# CALIFORNIA STATE SENATE SELECT COMMITTEE ON REGULATION OF TALENT AGENTS

**The Regulation of Talent Agents Under the California Labor Code: *The impact of the Talent Agencies Act upon performers, their agents and managers***

9:30am-3:30pm
Friday, September 28, 2001
Ronald Reagan State Building
300 S. Spring Street, Los Angeles



Senator John Burton, Chair
Dana Mitchell, Counsel

Committee Members:
Senator Richard Alarcon
Senator Jim Battin
Senator Ross Johnson
Senator Sheila Kuehl
Senator Kevin Murray

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## Table of Contents

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# CALIFORNIA STATE SENATE SELECT COMMITTEE ON REGULATION OF TALENT AGENTS

## Background Paper

### INTRODUCTION

The Select Committee on Regulation of Talent Agents was created on April 18, 2001 by the Senate Rules Committee, and is directed to, "study all issues related and ancillary to the representation of artists by talent agents and managers." The genesis for creation of the Select Committee came from the ongoing negotiations between the Screen Actors Guild (SAG) and the Association of Talent Agents (ATA). These negotiations involve proposed changes to both the public and private rules of regulation for this important industry.

Specifically, the Select Committee will study how the interested parties under the current scheme of regulation (e.g. actors, directors, writers, agents) are helped, and/or hindered, by the Talent Agent Act, (TAA) contained in the California Labor Code. Some questions for the Members to consider: Should the legislature codify the conflict of interest provisions of the SAG Franchise Agreement?; strengthen the existing TAA? If so, how?; regulate managers along with agents?; withdraw from regulation of conflicts of interest and allow the market to regulate the field?; or some combination of the above?

The following is a brief summary of the issues, provided to better inform the Select Committee Members as they grapple with these delicate questions.

## I. SUMMARY BACKGROUND AND HISTORIC OVERVIEW OF CALIFORNIA REGULATION OF TALENT AGENTS

(Condensed from a Birdthistle, *A CONTESTED ASCENDANCY: PROBLEMS WITH PERSONAL MANAGERS ACTING AS PRODUCERS* (2000) 20 Loy. L.A. Ent. L.J. 493 and Wilson, *TALENT AGENTS AS PRODUCERS: A HISTORICAL PERSPECTIVE OF SCREEN ACTORS GUILD REGULATION AND THE RISING CONFLICT WITH MANAGERS* (2001) 21 Loy. L.A. Ent. L.J. 401)

In 1933, the Academy of Motion Picture Arts and Sciences developed the first code to govern relations between producers and talent. By a grand subterfuge, the producers secured a code provision that placed a $100,000 cap on the salaries of actors, directors and writers, and another that mandated the licensing of agents by producers. This caused a mass exodus of well-known talent from the Academy who then joined the newly formed SAG, setting it on its way to becoming a major industry force.

In 1939, after one year of negotiations, SAG adopted the Agency Regulations. The Regulations required agents apply to SAG for a franchise, and forbade them from producing films. This marked the first appearance of the financial interest rules currently in dispute.

In the entertainment industry, talent has always required agency representation. The necessity for such representation is clear. Producers have vested interests in securing the services of creative talent for the lowest possible price and under the least onerous terms to the producer. In order to limit production costs, producers' eyes are trained to the bottom line. Their business acumen and negotiating abilities may easily intimidate a creative person whose training and natural abilities are of a different world.

Enter the agent. Representation of creative talent, in particular actors, includes a multiplicity of tasks. First and foremost, the agent has always negotiated and continues to negotiate the basic terms of the deal. Traditionally, the agent assumed

the role of nurturer, and provided actors with advice and assistance in career development. For example, the agent helped the actor to prepare materials for submission to casting directors and production companies, helped make choices when multiple offers were on the table, introduced the client to the studios and producers, handled the media and coordinated public appearances. However, over time, agents have increasingly confined themselves to the central task of sending the actor out for roles and negotiating the terms of the resulting deals. For assistance with other aspects of their careers, actors have employed personal managers and a variety of other professionals, such as lawyers, business managers and publicists.

Personal managers perform a wide range of activities. They offer the beginning actor counsel on breaking into the business and are often the means by which an agent is procured. For the experienced actor, they serve as a sounding board and offer expertise and help on aspects of sustaining and/or reviving a career. For the star, blessed with an array of personal assistants and professional help, the personal manager has become by and large a personal producer. Certain personal managers have built substantial movie and television production businesses by using the enormous clout of the star talent to which they have unique access.

These additional representatives come at quite a considerable cost to the actor. A personal manager generally charges between ten to fifteen percent of the actor's income. Lawyers charge either their hourly rate or five percent of the actor's income. Business managers charge an additional five percent. Publicists charge a fee on a monthly basis in the range of $1500-$ 3000. Only the highest paid actors can afford all of these services but even less-established actors often find it necessary, at the very least, to employ a personal manager.

Fewer restrictions govern personal managers than agents. In addition to statutory law, the agency business is regulated by the Screen Actors Guild ("SAG") pursuant

to the Codified Agency Regulations or Rule 16(g). To represent any member of SAG, an agent must be franchised by SAG and meet the requirements of the Agency Regulations. An important aspect of the Agency Regulations are the rules prohibiting an agency from possessing various kinds of financial interests that would, among other things, transform them into producers and employers of actors. There is no similar prohibition for personal managers whose ascendancy has been a comparatively recent phenomenon.

The financial interest rules prohibit agents from becoming motion picture producers and narrowly limits their participation in television production. They also essentially prevent agencies from owning an interest in, or being owned by, production companies or distribution companies. However, a provision within the rules allows for agents to "package" productions. Packaging a production calls for an agent to entice a particular combination of key talent to work on a production. In such a case, the talent, if represented by the packaging agent, will not pay a commission to the agent. The agent instead receives a commission as a percentage of the production budget and its profits, which may afford the agent a far greater return than if the agent were simply to receive the standard commission. However, in practice, only the major agencies are able to package. The Labor Commission takes the position that its jurisdiction does not extend to "packaging."

Until a few years ago, agents predominated in representing literary authors and stage, film, and television performers, while managers tended to predominate in the recording and music publishing fields. According to Gregg Kilday, a reporter for L.A. MAGAZINE, "It used to be that only established actors had managers." It was common for managers and agents to work together for the same client. Now, however, the role of agents in film and television seems to be declining and the role of managers in this field seems to be increasing. There are several reasons for this.

Escalating production and marketing costs have led many studios to cut the number of theatrical films they produce and distribute each year. The salaries of top box-office names (e.g., Tom Cruise, Tom Hanks, Jim Carrey, Harrison Ford, Mel Gibson, Julia Roberts) have soared past $ 20 million (often against a percentage of the gross receipts rather than the net). Since special effects are costly and the salaries of "below the line" personnel (basically, everyone except the producer, director, leading actors, and writers) are largely determined through collective bargaining, there has been downward pressure on the salaries of lesser actors. The number of television series which last long enough to trigger substantial syndication monies (generally a minimum of four years) also has shrunk. All of this has narrowed the range of possibilities within which many agents work. In addition, there has been a substantial increase in movement of artists and agents between agencies. In many cases, agents compete on price, taking less than the ten percent fee limit prescribed under applicable union franchise agreements.

As the economics of the entertainment industries became more and more "hit-driven," a number of leading performers (such as Harrison Ford, Kevin Costner, Jackie Chan, and Sharon Stone) have stopped working with agents and instead rely solely on their managers.

Agents see vast financial opportunities just out of reach and now wish freedom from the financial interest restrictions. Two of the main agency groups, the Association of Talent Agents ("ATA") and the National Association of Talent Representatives ("NATR"), have mounted a vigorous campaign to persuade the SAG to grant a broad-ranging waiver of the restrictions. The ATA and the NATR assert that the industry has changed and that the financial interest rules are antiquated and no longer applicable. This waiver received initial approval by the SAG Board. However, the waiver deal was opposed by a majority of SAG membership, who

anticipated that serious conflict of interest issues would arise if such a waiver were granted, and was never finalized.

## II. CALIFORNIA SCHEME OF REGULATION OF TALENT AGENTS

It should be noted that this is the second Legislative study into the regulation of artist representatives. In 1982 the California Entertainment Commission (Commission) was created and mandated to recommend any changes deemed appropriate to the California Talent Agencies Act. The Commission issued its Report (appended hereto) on December 2, 1985. Its recommendations form the basis for the current Talent Agent Act.

In one of the most definitive statements of Legislative intent regarding the TAA, the Commission stated, "No person, including personal managers, should be allowed to procure employment for an artist in any manner or under any circumstances without being licensed as a talent agent." Report of the, California Entertainment Commission, Executive Summary (Dec. 1985), page 1 (attached.) The Report continues, saying, "the exception in the nature of incidental, occasional or infrequent activities relating in any way to procuring employment for an artist cannot be permitted: one either is, or is not, licensed as a talent agent." Id. This strong statement of intent has led courts and the Labor Commissioner to strictly construe the "procuring employment" language of the TAA to cover even a single act of procurement.

In *Waisbren v. Peppercorn Productions* (1995) 41 Cal. App. 4th 246, the Court found that even incidental and minimal procurement activities violated the TAA, quoting language from the California Entertainment Commission Report, saying, "we conclude, as did the Commission, that the Act requires a license to engage in *any* procurement activities." (Id. emphasis in original.)

There is an exception for the procurement activities persons who are acting in concert with a talent agent. "The Act specifically provides that an unlicensed person may nevertheless participate in negotiating an employment contract for an artist, provided he does so 'in conjunction with, and at the request of, a licensed talent agency.' (Citation omitted.) Under this provision, a personal manager can seek employment for his client as part of a cooperative effort with a licensed talent agent." Id. However, the court cautions, "this limited exception to the licensing scheme would be unnecessary if incidental or occasional procurement efforts did not require a license in the first place." *Waisbren*, supra. at 259.

We currently regulate agents through the Talent Agent Act (TAA) found in section 1700, etc seq. in the Labor Code. The TAA defines "agent" as anyone who seeks employment for talent, even if it is only a minor part of his or her overall business. Agents must be licensed by the state, and franchised by the Screen Actors Guild (SAG) in order to represent SAG actors.

The enforcement of the TAA is through an administrative hearing, and only talent (i.e. actors, writers and directors) have standing to bring suit. The sole justiciable issue is the validity of the contract. The Labor Commissioner looks to find (1) whether there was procurement of employment; (2) whether the agent is licensed; and (3) the amount due under the contract. If the agent is unlicensed, the remedy is to declare the contract void; and the talent is reimbursed for the manager-as-agent's service fees paid or due for the past year.

**Conflict of interest clause only binds agents**

Managers can represent actors and get them jobs in productions in which the manager has a financial interest - and agents cannot. Under the TAA it is an illegal conflict of interest. It is assumed that one will not try and get the best deal for an actor while at the same time trying to keep production costs down. This conflict

provision came from historic distrust of producers, which was validated in an anti-trust case, *United States v. MCA*. In *US vs. MCA* the United States Justice Department alleged that it was a conflict of interest, a restraint upon trade, and a violation of the Sherman Antitrust Act for MCA to have both a talent agency branch and a production branch. The court forced MCA to divest its agency business. The case was not adjudicated, but rather settled. (The court order is attached.)

In addition, the TAA prohibits agents from:

- Offering ownership interest in the agency or profits of the agency to any person other than a director, officer, manager, employer or shareholder of the talent agency without the permission of the Labor Commissioner. (To prevent shill agencies which might front for managers and producers in avoiding the conflict clause.)
- Sending actors to any service company that the agent has an interest in – such as a photography studio for headshots, or drama school for acting lessons, etc…

**Franchise agreement**

We have largely deferred the enforcement of the TAA to the private sector, as is relevant to these hearings, to SAG. By agreement, SAG requires that its members must have agents in order to work, and only agents registered with the state are franchised by SAG to represent its members. The Franchise Agreement covers such details as the basic contract between agents and SAG members, "what's commissionable," packaging rules and restrictions, and an allowance for waivers, in addition to the conflict of interest prohibition.

**Problems arise because scofflaws go unpunished**

In reality, SAG has never strictly enforced the requirement that an actor must have an agent in order to work in a union project. This is because new or bit players cannot get agents, and agents claim that they can't make a living off of bit players.

So SAG unproven talent, part time actors and extras without agents can get jobs in union productions in practice through waivers.

The manager/agent issue has begun to heat up because some high profile actors do not use agents; rather their managers serve both functions. So far these folks have been very publicly happy, which is starting to undercut the validity of the TAA. High-end talent wants to know why they have to pay both an agent and a manager. Agents want to know why they can't invest in production companies if managers can. Managers say they welcome an open playing field, and embrace deregulation of the entire representation market. There is disagreement within SAG over the best route to take, some want to abolish the TAA; others want to strengthen it. The problem is compounded by the cliquish nature of Hollywood. The current case-by-case enforcement by the Labor Commissioner plays into bit players and lesser-known actors' fears of "never working in this town again."

## III. PACKAGING

What is packaging? Packaging is when an agent brings together a group -- actors, and/or directors and writers -- and a concept, and pitches it to a studio or a television network as a "package deal." The agent does not take a commission from the talent involved. Instead they are paid by the producers based on a proportion of the television network license fees and any off-network profits or movie production costs. Seasonally the packaging issue arises as a source of tension between agents and their clients, based on a number of conflict-of-interest related concerns.

**Neither the Labor Code or Labor Commissioner prohibit packaging**

The Labor Commissioner does not prohibit packaging, by virtue of an agreement reached in the 1950's, which remains in force today. (See attached, "Packaging" letters.)

**SAG franchise agreement allows and regulates packaging**

Section V of the SAG franchise agreement with ATA sets out the rules for packaging by agents. Major provisions include:

- Agent has to disclose that he/she is packaging a deal including the actor
- Agent may not charge actor commission on package deal (no double dipping)
- Actor must be paid at the same rate as if agent were not packaging deal
- Agents' fiduciary duty remains same
- Actor can fire the agent at any time during life of package deal

**SAG member concerns—packaging is a conflict of interest**

Basically, the concerned members of SAG position is that packaging caps actors/writers/directors fees by preventing competitive bidding. The logic goes that if a script were put out to bid it would draw a higher cost than the fixed fee set in the "package deal" by the agent; and an actor would be paid more if the agent only had *that* person to advocate for, and not have the individual actor's interests subsumed to the greater "package" interests. (E.g. the agents.) ATA responds with the "rising tide raises all boats" line -- that everyone involved benefits and packaging is a consensual relationship between well-represented parties.

In 1985, the SAG agent relations committee studied the issue of packaging, and found that the benefits of packaging- generated employment opportunity outweighed any concerns about "closed productions" or conflicts of interest.

**Salary compression**

Another concern raised is that of salary compression. There is a trend in the industry to pay top dollar to big names, and then the rest of the cast all get scale plus 10%. The complaint is that money diverted into the pocket of agents-as-packagers is

money which could have otherwise been given to higher salaries for supporting cast members.

A corollary issue here is the trend toward managers getting "Producer" credit, which allows them to receive ongoing compensation from the production company – without ever having to act as a producer – instead of being compensated through the normal percentage of the talent's salary. Recent law review articles support the notion that if the feux producers' money comes from the budget line-item allocation for talent (as opposed to production costs) this practice diminishes salaries lower down the line.

## IV. ATA PROPOSAL TO WAIVE CONFLICT OF INTEREST PROVISIONS OF SAG FRANCHISE AGREEMENT RULE 16(g)

Agents want to grow their industry into new areas of "the business" without the constraints of the current SAG conflict of interest rules. Some point to the success of the packaging model as a demonstration of the good faith agents demonstrate when faced with an ostensible conflict of interest. A summary of the rational for reopening the conflict of interest provision of the Franchise Agreement may be found on the ATA web site, www.agentassociation.com, wherein it states:

> An objective review of the agency rules and regulations, formulated over 25 years ago is not only reasonable, but long overdue. Indeed a reopening of the agency regulations has become a fundamental necessity. ...No meaningful revisions to the Screen Actors Guild Agency Regulations have been made in over 25 years. The negative economic impact on any business working under antiquated work rules and outdated financial constraints can be disastrous, particularly in an industry which continues to evolve as rapidly as ours. The economic viability of the agency business as we know it is in jeopardy and for that reason we have reopened the basic agreement with SAG.

At the present time, a significant number of SAG members have no franchised representation at all. Agencies have closed their doors, shrinking the number of agents to represent actors. To allow that number to shrink even further would be a serious disadvantage. When individual agents leave an agency, they are often not replaced due to financial constraints, thus leaving fewer franchised agents available to perform their essential duties for their SAG clients.

To stem this erosion, ATA submitted proposals to SAG on April 10, 2000 that address the shrinking revenues of independent agencies and the need for all agencies to operate from a position of strength in a consolidated economic environment. A successful negotiation between SAG and ATA will allow the agency business to strengthen and expand, creating additional franchised representatives for the SAG membership. Failure to negotiate a new agency franchise agreement in the required six-month period (which began on April 10, 2000), will destabilize the foundation on which our industry is built.

As discussed above, agents are currently prohibited from owning or being owned by a company which has a conflict of interest with those interests of the represented talent. The last offer on the table by ATA to revise this provision contained the following major provisions:

1. An agent shall not be a motion picture producer.

2. Major studios and networks may not own an interest in an agent. This would include both parent and subsidiaries.

3. An agent may not own a controlling interest in a company engaged in production, and a company engaged in production may not own a controlling interest in an agency. Control means greater than 49% of the company.

4. Companies such as advertising, technology, and consumer product companies which have an incidental interest in production could own any (or complete) interest in an agent.

5. Agents could own interest in distribution companies.

6. Agents could in no event participate in hiring/firing decisions regarding their talent clients.

7. Agents must disclose conflicts with an "interested company" to talent, and may not collect commissions on any contracts between the interested company and their talent-client.

8. Talent can fire their agents if they don't like what they hear disclosed.

SAG rejected this offer, and their last public statements now say that the offer would be illegal under the Talent Agent Act if accepted, based upon their interpretation of Labor Code Sections 1700.30 and 1700.39.

Labor Code Section 1700.30 provides, "(N)o talent agency shall sell, transfer, or give away to any person other than a director, officer, manager, employee, or shareholder of the talent agency any interest in or the right to participate in the profits of the talent agency without the written consent of the Labor Commissioner. "

Labor Code Section 1700.39 provides, "(N)o talent agency shall divide fees with an employer, an agent or other employee of an employer."

It has been suggested that the language in section 1700.39, which allows the Labor Commissioner to consent to profit sharing, would permit ATA and SAG to remove the financial conflict of interest provisions from the Franchise Agreement. However, that provision is intended to allow only case by case exceptions, such as when a spouse inherits an interest in an agency, or when two agencies merge. It is the opinion of some analysts that a broad waiver, as is contained in the ATA proposal, would exceed the legislative delegation of authority. Rather, that is a basic policy decision more appropriately addressed by the Legislature.

## V. PROBLEMS POSED WHEN MANAGER'S INTERESTS CONFLICT WITH TALENT: THE MORAL OF THE SHANDLING AND GREY TALE SHOULD NOT BE LOST ON ACTORS AND AGENTS

The issues raised when a manager's interests conflict with their client's are explored in the following article recalling the Garry Shandling Lawsuit (From, *A contested Ascendency: Problems with personal managers acting as producers* [2000] 20 Loyola Law Ent. L. J. 493.)

One particularly high-profile lawsuit, involving Garry Shandling's "It's Garry Shandling's Show," illustrates the conflicts of interest created by personal managers who decide to produce their clients' work. Brad Grey served as an involved producer on the show and was influential as a sounding board for Shandling's script ideas. The show was a critical success and ran for four years on Showtime and during the last two years was also broadcast on Fox. After the show went off the air in 1990, development executives from both cable and network companies courted Shandling, encouraging him to create another show.

In 1992, Home Box Office landed Shandling and his new show, The Larry Sanders Show. Initially, Grey took an active role in the development of the new series as executive producer. By the end of the final season in 1998, however, Grey had diverted much of his attention to nurturing new shows managed by Brillstein-Grey. Former Larry Sanders Show writers, Paul Simms and Steve Levitan, had left the show to create their own television comedies, News Radio and Just Shoot Me, respectively. Grey invested much of his energy in writers, nurturing these shows, and Shandling allegedly resented it. As one former writer on The Larry Sanders Show described the situation, "Garry wanted a manager, which is what Brad was, and Brad wanted to be a mogul. They were out of sync."

The tension between Shandling and Grey mounted considerably once Grey grew tired of his role as strictly a personal manager. In 1992, Grey began to expand his domain in the entertainment business and took a more active role in producing his clients' shows. "He was sick of the 2 a.m. calls from some unhappy comedian," said one network executive. "He wanted a different role in life." Grey began to produce more television shows and films starring Brillstein-Grey clients. Soon thereafter, Shandling began to doubt Grey's dedication to Shandling's work.

One issue disputed in the recent litigation was whether Shandling had independent counsel representing his interests. Shandling claims he asked Grey why Shandling did not have separate legal representation. Grey allegedly replied, "don't you trust me?" Although Grey denies this remark, in 1997 Shandling retained Barry Hirsch as his attorney. Hirsch had difficulty retrieving requested documents from Grey. When he eventually saw some files, he was alarmed by what he saw. In Shandling's complaint he accused Grey of double-dipping by taking an executive producer fee of The Larry Sanders Show as well as commissions on Shandling's compensation from the show.

Only on the cusp of trial did the lawsuit settle. Several commentators have suggested that had the case made it to trial, it would have lasting implications for managers. They believed Shandling had evidence showing that Grey had taken advantage of him financially. Despite Grey's assertion "[Shandling's] case doesn't look like a case to me," other insiders predicted, "Brad will settle." Although the case settled, the law suit still serves as a stark illustration of the complications that arise out of managers producing their clients' work. When $110 million was riding on the outcome, the case attracted the attention of all Hollywood's major players.

## A Catalog of Conflicts

The Shandling lawsuit provides a narrative background upon which particular conflicts of interest can be examined. Assuming Shandling's allegations were true, Grey's behavior illustrates the problems created when a personal manager expands his role beyond the discrete considerations of an artist's best interests. The litigation raised three particular conflicts of interest.

### 1. The Janus Conflict: Artist versus Manager qua Studio Representative

An artist retains a personal manager to develop the artist's career and to represent the artist's interest in dealings with third parties. If the producer-manager receives an equity interest in the profits of the show, the producer-manager will have an interest in limiting the outlays of the production. Consequently, artists lose their personal defenders when managers become producers qua studio representatives, as no one remains to champion their interests.

### 2. The Don Pedro Conflict: Artist v. Manager qua Titular Producer

In addition to simply leaving an artist without a zealous advocate for negotiations, the specter of producing creates different problems when the manager acts not only as an agent of the production entity, but also as a manager qua titular producer. One difficulty is the possibility the manager's quest for credit as a producer will corrupt the advice the manager gives the client regarding what opportunities that artist should select in building a career.

