr. Dorfman
24 would be Mr. Gibson's manager (and no longer his agent) and would help him produce his own
25 television series. If this venture succeeded, Mr. Dorfman would be a producer and be paid in
26 that capacity. As Mr. Gibson's manager, Mr. Dorfman, pursuant to an oral agreement, would
27 be paid a 10% commission (with the definition of what was "commissionable" being defined
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1 by a Screen Actors Guild-approved talent agency contract) and Mr. Gibson would hire another
2 person as his agent.

3 As a result of this agreement, Respondents and another enterprise controlled by
4 Mr. Dorfman (Blueprint Partners) received from Mr. Gibson and “loan-out” enterprises
5 Mr. Gibson controlled (Low Born Youth Productions and Long Walk Back Productions, Inc.) a
6 total of \$2,403,150.57 from July 1, 2003 to August 22, 2014; the bulk of this sum was a result
7 of Mr. Gibson’s work for Seasons 1-9 on a television series called “Criminal Minds.”

8 On August 20, 2014, Respondents filed the Los Angeles Lawsuit against Mr. Gibson,
9 alleging in sum Respondents provided management services to Mr. Gibson, that Mr. Gibson
10 agreed to pay Respondents a 10% commission from his gross compensation as an actor for
11 their services (i.e., assented to the Agreement) and Mr. Gibson had breached the Agreement by
12 refusing to pay commissions to Respondents - primarily for Season 10, et seq. of “Criminal
13 Minds”.

14 Mr. Dorfman testified that pursuant to the Agreement, what was “commissionable”
15 (i.e., on what items commissions would be levied), was to be determined by reference to the

16 Screen Actors Guild-approved talent agency contract; the length of time for which
17 commissions were to be paid, however, was pursuant to other provisions on which
18 Mr. Dorfman and Mr. Gibson orally agreed – namely, that commissions would be paid on
19 compensation received for all seasons of “Criminal Minds” for which the terms were being
20 negotiated during Mr. Dorfman’s last 91 days as Mr. Gibson’s manager.

21 Mr. Dorfman denied “procuring” Mr. Gibson’s role on “Criminal Minds” or helping
22 him negotiate the deal under which he was paid. Mr. Dorfman testified he acted only as
23 Mr. Gibson’s manager at the time Mr. Gibson obtained the role and remained his manager
24 through Season 9 of the program – during which time later seasons were being negotiated or
25 otherwise discussed. He denied telling Mr. Gibson he had helped him either get the role or
26 obtain more money for his services.

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1 Mr. Dorfman then testified (primarily on cross-examination by Mr. Gibson's counsel)
2 about the following instances in which Mr. Gibson alleged he had acted as an "agent" rather
3 than as a "manager":

4 • In January 2006, Mr. Dorfman forwarded to Gary Schneider, Mr. Gibson's business
5 manager, a proposal from the Professional Golfers Association (the "PGA") that
6 Mr. Gibson perform services for a PGA campaign as a "celebrity spokesperson".
7 Mr. Dorfman's testimony specifically focused on a January 6, 2006 e-mail from
8 Mr. Dorfman to Mr. Schneider in which Mr. Dorfman stated: "I have spoken to several
9 people who know the golf world and they say I should ask for \$1,000,000 for the year. I
10 might as well try and see what they respond with." Mr. Schneider responded to
11 Mr. Dorfman: "Go get it. I have an attorney that we can use on an hourly basis to help
12 with this and I suggest we do so"; Mr. Dorfman testified with respect to this exchange he
13 did not remember discussing the \$1,000,000 per year with the PGA and he had sent the
14 material to Mr. Schneider because Mr. Schneider could "get involved with this". At the
15 time, according to Mr. Dorfman, Mr. Gibson did not have a talent agent.

16 • In April 2010, Mr. Dorfman suggested Mr. Gibson to a casting director for a commercial
17 (i.e., "What about Thomas Gibson?") and then forwarded to Mr. Gibson the e-mails
18 between himself and the casting director: "Does this interest you? Its [sic] a big pay
19 commercial": Mr. Dorfman testified he sent the message to Mr. Gibson only to see if
20 Mr. Gibson was interested and the communication from the casting director ("perfect! 4 pm
21 on Wed 28th? Taping with me or Billy" / "choose 2 of 3") was not an offer.

22 • On November 22, 2013, Mr. Dorfman sent an e-mail to Mr. Schneider and Sherry Alef (an
23 employee of Mr. Schneider), under the subject "Gibson – Ion promo" that said:
24 They've picked up Thomas' option for another year. You should be receiving a 45,000
25 [sic] check shortly. We made a new agreement for an additional year at 50,000. I'll
26 send paperwork as we get it. Paradigm does not get a commission on this and I get a
27 commission directly not through Frontline.
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1 Mr. Dorfman testified with respect to this exchange that Paradigm (i.e., Paradigm Talent
2 Agency, LLC”), at the time, was Mr. Gibson’s agent; he denied negotiating the “promo”
3 (an advertisement promoting the “Criminal Minds” series) engagement with “Ion” (Ion
4 Media Networks, Inc. or its subsidiary, Ion Television) (a cable television network),
5 however. Instead, according to Mr. Dorfman, he told Ion, in response to a letter from the
6 network, that Mr. Gibson would take for the upcoming year the same amount another actor
7 (Joe Mantegna), performing in the same promo, was to receive; he asked Mr. Mantegna’s
8 agents at ICM (i.e., International Creative Management Partners LLC) to negotiate the
9 promo for both actors. Paradigm was not to receive a commission because “Thomas chose
10 not to pay them.” Mr. Dorfman received a \$4,000 commission for Mr. Gibson’s work on
11 the Ion promo.

- 12 • In June 2014, Mr. Dorfman received into his trust account \$40,000 from “Rainforest”,
13 which sum constituted a “modeling fee” for Mr. Gibson; Mr. Dorfman retained a \$4,000
14 commission from this sum; he testified all he did in connection with this transaction was
15 receive the money.

16 In short, Mr. Dorfman denied ever procuring any work for Mr. Gibson or soliciting,
17 negotiating or procuring any work for him at the request of an agent. He also asserted
18 Mr. Gibson did not work “during any hiatus or any other time except for ‘Criminal Minds’”
19 and he advised Mr. Gibson to hire or replace his talent agents, who, in turn, are the ones who
20 procured or negotiated work for Mr. Gibson.

21 Finally, Mr. Dorfman testified to a series of instances in 2011-2014 in which
22 Mr. Gibson was offered appearances or roles or engaged in negotiations (e.g., for “Criminal
23 Minds”) through his agent - with documentation pertaining to those offers and negotiations
24 transmitted between Mr. Dorfman and Alisa Adler, Mr. Gibson’s agent at the time.
25 Mr. Dorfman testified he was either simply a recipient of the communications or what he did in
26 connection with the communications or projects referenced in those communication was to
27 discuss such matters as script material, the advisability of the job, Mr. Gibson’s schedule, etc.
28 with Mr. Gibson’s agent.

1 Among the jobs discussed in this documentation were: (1) a November 2011
2 communication from Ion to Mr. Dorfman forwarding to him a notice letter whereby Ion
3 exercised an option, for \$30,000, to extend the term for Mr. Gibson's role in Ion promos for
4 "Criminal Minds"; and (2) a communication made in October 2013 by Ion to Ms. Adler – and
5 then conveyed by her to Mr. Dorfman to "discuss" - for Mr. Gibson (via Ion's exercise of an
6 option) to engage in promos for Ion for the sum of \$45,000; this October 2013 communication
7 referring to the option exercised by Ion and discussed in the November 22, 2013 e-mail
8 exchange.

9 Mr. Gibson terminated Mr. Dorfman as his manager in May or June 2014.

10 **C. Mr. Gibson's testimony.**

11 Mr. Gibson testified he worked as an actor, currently portraying an FBI special agent on
12 the CBS television program "Criminal Minds" – a role he had held for about 10 years. He met
13 Mr. Dorfman in 1996 when he was looking for a new talent agent; he initially retained
14 Mr. Dorfman in that capacity.