#### a. Double-dipping

A truly egregious problem occasionally occurs when a manager agrees to accept a producer's fee on a client's show. Almost all management agreements stipulate a manager will not take a commission from an artist when that manager is

producing the artist's work. The idea is the manager is compensated from a third-party by at least the amount of the commission the manager would receive from the client. Some managers, however, have been accused of accepting both a producer's fee and the client's commission. This practice is known as "double-dipping" and is a blatant violation of the management agreement and the manager's fiduciary obligations to the artist. Shandling accused his manager Brad Grey of such an impropriety.

**b. Siphoning Talent**

Shandling also accused Grey of siphoning talent. When management firms develop sophisticated and variegated production arms, the partners of the firm are allowed to become executive producers on a large number of shows. Of course, the wider the net a producer casts, the greater the possible financial returns from producer's fees and returns on equity investments. Other non-monetary advantages of producing are similarly telescoped when managers expand their fiefdoms to include several television series or films. Unique problems may occur, however, when a manager produces several shows for various clients. The manager may direct artists away from some shows towards others and this redeployment can easily affect the fortunes of the different shows.

## VI. CONCLUSION

The current approach to regulation of the representation of talent comes from two sources; one public, the Talent Agent Act, contained in the California Labor Code, and one private, The SAG Franchise Agreement. Neither of these forums purports to regulate the behavior of "managers." The most recent manifestation of the historic tension between talent agents and managers is the desire of agents to "level the playing field" with managers, by removing conflict of interest rules from the SAG

Franchise Agreement. However, once made public, the ATA conflict-of-interest proposal came under intense opposition from members of the Screen Actors Guild, and was not adopted. In addition, in the opinion of many observers, the ATA proposal seems to be in conflict with the existing TAA, requiring legislative action to implement. This stalemate lead the State Senate to form the Select Committee on Regulation of Talent Agents, and convene these hearings into the regulatory system.

The issues raised herein are complex and interrelated, as is the film industry. Interested investors, packaging, salary compression, and the cliquish nature of the Industry, all work to both the benefit of, and detriment to, members of the entertainment industry. Under-regulation risks placing vulnerable talent at the mercy of those unscrupulous persons who would pose as "agents." Yet to over-regulate is to place at risk the evolutionary growth of an industry which is by its very nature creative and organic. It is a delicate balance. But it is a balance which must be maintained -- or restored.

###

# SCREEN ACTORS GUILD

# CODIFIED AGENCY REGULATIONS

## RULE 16(g)

INCLUDING THE

BASIC CONTRACT

BETWEEN

SCREEN ACTORS GUILD

AND

ASSOCIATION OF TALENT AGENTS

AND

NATIONAL ASSOCIATION OF TALENT REPRESENTATIVES

maintain office hours and staff availability sufficient to carry out the purposes of this paragraph. During non-office hours SAG will maintain telephonic availability. Any violation of this paragraph by an agent, after written notice to the agent that he is not complying with the paragraph, shall be subject to the disciplinary procedures of Section VIII C. An agent's refusal to make a deal with a non-signatory shall not be construed to be a violation of the actor's agency contract, nor of any of its fiduciary obligations to the actor, nor a violation of this agreement.

## Section V. Package Program and Other Representation by Agents.

A. No agent shall receive, directly or indirectly, any gift or gratuity from any producer of motion pictures or any executive (major or minor) of any producer of motion pictures, except such gifts as may be customary under ordinary social usages or except by way of testamentary disposition. SAG recognizes that most agents are in the general agency business and that their business is not confined solely to the representation of actors. Therefore, it is agreed that no agent shall receive, directly or indirectly, any remuneration, consideration or other thing of value from any producer of motion pictures or any executive (major or minor) of any producer of motion pictures (see Additional Agreed Interpretation 2), except under the following circumstances:

(1) An agent may represent as an agent an executive or other employee of a producer of motion pictures and may receive a bona fide commission from such person for such representation.

(2) An agent may represent as an agent a producer of motion pictures in connection with the sale, placing or other disposition of any literary, dramatic or musical material or the loan or sale of services of writers, composers, directors or other persons under contract to the producer and the agent may receive a bona fide commission from such producer for such representation.

(3) An agent may represent (and receive a bona fide commission for such services) a producer of motion pictures in arranging or securing contracts for the loanout of the services of an actor or the assignment or sale of an actor's employment contract notwithstanding that the actor may be a client of the agent; provided, however, that if the actor is a client of the agent and if the agent is to receive a commission for such services from the producer, the agent shall disclose promptly in writing to the actor his representation of the producer for such purpose and, if the actor expresses in writing his objection to such representation by the agent, the agent shall not have the right to represent the producer for such purpose nor to receive a commission for such services.

(4) An agent may represent a producer of motion pictures in negotiating or securing distribution agreements or in the sale, distribution or other disposition of a motion picture photoplay, photoplays or series of photoplays, or in the sale or other disposition of all or a part of the producer's business, assets, property, interests, stock or the like, or in any other bona fide agency capacity for a specific transaction or transactions as distinguished from a general agency representation, and the agent may receive a bona fide commission or distribution fee from such producer for such services; provided, however, if the agent in representing such producer acts as the agent for such producer with respect to a package program owned by such producer as permitted under Paragraph (7) of this Subsection, (as the term "package program" is customarily understood in the television motion picture industry), then such agent's representation of such package program shall be governed by the provisions of Paragraph (7) of this Subsection.

(5) In the event an agent or the owners of an interest in an agent acquire an ownership interest in a motion picture producer of not to exceed in the aggregate ten percent (10%) as or for bona fide commissions or in lieu of commissions pursuant to the provisions of Paragraphs (1) to (4), both inclusive, of this Subsection, the agent shall not be deemed to have violated these Regulations, particularly the provisions of Section XVI hereof; provided, however, that the agent shall not thereby be relieved or released of the agent's obligation under the provisions of Paragraphs (2) and (3) of Subsection C of Section XVI hereof.

(6) In the event an agent or the owners of an interest in an agent acquire a share of the profits or proceeds of a motion picture producer or of a particular photoplay of a motion picture producer not to exceed in the aggregate ten per cent (10%) as or for bona fide commissions or in lieu of commissions pursuant to the provisions of Paragraphs (1) to (4), both inclusive, of this Subsection, the agent shall not be deemed to have violated these Regulations, particularly the provisions of Section XVI hereof; provided, however, that the agent shall not thereby be relieved or released of the agent's obligations under the provisions of Paragraphs

(2) and (3) of Subsection C of Section XVI hereof. Notwithstanding the provisions of the preceding sentence, in the event a non-actor client of the agent is employed by a motion picture producing company in the production of a motion picture and in the event such non-actor client is not himself in any sense an employer in such enterprise and in the event such non-actor client receives compensation computed or based, in whole or in part, on the profits or proceeds of such motion picture and if by reason of such employment the agent becomes entitled to receive a commission based on his non-actor client's participation in the profits or proceeds of such motion picture, the agent shall not be required to make a disclosure of such interest to any client.

(7) Notwithstanding any provisions elsewhere in these Regulations, an agent may represent any owner or producer (referred to herein as "producer-client") of television motion pictures or television motion picture package programs, (referred to herein as "package programs") subject only to the following conditions:

(a) If, during the period the agent represents a producer-client with respect to a package program, an actor is employed or offered employment (referred to herein as "said employment") as an actor in said package program produced by the producer-client and said employment is covered by the agency contract between the actor and the agent, then:

(i) The agent may not charge or collect any commission whatsoever on the compensation which the actor receives from said producer-client for the actor's said employment in said package program.

(ii) The actor shall be paid for said employment an amount not less than the amount he would have received had the agent not also represented the producer-client with respect to said package program.

(iii) The agent shall disclose, by written notice to the actor, that the agent also represents the producer-client with respect to said package program and advise the actor of his right to obtain independent advice before entering into the contract covering said employment on the producer-client's package program.

(iv) The agent's fiduciary obligation to the actor shall not be impaired or diminished by reason of the agent's representation of the producer-client with respect to said package program.

(v) If the actor, at his option, which he may exercise at any time during the period the agent represents the producer-client with respect to said package program, decides that he does not want the representation of the agent in connection with his said employment in said package program, he may notify the agent to that effect in writing. If the actor so notifies the agent, the agent and the actor shall be mutually relieved of their respective obligations to each other, arising after the date of delivery of such notice, under the actor's agency contract with respect to the actor's said employment in said package program; provided, however, that the actor's said employment on said package program shall nevertheless be deemed employment for the purposes of Paragraph (6) of the agency contract. The actor, if he chooses, may thereafter represent himself or obtain other representation with respect to said employment on said package program.

(vi) Should the actor elect not to exercise his option as provided in subparagraph (v) of subparagraph (a) hereof, the agent, at his option, may terminate the term of the SAG standard motion picture/television form agency contract (Exhibit E) between them by so notifying the actor in writing at any time during the period the agent represents the producer-client with respect to said package program and the term of the agency contract with the actor shall be deemed terminated as of the date of delivery of said notification to the actor.

(b) The agent shall not represent any owner or producer of a television motion picture package program in connection with claims, grievances or arbitrations brought by SAG on behalf of actors employed in such television motion picture package program.

(c) Each package show will have a person or persons not in the employ of the agent who will have the responsibility for the casting of players and drafting of employment contracts.

The provisions of this subparagraph (c) shall not preclude the agent from counseling and advising the package owner or producer of such television motion picture package programs with respect to the casting of actors and the terms and provisions of employment contracts and on other matters.

(d) Copies of all employment contracts of actor-clients who are represented by an agent who also represents the producer or owner of a television motion picture package program as agent, whenever an actor-client of said agent is employed on such television motion picture package program, shall be furnished to SAG by said agent.

(e) Nothing contained in this Paragraph (7) shall impose any conditions, restrictions or limitations whatsoever on an agent when he acts in the capacity of a distributor of television motion pictures as distinguished from "package program" representation.

(f) The conditions set forth in this Paragraph (7) shall be applicable only to the employment of actors on package programs pursuant to employment contracts made on or after July 31, 1962.

(8) With regard to agreements entered into after August 1, 1975, unless the agent shall at the request of a producer-client be contractually committed to make available the following services, the provisions of Paragraph (7), of this Section shall not be applicable.

(a) The agent shall be contractually committed in substance to make available his services in assisting his producer-client in bringing together key elements of the package program with the purpose of creating a product for sale and be contractually committed to make available his services in assisting in the negotiating of agreements in connection therewith.

(b) The agent shall be contractually committed in substance to make available his services to advise and consult with the producer-client as to the creation and/or development and/or production of the package program as such matters relate to the licensing or sale thereof.

(c) The agent shall be contractually committed in substance to make available his services in connection with soliciting and negotiating agreements with respect to the sale or exploitation of the package program and shall render advice with respect thereto.

(9) It shall be a violation of these Regulations, subject to the provisions of Section VIII C, for any agent to seek or obtain a package commission as part of the negotiation of employment for an actor. However, the foregoing sentence shall not be applicable where the agent shall have previously agreed to represent the package program within the meaning of these Regulations.

(10) When an actor is employed by a production company, a majority ownership interest in which is owned by a client of the agency representing the actor, the agency must fully disclose to the actor its relationship to the production company.

## Section VI. Arbitration.

A. All disputes and controversies of every kind and nature whatsoever between an agent and his client arising out of or in connection with or under any agency contract between the agent and his client executed prior to, on, or since July 31, 1962, as to the existence of such contract, its execution, validity, the right of either party to avoid the same on any grounds, its construction, performance, non-performance, operation, breach, continuance, or termination, shall be submitted to arbitration regardless of whether either party has terminated or purported to terminate the same. Said arbitration shall be in accordance with the arbitration provisions of Exhibit I hereto attached and made a part hereof.

B. Agents shall comply with awards made by arbitration tribunals.

C. Members of the SAG are required to comply with awards made by arbitration tribunals. Any wilful or intentional failure or refusal of any member of the SAG to comply with an award made by an arbitration tribunal shall be deemed conduct unbecoming a member of the SAG and shall subject the member to the penalties elsewhere provided for such conduct. Any effort by any member of the SAG against whom an arbitration award has been made to avoid the payment of said award by taking unfair advantage of any bankruptcy or insolvency laws shall be deemed conduct unbecoming a member of the SAG and shall subject the member to penalties provided for such conduct.

D.(1) Any judgment or arbitration award by reason of the breach of an agency contract by an actor shall give the agent only such right to receive money from and out of the actor's earnings, if, as, and when the actor receives the same, or the same is received for or on his behalf, and not otherwise, and the right of an agent to recover damages for an actor's breach of an agency contract is so limited. If an actor has already received moneys or other consideration in connection with which commissions are payable to an agent, then the award or judgment to the agent shall include the aggregate amount of such commissions payable forthwith. An agent has no right to collect commissions because the agent obtains an offer of an engagement which the actor refuses, or because the actor terminates or breaks a contract of employment which the agent has

(1) In connection with a change of entity permitted by Subsection G of Section XII;

(2) To carry out the provisions of Subsection H of Section XII involving a dissolution or split in a type CM-2 agent.

C. All assignments of agency contracts shall be filed by the assignee agent with SAG in accordance with the provisions of Subsection I of Section IV hereof.

## Section XIV. Surrender of Franchise.

A. A franchised agent shall have the right to surrender a franchise at any time by delivering the franchise to SAG with a written notice stating that the franchise is being surrendered and that the agent agrees not to engage in the agency business for or on behalf of members of SAG without making a new application to SAG for a franchise. Such surrender shall not impose upon SAG any obligation to grant any such new application for a franchise, but the refusal so to do shall nevertheless be subject to arbitration.

B. If a franchise is surrendered, all existing agency contracts between members and the agent shall terminate as of the date of the surrender of the franchise, and the members shall be under no further obligation to the agent, nor shall the agent be under any further obligation to the members; provided, however, such surrender of such franchise shall not relieve the agent from any liability incurred to members before such surrender. The members shall, of course, be obligated to pay commissions to the agent on moneys earned by the members prior to the termination in connection with which the agent was entitled to commissions under the agency contracts, but members shall not be under any obligation to pay commissions to the agent on any moneys earned by members after the termination of the agency contracts, even though such moneys are earned by members on employment contracts in existence at the date of the termination of the agency contracts. The provisions of this Subsection B are subject to the exceptions set forth in Subsections I and L of Section XI hereof.

## Section XV. Automatic Termination.

Section XV of the Regulations was deleted, effective July 31, 1968. Rights which have been perfected under the provisions of Section XV prior to its deletion shall not be affected thereby.

## Section XVI. Agents To Be Independent.

A. Other than as herein permitted, no person, firm or corporation engaged or employed in the production or distribution of motion pictures or owning any interest in any company so producing or distributing, shall own any interest in an agent, directly or indirectly, nor shall any such person, firm or corporation own or control any indebtedness of the agent or of any of its owners, nor shall any such person, firm or corporation share in the profits of the agent. However, if an owner of an agent sells his interest in such agent and takes in connection with such sale, in whole or in part, notes or evidences of indebtedness for such purchase price, even though secured by the stock of the agent, and such former owner before payment of such notes engages in production or distribution, the agent shall be unaffected thereby, and there shall be no violation of the preceding sentence. Should any indebtedness represented by notes or other written documents of an agent come into the ownership of any person, firm or corporation primarily engaged in the production or distribution of motion pictures after negotiation thereof by the original holders of such obligations, without the connivance of the agent, the ownership of such obligation by any such person, firm, or corporation shall not be a violation hereof by the agent.

B. An agent or an owner of an interest in an agent shall not be an active motion picture producer. Except as otherwise provided in these Regulations, an agent or an owner of an interest in an agent shall not engage in the production or distribution of motion pictures or own or control, directly or indirectly, any interest in a motion picture producing or distributing company. The term "interest in a motion picture producing or distributing company" for the purpose of this Section shall include any interest as an owner or stockholder and any share in the profits or proceeds of a motion picture producing or distribution company or of a particular photoplay of a motion picture producer, and shall further include acting as an officer or director of a motion picture producing or distributing company. An agent or an owner of an interest in an agent shall not finance the production of theatrical motion pictures or, except as provided in the next sentence, of a television motion picture series. However, an agent or an owner of an interest in an agent may finance the development of one or more series

through completion of a pilot program or programs for such series and an agent or an owner of an interest in an agent may, with respect to episodes of any one or more television series produced for telecasting in any given broadcasting season, finance the cost of production thereof in a sum not to exceed the aggregate cost of six (6) episodes of each such series. In determining such maximum allowable financing, there shall be included the cost of any pilot or pilots for such series financed by the agent.

C.(1) An agent or the owners of an interest in an agent may acquire or receive from one or more clients of such agent or as the nominee of such client or clients an interest in a motion picture producing or distributing company (herein designated as "an interested company") but in no event may such interest exceed in the aggregate ten percent (10%) of the total amount owned by such client or clients of the agent in such company.

(2) The agent shall make a full disclosure in writing of his interest in an interested company to each client whom an interested company proposes to employ, and the employment of each client by the interested company shall be on terms not less favorable than those received by such client for his services as an actor rendered to motion picture producing companies other than an interested company, and the guaranteed compensation payable to the client by an interested company shall not be less than the customary guaranteed compensation theretofore received by such client for such services.

(3) Notwithstanding the provisions of Paragraph (2) of this Subsection C, the guaranteed compensation payable to the client by an interested company may be less than the customary guaranteed compensation theretofore received by such client if the proposed employment contract shall be submitted to, and approved by, SAG. In the absence of such approval no such contract may be executed.

(4) In the event a client of the agent is employed by a motion picture producing company in the production of a motion picture and in the event such client is not himself in any sense an employer in such enterprise and in the event such client received compensation computed or based, in whole or in part, on the profits or proceeds of such motion picture and if by reason of such employment the agent becomes entitled to receive a commission based on his client's participation in the profits or proceeds of such motion picture, the agent shall not be required to make a disclosure of such interest to any client.

D. An agent or the owners of an agent may own not to exceed in the aggregate five percent (5%) of the stock, bonds, or other securities of a motion picture producing company listed on any recognized stock exchange. On written request of any client of such agent, disclosure shall be made in writing to such client of any such interest.

E. SAG may issue waivers in its discretion under this Section, but any such waiver shall be without prejudice to any claim by an actor that the agent's production activities have interfered with the proper representation of the actor by the agent or to the agent's defense thereto.

F. An agent shall not be an employer of members of SAG in connection with the production of motion pictures except pursuant to these Regulations; the foregoing prohibition includes casting on any basis. Nothing herein contained shall prevent an agent from contracting with a member of SAG in such form as to guarantee the member a minimum compensation during a specific period, if such contract in essence provides for the rendition of agency services by the agent, even though such agent is nominally the employer, and also if the total profit which the agent as an employer may earn under such contract is limited to not more than ten percent (10%) of the moneys which are earned by or on account of the rendition of the services of the member, and the agent is subject to all other obligations of an agent hereunder.

G. If an agent or the owners of an agent at the time application for a franchise is filed with SAG own any interest in a motion picture producing or distributing company other than is expressly permitted in these Regulations, the application shall have attached to it a statement specifying said ownership, and SAG may refuse to issue a franchise on such grounds. Should an agent or the owners of an agent acquire an ownership interest in any such firm or corporation so that at any time after a franchise is issued such agent or owners in the aggregate own any interest in any such firm or corporation other than as expressly permitted in these Regulations, the agent shall forthwith notify SAG of such fact, and SAG may revoke the franchise of such agent, unless it divests itself of such ownership within thirty (30) days after notice so to do.

H. All of the provisions of this Section XVI shall apply to agents who represent actors in connection with their employment and professional careers in television motion pictures; provided, however, that the prohibition contained in this Section XVI against agents engaging in the distribution of motion pictures shall apply to the

distribution of television motion pictures only where an agent has an ownership interest or a share in the profits or proceeds of such television motion pictures for which he is acting as distributor other than permitted by these Regulations. However, an agent may act as a general distributor of television motion pictures if said agent does not have an ownership interest or share in the profits or proceeds of such television motion pictures for which he is acting as general distributor other than the ownership interest or share in the profits or proceeds permitted by these Regulations. During the period an agent acts as a general distributor of a television motion picture, said agent shall assume and be liable for all obligations for the payment of rerun fees to actors for reruns that commence during such period and which become due to such actors under the provisions of the SAG collective bargaining contract applicable to such television motion picture, but no such assumption shall relieve Producer from liability. As used in this Section XVI, the phrase "an ownership interest or a share in the profits or proceeds from such television motion pictures" does not include distribution fees nor any interest acquired by the agent because of the deferment of commissions or compensation to be received by said agent who represents television motion picture package show owners or producers and does not include any interest acquired or received by said agent pursuant to Subsections C and D of this Section XVI or as otherwise permitted in these Regulations. Agents who represent television motion picture package show owners or producers as agents (as distinguished from functioning as general syndication distributors) shall not be deemed distributors within the purview of this paragraph.

## Section XVII. Barring.

A. It shall never be deemed to be a violation of these Regulations or a breach of any agency contract for an agent to be over-zealous in representing the interests of the client.

B. If an agent is barred from any studio where an actor is employed or might secure employment, or from contact with any employer, by action of the studio or employer, the agent shall submit to the actor the name of an agent who will substitute and act as his agent at such studio or with such employer, during the period the actor's agent is barred. If the substitute agent submitted by the agent is not satisfactory to the actor, the actor may state that fact, and the agent shall then name another substitute agent, and so on, until acceptance by the actor or the fifth substitute is named, who if the others have been rejected, must be accepted by the actor. All substitutes submitted must have standing and ability commensurate with the barred agent. All submissions and objections must be promptly made and be in writing. The substitute agent must agree in writing to service the actor without remuneration from the actor where the agent is barred or the substitution is invalid. In the event of such barring and failure by the agent to comply with this Section the actor may terminate his contract. The actor is the client of the original agent; the substitute agent only substitutes where the original agent is barred. Failure of the substitute agent to service the actor shall be a breach of these Regulations, but the original agent shall not be prejudiced thereby, but must name another substitute agent as soon as reasonably possible. If any employer or prospective employer refuses to deal with substitute agents to such an extent that it becomes apparent that he will not deal with any substitute agent, neither the original agent nor the substitute agent or agents shall be prejudiced thereby, and SAG and ATA or NATR shall take appropriate action in the premises.