15 As Mr. Gibson's licensed talent agent, Mr. Dorfman procured for him a role on the TV
16 series "Dharma & Greg"; the show lasted for five seasons, ending in 2002 and Mr. Gibson paid
17 Mr. Dorfman a 10% commission on his compensation. Following the end of "Dharma",
18 Mr. Dorfman ceased being Mr. Gibson's talent agent and became his manager. Mr. Gibson
19 testified his understanding was Mr. Dorfman, as his manager, would do the same work he had
20 done as an agent – sending him out for meeting with potential employers and negotiating deals
21 – and he would: "use his contacts and his connections in the business to find me more work as
22 an actor, as a director".

23 Mr. Gibson acknowledged, however, as his manager Mr. Dorfman also performed such
24 services as making travel arrangements, making sure Mr. Gibson got where he needed to go,
25 traveling with Mr. Gibson to various events, assisting Mr. Gibson in personal matters and in
26 matters potentially affecting his public image, assisting him in changing his shooting schedule
27 for "Criminal Minds", advising Mr. Gibson about issues pertaining to his directing of episodes
28 of "Criminal Minds" and working with Mr. Gibson's publicists and personal assistants.

1 Mr. Dorfman told him when he began working for him as his manager that Mr. Gibson
2 would “have to have an agent as well, but it’s better to have two people looking for work for
3 you than one.” Thereafter, Mr. Gibson, on several occasions, retained and replaced agents at
4 Mr. Dorfman’s suggestion.

5 According to Mr. Gibson, Mr. Dorfman was to receive a commission, during his tenure
6 as Mr. Gibson’s manager, equal to 10% of Mr. Gibson’s professional income, “whether he got
7 [Mr. Gibson] the job or not.”

8 One of Mr. Dorfman’s “contacts” was Nina Tassler, president of CBS Entertainment,
9 who had “quite a lot to do with” putting “Criminal Minds” on the air. Mr. Dorfman told
10 Mr. Gibson that he was “an old friend of hers and that he would bring his influence to bear on
11 ... closing the deal and getting [Mr. Gibson] the job.” According to Mr. Gibson, Mr. Dorfman
12 took credit for “his influence having something to do with my getting the job”. He did not
13 know, however, if Mr. Dorfman actually got him the job; further, Mr. Gibson paid
14 commissions to his talent agents – both at the beginning and throughout his tenure on the show
15 - on his compensation for “Criminal Minds”. These commissions were paid to The Gersh
16 Agency, Inc. (“Gersh”) (“because they were the agents of record for the initial contract which
17 covered Seasons 1 through 6”) and to Paradigm (“because they negotiated the new contract”) -
18 for Seasons 7-10.

19 Mr. Gibson attested to financial records showing via his “loan-out” corporations, Low
20 Born Youth Productions and Long Walk Back Productions, Inc. he paid Respondents, from
21 August 22, 2013 to August 22, 2014, a total of \$437,940.10. All but \$5,500.00 of this sum was
22 in connection with “Criminal Minds” (\$1,000.00 for “Batman” and \$4,500.00 for the Ion
23 promo).

24 Mr. Gibson fired Mr. Dorfman because Mr. Dorfman, he asserted, failed to get him a
25 “bump” in salary between Seasons 9 and 10 of “Criminal Minds”.