## Section XVIII. Notices.

All notices, except where otherwise provided herein, shall be given in writing. Notices shall be directed to SAG at its main offices in Los Angeles, California, or its environs, and notices shall be directed to agents and subagents at the address of the agent listed with SAG, and if none be listed, by leaving a copy at the office of SAG. Notices may be delivered personally or by mail, fax, telegraph, cable or radio. In the event notice is mailed, the notice shall be deemed delivered within the usual time of delivery of mail after mailing. All notices shall have postage or transmission cost prepaid. If the notice be given by telegram, cablegram or radiogram, then the notice shall be deemed given one day after the deposit of said notice for transmission with the communication system. Notices to be given to any owners, directors, officers, employees or other persons connected with an agent, may be directed to such person or persons at the address of the agent, and notice to the agent shall be notice to them, though they not be named therein. Notices addressed to actors may be addressed to the address of the actor, or, if such address is not known, then the notice may be directed to the actor in care of SAG. If the notice is

# ATA Modified Proposal 5
# Agents To Be Independent

Conform applicable provisions

Add the following:

1. An agent shall not be a motion picture producer.

2. Major Studios and Networks (i.e., Warner Bros., Universal, Disney, Miramax, Sony Pictures, Dreamworks, Fox, MGM, New Line, Paramount, ABC, CBS, NBC, FBC, WB, and UPN) may not own an interest in an agent. An agent may not own any interest in any Major Studio or Network (see above). Such prohibition shall include any parent entity of such Major Studios and Networks and shall include all subsidiaries of such parent entities. SAG and ATA shall establish a standing committee to recommend from time to time to SAG and ATA the addition of entities which have become Major Studios and Networks after the effective date of this proposal. The prohibition in this paragraph 2 is absolute and not diminished in any way by the operation of paragraph 3, 4, or 5.

3. An agent may not own a controlling interest in a company engaged in production and a company engaged in production may not own a controlling interest in an agency. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether through ownership of voting stock, by contract or otherwise, and in all events includes the ownership of an economic interest greater than 49% in such company.

4. A company that has an incidental interest in production may own any interest in an agent and an agent may own any interest in a company that has an incidental interest in production. Companies which have incidental interests in production include consumer product companies, technology companies and advertising companies, among others.

5. An agent may own any interest in a company engaged in distribution subject to the requirements of this Section.

6. In the event that any interest in an agent is transferred to any interested company the day to day management of the agency shall be the responsibility of franchised agents.

7. In no event as a result of the transactions permitted under this Section shall an agent participate in employer decisions respecting the hiring or firing of actors (other than strictly in the agent's capacity as the representative of the actor and consistent with the agent's fiduciary duty to the actor).

8. An agent contracting with an "interested company" (under paragraph 3, 4 or 5) shall disclose the following in such contract:

A. The agent is franchised by SAG and must comply with all provisions of the Basic Contract and Regulations; and the agent shall provide such to the interested company.

B. The agent's paramount duty is to the actor with whom the agent's relationship is that of a fiduciary and to whom the agent owes a duty of loyalty as set for in the Regulations.

C. All dealings between the agent and the interested company must be at arm's length.

D. In the event of any dispute between an actor and the interested company, the agent's sole duty will be to support the interests of the actor whom the agent represents.

E. All communications between the actor and his agent are confidential, and except as are permitted by the Regulations, cannot be disclosed by the agent to the interested company.

9. The agent shall obtain a representation and warranty from the interested company that it understands the agent's duties as disclosed and that it will not take any action to interfere with or coerce the agent in the performance of the agent's duties to the actor. SAG and the agent's clients will be express third party beneficiaries of that representation and warranty.

10. Within thirty (30) days of contracting with an interested company, the agent shall provide SAG and its clients with:

A. An appropriate disclosure specifying the interested company with which the agent has contracted; and

B. either a copy of the contractual provisions making the required disclosures and constituting the necessary representation and warranty or an affidavit attesting that these requirements have been satisfied.

11. Following disclosure pursuant to paragraph 10 above, the actor may within thirty (30) days after receipt of such disclosure terminate his agency contract. In such event, the agent shall be entitled to commission on employment contracts entered into prior to the date of termination.

12. Following the aforesaid disclosure and the expiration of the aforesaid thirty (30) day termination period, if the actor believes the agent has dealt with an interested company in which the agent has a financial interest that is an employer or potential employer of the actor in contravention of the agent's fiduciary duty or duty of loyalty by reason of such financial interest, the actor may refer his claim to expedited arbitration. The arbitrator shall determine the claim within thirty (30) days of the arbitration hearing. If the arbitrator finds the actor's claims to be meritorious, the arbitrator may permit the actor to terminate his agency contract upon such terms and conditions as the arbitrator deems proper.

13. The agent may not charge commission on compensation which the actor receives from direct employment by an interested company.

14. Any agent which engages in a transaction with an interested company shall appoint a compliance officer who is charged with the responsibility to monitor the agent's compliance with its fiduciary responsibilities to its clients.

15. Any agent desirous of participating in a financial interest transaction covered under paragraph 3, 4 or 5 above, shall financially participate in the creation of a fund to assist SAG's membership in broadening actor representation by agents.

16. Create expedited arbitration and disciplinary proceedings specific to these provisions to address any breaches of these provisions.

17. SAG and ATA shall commission a study respecting the effect of the revised financial interest rules. At any time after 3 years from the effective date of the revised financial interest rules, SAG or ATA can reopen this agreement respecting the revised financial interest rules to address changes for prospective transactions warranted by reason of the information derived from the study.

18. To the extent an agent has a controlling interest in an interested company in accordance with this proposal, said agent will undertake liability for residuals (and any other liability which may be owing) to SAG and its members by such interested company.

19. For purposes of this Section, the limits and requirements hereof shall apply to all areas of SAG's jurisdiction.

Retain current paragraphs:

A. Line 33 - beginning with "However" through line 40
B. Line 50 (p. 29) through line 5 (p.30)
C. Entire paragraphs C(2) - C(4)
E. Entire paragraph
F. Entire paragraph
G. Entire paragraph - prospective only

Welcome to the Association of Talent Agents

ATA Home Page

## ATA Negotiations with SAG

ATA/NATR Summary: Financial Interest

ATA/NATR believe it is important fully understand the Financial Interest proposal. The proposal represents crucial elements necessary for the future of all talent agencies and their clients: The proposal addresses every concern that SAG raised; yet SAG said they could not accept a fundamental change in the agency business. The business has changed and responsible parties must negotiate provisions to address those changes if a partnership is to continue.

The ATA/NATR membership cannot permit antiquated discriminatory practices to impede their ability to represent clients from a position of strength and security in the current marketplace.

**SUMMARY:**

# PROHIBITIONS ON AGENTS

1. An agent shall not be a motion picture producer.
2. Major studios and networks may not own an interest in an agent. An agent may not own any interest in any Major Studio or Network (including parents and subsidiaries).
3. An agent may not own a controlling interest in a company engaged in production and a company engaged in production may not own a controlling interest in an agency.

# PERMITTED TRANSACTIONS

1. An agent may own a non-controlling interest in a company engaged in production and a company engaged in production may own a non-controlling interest in an agent.
2. A company that has an incidental interest in production may own any interest in an agent and an agent may own any interest in a company that has an incidental interest in production.
3. An agent may own any interest in a company engaged in distribution.

**PROTECTIONS**

1. SAG and ATA standing committee to recommend additions to major studio and network prohibited companies.
2. If interest in company permitted, day-to-day management of the agency must remain responsibility of franchised agents.
3. In no event may agents participate with respect to employer decisions respecting the hiring or firing of actors.

SPACER

4. In any contract or transaction involving a permitted interest, the contract between the agent and the company shall include list of the agent's obligations to the actor and a representation and warranty from the interested company that it will not take any action to interfere or coerce the agent in performance of the agent's obligations to the actor.

5. Prompt disclosure to SAG and clients from agent of any interest and automatic right of termination for actor.

6. Guarantee of required representation and warranty language confirming third party beneficiary status to SAG and actors to protect against interference with actor and agent relationship.
7. Expedited arbitration if financial interest is claimed to conflict with agent's performance of duties to actor.
8. Waiver of commission from employment of agent's client with any interested company of agent.
9. Compliance officer for agent to monitor agent's compliance with duties to actor.
10. Expedited disciplinary proceedings if claimed violation of any of these provisions.
11. Agent with a controlling interest to assume liability for residuals.

**ADDITIONAL CONSIDERATION**

1. Agents desirous of participating in any financial interest transaction to participate toward fund created to assist in broadening agent representation.
2. Prohibitions and protections extended to new media.
3. Independent study of the effect of revised Financial Interest rules.

4. After study, SAG can reopen negotiations on financial interest in 2003.

SAG - SCREEN ACTORS GUILD

ATA - ASSOCIATION OF TALENT AGENCIES

REGULATIONS - RENEGOTIATIONS

# ACTORS FIRST!

The Negotiations between The Screen Actors Guild ("SAG") and The Association of Talent Agencies ("ATA"), has taken a dramatic shift and demands our immediate attention.

The Waiver that was being proposed was scuttled for good and sufficient cause.

We are now faced with a demand by the ATA that the entire book of agency regulations be opened and renegotiated.

The renegotiations of agency regulations is inevitable and it is incumbent upon all of us to set the agenda pertaining to issues of concern to the entire creative community.

The primary issues of concern are:

1. Conflict of Interest -

   It is our belief that if you "represent" talent, you cannot "employ" talent.

2. Scope and Jurisdiction -

   In the previous proposals, the ATA was suggesting that they be allowed to seek financing from Production and Distribution companies who employ us and, in particular, New Media companies who the agents claim are not in our jurisdiction and, therefore, the agents with New Media partners had no duty to respect our jurisdiction until, and after, we had significantly demonstrated that

we had organized a substantial number of those employers and employer groups.

The ATA was operating under the mistaken assumption that they were, in essence, the bargaining agents for us and these new financial partners, to have us recognized for collective bargaining.

That would be like saying that our agents become the bargaining agents between us and the AMPTP (Alliance of Motion Pictures and Television Producers). Not even a possibility.

This brings up the need to assert ourselves as the sole and sovereign owner of our identity, our likeness, our performance, copyright, licensing and merchandising. We own 100% of ourselves and no one can bargain that away, unless we allow them to, and only then, on our terms and conditions.

If we choose to acquire the services of an agent to represent us, we will set the terms. Ultimately, we must invoke Rule 1 and re-affirm that our Scope Agreement covers all of our work under our contract, wherever we go, anywhere in the World.

3. Exclusivity -

Do we want to continue with the Exclusivity clause in our agreement with agents? Other states do not have this clause.

Should we re-evaluate the Constitution and By-Laws, Rules and Regulations, Rule 16-c?

Perhaps it's time to consider the proposition of members representing themselves and one another.

4. Packaging -

Is it in the best interest of all agencies, big and small, and our members, to continue with the arrangements we've had with agents

regarding packaging?

5. Regulation of Managers -

Do we need to work for legislation that would level the playing field for agents and managers, if that truly is the main concern of agents, and we will give them the benefit of the doubt, when they say that it is so.

6. Study -

We must have a comprehensive study of economic impact on questions of such magnitude.

You have the CEO's of AOL/Time Warner, Stephen Case, and, Gerald Levin, testifying before the Senate Judiciary Committee, on the question of "Open Access" as it pertains to their merger and you have both parties and members of Congress stating:

"This is the biggest thing in the history of the World in terms of copyright, privacy, taxation and licensing, and we must admit that we don't fully understand the impact of it all".

They have a "memorandum of understanding" that they are trying to comprehend.

You have Edgar Bronfman, Jr., quoted in the March 13th edition of Newsweek saying "that the most complicated issue in the business world today, is the convergence of media and technology".

There is much more in this particularly revealing article. . .and we have presumed to understand all of this without so much as a study.

We must convene the entire creative community and their Guilds to discuss our respective and mutual relationships with our agents.

Time Is Of The Essence!

We basically have less than six months to do all of our work and reach some conclusion. That's how long we are given before the regulations are to be renegotiated.

7. Consultation -

Finally, we need to decide with which experts we should consult to prepare for future negotiations, legal affairs and legislative efforts.

We have been compromised, we need to regroup and re-arm ourselves for the ultimate task ahead.

Fraternally yours,

_____

Member, SCREEN ACTORS GUILD

# STATE OF CALIFORNIA

## DEPARTMENT OF INDUSTRIAL RELATIONS

June 22, 1959

File No. '59 IAc. A 24
E 233-T

Gang, Tyre, Rudin & Brown, Attorneys
6400 Sunset Blvd.
Hollywood 28, California

Re: William Morris Agency, Inc.
General Materials and Packages

Gentlemen:

This will acknowledge receipt of your two letters of June 12 and June 17 and of the contract form included with the first letter.

Although in the past it has been the practice of this office to approve this type of contract form insofar as it is within the jurisdiction of this office, the practice has been examined and it has been determined that since this type of contract form does not require the approval of the Labor Commissioner that no such approval should be attached. The decision that this form is not such as requires the approval of the Labor Commissioner is based upon the fact that this type of contract is concerned exclusively with "creative property or package show" and contains nothing with respect to the employment of an artist for the rendering of his personal services or for the advising and counseling of artists in their professional careers.

We have taken the liberty of retaining for our files one copy of your contract form as evidence of the type of document which has been reviewed and found NOT to require the approval of the Labor Commissioner.

Very Truly Yours,

Sigmund Arywitz
State Labor Commissioner

By _____
Mrs. Effie Sparling, Deputy

cc: William Morris Agency

EVERETT E. O'GEADY
Director of Department

SIGMUND ARTWITZ
Chief of Division and
Labor Commissioner

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR LAW ENFORCEMENT

STATE BUILDING ANNEX
455 GOLDEN GATE AVENUE
SAN FRANCISCO 2, CALIFORNIA
UNderhill 1-3705

ADDRESS REPLY TO:
Division of Labor Law Enforcement
P. O. Box 603
San Francisco 1.

May 13, 1964

IN REPLY REFER TO:

Mr. Michael H. Franklin
Executive Director
Western Guild of America, West, Inc.
8955 Beverly Boulevard
Los Angeles 48, California

Dear Mr. Franklin:

On April 30, you wrote to me relative to the practice of artists' managers selling "package deals", for which they receive as compensation a percentage of the gross receipts of the presentation. You complained in your letter that the individual artist was disadvantaged by this practice, and indicated your feeling that the conditions you describe should be a matter of concern to this Division.

At a meeting in our Los Angeles office on May 8, attended by representatives of the Writers Guild and the Screen Actors' Guild, the Directors' Guild of America, when you invited to be present, and the Division of Labor Law Enforcement, we explored the substance of your letter further, and it was agreed that this office would survey the situation to determine whether any of the labor laws applicable to the operation of artists' managers were being violated, and if so, what corrective measures would be appropriate.

Since that meeting, I have had an opportunity to review the provisions of the California Labor Code and the California Administrative Code relative to the licensing and regulation of artists' managers, as well as the basic agreements between the three talent guilds and the Artists' Managers Guild.

I find that there is no provision in the laws for which this Division has enforcement responsibility which covers the procuring or sales of package shows, or receipt by the artist manager of a percentage of the profits of such shows. The import of Labor Code Section 1700.39 which states, "No artists' manager shall divide fees with an employer, an agent, or other employee of an employer", is interpreted to prohibit the artists' manager from sharing his

fee; the language does not lend itself to a construction of the reverse, a prohibition of the artists' manager from obtaining a fee from the employer.

I have also examined Rider W, which is an attachment to the contract between the individual writer and the individual artists' manager, which was approved as to form by this office on April 18, 1962, and approved as to form and content by the Writers Guild of America. I find that Paragraph 5, of Rider W, which appears on Page 11 of your printed Basic Agreement with the artists' managers, makes specific provisions for a situation where the artists' manager is engaged in the sale of a package show and his commission is computed in relation to the gross sales price of the program. This paragraph contains both protective and remedial language, which taken in conjunction with the arbitration provisions of your agreement and the provisions of Labor Code Section 1700.45 could obviate any oppressive practices against an artist.

A violation of Paragraph 5 would be arbitrable under provisions of Paragraph 3 of your Basic Agreement and thus come within the purview of this Division's statutory powers, just as would any case of improper representation of his client by any artists' manager. Should you have any complaint at any time on matters coming under our jurisdiction, please bring it to our attention.

Very truly yours,

Sigmund Arywitz
State Labor Commissioner

cc: Mr. John Dales
Screen Actors Guild
Mr. Jos Youngerman
Directors Guild of America
Mr. Adrian McCalman
Artists Managers Guild

**DRAFT PETITION**

**TO THE CALIFORNIA STATE LABOR COMMISSIONER**

By means of this letter, we seek to call your attention to a mechanism by which licensed talent agencies impose a form of contract which is unfair, unjust and oppressive to the artists who they purportedly represent.

The mechanism in question is the General Materials and Packages Agreement. It has been our experience that the Package Agreement invites conflict of interest between artist and agent and, per se, subordinates the interests of the individual creative talent to the interests of the talent agency.

By empowering the Labor Commissioner to regulate the activity of talent agents, the State sought to secure the rights of individual creative artists against the usurious and predatory behavior of those entities whose business is to seek employment on behalf of talent. To secure the rights of the artist, talent agents are prohibited from charging a commission in excess of ten percent of the artists' gross earnings and are further prohibited from splitting fees with the employer of the artist.

When engaged in the practice of packaging, the agency determines its fees in proportion to the network license fee and the off-network profits of any given program. Packaging allows an agency to charge fees that are unrelated to, and often in excess of, the fees earned by the artists who are represented by the agency. The effort to secure a package fee from a producing entity is, de facto, a form of fee-splitting between the employer of talent and the purported representation of talent.

In defending their Package fees, the agencies cite an exemption to the California Labor Code which was promulgated on June 22, 1959 by the State Labor Commissioner. We believe the 1959 exemption was aberrant and incorrect. Even if one assumes that the 1959 decision was correct, it is our belief that the facts at issue then do not conform to the practice of Packaging as it takes place in 1998.

In 1959, the large agencies, specifically William Morris and MCA, were often responsible for the creation and financing of television programs. The agency would not only represent all key creative talent, but would negotiate sponsorship and offer the fully staffed and pre-financed package to the broadcast networks. The talent agencies employed full time creative executives and provided each package with full scale legal, accounting and casting support.

Today the agencies continue to charge package fees, but they no longer render, nor are they capable of rendering, the services which were provided when the 1959 exemption was granted. Packaging is no longer a service but a subversion of the fiduciary obligation of agent to client. The 1959 exemption is an anachronism by which contemporary agencies excuse themselves from the restrictions which the State intended to impose under the Artists' Managers and Employment Agencies section of the Labor Code.

The packaging issue has notable public interest significance. Not only does the practice of packaging disadvantage the creative artists, it robs the viewing public as well. By asserting a now baseless exemption to the Labor Code, agencies are able to collect staggering fees which can exceed the total remuneration paid to the creative talent responsible for any given production. These fees represent a direct reduction of the production budget and, thereby, diminish the quality and diversity of the programs offered for public consumption.

The practice of packaging undermines the competitive dynamic of the marketplace. The true value of literary material can only be determined if the writer's representative allows all qualified producers the opportunity to bid on the material. Packaging limits the market by excluding producers who are unwilling to enter into a package agreement as precondition for access to literary material.

The Package Agreement not only subverts those portions of the California Labor Code that govern the behavior of talent agents, (specifically Chapter 4, Section 1700), it creates an incentive for agents to discriminate unfairly among the talent they represent. An artist who determines not to sign package papers will be regarded by the agent as a second class client, one who is not as valuable to the agency as another client of equal industry stature who endorses the agent's desire to function as a packager.

By holding themselves out as packagers, agents disavow their fiduciary obligation to the talent they represent. Agents seek to cure such breach of trust by waiving the commission which the artist would ordinarily pay to the agent. But the waiver of commission is a cynical hoax designed to create the illusion that packaging saves the client the expense of paying commission. By refusing to commission the artist, the agent tries to create a rationale abandoning the artist's interest in favor of the interests of the agency. The rationale is spurious as the fiduciary obligation is paramount and unwaivable. Agents should simply not be allowed to represent the producers who hire and fire creative talent.

By asserting the right to package, agents put themselves in a direct and untenable conflict of interest with their clients. As the packager receives a significant piece of the programs' gross profits, the packager is, per se, in direct competition with the artist they are licensed to represent. An agent naturally seeks to secure maximum compensation for their artist. A packager seeks maximum profit for the production which, ipso facto, can only be achieved by sub-optimizing the fees and points paid to the artist. The level of compensation paid to the packager has an inverse correlation to the level of compensation

paid to the artist. Such an inverse relation is perverse and suggests the inherent bad faith which is at the root of the packaging process.

In direct contravention of the Labor Code and the agreements between SAG, WGA and DGA, packaging allows agents to secure unconscionable fees and profits. The self-dealing that underlies the practice of packaging, allows agents to receive fees and profits that often exceed the fees and profits paid to an individual artist.

It is significant that the practice of packaging takes place only in television. No agent receives fees based on a percentage of a feature film budget. Artists seeking to move from television to feature work are disadvantaged by this disparity. An agent who has a packagable client working in television is disinclined to move that client into features as such a move might increase the artists' earnings but reduce the fees collected by the agent.

Furthermore, the package exemption artificially encourages the centralization of power in the hands of a few large agencies and imposes an undue and anti-competitive hardship on small and mid-sized agencies. The buyout of Triad Artists by the William Morris Agency and the demise of Intertalent are suggestive of an alarming trend. Large agencies, often motivated by the profits of packaging, generally decline to represent new or struggling artists. Emerging talent is particularly dependent on the viability of the small agencies who are now being swallowed up by the package-rich giants.

A determination by the Labor Commissioner to eliminate the exemption would have an immediate and wholly salutary effect. Talent would be secure in the knowledge that the regulatory system protected them from agency conflicts of interest. The earnings of artists would increase. The dollars available for production would expand. And the unnatural concentration of power in the hands of a few super-agencies would give way to greater competition.

We implore the Labor Commissioner to review the 1959 exemption in light of both current realities and historical abuses. It is bad public policy to continue an exemption which allows talent agencies to represent the entities which employ creative talent. The General Materials and Packaging Agreement is a form of contract that is unfair, unjust and oppressive to those artists working in the television industry and, as such, is inconsistent with the Talent Agencies provisions of the State Labor Code.

We would welcome the opportunity to provide any additional or specific information you may need in order to render a decision in this matter.

PackgAgrmnt.Jul9.doc

DIVISION OF LABOR STANDARDS ENFORCEMENT
*Headquarters Office*
45 Fremont Street, Suite 3250
San Francisco, CA 94105
(415) 975-2080
(415) 975-0772 Fax

*Office of the*
*State Labor Commissioner*

October 30, 1998

Mr. Leonard Hill
Leonard Hill Films
4500 Wilshire Blvd.
Los Angeles, CA 90010

RE: General Materials and Packages Agreement

Dear Mr. Hill:

This letter is written in response to the draft petition I received from you. You seek a change in policy whereby the Labor Commissioner would eliminate the "packaging agreement" exemption from state regulation pursuant to the Talent Agencies Act (Labor Code §§ 1700-1700.47).

After exhaustive review of all pertinent materials, including legislative history, the various Guild Agreements, administrative regulations, applicable Labor Code sections, and historical administrative construction, I conclude that I lack jurisdiction with respect to "Packaging Agreements." The appropriate forum for any change would be the legislature.

As you know, the Division of Labor Standards Enforcement pursuant to the Talent Agencies Act (hereinafter Act) regulates talent agents. The Act defines "talent agent" as "a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists." L.C. § 1700.4

The Legislature determined the act of "procuring employment" for artists was an occupation necessitating regulatory oversight and statutory protection. When determining the Division's responsibility under the Act, the Division first must interpret the statute to effectuate legislative intent. The legislature clearly focused on the act of "procuring employment" and required this activity to be closely regulated. To "procure" as defined by Webster's Collegiate Dictionary 10th ed. 1996 pg. 930 means: " to get possession of:

obtain by particular care and effort." In giving this provision a reasonable and common sense interpretation, the Division does not view a packaging agreement as procuring employment. A "package agreement" or "package program" as the term is customarily understood in the television and motion picture industries is more analogous to selling an idea or a concept. In packaging agreements, the requisite obtaining or getting possession elements are not present. The concept of packaging is a "pitch" that must be sold prior to any procurement of employment. After the idea is sold, and once the artist begins work under the signed package agreement, only then would jurisdiction of the Labor Commissioner commence.

In 1982 the Legislature created the California Entertainment Commission (hereinafter "Commission") to study the laws and practices of California relating to licensing of agents and representatives of artists in the entertainment industry. The Commission was required to analyze the Act in great detail and submit its report to the Legislature and the Governor no later than January 1, 1986. After more than two years of study the report noted "the Act is a sound and workable statute and the recommendations contained in this report will, if enacted by the California Legislature, make that Act a model statute of its kind in the United States." (Report at p. 4) The Legislature adopted all of the Commission's recommendations, and the Governor signed them into law.

The Commission had ample opportunity to change the long standing policy of the Labor Commissioner with regard to "packaging agreements." The Commission, including former Labor Commissioner C. Robert Simpson, could have recommended to the Legislature that materials and packaging was a conflict of interest as it relates to employment of artists, and as such the Labor Commissioner should change its policy as to having jurisdiction and therefore regulate this activity. Had the Commission felt that changing the Labor Commissioner's policy would further effectuate the protections of the Act, there was certainly a forum to do so. However, there was no such discussion. The Commission's silence can only be interpreted as an approval of the Labor Commissioner's long standing policy of lack of jurisdiction.

Furthermore, it appears that artists benefit from package agreements. Upon analyzing the various Guild Agreements, including, SAG, AFTRA, DGA, and the WGA, I have also concluded that there is ample protection for the artists contained in the guild provisions with respect to package programs. For example, the Screen Actors Guild, section V (A)(7) provides that when an agent represents both an owner or producer of a "package program" and an artist rendering services in that program, the agent is precluded from receiving commissions from the artist. Additionally, the dual representation

shall not affect the artists compensation in any manner. Indeed all of the Guild Regulations provide similar provisions.

When ascertaining whether a change in policy would benefit the protected class, the Division of Labor Standards Enfoccement has historically given great weight to past consistent administrative construction. As you are aware from the June 22, 1959, letter included in your petition, the Labor Commissioner has historically held that packaging "contains nothing with respect to the employment of an artist for the rendering of his personal service..." At this point there has been no material provided that would serve to undermine the long standing policy of the Labor Commissioner.

It must be stated that this determination is made considering only the materials mentioned above. Should you have any questions, viewpoints, or additional materials that I have not considered, please do not hesitate to contact me directly. I hope I have adequately answered your Draft Petition for a change in policy.

Sincerely,

Jose Millan
*State Labor Commissioner*

cc: John Duncan, Director, Department of Industrial Relations
Patti Archuletta, California Film Commission

5TH CASE of Level 1 printed in FULL format.

United States v. MCA Inc.

Civil No. 62-942-WM.

United States District Court for the Southern District of California, Central Division.

1962 U.S. Dist. LEXIS 5706; 1962 Trade Cas. (CCH) P70,459

October 18, 1962.

CORE TERMS: television, subsidiaries, license, films, exhibition, motion picture, theatrical, talent, sub-paragraph, conditioning, phonograph record, upset price, distributor, affiliates, comparable, phonograph, distribute, presently, enjoined, Act Of Congress, television production, reasonable notice, sole discretion, commonly known, acquisition, negotiate, offeree, filmed, merger, taped

OPINIONBY: [*1]

CURTIS

OPINION: Final Judgment

CURTIS, District Judge: Plaintiff, United States of America, having filed its complaint herein on July 13, 1962, and the defendant herein, MCA Inc., having appeared by its attorneys, and hereby denying that any violations of law have been committed by it, and said plaintiff and defendant having each consented to the entry of this Final Judgment herein, without admission by any party in respect to any such issue;

Now, Therefore, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein, and upon consent as aforesaid of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I.

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states claims for relief under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended, and under Section 7 of the Act of Congress of October 15, 1914, as amended, commonly known as the Clayton Act.

II.

As used in this Final Judgment:

(A) "Elements" means the creatively [*2] significant components of a television or motion picture production (including, but not limited to, actors, directors, producers, writers, scripts, etc.).

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II.

As used in this Final Judgment:

(A) "Elements" means the creatively [*2] significant components of a television or motion picture production (including, but not limited to, actors, directors, producers, writers, scripts, etc.).

(B) "Package" means two or more elements designed to be used together in the production of a live, taped or filmed television program or in a theatrical motion picture.

(C) "Program" means a filmed or taped television show, or a series of related episodes (including, without limitation, anthologies) made primarily and originally for free television exhibition in the United States.

(D) "Talent Agency Business" means the business of representing, as artists' manager, creative or performing talent in the entertainment business.

(E) "Feature Film" means a copyrighted motion picture made primarily and originally for theatrical exhibition in the United States, containing four or more reels in length, including Westerns, but excluding motion pictures of strictly educational, religious or industrial character.

(F) "MCA" means defendant MCA, Inc., a Delaware corporation, and its subsidiaries, or any of them; the reference to MCA shall be deemed to include Decca Records, Inc. (hereinafter referred to as Decca) and Universal Pictures [*3] Company, Inc., (hereinafter referred to as Universal) and their respective subsidiaries, unless expressly excluded.

III.

The provisions of this Final Judgment applicable to defendant MCA shall apply to its officers, directors, agents, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with it who receive notice of the Final Judgment by personal service or otherwise.

IV.

Defendant MCA is hereby enjoined and restrained from:

(1) Engaging in the talent agency business, or acquiring any interest in the talent agency business, provided that nothing contained in this sub-paragraph (1) shall affect in any way compensation and/or commissions for past services, and provided further that insofar as the talent agency business of MCA in foreign countries is concerned, MCA shall have the right to discontinue such talent agency business according to the procedures and provisions set forth in paragraph 6 of the 6-page Stipulation and Order made and dated July 23, 1962.

(2) Making, at any time during the period of 7 years from the date of this Judgment, future acquisitions of or mergers with any major television production or distribution [*4] company or any major theatrical motion picture production or distribution company or any major phonograph record production or distribution company (other than of or with Decca and/or Universal and/or their respective subsidiaries) unless MCA either obtains and files herein the written consent of the Department of Justice thereto, or, after reasonable notice to the Department of Justice, establishes to the satisfaction of the Court that any such acquisition or merger will not unduly restrain or substantially lessen competition in the television, theatrical motion picture, or phonograph record industries in the United States.

A "major television production or distribution company" for the purposes of this sub-paragraph (2) shall mean Four Star Television, Screen Gems, Inc.,

Walt Disney Productions, Seven Arts Associated Corporation or Desilu Productions Inc. (including as part of such companies their respective subsidiaries and affiliates) or companies of comparable size to the foregoing as presently constituted.

A "major theatrical motion picture production or distribution company," for the purposes of this sub-paragraph (2), shall mean Metro-Goldwyn-Mayer, Inc., Columbia Pictures [*5] Corporation, Paramount Pictures Corporation, United Artists Corporation, Warner Bros. Pictures, Inc., or Twentieth-Century Fox Film Corporation (including as part of such companies their respective subsidiaries and affiliates) or companies of comparable size to the foregoing as presently constituted.

A "major phonograph record production or distribution company," for the purposes of this sub-paragraph (2), shall mean Columbia Record Division of Columbia Broadcasting System, Inc., RCA-Victor Record Division of Radio Corporation of America, Capitol Records, Inc., Liberty Records, Inc., Mercury Record Corporation, or Dot Records Inc. (including as part of such companies their respective subsidiaries and affiliates), or companies of comparable size to the foregoing as presently constituted.

(2) (a) With respect to programs offered for exhibition in the United States, conditioning the offer to license any such program upon the requirement that the offeree thereof license any other programs or any feature films being offered for exhibition in the United States.

(b) With respect to feature films offered or to be offered for television exhibition in the United States, conditioning [*6] the offer by MCA to license any one or more feature films upon the requirement that the offeree thereof license any other or others of such feature films or any programs.

(c) With respect to phonograph records offered for sale by MCA in the United States, conditioning the sale of any such phonograph records upon the requirement that the purchaser thereof license any feature films or any programs, or conditioning the license of any feature films or any programs offered for television exhibition in the United States upon the requirement that the licensee thereof purchase any such phonograph records.

V.

(1) For the purposes of this paragraph V "MCA" does not include Decca or Universal or the subsidiaries of Decca or Universal.

(2) If Universal, in its sole discretion shall by June 1, 1963 determine to make available the United States and Canadian free television distribution rights in any of the 229 feature films shown on the attached list [not reproduced], Universal shall publicly announce an upset price at or above which it will negotiate in good faith a license to distribute 215 or more of such feature films with any responsible television distributor other than MCA, [*7] which is hereby enjoined from taking such a license. Such upset price shall be the fair market value of the distribution rights offered.

(3) If any offer or offers at or above such upset price is or are received by Universal on or prior to October 1, 1963 from one or more responsible distributors acceptable to the Department of Justice, Universal

shall negotiate in good faith a license satisfactory to it for said features.

(4) If no such offer is received by Universal by October 1, 1963, or if no such license is executed within 60 days thereafter, Universal may, in its sole discretion: (a) distribute said features for television through its own organization; (b) withdraw such rights from television; (c) make any arrangements it deems fit other than for the distribution of said features by MCA for television exhibition.

(5) Universal shall not distribute said feature films for United States and Canadian free television through its own organization prior to October 1, 1967 unless and until Universal shall have followed the procedures described in subparagraphs (2), (3) and (4) of this paragraph V.

(6) Any such determination and any such distribution by Universal pursuant thereto [*8] shall be made and done by Universal management independently of MCA, and no person who was an officer, director or executive of MCA, on June 18, 1962, or within two years prior thereto, shall participate in such determination or distribution or make any recommendations relating thereto. Distribution by Universal itself, if that occurs, shall be through employees of its own or its subsidiaries who are not now and have not been since June 18, 1962 in the employ of MCA.

(7) In the event that MCA merges with either Decca or Universal, then MCA, Decca and Universal are enjoined from acting as distributor of the United States or Canadian free television rights in any of said 215 features prior to October 1, 1967.

(8) The restrictive and injunctive provisions of this Paragraph V shall apply only to the United States and Canadian free television distribution rights in said 215 features and only until, in any event, October 1, 1967.

VI.

Defendant, MCA, Inc., is ordered and directed upon entry of this Final Judgment to advise promptly, in writing, all officers, directors and executives of defendant and its subsidiaries of the terms of this Final Judgment and that each and every [*9] such person is subject to the provisions of this Judgment; and it shall make readily available to such persons a copy of this Final Judgment and shall inform them of such availability.

VII.

For the purposes of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted:

(A) Access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda, and records and documents in the possession or under the control of such defendant relating to any matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of such defendant who may have counsel present regarding any such matters.

Upon such request said defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary [*10] to the enforcement of this Final Judgment. No information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the executive branch of the United States Government except in the United States is a party for the purpose the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VIII.

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

254 Cal. App. 2d 347 printed in FULL format.

MARTYN BUCHWALD et al., Petitioners v. THE SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, Respondent; MATTHEW KATZ, Real Party in Interest

Civ. No. 24382

Court of Appeal of California, First Appellate District, Division One

254 Cal. App. 2d 347; 1967 Cal. App. LEXIS 1401; 62 Cal. Rptr. 364

September 15, 1967

SUBSEQUENT HISTORY: [**1]

A Petition for a Rehearing was Denied September 29, 1967, and the Petition of the Real Party in Interest for a Hearing by the Supreme Court was Denied November 8, 1967.

PRIOR HISTORY:

PROCEEDING in prohibition or mandamus to review orders of the Superior Court of the City and County of San Francisco denying a motion to restrain arbitration, restraining petitioners from proceeding further before the labor commissioner and ordering them to arbitrate a dispute before the arbitration association.

DISPOSITION: Orders annulled; writ of certiorari granted.

CORE TERMS: artist, manager, licensed, arbitration, procure, bookings, Employment Agencies Law, subterfuge, employment agency, summary judgment, engagements, duty, artists-manager, arbitrator, unlicensed, premature, invalid, evade, void, obtain employment, written contract, subject matter, thereunder, arbitrate, licensee, restrain, promised, conceal, license, hear

COUNSEL: Maxwell Keith for Petitioners.

Andrew H. D'Anneo, Louis Giannini, Douglas M. Phillips and Bruce Weathers as Amici Curiae on behalf of Petitioners.

No appearance for Respondent.

Howard L. Thaler for Real Party in Interest.

Irmas & Rutter and Michael R. Shapiro as Amici Curiae on behalf of Real Party in Interest.

JUDGES: Elkington, J. Molinari, P. J., and Brown (H. C.), J., * concurred.

* Assigned by the Chairman of the Judicial Council.

OPINIONBY: ELKINGTON

OPINION: **[*350] [***366]** By their "Petition for Writ of Review (and/or, in the Alternative, a Writ of Prohibition or Mandamus)" petitioners seek review of orders of the superior court**[**2]** in an action commenced by them against Matthew **[***367]** Katz, hereinafter referred to as Katz, who is here the real party in interest. Concerned is the Artists' Managers Act which we shall hereafter refer to as the Act.

The Act comprises *sections 1700-1700.46* of the Labor Code. n1 It is found in division 2, part 6 of that code, relating to "Employment Agencies." It requires licensing, and regulates the business, of artists' managers. n2

n1 Unless otherwise indicated, all statutory references herein will be to the Labor Code.

n2 Section 1700.4 defines artists' managers as follows: "An artists' manager is hereby defined to be a person who engages in the occupation of advising, counseling, or directing artists in the development or advancement of their professional careers and who procures, offers, promises or attempts to procure employment or engagements for an artist only in connection with and as a part of the duties and obligations of such person under a contract with such artist by which such person contracts to render services of the nature above mentioned to such artist."

**[**3]**

The Act is a remedial statute. Statutes such as the Act are designed to correct abuses that have long been recognized and which have been the subject of both legislative action and judicial decision. (See *Collier & Wallis, Ltd. v. Astor, 9 Cal.2d 202, 206 [70 P.2d 171].)* Such statutes are enacted for the protection of those seeking employment. (See *Smith v. [*351] La Farge, 242 Cal.App.2d 806, 808-809 [51 Cal.Rptr. 877].)* They properly fall within the police power of the state. (*Collier & Wallis, Ltd. v. Astor, supra)* and their constitutionality has been repeatedly affirmed. (See *Garson v. Division of Labor Law Enforcement, 33 Cal.2d 861, 864 [206 P.2d 368]; Collier & Wallis, Ltd. v. Astor, supra; Smith v. La*

*Fafarge, supra, at p. 811.)*

Since the clear object of the Act is to prevent improper persons from becoming artists' managers and to regulate such activity for the protection of the public, a contract between an unlicensed artists' manager and an artist is void. (See *Wood v. Krepps, 168 Cal. 382, 386 [143 P. 691,* L.R.A. 1915B 851]; *Loving & Evans v. Blick, 33 Cal.2d 603, 608-609 [204 P.2d 23]; Albaugh [**4] v. Moss Constr. Co., 125 Cal.App.2d 126, 131-132 [269 P.2d 936];* 1 Witkin, Summary of Cal. Law (1960) Contracts, § 171, p. 185.) Contracts otherwise violative of the Act are void (see *Severance v. Knight-Counihan Co., 29 Cal.2d 561, 568 [177 P.2d 4, 172 A.L.R. 1107]; Smith v. Bach, 183 Cal. 259, 262 [191 P. 14];* 1 Witkin, op. cit., § 157, p. 167). And as to such contracts, artists, being of the class for whose benefit the Act was passed, are not to be ordinarily considered as being in pari delicto. (See *Lewis & Queen v. N. M. Ball Sons, 48 Cal.2d 141, 153 [308 P.2d 713],* and authorities there cited.)

Section 1700.44 of the Act, as pertinent here, provides: "In all cases of controversy arising under this chapter 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."

Petitioners constitute a professional musical group known as the "Jefferson Airplane." They are "artists" as defined by section 1700.4 of the Act. Each petitioner entered into a separate[**5] and identical contract with Katz, who for a percentage of each petitioner's earnings undertook, among other things, to act as "exclusive personal representative, advisor and manager in the entertainment field." The contract contained a provision reading: "It is clearly understood that you [Katz] are not an employment agent or theatrical agent, that you have not offered or attempted or promised to obtain employment or engagements for me, and you are not obligated, authorized or expected to do so." It also provided for arbitration of any dispute thereunder in accordance with the rules of the American Arbitration Association.

**[*352] [***368]** A dispute arose between the petitioners and Katz in relation to the subject matter of the contract. Katz thereupon, on September 21, 1966, commenced proceedings with the arbitration association seeking to compel arbitration of the dispute.

On October 18, 1966, petitioners filed with the Labor Commissioner a "Petition to Determine Controversy," alleging among other things: "Complainants complain that in September of 1965, defendant [Matthew Katz] acting as an artists-manager and through false and fraudulent statements and by duress, **[**6]**caused complainants to sign with defendant as an artists-manager; that defendant, prior to the time of signing said contracts, promised the complainants and each of them that he would procure bookings for them; that defendant thereafter procured bookings for the complainants and insisted that the complainants perform the bookings procured by him; that complainants sought to procure their own bookings, and that defendant refused them the right to procure their own bookings; that at the time that said contracts were negotiated, defendant Matthew Katz was not licensed as an artists-manager pursuant to the provisions of the California Labor Code, *Section 1700.5*; n3 that the contract presented to each complainant was not submitted to the Labor Commissioner, State of California, as required under Section 1700.23; n4 that Matthew Katz has not performed in accordance with Sections 1700.24, 1700.25, 1700.26, 1700.27, 1700.28, 1700.31, 1700.32, *1700.36* and *1700.40* of the Labor Code and other provisions of the Labor Code; that Matthew Katz never rendered an accounting to the complainants for thousands of dollars received by Mr. Katz for their services; that Matthew Katz has not allowed complainants**[**7]** to inspect the books and records maintained by Matthew Katz with respect to fees earned by the complainants; that Matthew Katz has and continues to obtain payments intended for one or more of the above complainants and has cashed checks intended for one or more of the above complainants for his own use and benefit."

n3 Section 1700.5, as pertinent here, provides: "No person shall engage in or carry on the occupation of an artists' manager without first procuring a license therefor from the Labor Commissioner."

n4 *Section 1700.23*, as pertinent here, provides: "Every artists' manager shall submit to the Labor Commissioner a form or forms of contract to be utilized by such artists' manager in entering into written contracts with artists for the employment of the services of such artists' managers by such artists, and secure the approval of the Labor Commissioner thereof."

Katz appeared and filed his answer to the petition, in which he objected to the jurisdiction of the Labor Commissioner and **[*353]** denied**[**8]** that he had agreed to act, or that he was or had been acting, as an artists' manager.

On October 21, 1966 while the Labor Commissioner proceedings were pending, petitioners filed an action against Katz in the superior court, seeking relief, among other things, that Katz be restrained from proceeding before the arbitration association.

In the superior court action Katz appeared and moved the court to order petitioners to arbitrate as provided by the contracts, and to restrain the proceedings before the Labor Commissioner. Petitioners opposed Katz' motion contending that a bona fide controversy existed before the Labor Commissioner as to whether Katz had agreed to act, and had been acting as their artists' manager, and as to the legality and validity of the contracts. They contended that the language of the contracts "you have not offered, or attempted or promised to obtain employment or engagements for me, etc." was but a subterfuge to conceal the fact that Katz did act, and had agreed to act, as an artists' manager. Evidence was introduced by petitioners in support of their contentions. Katz offered evidence to the contrary.

**[***369]** The court thereafter on January 17, 1967**[**9]** made its orders denying petitioners' motion to restrain arbitration; restraining petitioners from proceeding further before the Labor Commissioner; and ordering them to arbitrate their dispute before the arbitration association. These orders are the subject of the instant proceedings.

Real party in interest Katz has rather clearly stated the issues to be determined in this proceeding. Our discussion will follow the contentions as presented by him.

First Contention: Neither certiorari, prohibition nor mandamus is a proper remedy.

It appears that the superior court's orders constitute completed judicial acts. If the orders were in excess of the court's jurisdiction and if there is available neither appeal nor other plain, speedy and adequate remedy, certiorari is proper. (See 3 Witkin, Cal. Procedure (1954) Extraordinary Writs, pp. 2490-2493.)

An appeal does not lie from an order compelling arbitration (*Corbett v. Petroleum Maintenance Co., 119 Cal.App.2d 21 [258 P.2d 1077]);* nor is any other plain, speedy or adequate remedy apparent. We consider certiorari to be the proper remedy.

**[*354]** Second Contention: The Artists' Managers Act does not give the Labor **[**10]** Commissioner jurisdiction over an artists' manager who is not licensed as such by the commissioner.

Admittedly Katz was not licensed as an artists' manager.

The Act, section 1700.3, defines "licensee" as an "artists' manager which holds a valid, unrevoked, and unforfeited license. . . ." Section 1700.4 defines "artists' manager" (see fn. 2, ante).

Certain sections, i.e., 1700.17, 1700.19, 1700.21, 1700.42, 1700.43, refer to licensee in such context that the word can reasonably apply only to a licensed artists' manager. Other sections, including those which are the subject of the Petition to Determine Controversy, refer to artists' manager in such manner that they apply reasonably to both licensed and unlicensed artists' managers. The Act thus refers to and covers two classes of persons, "licensees" who are artists' managers with valid licenses, and "artists' managers" who may or may not be so licensed.