26 With respect to alleged procurement or negotiation of jobs after Mr. Dorfman ceased
27 being a licensed talent agent, Mr. Gibson testified to the following:
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- 1 • He always believed Mr. Dorfman's job involved procuring work for him and asserted
2 he would not have entered into the Agreement with Dorfman if he had not believed
3 Mr. Dorfman was to procure work for him; he knew, however, Mr. Dorfman provided
4 additional services for him and acknowledged a series of instances in which
5 Mr. Dorfman assisted him in personal, business and public-relations matters.
- 6 • In 2004, Mr. Dorfman told him he had procured for him a modeling job for a series of
7 print ads for "Rainforest" (a clothing line); Mr. Gibson did not pay any talent agent a
8 commission for that job.
- 9 • In 2004, Mr. Gibson worked on a television movie titled, "In From the Night".
10 Mr. Dorfman told Mr. Gibson he had procured the engagement; Mr. Gibson believed
11 the offer had come from persons Mr. Gibson had worked with in the past and had come
12 directly to Mr. Dorfman; he also believed Gersh (his licensed agent at the time) had
13 negotiated the terms for the role.
- 14 • In contrast, in 2007, Mr. Dorfman recommended that Mr. Gibson hire a lawyer, Jamie
15 Mandelbaum of Jackoway Tyerman, to negotiate a \$5,000/episode increase in
16 Mr. Gibson's salary on "Criminal Minds"; according to Mr. Gibson, Mr. Dorfman split
17 his \$500/episode increased commission with Mr. Mandelbaum.
- 18 • Mr. Gibson's roles in the following projects, after Mr. Dorfman stopped being a
19 licensed talent agent, were procured or negotiated by either Gersh or Mr. Dorfman
20 (Mr. Gibson did not know which) - or were procured and negotiated by neither:
21 "Category 6: Day of Destruction" (2004), "Come Away Home" (2005) and "Berkeley"
22 (2005).
- 23 • Mr. Dorfman was "involved" in the solicitation and/or negotiation of the following
24 "post-licensed talent agent" projects, although Mr. Gibson did not know what
25 Mr. Dorfman did in that role or if his involvement was in conjunction with Mr.
26 Gibson's licensed agent at the time: "I'll Believe You" (which may have been
27 negotiated and shot three years before being released in 2006 - i.e., possibly while Mr.
28 Dorfman still was a licensed talent agent), "Two and a Half Men (2011) (Mr. Gibson

1 “presumed” Mr. Dorfman was involved but did not know if he had acted alone or in
2 conjunction with Mr. Gibson’s agent); “Son of Batman” (2014) (Mr. Gibson did not
3 know who solicited the role or what Mr. Dorfman’s role was in negotiations); and
4 “Criminal Minds” (2005) (Mr. Dorfman was “involved with an agent” and Gersh was
5 Mr. Gibson’s agent at the time).

6 **D. Alisa Adler’s testimony.**

7 Ms. Adler testified she was a talent agent employed by Paradigm Agency (Paradigm
8 Talent Agency, LLC), a licensed talent agency that was Mr. Gibson current agent, she was
9 Mr. Gibson’s primary talent agent and she had been served with a subpoena by Respondents,
10 seeking documents pertaining to: Mr. Gibson; to the procurement of jobs for Mr. Gibson; and
11 to communications with Respondents pertaining to those jobs or to Mr. Gibson.

12 When asked about her knowledge of instances in which Mr. Dorfman “submit[ted]
13 Mr. Gibson for employment as an actor” or “negotiat[ed] on behalf of Mr. Gibson for
14 employment as an actor”, Ms. Adler responded Mr. Dorfman had but could not recall any
15 specific instances in which he had done so. She also testified she did not know if any of the
16 documents she produced in response to the subpoena “demonstrate[d] Mr. Dorfman ever
17 negotiated on behalf of Mr. Gibson.”

18 **E. Bob Gersh’s testimony.**

19 Mr. Gersh testified that he was the co-President of the Gersh Agency (i.e., The Gersh
20 Agency, Inc. (“Gersh”)), he was a talent agent and that Gersh is licensed by the Labor
21 Commissioner. Mr. Gibson was a former client of Gersh and was a client of Gersh at the time
22 he began his role on “Criminal Minds”; Mr. Gersh was one of Mr. Gibson’s “main agents”.