"'It is well settled that a legislative body has the power within reasonable limitations to prescribe legal definitions of its own language, and when an act passed by it embodies a definition it is binding on the courts.'" *(Application of Monrovia Evening Post, 199 Cal. **[**11]** 263, 269-270 [248 P. 1017];* see also *People v. Western Air Lines, Inc., 42 Cal.2d 621, 638 [268 P.2d 723]; In re Miller, 31 Cal.2d 191, 198 [187 P.2d 722].)* If possible, significance should be given to every word and phrase of an act in pursuance of the legislative purpose. *(Select Base Materials v. Board of Equalization, 51 Cal.2d 640, 645 [335 P.2d 672]; People v. Hampton, 236 Cal.App.2d 795, 801 [46 Cal.Rptr. 338]; Brown v. Cranston, 214 Cal.App.2d 660, 672-673 [29 Cal.Rptr. 725].)*

Remedial statutes should be liberally construed to effect their objects and suppress the mischief at which they are directed (*Lande v. Jurisich, 59 Cal.App.2d 613, 616-617 [139 P.2d 657];* see also *Union Lbr. Co. v. Simon, 150 Cal. 751, 757 [89 P. 1077, 1081];* 45 Cal.Jur.2d, Statutes, § 182, p. 681). It would be unreasonable to construe the Act as applying only to licensed artists' managers, thus allowing an artists' manager, by nonsubmission to the licensing provisions of the Act, to exclude himself from its restrictions and regulations enacted in the public interest. "Statutes must be given a reasonable and common sense construction**[**12]** in accordance with the apparent purpose and intention of the lawmakers -- one that is practical rather than technical, and **[*355]**that will lead to wise policy rather than to mischief or absurdity." (45 Cal.Jur.2d, Statutes, § 116,

pp. 625-626.)

[***370] We conclude that artists' managers (as defined by the Act), whether they be licensed or unlicensed, are bound and regulated by the Artists' Managers Act.

Third Contention: By virtue of his written contract, Katz as a matter of law is not an artists' manager and therefore is not subject to the Artists' Managers Act.

The Act gives the Labor Commissioner jurisdiction over those who are artists' managers in fact. The petition filed with the Labor Commissioner alleges facts which if true indicate that the written contracts were but subterfuges and that Katz had agreed to, and did, act as an artists' manager. Clearly the Act may not be circumvented by allowing language of the written contract to control -- if Katz had in fact agreed to, and had acted as an artists' manager. The form of the transaction, rather than its substance would control.

"It is a fundamental principle of law that, in determining rights and obligations, [**13] substance prevails over form." (*San Diego Federation of Teachers v. Board of Education, 216 Cal.App.2d 758, 764 [31 Cal.Rptr. 146];* Civ. Code, § *3528.*) This principle is recognized in a case Katz cites and relies upon, *Pawlowski v. Woodward, 122 Misc. 695 [203 N.Y.S. 819, 820],* where the court said, "This contract is no subterfuge to evade the General Business Law. An employment agency could not circumvent the statute by putting its contract to procure employment for an artist in the form of an agreement for management."

The court, or as here, the Labor Commissioner, is free to search out illegality lying behind the form in which a transaction has been cast for the purpose of concealing such illegality. (*Lewis & Queen v. N. M. Ball Sons, supra , 48 Cal.2d 141, 148.)* "The court will look through provisions, valid on their face, and with the aid of parol evidence, determine that the contract is actually illegal or is part of an illegal transaction." (1 Witkin, Summary of Cal. Law (1960) Contracts, § 157, p. 169.)

In support of his position that as a matter of law he is not an artists' manager Katz cites *Raden v. Laurie, 120 Cal.App.2d 778 [262[**14] P.2d 61].* That case, decided in 1953, concerned the Private Employment Agencies Act, sections 1550-1650 (also found in part 2, div. 6 relating to "Employment Agencies") which at that time regulated persons doing business as artists' managers.

[*356] Raden was employed by Laurie, an actress, as a counselor and advisor under a written contract which specified he was to receive 10 percent of Laurie's professional earnings. Among other things the contract provided: "'It is expressly agreed that . . . nothing herein contained shall be deemed to require you or authorize you to seek or obtain employment for the undersigned [Laurie].'" *(120 Cal.App.2d at p. 779.)* Raden was not paid his 10 percent so he sued in the superior court. As to the subject matter of the complaint the superior court clearly had jurisdiction. Laurie moved for summary judgment, alleging the suit to be without merit. (Code Civ. Proc., § *437c.*) She contended the contract was invalid because it was a subterfuge used by an artists' manager who had not complied with the Private Employment Agencies Act. The motion for summary judgment was granted by the superior court.

The appellate court reversed, stating as[**15] follows (at p. 782): "It would seem clear that his [Raden's] duties were intentionally limited to the rendition of services which would not require his being licensed as an artists' manager. Respondent says: 'It is the act of seeking employment, not the contract provision, which brings the legislation into play.' This might be true if the contract were a mere sham and pretext designed by plaintiff to misrepresent and conceal the true agreement of the parties and to evade the law. But there was no evidence which would have justified the court in reaching that concluion. There was no evidence of misrepresentation, fraud or mistake as to the terms of the contract nor as to plaintiff's [***371] obligations thereunder, nor evidence that defendants did not understand and willingly accept the limitation of plaintiff's duties. . . . In the absence of any evidence that the July 30th agreement was a mere subterfuge or otherwise invalid the court was required to give effect to its clear and positive provisions. . . . Since plaintiff was employed only to counsel and advise [Laurie] and to act as her business manager in matters not related to obtaining engagements for her, he[**16] was not acting as an 'Employment Agency' as defined by *section 1551*, Labor Code." (Italics added; pp. 782-783.)

The inapplicability of Raden v. Laurie to the instant controversy is obvious. There, on a motion for summary judgment, no showing, prima facie or otherwise, was made (as regards the contract sued upon or its subject matter) that Raden had agreed to act, or had acted as an artists' manager (or employment agency). The District Court of Appeal found [*357] no evidence which would support a conclusion that the contract was a sham or pretext designed to conceal the true agreement or to evade the law. On the uncontroverted facts

the court had jurisdiction over the controversy and the Labor Commissioner did not. In the proceedings before us a prima facia showing was made to the Labor Commissioner as to matters over which he had jurisdiction.

Fourth Contention: The superior court had jurisdiction over the controversy referred to the Labor Commissioner by petitioners.

The Artists' Managers Act (enacted in 1959) so far as we can determine, has never been mentioned in the reported decisions of the courts of this state. However, an earlier, similar and in many[**17] respects identical, statute has been frequently interpreted. This statute is the previously referred to Private Employment Agencies Law (§§ 1550-1650). Both statutes are, as previously stated, contained in part 6 (entitled "Employment Agencies") of division 2 of the Labor Code. Each is an outgrowth of a 1913 statute relating to employment agencies. (See Stats. 1913, ch. 282, p. 515, and amendments thereto.) Indeed, section 1700.44, previously quoted and on which the instant dispute is focused was taken word for word from section 1647 of the Private Employment Agencies Law, which language in turn was taken in its entirety from an amendment to the 1913 statute. (See Stats. 1923, ch. 412, p. 936.)

"'It is a cardinal principle of statutory construction that where legislation is framed in the language of an earlier enactment on the same or an analogous subject, which has been judicially construed, there is a very strong presumption of intent to adopt the construction as well as the language of the prior enactment. . . .'" (*Greve v. Leger, Ltd., 64 Cal.2d 853, 865 [52 Cal.Rptr. 9, 415 P.2d 824]; Union Oil Associates v. Johnson, 2 Cal.2d 727, 734-735 [43 P.2d 291, [**18] 98 A.L.R. 1499].*)

Applying to the Act the construction given to its sister and parent statutes the following appears: The Act is broad and comprehensive. The Labor Commissioner is empowered to hear and determine disputes under it, including the validity of the artists' manager-artist contract and the liability, if any, of the parties thereunder. (See *Garson v. Division of Labor Law Enforcement, 33 Cal.2d 861, 866 [206 P.2d 368].*) He may be compelled to assume this power. (*Bollotin v. Workman Service Co., 128 Cal.App.2d 339, 341 [275 P.2d [*358] 599].*) In the settlement of disputes the jurisdiction of the Labor Commissioner is similar to, but broader, than the power of an arbitrator under Code of Civil Procedure *sections 1280-1294.2.* (*Robinson v. [***372] Superior Court, 35 Cal.2d 379, 387 [218 P.2d 10]; Garson v. Division of Labor Law Enforcement, supra, 33 Cal.2d 861, 865.*) The Labor Commissioner's awards are enforceable in the same manner as awards of private arbitrators under Code of Civil Procedure *sections 1285-1288.8.* n5 (See *Robinson v. Superior Court, supra, 35 Cal.2d 379, 388.*)

n5 The Act, section 1700.45, under conditions not applicable or relevant here, allows private arbitration of a dispute between an artists' manager and artist.

[**19]

Section 1700.44 of the Act is mandatory. It provides that the parties involved, artists and artists' manager, in any controversy arising under the Act, shall refer the matters in dispute to the commissioner. n6 (See *Garson v. Division of Labor Law Enforcement, supra, 33 Cal.2d 861, 864; ABC Acceptance v. Delby, 150 Cal.App.2d Supp. 826, 827 [310 P.2d 712]; Abraham Lehr, Inc. v. Cortez, 57 Cal.App.2d 973, 975-976 [135 P.2d 684].*) It has been held under the Private Employment Agencies Law that the commissioner has original jurisdiction, to the exclusion of the superior court, over controversies such as those here involved. In *Collier & Wallis, Ltd. v. Astor, supra, 9 Cal.2d 202,* the plaintiff, a private employment agency, sued Mary Astor, an artist, to recover on a contract relating to her employment. At that time the previously mentioned predecessor (1913) statute to both the Private Employment Agency Law and the Act contained the provision concerning reference of matters in dispute to the Labor Commissioner which is presently found in the Private Employment Agencies Law. As the dispute had not been submitted to the Labor Commissioner the[**20] court held the action in the superior court to be premature. The court (p. 204) stated: "It is conceded that the respondent did not, before commencing this action, refer 'the matter in dispute' to the commissioner of labor, and consequently that official made no determination of said matter before this action was commenced. Therefore if this section of said act is a valid legislative act the point made by appellant that this action was prematurely brought must be sustained." (Italics added.)

n6 Although the Act says "'the parties involved shall refer the matters in dispute'" it is sufficient if one of the parties shall submit the controversy. (See *Bess v. Park, 144 Cal.App.2d 798, 805 [301 P.2d 978].*)

The holding of *Collier & Wallis, Ltd. v. Astor, supra,* as to premature superior court filing has been consistently followed **[*359]** in cases under the Private Employment Agencies Law. (See *Garson v. Division of Labor Law Enforcement, supra, 33 Cal.2d 861, 864; ABC Acceptance [**21] v. Delby, supra, 150 Cal.App.2d Supp. 826, 828; Bess v. Park, supra, 144 Cal.App.2d 798, 806; Abraham Lehr, Inc. v. Cortez, supra, 57 Cal.App.2d 973, 977.)*

Since the instant controversy was pending before, and was properly within the jurisdiction of, the Labor Commissioner, the doctrine of "exhaustion of administrative remedies" applies. This well known concept is expressed in *Abelleira v. District Court of Appeal, 17 Cal.2d 280, 292-293 [109 P.2d 942, 132 A.L.R. 715],* as "where an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted before the courts will act. . . . It is not a matter of judicial discretion, but is a fundamental rule of procedure laid down by courts of last resort, followed under the doctrine of stare decisis, and binding upon all courts." (See also 2 Cal.Jur.2d, Administrative Law, § 184, p. 304; 1 Witkin, Cal. Procedure (1954) pp. 316, 578.)

We hold as to cases of controversies arising under the Artists' Managers Act that the Labor Commissioner has original jurisdiction to hear and determine the same to the exclusion of the superior court, subject to an**[**22]** appeal within 10 days after determination, to the superior court where the same shall be heard de novo. (See § 1700.44.)

Fifth Contention: The petitioners waived any right they may have had to proceed before the Labor Commissioner by filing their action in the superior court.

It appears that the superior court action was brought primarily to restrain Katz from proceeding to arbitrate the dispute before the American Arbitration Association. This is in no way inconsistent with the proceedings before the Labor Commissioner **[***373]** and cannot be deemed an "intentional or voluntary relinquishment of a known right" (see Black's Law Dictionary (4th ed.) p. 1751) to proceed before the commissioner. Nor may one waive the benefits of a statute established for a public reason (Civ. Code, § *3513*), as were the Labor Code provisions here. (See *Collier & Wallis, Ltd. v. Astor, supra, 9 Cal.2d 202, 206; Smith v. LaFarge, supra, 242 Cal.App.2d 806, 811.)* At most the superior court action was premature. (See *Garson v. Division of Labor Law Enforcement, supra, 33 Cal.2d 861, 864; Collier & Wallis, Ltd. v. Astor, supra, at p. 204; ABC Acceptance v.[**23] Delby, supra, 150 Cal.App.2d Supp. 826, 828;* **[*360]** *Bess v. Park, supra, 144 Cal.App. 798, 806; Abraham Lehr, Inc. v. Cortez, supra, 57 Cal.App.2d 973, 977.)*

And since the Act gives initial jurisdiction of the controversy here to the Labor Commissioner neither party could confer such jurisdiction on the court for "jurisdiction may not be waived by a party or conferred on the court by consent." (*Sampsell v. Superior Court, 32 Cal.2d 763, 773 [197 P.2d 739];* see also *Harrington v. Superior Court, 194 Cal. 185, 188 [228 P. 15]; Taylor v. Taylor, 192 Cal. 71, 78 [218 P. 756, 51 A.L.R. 1074]; ABC Acceptance v. Delby, supra, 150 Cal.App.2d Supp. 826, 828.)*

Sixth Contention: Private arbitration being permissible under the Act (§ 1700.45) and the parties having agreed to arbitrate before the American Arbitration Association, the orders of the superior court were proper.

This argument overlooks the basic contention of petitioners that their agreement with Katz is wholly invalid because of his noncompliance with the Act. If the agreement is void no rights, including the claimed right to private arbitration, can be**[**24]** derived from it.

*Loving & Evans v. Blick, supra, 33 Cal.2d 603, 610,* states: "It seems clear that the power of the arbitrator to determine the rights of the parties is dependent upon the existence of a valid contract under which such rights might arise. [Citations.]" (See also 1 Witkin, Summary of Cal. Law (1960) Contracts, § 165, 177.)

Seventh Contention: The superior court had jurisdiction to determine, as in *Raden v. Laurie, supra, 120 Cal.App.2d 778,* whether the controversy here in question fell within the Act's grant of jurisdiction to the labor commissioner.

In Raden v. Laurie, as previously stated, the District Court of Appeal found no evidence on a motion for summary judgment to support Laurie's contention that Raden agreed to or did act as an artists' manager. Here a prima facie showing was made to the Labor Commissioner that Katz had so agreed and had so acted. The Labor Commissioner had the power and the duty to determine, in the first instance, whether the controversy was within the Act's grant of jurisdiction. See *United States v. Superior Court, 19 Cal.2d 189, 195 [120 P.2d 26],* where the court stated: "[It] lies within the**[**25]** power of the administrative agency to determine in the **[*361]** first instance, and before judicial relief may be obtained,

whether a given controversy falls within a statutory grant of jurisdiction."

We conclude that petitioners are entitled, by way of certiorari, to the relief sought by them. The orders of the superior court dated January 17, 1967 are annulled.

Opinion (*People* v. *Rucker*)
on pages 236-245 omitted.*

[No. B088448. Second Dist., Div. One. Dec. 20, 1995.]

BRAD WAISBREN, Plaintiff and Appellant, v.
PEPPERCORN PRODUCTIONS, INC., et al., Defendants and Respondents.

## SUMMARY

In an action for breach of contract brought by a personal manager against his former client, an artistic production company, the trial court granted defendant's summary judgment motion on the ground that the parties' oral agreement was void because plaintiff had performed the duties of a talent agent, by procuring employment for defendant, without first obtaining the necessary license under the Talent Agencies Act (Lab. Code, §§ 1700-1700.47). (Superior Court of Los Angeles County, No. EC001909, Thomas C. Murphy, Judge.†)

The Court of Appeal affirmed. The court held that the trial court did not err in granting summary judgment for defendant, since plaintiff was required to be licensed as a talent agent, even though his efforts to procure employment for defendant were minimal or incidental to his other activities. The Talent Agencies Act (Lab. Code, §§ 1700-1700.47), is entirely consistent with the concept of dual occupations, i.e., being a personal manager and a talent agent, and a license was required even though plaintiff spent only an incidental part of his time procuring employment for defendant. The court further held that the trial court properly declared the parties' agreement void and precluded plaintiff from seeking any recovery under it. Declaring the parties' agreement to be void was not too severe a penalty, even though the act did not contain criminal penalties for licensing violations, since the existence of criminal penalties is not required as a prerequisite to declaring an illegal contract to be void. Further, since all of plaintiff's causes of action were based on his illegal agreement or business arrangement with defendant, he could not establish his case against defendant other than through the medium of an illegal transaction to which he was a party. (Opinion by Masterson, J., with Spencer, P. J., and Ortega, J., concurring.)

*Deleted on direction of Supreme Court by order dated March 14, 1996.
†Retired judge of the Los Angeles Superior Court sitting under assignment by the Chairperson of the Judicial Council.



## HEADNOTES

Classified to California Digest of Official Reports

(1) **Summary Judgment § 26—Appellate Review—Scope of Review.**—Summary judgment is appropriate if all of the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law (Code Civ. Proc., § 437c, subd. (c)). A defendant seeking summary judgment has met the burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action cannot be established or that there is a complete defense to that cause of action. Once the defendant's burden is met, the burden shifts to the plaintiff to show that a triable issue of fact exists as to that cause of action. In reviewing the propriety of a summary judgment, the appellate court independently reviews the record that was before the trial court and must determine whether the facts as shown by the parties give rise to a triable issue of material fact. In making this determination, the reviewing court strictly construes the moving party's affidavits, liberally construes the opposing party's affidavits, and accepts as undisputed facts only those portions of the moving party's evidence that are not contradicted by the opposing party's evidence. In other words, the facts alleged in the declarations of the party opposing summary judgment must be accepted as true.

(2) **Employment Agencies § 1—Regulation—Talent Agencies Act—Construction—Legislative Intent—Plain Meaning—"Occupation"—Necessity of Licensing as Talent Agent—When Employment Procurement Activities Are Minimal.**—In an action for breach of contract brought by a personal manager against his former client, an artistic production company, the trial court did not err in granting summary judgment for defendant, since plaintiff was required to be licensed as a talent agent, even though his efforts to procure employment for defendant were minimal or incidental to his other activities. The Talent Agencies Act (Lab. Code, §§ 1700-1700.47), is entirely consistent with the concept of dual occupations, i.e., being a personal manager and a talent agent, and a license was required even though plaintiff spent only an incidental part of his time procuring employment for defendant. In construing the provisions of the act, which applies only if a person engages in the "occupation" of procuring employment for an artist, the court's goal is to ascertain and effectuate legislative intent. In determining that intent, the court looks first to the language of the statute, giving effect to its plain meaning. As the dictionary definitions of "occupation" make clear, a person can hold a particular occupation even if it is not his or her principal line of work.

(3) **Employment Agencies § 1—Regulation—Talent Agencies Act—Remedial Purpose of Act—Construction—Application.**—The Talent Agencies Act (Lab. Code, §§ 1700-1700.47), is a remedial statute. Statutes such as the act are designed to correct abuses that have long been recognized and which have been the subject of both legislative action and judicial decision. Such statutes are enacted for the protection of those seeking employment, i.e., the artists. Consequently, the act should be liberally construed to promote the general object sought to be accomplished; it should not be construed within narrow limits of the letter of the law. The licensing scheme contemplates that the occasional talent agent, like the full-time agent, is subject to regulatory control. Thus, the act covers personal managers, even if their procurement efforts were merely incidental, since the statutory goal of protecting artists would be defeated if the act applied only where a personal manager spent a significant part of his or her workday pursuing employment for artists. Such a standard is so vague as to be unworkable and would undermine the purpose of the act.

(4) **Administrative Law § 10—Powers and Functions of Administrative Agencies—Administrative Construction and Interpretation of Laws.**—The construction of a statute by an agency charged with its administration is entitled to great weight. If the administrative agency's construction is reasonable, a court should defer to it.

(5) **Employment Agencies § 1—Regulation—Talent Agencies Act—Purpose of Act—Validity of Contract Between Unlicensed Agent and Artist.**—Since the clear object of the Talent Agencies Act (Lab. Code, §§ 1700-1700.47), is to prevent improper persons from becoming talent agents and to regulate such activity for the protection of the public, a contract between an unlicensed agent and an artist is void. The general rule controlling in cases of this character is that where a statute prohibits the doing of an act, the act is void, and this is the consequence, notwithstanding that the statute does not expressly pronounce it so.

(6a, 6b) **Employment Agencies § 1—Regulation—Talent Agencies Act—Dismissal of Complaint—Propriety of—Unlicensed Person Acting as Talent Agent: Contracts § 12—Legality—Effect of Illegality.**—In an action for breach of contract brought by a personal manager against his former client, an artistic production company, the trial court properly disposed of plaintiff's complaint in its entirety on the ground that the parties' oral agreement was void because plaintiff had performed the duties of a talent agent, by procuring employment for defendant, without first obtaining the necessary license under the Talent Agencies Act (Lab. Code, §§ 1700-1700.47). Declaring the parties' agreement to be void was not too severe a penalty, even though the act did not contain criminal penalties for licensing violations, since the existence of criminal penalties is not required as a prerequisite to declaring an illegal contract to be void. Moreover, the Legislature approved the remedy of declaring agreements void if they violate the act, by following the California Entertainment Commission's advice and not enacting criminal penalties for licensing violations. Further, since all of plaintiff's causes of action were based on his illegal agreement or business arrangement with defendant, he could not establish his case against defendant other than through the medium of an illegal transaction to which he was a party.

[See 1 **Witkin,** Summary of Cal. Law (9th ed. 1987) Contracts, §§ 430, 450.]

(7) **Contracts § 12—Legality—Effect of Illegality.**—The courts generally will not enforce an illegal bargain or lend their assistance to a party who seeks compensation for an illegal act. The reason for this refusal is not that the courts are unaware of possible injustice between the parties, and that the defendant may be left in possession of some benefit that he or she should in good conscience turn over to the plaintiff, but that this consideration is outweighed by the importance of deterring illegal conduct. Knowing that they will receive no help from the courts and must trust completely to each other's good faith, the parties are less likely to enter an illegal arrangement in the first place. Further, a party to an illegal contract cannot come into a court of law and ask to have his or her illegal objects carried out. The test is whether the plaintiff can establish his or her case otherwise than through the medium of an illegal transaction to which he or she is a party.