23 Mr. Gersh testified his agency submitted Mr. Gibson for the role on “Criminal Minds”
24 and negotiated his original contract for the program – although he did know which agent was
25 involved in either process. Mr. Gersh had “no idea” if Mr. Dorfman “submitted Mr. Gibson for
26 consideration for the show ‘Criminal Minds.’” He responded “absolutely not” to the question,
27 “So you don’t recall telling Nina Tassler to call Craig Dorfman” [“during the negotiations and
28 procurement of [Mr. Gibson’s] engagement on ‘Criminal Minds.’”]

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III.

FINDINGS OF FACT

1. During a portion (i.e., until approximately May or June 2014) of the one year prior to August 22, 2014, when Mr. Gibson filed the Petition, Respondents were retained by Mr. Gibson, a professional television actor, to provide him with talent management services.

2. Neither Respondent was a licensed talent agent during any part of this one-year period.

3. Respondents received compensation from Mr. Gibson during this period, based on a percentage of his earnings from his employment as an actor, for their talent management services.

4. Respondents did not procure employment or engagements for Mr. Gibson during this period.

5. Respondents did not offer to procure or promise to procure employment or engagements for Mr. Gibson during this period.

6. Respondents did not attempt to procure employment or engagements for Mr. Gibson during this period.

7. Respondents' efforts to procure employment or engagements for Mr. Gibson prior to the one-year limitations period were not sufficiently pervasive either to warrant nullification of the Agreement or to nullify the Agreement insofar as Mr. Gibson's role in "Criminal Minds" is concerned.

IV.

CONCLUSIONS OF LAW

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A. Legal Background.

Labor Code Section 1700.44(a) states: "In cases of controversy arising under this chapter [4, of Part 6 of Division 2 of the Labor Code], the parties involved shall refer the matters in dispute to the Labor Commissioner, who shall hear and determine the same, subject to an appeal within 10 days after determination, to the superior court where the same shall be heard de novo. To stay any award of money, the party aggrieved shall execute a bond

1 approved by the superior court in a sum not exceeding twice the amount of the judgment. In all
2 other cases the bond shall be in a sum of not less than one thousand dollars (\$1,000) and
3 approved by the superior court.”

4 Pursuant to Section 1700.44(c): “No action or proceeding shall be brought pursuant to
5 this chapter [4 (Labor Code §§ 1700-1700.47)] with respect to any violation which is alleged to
6 have occurred more than one year prior to commencement of the action or proceeding.”

7 The “controversy arising under” Chapter 4 is over whether Respondents – admittedly
8 not licensed talent agents – nevertheless acted as talent agents so as to be in violation of
9 Section 1700.5: “No person shall engage in or carry on the occupation of a talent agency
10 without first procuring a license therefor from the Labor Commissioner”. “Talent agency” is
11 defined as “a person or corporation who engages in the occupation of procuring, offer,
12 promising or attempting to procure employment or engagements for an artist or artists....” (§
13 1700.4(a).) Chapter 4 does, however, include the following “safe harbor” from this
14 prohibition: “It is not unlawful for a person or corporation which is not licensed pursuant to
15 this chapter to act in conjunction with, and at the request of, a licensed talent agency in the
16 negotiation of an employment contract.”

17 Against this statutory backdrop – particularly the one-year statute of limitations in
18 Section 1700.44(c) - the Petition seeks answers to two distinct questions. The first is one of
19 affirmative relief: Did Respondents act unlawfully as talent agents during the one-year
20 limitations period and should they as a consequence be required to disgorge commissions paid
21 to them during that period as a result of such activity? The second is more properly defensive
22 and is posed in light of the Los Angeles Lawsuit: is the Agreement itself, as the result of
23 Respondents’ alleged actions both during and prior to the one-year limitations period,
24 unenforceable – thereby affording Mr. Gibson, in the Los Angeles Lawsuit, a defense to those
25 causes of action by Respondents that seek damages for his breach of the Agreement?