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**COUNSEL**

Steven D. Waisbren for Plaintiff and Appellant.

Anker & Hymes, Jonathan L. Rosenbloom and Douglas K. Schreiber for Defendants and Respondents.

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**OPINION**

**MASTERSON, J.**—In the entertainment industry, talent agents and personal managers perform valuable services for their clients. Talent agents,

Opinion (*People* v. *Rucker*)
on pages 236-245 omitted.*

[No. B088448. Second Dist., Div. One. Dec. 20, 1995.]

BRAD WAISBREN, Plaintiff and Appellant, v. PEPPERCORN PRODUCTIONS, INC., et al., Defendants and Respondents.


## SUMMARY

In an action for breach of contract brought by a personal manager against his former client, an artistic production company, the trial court granted defendant's summary judgment motion on the ground that the parties' oral agreement was void because plaintiff had performed the duties of a talent agent, by procuring employment for defendant, without first obtaining the necessary license under the Talent Agencies Act (Lab. Code, §§ 1700-1700.47). (Superior Court of Los Angeles County, No. EC001909, Thomas C. Murphy, Judge.†)

The Court of Appeal affirmed. The court held that the trial court did not err in granting summary judgment for defendant, since plaintiff was required to be licensed as a talent agent, even though his efforts to procure employment for defendant were minimal or incidental to his other activities. The Talent Agencies Act (Lab. Code, §§ 1700-1700.47), is entirely consistent with the concept of dual occupations, i.e., being a personal manager and a talent agent, and a license was required even though plaintiff spent only an incidental part of his time procuring employment for defendant. The court further held that the trial court properly declared the parties' agreement void and precluded plaintiff from seeking any recovery under it. Declaring the parties' agreement to be void was not too severe a penalty, even though the act did not contain criminal penalties for licensing violations, since the existence of criminal penalties is not required as a prerequisite to declaring an illegal contract to be void. Further, since all of plaintiff's causes of action were based on his illegal agreement or business arrangement with defendant, he could not establish his case against defendant other than through the medium of an illegal transaction to which he was a party. (Opinion by Masterson, J., with Spencer, P. J., and Ortega, J., concurring.)


*Deleted on direction of Supreme Court by order dated March 14, 1996.

†Retired judge of the Los Angeles Superior Court sitting under assignment by the Chairperson of the Judicial Council.



## HEADNOTES

Classified to California Digest of Official Reports

(1) **Summary Judgment § 26—Appellate Review—Scope of Review.**—Summary judgment is appropriate if all of the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law (Code Civ. Proc., § 437c, subd. (c)). A defendant seeking summary judgment has met the burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action cannot be established or that there is a complete defense to that cause of action. Once the defendant's burden is met, the burden shifts to the plaintiff to show that a triable issue of fact exists as to that cause of action. In reviewing the propriety of a summary judgment, the appellate court independently reviews the record that was before the trial court and must determine whether the facts as shown by the parties give rise to a triable issue of material fact. In making this determination, the reviewing court strictly construes the moving party's affidavits, liberally construes the opposing party's affidavits, and accepts as undisputed facts only those portions of the moving party's evidence that are not contradicted by the opposing party's evidence. In other words, the facts alleged in the declarations of the party opposing summary judgment must be accepted as true.

(2) **Employment Agencies § 1—Regulation—Talent Agencies Act—Construction—Legislative Intent—Plain Meaning—"Occupation"—Necessity of Licensing as Talent Agent—When Employment Procurement Activities Are Minimal.**—In an action for breach of contract brought by a personal manager against his former client, an artistic production company, the trial court did not err in granting summary judgment for defendant, since plaintiff was required to be licensed as a talent agent, even though his efforts to procure employment for defendant were minimal or incidental to his other activities. The Talent Agencies Act (Lab. Code, §§ 1700-1700.47), is entirely consistent with the concept of dual occupations, i.e., being a personal manager and a talent agent, and a license was required even though plaintiff spent only an incidental part of his time procuring employment for defendant. In construing the provisions of the act, which applies only if a person engages in the "occupation" of procuring employment for an artist, the court's goal is to ascertain and effectuate legislative intent. In determining that intent, the court looks first to the language of the statute, giving effect to its plain meaning. As the dictionary definitions of "occupation" make clear, a person can hold a particular occupation even if it is not his or her principal line of work.

who seek to procure employment for artists, must be licensed under the Talent Agencies Act (Lab. Code, §§ 1700-1700.47). In contrast, personal managers, who advise and direct artists in the development of their careers, are not subject to any licensing requirements.

This appeal presents the question of whether a personal manager must be licensed under the Talent Agencies Act if he devotes an incidental portion of his business to the function of a talent agent—procuring employment for an artist. We conclude that he must be so licensed.

## BACKGROUND

Defendant Peppercorn Productions, Inc. (Peppercorn) is a California corporation specializing in the design and creation of puppets for use in the entertainment industry and advertising media. Peppercorn has also been involved in producing various television projects. Defendants David Pavelonis and Terrie Pavelonis are officers of Peppercorn.

In 1982, plaintiff Brad Waisbren agreed to promote Peppercorn. From 1982 through 1988, he performed numerous services for the company pursuant to an oral agreement. Among other things, Waisbren assisted in project development, managed certain business affairs, supervised client relations and publicity, performed casting duties, advised Peppercorn regarding the selection of artistic talent, coordinated production, and handled office functions, such as the hiring and firing of personnel. Occasionally, Waisbren procured employment for Peppercorn, but his efforts in that regard were incidental to his other responsibilities. For his services, Waisbren was to receive 15 percent of Peppercorn's profits.[1]

In 1988, Peppercorn terminated its relationship with Waisbren. In 1990, he filed suit against defendants, alleging that they had not paid him in accordance with the parties' agreement. By way of a second amended complaint filed in 1991, Waisbren alleged six causes of action, all of which sought relief based on an alleged breach of the agreement.[2]

In March 1994, defendants moved for summary judgment on the ground that the parties' agreement was void because Waisbren had performed the

[1]Waisbren contends that he was to receive 15 percent of "gross profits" less out-of-pocket expenses per project. Peppercorn claims that Waisbren's compensation was based on "net profits." To the extent the parties disagree on this point, it is not material to the question before us.

[2]Specifically, Waisbren alleged causes of action for breach of an oral contract, breach of an implied-in-fact contract, quantum meruit, fraud, bad faith denial of the existence of a contract, and accounting.



duties of a talent agent—by procuring employment for Peppercorn—without first obtaining the necessary license under the Talent Agencies Act. In opposing summary judgment, Waisbren admitted that he had no such license. However, he argued that a license was unnecessary since his procurement activities were minimal and merely incidental to his other responsibilities.[3] In May 1994, the trial court granted defendants' summary judgment motion. Waisbren filed a timely appeal from the judgment.

## DISCUSSION

**(1)** Summary judgment is appropriate if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).)

"A defendant seeking summary judgment has met the burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action cannot be established [or that there is a complete defense to that cause of action]. . . . Once the defendant's burden is met, the burden shifts to the plaintiff to show that a triable issue of fact exists as to that cause of action. . . . In reviewing the propriety of a summary judgment, the appellate court independently reviews the record that was before the trial court. . . . We must determine whether the facts as shown by the parties give rise to a triable issue of material fact. . . . In making this determination, the moving party's affidavits are strictly construed while those of the opposing party are liberally construed." (*Hanooka* v. *Pivko* (1994) 22 Cal.App.4th 1553, 1558 [28 Cal.Rptr.2d 70], citations omitted; see also Code Civ. Proc., § 437c, subd. (o)(2).) We accept as undisputed facts only those portions of the moving party's evidence that are not contradicted by the opposing party's evidence. (*Kelleher* v. *Empresa*

[3]During discovery, defendants served Waisbren with the following request for admission: "That pursuant to the agreement you alleged existed between Peppercorn Productions, Inc. and you that you engaged in procuring employment for the services offered by Peppercorn Productions, Inc." Waisbren admitted the request, after objecting to it as vague, ambiguous, and unintelligible.

According to a declaration submitted by David Pavelonis, Waisbren negotiated deals on behalf of Peppercorn for regional television commercials and home video projects as well as a Dick Clark Productions pilot. Waisbren stated in his own declaration that his "attempt to explore new business opportunities for [Peppercorn] . . . constituted only a very small portion of the overall duties that I had with, and performed for, [Peppercorn]." Waisbren also submitted the declarations of two associates who stated that "any effort[] on the part of Mr. Waisbren to procure employment for Peppercorn Productions was relatively minimal" and that "[a] great majority of the functions and tasks performed by Mr. Waisbren for Peppercorn . . . were not associated or connected with the procurement of employment for Peppercorn . . . ."

*Hondurena de Vapores, S.A.* (1976) 57 Cal.App.3d 52, 56 [129 Cal.Rptr. 32].) In other words, the facts alleged in the declarations of the party opposing summary judgment must be accepted as true. (*Zeilman* v. *County of Kern* (1985) 168 Cal.App.3d 1174, 1179, fn. 3 [214 Cal.Rptr. 746].)

With these principles in mind, we turn first to the question of whether Waisbren had to be licensed as a talent agent, even though his efforts to procure employment for Peppercorn were minimal or incidental in relation to his other activities. Finding that a license was necessary, we then examine whether the trial court applied the proper remedy for Waisbren's unlicensed conduct (i.e., declaring the parties' agreement void and precluding Waisbren from seeking any recovery under it).

A. *The Licensing Scheme*

The Talent Agencies Act (the Act) provides that "[n]o person shall engage in or carry on the occupation of a talent agency without first procuring a license therefor from the Labor Commissioner." (Lab. Code, § 1700.5.) A "talent agency" is "a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists." (*Id.* § 1700.4, subd. (a).)[4] An "artist," in turn, includes a broad spectrum of persons and entities working in the entertainment field.[5]

Unlike a talent agent, a "personal manager" is not covered by the Act or any other statutory licensing scheme. (Yanover & Kotler, *Artist/Management Agreements and the English Music Trilogy: Another British Invasion?* (1989) 9 Loy. Ent. L.J. 211, 211-214.) "Artists typically engage personal managers in addition to talent agents. . . . [¶] . . . In essence, 'the primary function of the personal manager is that of advising, counselling, directing and coordinating the artist in the development of the artist's career.' The manager's task encompasses matters of both business and personal significance. As business advisors, they might attend to the artist's finances, and they routinely organize the economic elements of the artist's personal and creative life necessary to bring the client's product to fruition. The personal

[4]The Act exempts procurement efforts related to recording contracts. (Lab. Code, § 1700.4, subd. (a).)

[5]"Artists" is defined as "actors and actresses rendering services on the legitimate stage and in the production of motion pictures, radio artists, musical artists, musical organizations, directors of legitimate stage, motion picture and radio productions, musical directors, writers, cinematographers, composers, lyricists, arrangers, models, and other artists and *persons* rendering professional services in motion picture, theatrical, radio, television and other entertainment enterprises." (Lab. Code, § 1700.4, subd. (b), italics added.) A "person" means "any individual, company, society, firm, partnership, association, corporation, . . . manager, or their agents or employees." (Lab. Code, § 1700.) In this case, there is no dispute that defendants qualify as "artists" under the Act.



manager frequently lends money to the neophyte artist, thereby speculating on a return from the artist's anticipated future earnings. The manager also serves as a liaison between the artist and other personal representatives, arranging their interactions with, and transactions on behalf of, the artist. On a more personal level, the manager often serves as the artist's confidant and alter ego. . . . [¶] By orchestrating and monitoring the many aspects of the artist's personal and business life, the personal manager gives the artist time to be an artist. That is, managers liberate artists from burdensome yet essential business and logistical concerns so that artists have the requisite freedom to discharge their artistic function and to concentrate on their immediate creative task . . . . In this regard, the personal manager is an indispensable element of an artist's career." (O'Brien, *Regulation of Attorneys Under California's Talent Agencies Act: a Tautological Approach to Protecting Artists* (1992) 80 Cal.L.Rev. 471, 481-483, fns. omitted (hereafter *Regulation of Attorneys*).)

As a practical matter, personal managers may occasionally find themselves in situations where they would like to procure employment for their clients. (See Hertz, *The Regulation of Artist Representation in the Entertainment Industry* (1988) 8 Loy. Ent. L.J. 55, 58-59, 63 (hereafter *The Regulation of Artist Representation*); Johnson & Lang, *The Personal Manager in the California Entertainment Industry* (1979) 52 So.Cal.L.Rev. 375, 375-376 (hereafter *The Personal Manager*).) That is not the issue before us, however. Rather, we must decide whether a person needs to be licensed under the Act if he occasionally procures employment for an artist. We conclude that a license is required.

1. *The Plain Meaning of the Act*

(2) In construing the provisions of the Act, our goal is to ascertain and effectuate legislative intent. (*Burden* v. *Snowden* (1992) 2 Cal.4th 556, 562 [7 Cal.Rptr.2d 531, 828 P.2d 672].) In determining that intent, we look first to the language of the statute, giving effect to its plain meaning. (*Ibid.*)

The Act applies only if a person engages in the "occupation" of procuring employment for an artist. (Lab. Code, §§ 1700.4, subd. (a), 1700.5.) Waisbren contends that because "occupation" is defined as "the *principal* business of one's life" (see Webster's Third New Internat. Dict. (1981) p. 1560, col. 3, italics added), a license is not needed unless a person's principal responsibilities involve procuring employment for an artist. We disagree.

By limiting the concept of "occupation" to one's "principal" business endeavor, Waisbren ignores the possibility that a person can have more than

one job. Plainly, an individual can be engaged in an "occupation" even if he does not spend most of his time in that pursuit. Moreover, Waisbren's argument rests on only one definition of "occupation." That term also means "a craft, trade, profession or other means of earning a living." (Webster's Third New Internat. Dict., *supra*, p. 1560, col. 3.) Further, "occupation" is synonymous with "employment" (*ibid.*), which includes "temporary or occasional work or service for pay" (*id.* at p. 743, col. 3). As these additional definitions make clear, a person can hold a particular "occupation" even if it is not his principal line of work. Thus, the Act is entirely consistent with the concept of dual occupations—for example, being a personal manager *and* a talent agent.[6]

2. *The Remedial Purpose of the Act*

(3) "The Act is a remedial statute. Statutes such as the Act are designed to correct abuses that have long been recognized and which have been the subject of both legislative action and judicial decision. . . . Such statutes are enacted for the protection of those seeking employment [i.e., the artists]." (*Buchwald* v. *Superior Court* (1967) 254 Cal.App.2d 347, 350-351 [62 Cal.Rptr. 364], citation omitted.)[7] Consequently, the Act should be liberally construed to promote the general object sought to be accomplished; it should "not [be] construed within narrow limits of the letter of the law." (*Henning* v. *Industrial Welfare Com.* (1988) 46 Cal.3d 1262, 1269 [252 Cal.Rptr. 278, 762 P.2d 442]; accord, *Buchwald* v. *Superior Court*, *supra*, 254 Cal.App.2d at p. 354.)[8] To ensure the personal, professional, and financial welfare of artists, the Act strictly regulates a talent agent's conduct.[9]

The statutory goal of protecting artists would be defeated if the Act applied only where a personal manager spends a significant part of his

[6]Our interpretation of the statutory language does not render the term "occupation" mere surplusage. (See Lab. Code, § 1700.4, subd. (a) [defining "talent agency" as a person who "engages in the occupation of procuring . . . employment . . . for an artist or artists"].) By using that term, the Legislature intended to cover those who are compensated for their procurement efforts.

[7]When *Buchwald* was decided, Labor Code section 1700.4 used the term "artists' manager" instead of "talent agency" and was part of the Artists' Managers Act. (See Stats. 1959, ch. 888, § 1, pp. 2921, 2922.) An "artists' manager" was defined as "a person who engages in the occupation of advising, counseling, or directing artists in the development or advancement of their professional careers and who procures, offers, promises or attempts to procure employment or engagements for an artist . . . ." (Stats. 1959, ch. 888, § 1, p. 2921.) In 1978, the Legislature changed the name of the statutory scheme and amended section 1700.4 to use the term "talent agency." (Stats. 1978, ch. 1382, §§ 3, 6, pp. 4575, 4576.) These changes did not alter the statute's remedial purpose.

[8]This rule of construction counsels against adopting Waisbren's definition of "occupation" since, by focusing on one's *principal* business, it is the most narrow of the various definitions. (See pt. A.1., *ante*.)

[9]For instance, an agent must (1) have his form of contract approved by the Labor Commissioner (Lab. Code, § 1700.23), (2) maintain his client's funds in a trust fund account



workday pursuing employment for artists. The fact that an unlicensed manager may devote an "incidental" portion of his time to procurement activities would be of little consolation to the client who falls victim to a violation of the Act. As a result, the licensing scheme contemplates that the "occasional talent agent," like the full-time agent, is subject to regulatory control.

We refuse to believe that the Legislature intended to exempt a personal manager from the Act—thereby allowing violations to go unremedied—unless his procurement efforts cross some nebulous threshold from "incidental" to "principal." Such a standard is so vague as to be unworkable and would undermine the purpose of the Act.[10]

3. *The Labor Commissioner's Interpretation of the Act*

The Labor Commissioner, who is statutorily charged with enforcing the Act (Lab. Code, § 1700.44, subd. (a)), has long taken the position that a license is required for incidental procurement activities. (See generally, *The Personal Manager*, *op. cit. supra*, 52 So.Cal.L.Rev. at pp. 389-393.) In *Derek* v. *Callan* (Jan. 14, 1982, Lab. Comr.) No. 08116, TAC 18-80, SFMP 82-80, a personal manager argued that "the Legislature meant to regulate only those whose primary purpose was the securing of employment for artists and not personal managers who might be involved in 'incidental' procurement of employment." (*Id.* at p. 6.) The Labor Commissioner rejected that argument, stating, "That is like saying you can sell one house without a real estate license or one bottle of liquor without an off-sale license." (*Ibid.*) "A talent agency license is necessary even where procurement activities are only 'incidental' to the agent's duties and obligations . . . ." (*Damon* v. *Emler* (Jan. 14, 1982, Lab. Comr.) No. TAC 36-79, SFMP 63, p. 4.)

(4) The construction of a statute by an agency charged with its administration is entitled to great weight. (*Henning* v. *Industrial Welfare Com.*, *supra*, 46 Cal.3d at p. 1269.) If the administrative agency's construction is

(*id.* § 1700.25), (3) record and retain certain information about his client (*id.* § 1700.26), (4) refrain from giving false information to an artist concerning potential employment (*id.* § 1700.32), and (5) avoid certain payment practices (*id.* §§ 1700.39-1700.41). In addition to his statutory obligations, an agent must comply with the regulations promulgated by the Labor Commissioner to implement the Act (Cal. Code Regs., tit. 8, § 12000 et seq.). (See generally, *Regulation of Attorneys*, *op. cit. supra*, 80 Cal.L.Rev. at pp. 487-490 [discussing the Act's restrictions on talent agents].)

[10]Perhaps a personal manager's procurement activities should no longer be considered "incidental" when they exceed 10 percent of his total business. Or perhaps the line should be drawn at 25 or 50 percent. We simply cannot make this determination because the Act provides no rational basis for doing so. Moreover, even if we could somehow justify using a particular figure, it would be virtually impossible to determine accurately whether a personal manager had exceeded it.

reasonable, a court should defer to it. (*Ibid.*) Because the Labor Commissioner's interpretation of the Act is reasonable, we agree with his analysis of the licensing requirement.

4. *Recent Legislative Action: The California Entertainment Commission*

Significantly, the Legislature has adopted the view that a license is required for incidental procurement activities.[11] In 1982, the Legislature created the California Entertainment Commission (the Commission) to "study the laws and practices of this state, the State of New York, and other entertainment capitals of the United States relating to the licensing of agents and representatives of artists in the entertainment industry in general . . . , so as to enable the commission to recommend to the Legislature a model bill regarding this licensing." (Former Lab. Code, § 1702, added by Stats. 1982, ch. 682, § 6, p. 2816 and repealed by Stats. 1984, ch. 553, § 6, p. 2187.)[12] The Commission was required to submit its report to the Legislature and the Governor no later than January 1, 1986. (Former Lab. Code, § 1703, added by Stats. 1982, ch. 682, § 6, p. 2816, as amended and repealed by Stats. 1984, ch. 553, §§ 5, 6, p. 2187.)

Of the many issues considered by the Commission, "the most important was whether personal managers or anyone other than a licensed talent agent should be allowed to procure employment for an artist. This was the true issue that the Commission was formed to resolve, as it has been the main point of contention between talent agents and personal managers throughout their history." (*The Regulation of Artist Representation, op. cit. supra,* 8 Loy. Ent. L.J. at p. 66, fn. omitted.) From June 1983 to January 1985, the Commission met 15 times to accomplish its mandate. On December 2, 1985, the Commission submitted its report (the Report) to the Legislature and the Governor.

The Report noted that, "[p]ursuant to [its] statutory mandate, the Commission studied the laws and practices of California and of New York and other

[11]We may properly resort to extrinsic aids, such as legislative history, in determining the intent of the Legislature. (*California Mfrs. Assn.* v. *Public Utilities Com.* (1979) 24 Cal.3d 836, 844 [157 Cal.Rptr. 676, 598 P.2d 836]; *Burden* v. *Snowden, supra,* 2 Cal.4th at p. 562.)

[12]The Commission consisted of ten members, three appointed by the Governor, three by the Speaker of the Assembly, and three by the Senate Rules Committee, plus the Labor Commissioner. (Former Lab. Code, § 1701, added by Stats. 1982, ch. 682, § 6, p. 2816 and repealed by Stats. 1984, ch. 553, § 6, p. 2187.) Each appointing power had to appoint a licensed talent agent, a personal manager, and an artist. (*Ibid.*) The members of the Commission were: talent agents Jeffrey Berg, Roger Davis, and Richard Rosenberg; personal managers Bob Finklestein, Patricia McQueeney, and Larry Thompson; artists Ed Asner, John Forsythe, and Cicely Tyson; and Labor Commissioner C. Robert Simpson, Jr. The Labor Commissioner chaired the Commission.



entertainment capitals of the United States. In the course of its deliberations, it analyzed the [Talent Agencies] Act in minute detail. [¶] In the judgment of a majority of the members of the Commission, the Talent Agencies Act of California is a sound and workable statute and the recommendations contained in this report will, if enacted by the California Legislature, make that Act a model statute of its kind in the United States." (Report at p. 4.)