26 Marathon Entertainment v. Blasi, 42 Cal. 4th 974 (2008) is the Supreme Court case that
27 most recently and extensively discusses the consequence of an artist’s accusation that a talent
28 manager has violated Chapter 4, holding as pertinent here:

- 1 • The Talent Agencies Act (i.e., Chapter 4: the “Act”) “requires anyone who solicits or
- 2 procures artistic employment or engagements for artists to obtain a talent agency license”;
- 3 • The Act applies to “managers” just as it does to any other person;
- 4 • The Act applies to “even the incidental or occasional provision of such services”; and
- 5 • Pursuant to Civil Code Section 1599 (“Where a contract has several distinct objections, of
- 6 which one at least is lawful, and one at least is unlawful, in whole or in part, the contract is
- 7 void as to the latter and valid as to the rest”), a lawful contract for the provision of
- 8 management services may be enforced in part even if the manager illegally provided
- 9 unlicensed talent agency services under that contract “in order to avoid an inequitable
- 10 windfall or preserve a contractual relationship where doing so would not condone
- 11 illegality”; contra Section 1608: “If any part of a single consideration for one or more
- 12 objects, or of several considerations for a single object, is unlawful, the entire contract is
- 13 void”.

14 Id., at 986-90 and 997.

15 The Court in Blasi acknowledged the Labor Commissioner has the “power” to void

16 contracts and to “deny all recovery for services where the act has been violated” (id., at 994,

17 referencing, supra, a portion of the Act’s legislative history asserting that “a ... manager or

18 anyone [who] has acted as an unlicensed talent agent ... [may be ordered to provide] restitution

19 to the artist, for the period of the statute of limitations, of all fees paid by the artist” [and] [i]f

20 no fees have been paid, ... to declare that no fees are due and owing, regardless of the services

21 which the unlicensed talent agent may have performed on behalf of the artist”). Id., at 994,

22 quoting from the California Entertainment Commissioner’s 1985 report to the Legislature and

23 proposed amendments to the Act.

24 In deciding whether to apply “severance”, as authorized by Civil Code Section 1599:

25 The overarching inquiry is whether “the interests of justice ... would be furthered” by

26 severance.” “Courts are to look to the various purposes of the contract. If the central

27 purpose of the contract is tainted with illegality, then the contract as a whole cannot be

28 enforced. If the illegality is collateral to the main purpose of the contract, and the

1 illegal provision can be extirpated from the contract by means of severance or
2 restriction, then such severance and restriction are appropriate.”

3 Id., at 997 (citations and internal quotation marks omitted). The Court then held that severance
4 could be applied to – and complete nullification avoided of - a talent management contract
5 where the managing agency was to be paid a percentage of the artist’s earnings and had
6 provided management services but which, in violation of the Act, had committed one or more
7 acts of solicitation or procurement for the artist. Id., at 981-82 and 996-98.

8 **B. Did Respondents act unlawfully as talent agents during the one-year limitations**
9 **period and should they as a consequence be required to disgorge commissions paid**
10 **to them during that period as a result of such activity?**

11 The Parties submitted extensive briefing on various issues, including the sine qua non
12 of Mr. Gibson’s claim: Respondents either procured work for him or attempted to procure
13 work for him during their time as his managers. With respect to Mr. Gibson’s claim for purely
14 affirmative relief, however, Mr. Gibson is limited to the one-year period, set in Labor Code
15 Section 1700.44(c), prior to his filing of the Petition: i.e., from August 23, 2013 through
16 August 22, 2014. See Styne v. Stevens, 26 Cal. 4th 42, 52-54 (2001) (distinguishing between
17 one’s claim for affirmative relief (e.g., for damages) under the Act, which must be made within
18 the one-year period; and one’s defensive claim for a declaration that an agreement may not be
19 enforced because of a violation of the Act, which need not be made within the one-year
20 period).