The Report phrased the first issue to be addressed as follows: "Under what conditions or circumstances, if any, should personal managers or anyone other than a licensed talent agent be allowed to procure employment for an artist without being licensed as a talent agent?" (Report at p. 6.) The Report acknowledged that "[t]he principal, and philosophically the most difficult, issue before the Commission, the discussion of which consumed a substantial portion of the time of most of the meetings of the Commission was this first issue." (*Id.* at p. 7.) The Commission concluded that "[n]o person, including personal managers, should be allowed to procure employment for an artist in any manner or under any circumstances without being licensed as a talent agent." (Report, Executive Summary, p. 1.) The Report discussed the licensing issue at some length, stating:

"The position of the talent agents is that anyone who performs the same function as they in procuring employment for an artist should be subject to the same statutory and regulatory obligations as they are—nothing more and nothing less. Those obligations include regulation of contract terms and fees by the Labor Commissioner and the requirements of franchise agreements with unions representing the artists. Talent agents increasingly find themselves in competition with personal managers and others in seeking employment for clients. In the opinion of the talent agents, the issue is simply one of fairness: all who seek employment for an artist should be licensed or none should be licensed.

"Personal managers contend that the reality of the entertainment industry requires that, in the normal course of the conduct of their profession, they must engage in limited activities which could be construed as procuring employment. Such activity is only a minor and incidental part of their services to the artist. The essence of their service, which is counseling the artist in the development of his/her professional career, is not the kind of activity which can feasibly or legitimately be made the subject of licensure. They argue that if they are required to be licensed, they will not only be required to procure employment for their clients, but their fees, the length of the contracts, and other aspects of their service will be controlled by the Labor Commissioner and the unions. . . .

"The Commission attempted over many hours, and by diligent exploration and analysis of alternatives, to find a common ground of compromise on

which an answer to this long-standing industry controversy could be formulated, but without success.

". . . . . .

"Thus, in searching for permissible limits to activities in which an unlicensed personal manager, or anyone, could engage in procuring employment for an artist without being licensed as a talent agent, the Commission concluded that there is no such activity, that there are no such permissible limits, and that the prohibitions of the Act over the activities of anyone procuring employment for an artist without being licensed as a talent agent must remain, as they are intended to be, total. *Exceptions in the nature of incidental, occasional or infrequent activities relating in any way to procuring employment for an artist cannot be permitted: one either is, or is not, licensed as a talent agent, and, if not so licensed, one cannot expect to engage, with impunity, in any activity relating to the services which a talent agent is licensed to render.* There can be no 'sometimes' talent agent, just as there can be no 'sometimes' professional in any other licensed field of endeavor." (Report at pp. 8-12, italics added.)

Although the Commission concluded that the Act should remain unchanged with respect to requiring a license for any procurement activities (incidental or otherwise), the Commission did recommend statutory changes on other matters. (See Report at pp. 22-34.) In response, the Legislature adopted all of the Commission's recommendations, and the Governor signed them into law. (See Stats. 1986, ch. 488, §§ 1-19, pp. 1804-1808; 3d reading of Assem. Bill No. 3649 as amended Apr. 15, 1986 (1985-1986 Reg. Sess.) p. 3 ["This Bill is the result of a one and one-half year study conducted by the California Entertainment Commission"]; *Regulation of Attorneys, op. cit. supra,* 80 Cal.L.Rev. at p. 495 [the Legislature and Governor adopted the Commission's recommendations with some minor alterations in language]; *The Regulation of Artist Representation, op. cit. supra,* 8 Loy. Ent. L.J. at p. 66 [the Legislature codified the Commission's Report in the Act].) In accordance with the Commission's advice, the Legislature did not alter the requirement of a license for persons who occasionally procure employment for artists.[13]

By creating the Commission, accepting the Report, and codifying the Commission's recommendations in the Act, the Legislature approved the

[13]Of significance, the Legislature had directed the Commission to study New York's licensing law (former Lab. Code, § 1702, added by Stats. 1982, ch. 682, § 6, p. 2816 and repealed by Stats. 1984, ch. 553, § 6, p. 2187), and the Commission did so (Report at p. 3). For several decades, New York's statutory scheme has expressly exempted persons whose "business only *incidentally* involves the seeking of employment [for artists]." (N.Y. Gen. Bus. Law § 171, subd. 8 (McKinney 1988), italics added; see also *Mandel* v. *Liebman* (1951) 303 N.Y. 88, 97-98 [100 N.E.2d 149, 155] [construing license exception for incidental procurement activities]; *Friedkin* v. *Harry Walker, Inc.* (1977) 90 Misc.2d 680, 682 [395 N.Y.S.2d 611, 613] [finding exception not applicable].) Thus, the Commission and the Legislature clearly decided not to adopt a licensing exception for incidental procurement efforts.



Commission's view that "[e]xceptions in the nature of incidental, occasional or infrequent activities relating in any way to procuring employment for an artist cannot be permitted: one either is, or is not, licensed as a talent agent . . . ." (Report at p. 11.) This legislative approval extends to the Commission's finding that the Act imposes a *total* prohibition on the procurement efforts of unlicensed persons. (*Ibid.*) Given the Legislature's wholesale endorsement of the Report, we conclude, as did the Commission, that the Act requires a license to engage in *any* procurement activities. (Cf. *Harris* v. *Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1155-1156 [278 Cal.Rptr. 614, 805 P.2d 873] [in amending statute without altering portion previously construed by the courts, Legislature acquiesces in previous judicial construction].)

5. *The Act's Limited Exception for Unlicensed Persons*

The Act specifically provides that an unlicensed person may nevertheless participate in negotiating an employment contract for an artist, provided he does so "in conjunction with, and at the request of, a licensed talent agency." (Lab. Code, § 1700.44, subd. (d).)[14] Under this provision, a personal manager can seek employment for his client as part of a cooperative effort with a licensed talent agent. (See *Regulation of Attorneys, op. cit. supra,* 80 Cal.L.Rev. at p. 500.) However, this limited exception to the licensing scheme would be unnecessary if incidental or occasional procurement efforts did not require a license in the first place. We refuse to read the Act in such a way as to render superfluous the exception contained in Labor Code section 1700.44, subdivision (d).[15]

6. *Prior Judicial Construction of the Act*

In *Buchwald* v. *Superior Court, supra,* 254 Cal.App.2d 347, a dispute arose between the members of a musical group (known as the "Jefferson Airplane") and their personal manager. The parties' written agreement stated that the manager had not agreed to obtain employment for the group and that he was not authorized to do so. (*Id.* at p. 351.) The group alleged that, despite the contractual language, the manager had in fact procured bookings for them. In seeking to avoid the licensing requirement, the manager argued

[14]This provision was first enacted in 1982 (Stats. 1982, ch. 682, § 3, p. 2815) but was to remain in effect only until January 1, 1986 (Stats. 1984, ch. 553, § 3, p. 2186). As a result of the Commission's work (see Report at p. 19), the Legislature made the provision permanent, effective January 1, 1986 (Stats. 1986, ch 488, §§ 15, 19, pp. 1807, 1808).

[15]Waisbren does not contend that this exception is applicable here.

that the written agreement established, as a matter of law, that he was not subject to statutory regulation.

The court rejected that contention, stating: "The court, or as here, the labor commissioner, is free to search out illegality lying behind the form in which a transaction has been cast for the purpose of concealing such illegality. [Citation.] 'The court will look through provisions, valid on their face, and with the aid of parol evidence, determine that the contract is actually illegal or is part of an illegal transaction.' " (254 Cal.App.2d at p. 355.) Thus, while *Buchwald* did not address the precise question of whether a license is necessary for incidental procurement activities, it did hold generally that procurement efforts require a license and that the substance of the parties' relationship, not its form, is controlling.

Waisbren responds that the holding in *Wachs* v. *Curry* (1993) 13 Cal.App.4th 616 [16 Cal.Rptr.2d 496] compels the conclusion that a personal manager need not be licensed if he procures employment for an artist on an occasional basis. We disagree.

In *Wachs,* the plaintiffs, who were personal managers, raised a constitutional challenge to the Act on its face. More specifically, they argued that (1) the Act's exemption for procurement activities involving recording contracts (see fn. 4, *ante*) violated the equal protection clause, and (2) the Act's use of the term "procure" was so vague as to violate due process. (13 Cal.App.4th at pp. 620, 624-625, 628-629.) The court rejected both contentions. On the first issue, the court held that there was a rational basis for exempting recording contracts from the licensing requirement. (*Id.* at pp. 624-626.) On the second issue, the court held that the term "procure" was not unconstitutionally vague. (*Id.* at pp. 628-629.)

In resolving the question of whether the term "procure" was too vague, the court initially noted that the Act applies to persons engaged in the "occupation" of procuring employment for artists. (13 Cal.App.4th at pp. 626-627.) After defining "occupation" as one's principal line of work, the court stated that the licensing scheme did not apply unless a person's procurement activities constituted a "significant part" of his business. (*Id.* at pp. 627-628.) Because the court expressly declined to say what it meant by "significant part" (*id.* at p. 628), the import of its discussion on this point is unclear. In any event, the court recognized that "[p]laintiffs[] concentrate their attack on the alleged vagueness of the word 'procure' " (*ibid.*) and that ". . . the *only* question before us is whether the word 'procure' in the context of the Act is so lacking in objective content that it provides no standard at all by which to measure an agent's conduct" (*ibid.*, italics deleted).



Given *Wachs*'s recognition of the limited nature of the issue before it, we regard as dicta the court's interpretation of the term "occupation" and its statement that the Act does not apply unless a person's procurement function is significant. Because the *Wachs* dicta is contrary to the Act's language and purpose, we decline to follow it. In that regard, we note that *Wachs* applied an overly narrow concept of "occupation" and did not consider the remedial purpose of the Act, the decisions of the Labor Commissioner, or the Legislature's adoption of the view (as expressed in the California Entertainment Commission's Report) that a license is necessary for incidental procurement activities. Thus, we conclude that the *Wachs* dicta is incorrect to the extent it indicates that a license is required only where a person's procurement efforts are "significant."[16]

B. *The Sanction for Unlicensed Work*

**(5)** "Since the clear object of the Act is to prevent improper persons from becoming [talent agents] and to regulate such activity for the protection of the public, a contract between an unlicensed [agent] and an artist is void." (*Buchwald* v. *Superior Court, supra,* 254 Cal.App.2d at p. 351.) " 'The general rule controlling in cases of this character is that where a statute prohibits . . . the doing of an act, the act is void, and this [is the consequence], notwithstanding that the statute does not expressly pronounce it so.' " (*Severance* v. *Knight-Counihan Co.* (1947) 29 Cal.2d 561, 568 [177 P.2d 4, 172 A.L.R. 1107].)

**(6a)** Waisbren nevertheless contends that declaring the parties' agreement to be void is too severe a penalty, especially in light of the fact that the Act does not contain criminal penalties for licensing violations. We disagree. Nothing in the case law requires the existence of criminal penalties as a prerequisite to declaring an illegal contract to be void. Moreover, the legislative history of the Act directly contradicts Waisbren's contention. In examining the licensing issue, the California Entertainment Commission

[16]Waisbren's reliance on *Raden* v. *Laurie* (1953) 120 Cal.App.2d 778 [262 P.2d 61] is also misplaced. In that case, a personal manager sued an artist for sums allegedly due under a written contract. The contract expressly stated that the manager was not authorized to seek employment for the artist. Nevertheless, the artist sought summary judgment on the ground that the manager had in fact agreed to procure such employment. The manager opposed the summary judgment motion by submitting evidence that he had not so agreed. The trial court granted summary judgment. The Court of Appeal reversed, finding that there was conflicting evidence regarding the substance of the parties' agreement. (*Id.* at p. 783.) By contrast, in this case, there is no dispute that Waisbren actually engaged in some procurement activities. The undisputed evidence thus presents a pure question of law: whether a license is required where a personal manager occasionally procures employment for an artist. (See also *Buchwald* v. *Superior Court, supra,* 254 Cal.App.2d at pp. 355-357 [distinguishing *Raden* on ground that there was no evidence in that case indicating that personal manager had actually procured employment for artist].)

specifically addressed the question of whether criminal sanctions should be imposed for violations of the Act. (Report at pp. 15-18.) It recommended that the Legislature not enact criminal penalties, in part because "the most effective weapon for assuring compliance with the Act is the power . . . to . . . declare any contract entered into between the parties void from the inception." (*Id.* at p. 17.) By following the Commission's advice and not enacting criminal penalties, the Legislature approved the remedy of declaring agreements void if they violate the Act. Thus, an agreement that violates the licensing requirement is illegal and unenforceable despite the lack of criminal sanctions.

(7) As explained by our Supreme Court: "[T]he courts generally will not enforce an illegal bargain or lend their assistance to a party who seeks compensation for an illegal act. The reason for this refusal is not that the courts are unaware of possible injustice between the parties, and that the defendant may be left in possession of some benefit he should in good conscience turn over to the plaintiff, but that this consideration is outweighed by the importance of deterring illegal conduct. Knowing that they will receive no help from the courts and must trust completely to each other's good faith, the parties are less likely to enter an illegal arrangement in the first place." (*Lewis & Queen* v. *N. M. Ball Sons* (1957) 48 Cal.2d 141, 150 [308 P.2d 713].)

Further, it does not matter that some of Waisbren's causes of action sounded in tort rather than contract. " ' "No principle of law is better settled than that a party to an illegal contract cannot come into a court of law and ask to have his illegal objects carried out . . . . [T]he test [is] whether the plaintiff can establish his case otherwise than through the medium of an illegal transaction to which he himself is a party." ' " (*Wong* v. *Tenneco, Inc.* (1985) 39 Cal.3d 126, 135 [216 Cal.Rptr. 412, 702 P.2d 570], internal citation and italics omitted; see also *Hydrotech Systems, Ltd.* v. *Oasis Waterpark* (1991) 52 Cal.3d 988, 997-1002 [277 Cal.Rptr. 517, 803 P.2d 370] [unlicensed contractor cannot sue for fraud].)[17]

(6b) Because all of Waisbren's causes of action are based on his illegal agreement or business arrangement with Peppercorn, he cannot establish his case against defendants "otherwise than through the medium of an illegal transaction to which [he] [was] a party." (*Wong* v. *Tenneco, Inc.*, *supra*, 39 Cal.3d at p. 135, italics omitted.) Accordingly, the trial court properly disposed of the complaint in its entirety.

[17]Nothing in *Tenzer* v. *Superscope, Inc.* (1985) 39 Cal.3d 18 [216 Cal.Rptr. 130, 702 P.2d 212] is to the contrary. *Tenzer* simply recognized that the statute of frauds does not bar a cause of action for fraud based on an oral misrepresentation. (*Id.* at pp. 28-31.) *Tenzer* does not authorize any cause of action based on an *illegal* agreement.



C. *The Propriety of Summary Judgment*

Waisbren argues that summary judgment was improper because there were disputed issues of fact as to whether he was a partner and coproducer with Peppercorn. According to Waisbren, the Act does not apply to an artist's "partner" or "co-producer." Regardless of the merits of Waisbren's interpretation of the Act—on which we express no opinion—he did not properly raise this argument in opposing summary judgment. His opposition papers did not make any such legal argument, and his separate statement (see Code Civ. Proc., § 437c, subd. (b)) did not set forth facts in support of that argument. Consequently, he waived this basis for opposing summary judgment. (See *North Coast Business Park* v. *Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 28-32 [21 Cal.Rptr.2d 104]; *United Community Church* v. *Garcin* (1991) 231 Cal.App.3d 327, 335-337 [282 Cal.Rptr. 368].)

Finally, Waisbren contends that the trial court should have continued the hearing on the summary judgment motion to allow him time to engage in additional discovery. This contention is without merit. We recognize that a trial court must order a continuance and allow the taking of discovery where "facts *essential* to justify opposition exist but cannot, for reasons stated, then be presented." (Code Civ. Proc., § 437c, subd. (h), italics added.) However, in opposing summary judgment, Waisbren did not explain how the outstanding discovery was related to the issues raised by the motion. Further, the motion was based solely on an issue within Waisbren's knowledge, i.e., whether he had procured any employment for Peppercorn. He obviously did not need to obtain discovery from defendants to dispute or address that issue. Indeed, the evidence he submitted in opposition to the motion left no doubt that he had engaged in such activities. (See fn. 3, *ante*.) For these reasons, the trial court did not abuse its discretion in denying Waisbren's request that the hearing on the motion be continued.

DISPOSITION

The judgment is affirmed.

Spencer, P. J., and Ortega, J., concurred.

A petition for a rehearing was denied January 17, 1996, and appellant's petition for review by the Supreme Court was denied March 14, 1996.

# What Hath Ovitz Wrought?

For more than 60 years, a feud has raged between artists' managers and talent agents. In part, this has to do with philosophical differences concerning the role which each plays in the development and furtherance of their clients' careers, and in part it concerns the levels of compensation each can receive. As a general rule of thumb, the job of an agent is to find work for his/her clients, whereas the job of a manager is to guide and develop the client's career. Of equal importance is the manner in which they are regarded by prevailing law.

## AGENTS v. MANAGERS Revisited

Agents have been heavily regulated by state legislation in New York and California and by guild franchising agreements. For example, Actors Equity, which represents actors in the theatre, only permits its members to deal with agents who are licensed (i.e., "franchised") by the union. The union, among other things, insists that agents not commission the minimum "scale" payments negotiated between the union and the producers.[1]

By Donald E. Biederman

However, until now, managers were not subject to an overall regulatory scheme established by legislation or by the entertainment guilds.

Managers have lived in a sort of never-land, vulnerable to potentially disastrous results if they step over the line into the role of agent. The management agreement of a manager who procures work for a client can be nullified, even where the client has encouraged the manager to do so. Managers feel ill-used by this treatment.[2] Robert Wachs, an extremely experienced and highly successful manager who figures prominently in the development of case law in this area, puts the matter this way:

> If an actor or actress comes out to make a career in Hollywood, how do they get work? They can't go to a manager because a manager is not allowed to get them work ... So you have to have an agent. But you can't get an agent because you don't have any credits yet. So you have to get a manager to develop your talent. But the manager can't get you work, so no one ends up doing it. In reality, the agent only wants to book once you've got a part or a career, but they do not want to work to develop the talent. So the [Talent Agencies] Act, which is supposed to be protecting talent, makes them suffer because their careers are going nowhere. So it has fallen on the managers to try to help. And when the manager then submits their clients for jobs, they are soliciting work and violating the Act. ... We're talking about nothing but success that the manager helped accomplish. And then the Act allows the client to sabotage the manager—every good piece of work he's done for the client. ... Every manager, every single manager is in violation of the Act, except for [those who manage] the big stars [who don't need help procuring contracts].[3]

In recent years, this established tension has been further exacerbated as managers—until now, the most prominent being Brillstein-Grey Entertainment—have branched out into developing film and television productions with their management clients. Agents, meanwhile, are prohibited by law from doing this because of the conflict of interests it creates. Now, as a result of the founding by former superagent Michael Ovitz of Artists Management Group (who, presumably, will develop projects in the same manner as Brillstein-Grey), and the introduction of a California bill—AB 884—by Assembly Member Sheila James Kuehl,[4] the tension in the California entertainment community has been ratcheted up considerably. This comes "at a time when there challenges to the traditional structure of talent representation, not to mention profit equations of the entertainment industry as a whole."[5]

How serious is this? According to Tom Pollock, longtime "A-list" entertainment attorney and former head of Universal Pictures:

> Something's going to have to happen because the playing field's not level. Either the managers will end up being regulated by both the state and the guilds, or the next time the guilds' franchises come up the agencies won't sign them. Why shouldn't they be able to own pieces of movies when managers already can?[6]

As an example of this phenomenon, DAILY VARIETY reported on March 19, 1999, that New Line Cinema had acquired feature film rights to Tess Gerritson's novel GRAVITY for $1,000,000 (with another $500,000 to be paid upon production), and that the film would be produced by Michael Ovitz's Artists Management Group. According to DAILY VARIETY, "AMG will likely package the project with as many of the banner's [sic] clients as possible."[7]

At first blush, this issue might seem to concern only those resident in or whose businesses are based in New York and California. The expansive nature of long-arm jurisdiction, however, should make this issue one of concern to managers in other states who conduct any business with clients or production companies located in the major markets of New York or California. Moreover, the fact that an individual is licensed to practice law will not necessarily provide insulation against the impact of legislation regulating agents.

In this article, we will review the history of California's Talent Agencies Act[8] and the comparable New York statute,[9] with an analysis of the leading cases which have arisen under each act, and discuss the current controversy and pending legislation.

## MAKING THE GRADE ON THE A-LIST

Agents and managers have played extremely important roles in the entertainment industries for more than a 100 years. Legendary agents such as Jules Stein and Lew Wasserman of MCA;[10] Sam Weisbord and Abe Lastfogel of the William Morris Agency;[11] Sam Cohn of

International Creative Management; Michael Ovitz, Ron Meyer, and Bill Haber of Creative Artists Agency;[12] Irving "Swifty" Lazar;[13] and David Geffen[14] have—for good or ill—left a huge footprint.

So, too, have managers. The late British manager Gordon Mills, for example, was instrumental in creating and advancing the careers of Tom Jones, Engelbert Humperdinck, and Gilbert O'Sullivan. Mills not only managed these artists and produced their recordings, he created personae for them. Tom Jones (born Matthews) was cast by Mills as a sex symbol in tight black clothing, Engelbert Humperdinck (born Gerry Dorsey) as a suave smoothie in a tuxedo, and Gilbert (born Raymond) O'Sullivan as something of a geek with a bowl haircut, a red college sweatshirt with "G" on it, and short pants. The skyrocketing early success and ultimate meltdown of the relationship between Mills and O'Sullivan is recounted in O'Sullivan v. Management Agency and Music, Ltd.[15] Similarly, in the late 1960s and early 1970s, a San Francisco-based manager, Matthew Katz, was instrumental in advancing the careers of such acts as It's A Beautiful Day, Moby Grape, and Jefferson Airplane. The decline and fall of the relationship between Katz and Jefferson Airplane is described in Buchwald v. Superior Court.[16]

In recent years, as the economics of the entertainment industries became more and more "hit-driven," a number of leading performers (such as Harrison Ford, Kevin Costner, Jackie Chan, and Sharon Stone) have stopped working with agents and instead rely solely on their managers.[17]

Inevitably, clashes occurred between agents and managers, and between managers and their clients. In the former instance, this took the form of legislation designed to protect the agents' "turf." In the latter, this took the form of lawsuits in New York and proceedings before the Labor Commissioner in California. And now, to borrow a phrase from the legendary Al Jolson, it looks like "you ain't seen nothin' yet!"

## TURF WAR OVER TALENT AGENCIES

New York and California have been the primary centers for both agents and managers, so it is not surprising that the principal legislation in this area was enacted in those states.[18] The two statutes have a lot in common; however, there are a number of significant distinctions between them.