21 Only one of the alleged actions of or procurement or attempted procurement on which
22 Mr. Gibson bases his claim for affirmative relief occurred within the one-year period: that of
23 the October and November 2013 discussions pertaining to the Ion promo. The evidence of
24 procurement, however, is equivocal: Mr. Dorfman’s informing Mr. Gibson’s business manager
25 that Ion had exercised its option and that “We made a new agreement for an additional year at
26 [sic] 50,000” (which communication implies at least some involvement by Mr. Dorfman in
27 negotiation) combined with the prior conveyance from Ion to Mr. Gibson’s manager of Ion’s
28 notice of its exercise of the option and the proposal to extend the arrangement for an additional

1 year – further explained by Mr. Dorfman’s unrebutted testimony about how the negotiations
2 were conducted.

3 In short, while the evidence about the Ion promo makes the issue of procurement or of
4 un-requested (by Mr. Gibson’s agent) negotiation a close question, we cannot conclude that it
5 is more likely than not that he did so. Accordingly, there is no need, with respect to the \$4,500
6 commission Respondents earned from the Ion promo, to determine whether to apply the
7 doctrine of “severance” as set forth in Civil Code Section 1599.

8 This incident being the only one during the one-year limitations period that could
9 possibly have constituted a violation of the Act, I find for Respondents on this issue.

10 **C. Is the Agreement, as the result of Respondents’ actions both during and prior to**
11 **the one-year limitations period, unenforceable – thereby affording Mr. Gibson, in**
12 **the Los Angeles Lawsuit, a defense to those causes of action by Respondents that**
13 **seek damages for his breach of the Agreement?**

14 This issue is more complicated because, as held in *Styne, supra*, 26 Cal. 4th at 51-52, the
15 one-year limitations period in Labor Code Section 1700.44(c) does not bar Mr. Gibson from
16 attempting to have the Agreement set aside as a defense to Respondents’ affirmative claims
17 against him for damages. See also *Park v. Deftones*, 71 Cal. App. 4th 1465 (1999) (petition
18 with Labor Commissioner to nullify artist-manager contract adjudicable when it was filed
19 within one-year of manager’s action against artist, even though alleged violative acts occurred
20 more than one year before petition was filed). Accordingly, a broader spectrum of
21 Respondents’ actions may be considered.

22 There are three instances, prior to the one-year limitations period, in which Respondents
23 appear to have engaged in actual or attempted procurement or in negotiations not made in
24 conjunction with or at the request of Mr. Gibson’s agent: the “Rainforest” and “In From the
25 Night” projects in 2004 and the “big pay commercial” in 2010.

26 None of the remaining instances of alleged procurement or attempted procurement
27 show actions by Respondents that further Mr. Gibson’s claims; in some instances Respondents
28

1 passed information on to Mr. Gibson or his agents and in others Respondents fielded questions
2 without making any offers or demands.

3 There is not enough evidence of illegal activity by Respondents to warrant setting aside
4 the Agreement: (1) Mr. Gibson usually did have agents –often suggested by Mr. Dorfman –
5 who apparently performed for him as licensed talent agents without any evidence that they
6 were being used as a subterfuge or cover for Respondents; (2) the vast majority of Mr.
7 Gibson’s work appears to have been procured through his agents, with the terms for that work
8 negotiated either by his agents or attorneys; (3) Respondents provided voluminous evidence of
9 “managerial” work; and (4) the initial Agreement itself, even if Mr. Gibson believed would
10 result in Respondents still trying to “get him work”, was treated by the Parties as a managerial
11 agreement, with Respondents providing managerial services and Mr. Gibson being aware, from
12 the beginning, of the need to obtain a separate talent agent – i.e., we cannot conclude the
13 Agreement operated initially or later as a ruse to enable Respondents to act as unlicensed
14 agents.

15 “The purpose of severing or restricting illegal terms rather than voiding the entire
16 agreement is two-fold: “ ‘to prevent parties from gaining undeserved benefit or suffering
17 undeserved detriment ...—particularly when there has been full or partial performance of the
18 contract[; and,] more generally, ... to conserve a contractual relationship if to do so would not
19 be condoning an illegal scheme. MKB Management, Inc. v. Melikian, 184 Cal.App.4th 796,
20 803-04 (2010); see also Todd v. Meagher, TAC-13418 (CA. Dept. Lab. 2012), 2012 WL
21 8436258 (nullifying the entirety of a management agreement when manager had engaged in 24
22 instances, over a 13-month period, of unlawful procurement or attempted procurement – which
23 engagements produced more than half of the manager’s revenue from the artist over that period
24 and when the structure of the agreement, which did not provide to the manager direct
25 compensation from the artist’s performances, prevented the separation of illegal activities from
26 lawful ones).

27 As noted above, there were three instances, prior to the one-year limitations period, in
28 which Respondents engaged in activities barred by the Act. These instances, however, appear

1 to be sporadic and were dwarfed by the bulk of Respondents' work for Mr. Gibson. Although
2 Mr. Gibson consistently used words such as "procure" to describe Respondents' work, his
3 testimony about details was almost entirely lacking – i.e., he rarely knew anything specific
4 about what Respondents had actually done. Mr. Dorfman admitted to almost nothing and
5 neither of the two agents (Ms. Adler and Mr. Gersh) provided any evidence that would
6 illuminate one as to instances in which they were aware of unlawful procurement by
7 Respondents. Finally, there was no evidence by persons who might have such knowledge:
8 e.g., former agents who had been "cut out" of commissions because of procurement done by
9 Respondents; or parties from whom Respondents had actually procured or attempted to procure
10 engagements for Mr. Gibson or with whom Respondents had negotiated the terms of such
11 employment.

12 The instance most hotly contested by the Parties is the one closest to the gravamen of
13 the Los Angeles Lawsuit: Mr. Gibson landing the role on "Criminal Minds" that has resulted
14 in commissions allegedly being owed to Respondents. Mr. Gibson testified Mr. Dorfman told
15 him that he would try to get him a role on the show and he "took credit for ... his influence
16 having something to do with my getting the job" but that was where Mr. Gibson's direct
17 knowledge ended; the rest of the support for the proposition that Mr. Dorfman actually
18 attempted to or obtained the role for Mr. Gibson comes from Mr. Dorfman's recollection of a
19 single phone call with CBS' Nina Tassler in which no actual negotiation appears to have taken
20 place: i.e., Mr. Dorfman told Ms. Tassler that Mr. Gibson's agent could not make a deal and
21 Ms. Tassler told Mr. Dorfman "there is no more money. Les wants Thomas on the show.
22 Please let him know that."

23 This exchange constitutes only a request by Ms. Tassler to transmit a message to
24 Mr. Gibson. One cannot determine anything about Mr. Gibson's negotiating position – nothing
25 about what he wanted or would be willing to settle for and no effort by Mr. Dorfman to
26 convince Ms. Tassler to change her position. Especially in the absence of testimony by
27
28

1 Ms. Tassler, this exchange would be a slender reed on which to base a nullification of that part
2 of the Agreement whereby Mr. Gibson was required to pay Respondents commissions from his
3 role on "Criminal Minds".

4 Accordingly, we find no basis to nullify the Agreement either in its totality or with
5 respect to commissions, if any, owed to Respondents by Mr. Gibson from his work on
6 "Criminal Minds." This determination does not contain within its scope any finding about
7 whether Mr. Gibson has other defenses to Respondents' claims in the Los Angeles Lawsuit or
8 about the terms of the Agreement

9 V.

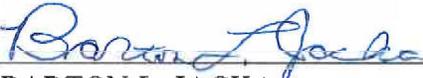
10 **ORDER**

11 The relief sought in the Petition is DENIED.

12
13 **Respectfully submitted:**

14
15 Dated: March 23, 2017

DIVISION OF LABOR STANDARDS
ENFORCEMENT, Department of Industrial Relations,
State of California

16
17
18 By: 
19 BARTON L. JACKA
20 Attorney for the Labor Commissioner

21 **Adopted as the determination of the Labor Commissioner:**

22
23 Dated: 3/22/2017


24 JULIE A. SU
25 CALIFORNIA LABOR COMMISSIONER
26
27
28