### New York

In New York, the legislation embodied in §§170-190 of the General Business Law was designed to regulate "employment agencies," with "theatrical employment agency" being a subset.[19] The statute applies to:

> any person ... who procures or attempts to procure employment or engagements for [a virtually encyclopedic range of talent] ... *but such term does not include the business of managing such entertainments, exhibitions or performances, or the artists or attractions constituting the same, where such business only incidentally involves the seeking of employment therefor*" (emphasis supplied).

A talent agent must be licensed by the Commissioner of Labor (for agents located in New York City, by the Commissioner of Consumer Affairs),[20] who investigates the applicant for character and responsibility.[21] The license fee is $200 at issuance ($400 if the agency has more than four employees) and a $5,000 bond is required. A written contract is required,[22] and the maximum fee chargeable for "theatrical engagements"[23] is ten percent of "the compensation paid" to the talent, with an exception allowing a fee of 20 percent for "engagements for orchestras and employment or engagements in the opera and concert fields."[24]

The Commissioner is empowered to suspend or revoke an agency license for "violat[ion] of any provision of this article or [if the agent] is not a person of good character and responsibility."[25] The action of the Commissioner is subject to review by the New York Supreme Court[26] in a so-called "Article 78 proceeding," in which the "substantial evidence" rule generally applicable to review of administrative decisions applies.[27] In addition, violation of the article can constitute a misdemeanor punishable by imprisonment for up to a year and/or a fine of not more than $1,000.[28] Criminal proceedings may be instituted by the Commissioner or by "any person aggrieved by such violations."[29] The Commissioner has no power to nullify contracts between the artist and agent, nor does the Commissioner have power to order an agent to return commissions already paid to the agent. Moreover, the Commissioner has no power to hear complaints against unlicensed agents. Aggrieved artists must pursue their remedies in the New York Supreme Court.

### California

At first glance, California's statute has many things in common with New York's. A talent agent must obtain a license from the Labor Commissioner.[30] The applicant

must be a person of "good moral character" (corporate agencies must have a "reputation for fair dealing")[31] with two years' experience in a business or occupation.[32] The initial license fee is $25, and there is an annual renewal fee of $225.[33] An agent's contract forms are subject to approval by the Commissioner, who may withhold them if they are "unfair, unjust and oppressive to the artist."[34] While fee limitations are not prescribed legislatively, contrary to the case in New York, California agents' fees are limited in practice to ten percent by guild franchising agreements and by the Commissioner's review power during licensure. Agency contract forms must provide for referral of "any controversy" to the Labor Commissioner "for adjustment."[35] An agent must maintain his/her/its clients' funds in a separate trust account, and monies received by an agent on behalf of a client must be disbursed within 30 days, except where there is a valid offset in favor of the agent.[36]

As is the case in New York, there is an extremely broad definition of "theatrical engagement."[37] A talent agency is defined to engage in:

> the occupation of procuring, offering, promising or attempting to procure employment or engagements for an artist or artists, *except that the activities of procuring, offering, or promising to procure recording contracts for an artist or artists shall not of itself subject to person or corporation to regulation and licensing under this chapter*"[38] (emphasis supplied).

In addition to the recording-contracts exception, "[i]t is not unlawful ... to act in conjunction with, and at the request of, a licensed talent agent in the negotiation of an employment contract."[39] The two exceptions were enacted in the early 1980s as part of the Waters Amendment, carried by then-Assembly Member (now Representative) Maxine Waters of Los Angeles. The recording contracts exception was enacted to recognize the business reality that a recording artist could not secure the services of an agent without a recording agreement. Thus, managers almost universally handled such matters, thereby exposing themselves to being discharged once their clients experienced success. The exception for managers working with agents was similarly based upon the business reality that managers and agents customarily worked as part of an overall representative team. In addition to these reforms, the amendment removed criminal penalties for violations of the Talent Agencies Act and established a one-year statute of limitations.

Thus, California, too, provides some comfort for managers, albeit less broadly than New York. However, since talent agencies "may counsel, or direct artists in the development of their professional careers,"[40] it is easy to see why the traditional agents are alarmed at what they perceive as an increasing invasion of their turf by essentially unregulated competition.

Where the two statutes part company most dramatically is in the area of enforcement. In "cases of controversy arising under [the Talent Agencies Act]," Commissioner "shall hear and determine the same, ject to an appeal within 10 days after determination to the superior court where the same shall be heard de novo."[41] However, under California Labor Code §1700.45, an agency agreement may provide for private arbitration if (1) enumerated in the agency agreement, in the union rules applicable to "franchising agreements," or in such agreements themselves, and (2) the contract provides for reasonable notice to the Commissioner and an opportunity for the Commissioner to attend all arbitration hearings.

## License and Registration, Please

If a Manager is Caught Acting as an Unlicensed Agent in Violation of the California Talent Agencies Act:

1. The management contract is void from inception.
2. Past commissions paid to the manager may be required to be returned to the artist.
3. All commissions owed to the manager by the artist are discharged.

## MANAGING MANAGERS IN COURT

The New York and California statutes have fared very differently in the courts. The Labor Commissioner appears to have been far more active in this area than the Commissioner of Consumer Affairs, and there have been many more lawsuits in California.

## New York

There have been three major court cases under the New York statute: Mandel v. Liebman,[42] Pine v. Laine,[43] and Gershunov v. Panov.[44]

In Mandel, a legendary television producer fired his manager (who happened to be a licensed attorney, although not functioning as an attorney vis-à-vis Liebman). Mandel's management agreement with Liebman provided for a five-year term and a ten percent commission applicable in perpetuity to all contracts entered into during the term.[45] The agreement stated that Liebman "employ[ed]" Mandel to "use his ability and experience as [a] manager and personal representative" to further Liebman's career and to "advise him in connection with all offers of employment and contracts for services, and conclude for him such contracts." Mandel was only required to devote as much time and attention to Liebman's affairs as Mandel's "opinion and judgment ... deem[ed] necessary."

Liebman argued that the agreement was unconscionable and lacking in mutuality. The Court of Appeals[46] rejected the unconscionability argument by reviewing the agreement in light of industry custom and usage, stating that the description of Mandel as Liebman's "personal representative and manager" was sufficient to constitute a commitment on Mandel's part to provide customary services. As to the provision leaving the amount of time dedicated to managerial duties to Mandel's discretion, the Court of Appeals regarded this simply as a recognition that Mandel might have other clients beside Liebman, and thus he would have to budget his time. The court similarly rejected Liebman's argument that since Mandel was an attorney, the management agreement was in essence a retainer agreement, which generally allows for a client to fire his attorney at any time. It explained that since Mandel's services might be performed as adequately by a non-lawyer as by a lawyer, Mandel had not served as Liebman's attorney. Finally, the court rejected Liebman's argument that Mandel was an unlicensed talent agent in violation of the General Business Law by pointing out the management exception in GBL §171 and by citing provisions in their contract. The contract stated that it "does not in any way contemplate that [Mandel] shall act as agent for the purpose of procuring further contracts or work for [Liebman]," that Mandel was "not required in any way to procure" employment for Liebman, and that in the event that Liebman needed further work "then an agent shall be employed by [Liebman] to procure such employment and the services of said agent shall be separately paid for" by Liebman. As will be seen, the deference accorded by the Court of Appeals to the terms of the agreement is far greater than that accorded by the Labor Commissioner and by the California courts.

The Pine decision held that the "incidental management" exception was unavailable where the sole activity of the purported "manager" consisted of negotiating a record deal (and the performer already had a manager). Thus, New York does not judicially recognize the equivalent of California's recording-contracts exception.

In Gershunov, a well-known impresario/manager, fluent in Russian, signed two Russian ballet artists who had emigrated to Israel. The agreement between them provided for a fee of 20 percent of the artists' earnings. If, however, Gershonov acted as a promoter for any engagement, the fees for such services would be negotiated between them. As the Panovs became more experienced, they became increasingly dissatisfied with Gershunov, who sued them for damages and injunctive relief. They countersued for an accounting of past receipts, as well as for the value of engagements which Gershunov had rejected without consulting them. They accused him additionally of general misconduct in his fiduciary capacity. Citing an instance in which Gershunov had received $25,000 to "promote" a concert in Philadelphia (when he had borne little or no risk), plus a $4,000 fee from the $20,000 paid to the Panovs for that appearance, the lower court found Gershunov guilty of a conflict of interest and ordered him to forfeit *both* fees. This result was upheld on appeal. Thus, the courts recognized that the management exception under GBL §171(8) was to be read in light of normal principles governing conflict of interest.

## California

In contrast to New York, California has experienced a plethora of administrative and judicial decisions, beginning with Raden v. Laurie.[47] In that case, the California Supreme Court held that an individual who merely worked to develop his client's poise and skills and took her to auditions, without ever directly seeking employment for her, was a personal manager rather than an agent.

Greater involvement in the employment process, however, led the court in Buchwald v. Superior Court to conclude that a manager was acting as an unlicensed agent.[48] In this case, Matthew Katz had signed Jefferson Airplane to what one author termed "the blessed trinity

of contracts:"[49] agreements signing the band to Katz for management, to Katz's record production company, and to Katz's music publishing company. Such situations were by no means uncommon in the 1960s[50] and are still encountered today. When disputes arose, Katz tried to enforce a contractual arbitration provision; the band went to the Labor Commission. Despite Katz's argument that the Commissioner lacked jurisdiction over him because he had not obtained a talent agent's license, a federal district court found for the Commissioner. The Talent Agencies Act, the court stated, was a remedial statute enacted for the protection of artists, and thus it should be construed liberally in favor of those whom the statute was intended to protect. Artists were not to be ordinarily considered as being *in pari delicto* with unlicensed agents with whom they contracted, and so a contract between an artist and an unlicensed agent would be void. This conclusion was based upon Katz's heavy involvement in the procuring of, and contracting for, the band's engagements, despite stipulations in their contract that Katz was not an agent and that Katz would not offer, attempt, or promise to obtain work for the band. The agreements between Katz and Jefferson Airplane were "wholly invalid"—including the clause requiring private arbitration.

Managers have lived in a sort of never-land, vulnerable to potentially disastrous results if they step over the line into the role of agent.

The substance of their relationship, rather than the contractual form, controlled Buchwald. This was a far different result from the New York Court of Appeals in Mandel v. Liebman.[51] The ascendancy of substance over form is qualified, however, as shown by the subsequent decision of the Labor Commissioner in Ivy v. Howard.[52] In that case, the special hearing officer voided an agreement which provided that the personal manager would attempt to procure personal engagements for the client, and which lacked a "severability" clause under which the offending provisions might have been excised in order to save the agreement.

Another important decision was Pryor v. Franklin,[53] in which the Labor Commissioner voided the management agreement between Richard Pryor and David Franklin. Franklin was ordered to return the management commissions he had received between 1975 and 1980, as well as the fees he had received as an executive producer on films in which Pryor appeared, for an aggregate of $3,110,918 (inclusive of interest). Franklin had promised to secure employment for Pryor and had, in fact, negotiated numerous deals. He had dismissed Pryor's former agents (as well as Pryor's former attorney, accountant, and other personal representatives) and held himself out to third parties as Pryor's "agent." Franklin's defenses were (1) that he had not instigated negotiations, but merely "furthered" offers which came in from third parties and (2) that he was an attorney. Special Hearing Officer Joseph rejected both theories. He observed that if Franklin's first defense were valid, the Talent Agencies Act would never apply to those artists who were in greatest demand. SHO Joseph rejected the second claim because of the absence of proof that Franklin was licensed to practice either in Georgia—where he made his office—or in California. The ruling made clear, however, that it did not have to reach the question of whether an attorney's license to practice law in California would excuse the lack of a talent agency license.

So, can an attorney/manager rest easily, protected securely by his/her license to practice law?

Not in the view of the Labor Commission. In a March 2, 1999, telephone interview, David Gurley, Staf Counsel for the Division of Labor Standards Enforcement of the Department of Industrial Relations, stated:

> [C]learly there is a fiduciary duty that has to be met. And as such, the fiduciary duty requires licensure. We don't exempt attorneys from being required to be licensed as talent agents. I think that attorneys, after taking the bar exam, should have a clear concept of what their fiduciary responsibilities are. Nevertheless, the Labor Commission takes each applicant individually and does a background check independently of the California Bar and requires them to be licensed as well.[54]

This position will not sit well with the legal community, since Chapter 4 of the Business & Professions Code[55] establishes a highly detailed structure for the bar and its administration. An attorney's qualifications[56] are established at a level far higher than those prescribed for talent agents, as are the duties required of an attorney.[57] The disciplinary aspects of Chapter 4 are similarly rigor-

ous; for example, under §6106,

> The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of [the attorney's] relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension.

The Code prescribes detailed requirements for fee agreements.[58] Mandatory fee arbitration is available at the election of the client.[59] When these statutory provisions are combined with the Rules of Professional Conduct, it is clear that the bar is set far higher for attorneys than for talent agents. In the opinion of the author, it is therefore questionable (except from the standpoint of uniformity of enforcement) whether a *second* license should be required of an attorney. In the words of commentator James M. O'Brien III,

> [A]ttorneys should be exempted because the [Talent Agencies] Act was never intended to apply to their activities. ... The Professional Rules and the State Bar Act ... provide greater protection to artists than the [Talent Agencies] Act does... and are sufficient to safeguard artists from any unscrupulous conduct by lawyers."[60]

As far as the author is aware, there are no court decisions on this issue. However, given the fact that the vast majority of music publishing deals are negotiated by attorneys, it seems inevitable that litigation will eventuate in this area. In Tobin v. Chinn,[61] Special Hearing Officer Locker observed that the recording contract exemption "does not expressly extend to the procurement of music publishing contracts" (underlining in original). Further, "exemptions must be strictly construed," and "music publishing and recording are two separate endeavors. ... Music publishing and songwriting does not fall within the recording exemption."

A manager who confined her involvement in the employment area to creative matters was protected, however, in Barr v. Rothberg.[62] In that instance, unlike the situation in Pryor, Roseanne Barr had a licensed talent agent as well as an attorney. Although Barr's manager attended and took part in contract negotiations, attorney Barry Hirsch acted as lead negotiator, and the manager confined herself to "creative" issues. Even more latitude was afforded a manager working in conjunction with an agent in Snipes v. Dolores Robinson Entertainment,[63] in which the agent brought the manager in as part of a manager/attorney/agent team. Although the manager sometimes directly negotiated aspects of employment agreements (such as "perks," and, on occasion, compensation), there was no violation because there was "no showing of subterfuge or an attempt to circumvent the law."

The Talent Agencies Act itself came under attack in Wachs v. Curry,[64] in which Robert Wachs, the longtime manager of Arsenio Hall, asserted that the Act was unconstitutional because the term "occupation of procuring employment" was void for vagueness. The court rejected this after reviewing the history of the Talent Agencies Act, noting that the definition had been shifted so as to concentrate on the employment aspects of the relationship rather than the management aspects.[65] The court then went on to posit what appeared to be a new test:

> the significance of the agent's employment procurement function compared to the agent's business as a whole. If the agent's employment constitutes *a significant part* of the agent's business as a whole, then he or she is subject to the ... Act even if, with respect to a particular client, procurement of employment was only an incidental part of the agent's overall duties. On the other hand, if counseling and directing the clients' careers constitutes *the significant part* of the agent's business then he or she is not subject to the ... Act, even if, with respect to a particular client, counseling and directing the client's career was only an incidental part of the agent's activities"[66] (emphasis supplied).

To those who might end up scratching their heads while trying to comprehend this formulation, the court stated, "What constitutes a 'significant part' of the agent's business is an element of degree we need not decide in this case."[67]

Thereafter, in Church v. Brown,[68] Special Hearing Officer Reich explained the Wachs discussion in the following manner:

> The word "significant" is defined in the American Heritage Dictionary as follows: "Having or expressing a meaning; meaningful." This definition, coupled with the obvious purpose of the Wachs court, seems to imply that the conduct which constitutes an important part of the relationship constitutes a "significant" portion of the activities of an agent if the procurement is not due to inadvertence or

> mistake and the activities of procurement have some importance and are not simply a *de minimis* aspect of the overall relationship between the parties when compared with the agent's counseling functions on behalf of the artist.[69]

Not long after that, another panel of the same appellate court which had decided Wachs v. Curry handed down its decision in Waisbren v. Peppercorn Productions, Inc.,[70] rejecting the above-quoted dictum in Wachs. It held instead that a personal manager would require a talent agency license even when he devoted only an incidental portion of his business to the agency function. According to Division of Labor Standards Staff Counsel David Gurley,

> The Labor Commissioner feels that the line is a strict bright-line rule, where any incidental procurement of employment would require licensure under the Act. So if a manager in any way is attempting to procure, or offering, or even promising to procure, even to the point of having incidental conversation about potential jobs, that's going to require licensure. We've created a bright-line test as much as is possible to be able to distinguish between managers and agents. Case law determines this rule. In the Waisbren case, it says "any incidental procurement of employment." We're just following the case law as it's been brought down.[71]

In sum, then, subject to further word from the appellate courts, *any* employment/procurement activity other than (1) securing a recording contract, or (2) working in conjunction with, and at the request of, a licensed talent agent, can cause grief under the Talent Agencies Act.

However, the Labor Commission takes the position that its jurisdiction does not extend to a "packaging" situation proposed by a manager,[72] and recent cases indicate that "procurement" activities are not involved where the artist is employed by an entity owned by the manager. In Tobin v. Chinn,[73] there was no violation when a manager signed an artist to a recording/music publishing agreement with his own company as well as a personal management agreement. In his status as record company, the manager/owner arranged for and paid for the artist's recordings, "shopped" them to distributor labels, and behaved in other ways as a functioning record production company. In the words of Special Hearing Officer Locker,[74]

> [A] person or entity who employs an artist does not "procure" employment for that artist, within the meaning of Labor Code section 1700.04(a), by directly engaging the services of that artist. ... [T]he activity of "procuring employment," under the Talent Agencies Act, refers to the role an agent plays when acting as an intermediary between the artist whom the agent represents and a third-party employer.

Continuing on, SHO Locker made a statement which is bound to resonate with the new breed of entrepreneurial management companies:

> Petitioners' novel argument would mean that every television or film production company that directly hires an actor, and that every concert producer that directly engages the services of a musical group, without undertaking any communications or negotiations with the actor's or musical group's talent agent, would itself need to be licensed as a talent agency. ... To suggest that any person who engages the services of an artist for himself is engaged in the occupation of procuring employment ... is to radically expand the reach of the Talent Agencies Act beyond recognition.

SHO Locker distinguished Humes v. MarGil Ventures, Inc.,[75] where a "theatrical production company" existed "in name only" and "was not engaged in the production of any entertainment or theatrical enterprise, but merely functioned as a loan-out company." A similar conclu was reached in Rose v. Reilly,[76] in which t... Commissioner found an agency relationship despite the presence of a "television production company." The claimant was never employed directly by the "production company" and was never on salary. All compensation came via a third party. In addition, depending on the production, the director/client might be employed by the advertiser which utilized his services in connection with its commercials.

Although the personal management agreement in Tobin was part of an interlinked contractual arrangement, and although the form allowed the manager to "prepare, negotiate, consummate, sign, execute and deliver" contracts for the artist, this did not cause the arrangement to collapse. The form contained the usual disclaimer that the manager was not "an employment agent, theatrical agent, or artist's manager" and that he "[was] not permitted, obligated, authorized or expected to do so." Further, the manager would,

> consult with and advise Artist with respect to

> the selection, engagement and discharge of theatrical agents, artists' managers, employment agencies and booking agents ... but manager is not authorized to select, engage, discharge or direct any such talent agent in the performance to [sic] the duties of such talent agent.

The manager did not commission revenues under the recording/publishing agreement.

It seems logical, therefore, under the reasoning in Tobin v. Chinn, that if a production company is not considered an agent when it hires an actor directly, there should be no objection when a manager and a client form a production company to develop film or television properties and the production company thereafter signs the actor to an employment agreement.

Thus, it would appear that managers have considerable latitude, so long as the structures they create with their clients are truly active and not simply pretextual.

## THE GATHERING STORM

Until a few years ago, agents predominated in representing literary authors and stage, film, and television performers, while managers tended to predominate in the recording and music publishing fields. According to Gregg Kilday, a reporter for L.A. MAGAZINE, "It used to be that only established actors had managers."[77] It was common for managers and agents to work together for the same client.[78] Now, however, the role of agents in film and television seems to be declining and the role of managers in this field seems to be increasing. There are several reasons for this.

Escalating production and marketing costs have led many studios to cut the number of theatrical films they produce and distribute each year. The salaries of top box-office names (e.g., Tom Cruise, Tom Hanks, Jim Carrey, Harrison Ford, Mel Gibson, Julia Roberts) have soared past $20 million (often against a percentage of the gross receipts rather than the net). Since special effects are costly and the salaries of "below the line" personnel (basically, everyone except the producer, director, leading actors, and writers) are largely determined through collective bargaining, there has been downward pressure on the salaries of lesser actors. The number of television series which last long enough to trigger substantial syndication monies (generally a minimum of four years) also has shrunk. All of this has narrowed the range of possibilities within which many agents work. In addition, thanks in large measure to the aggressive approach of Michael Ovitz and Creative Artists Agency over a 20-year period, there has been a substantial increase in movement of artists and agents between agencies. In many cases, agents compete on price, taking less than the ten percent fee limit prescribed under applicable union franchise agreements.

Because of the convergence of these negative forces, the business model adopted by Brillstein-Grey has become more and more attractive to companies that see the prospects of talent agencies diminishing. The Brillstein-Grey Company was something of a pioneer in creating television series which they owned together with their management clients. Instead of simply working for a fee, Bernie Brillstein and Brad Grey were creating assets. How did they do this?

As Gregg Kilday puts it:

> Agents were legally barred from producing films and TV shows, since, it is argued, to allow them to do so would lead to inevitable conflicts of interests. ... Managers, though,

### Agents Will Be Agents

Differences Between Agents and Managers in California:

1. Agents are limited to a ten percent commission by guild agreements and Labor Commission action, whereas managers typically charge a 15 percent commission.

2. Agents tend to have a large stable of clients, who typically do not receive intense personalized attention, whereas managers have a much smaller stable of clients, who receive significant personal attention.

3. The primary role of the agent is the procurement of employment for the client, whereas the manager counsels the client in personal and professional matters in an advisory capacity.

4. Agents are strictly regulated under the Talent Agencies Act, whereas managers are unregulated in their professional capacity.

operate under no such restrictions."[79]

Brillstein-Grey produced shows such as *The Days and Nights of Molly Dodd, Buffalo Bill, Alf, Just Shoot Me,* and *The Sopranos,* all featuring their management clients. In addition, they produced *The Larry Sanders Show* with Gary Shandling. However, Shandling filed suit against Brillstein-Grey in January 1998, claiming that they had leveraged his popularity to line their own pockets without sharing the profits.[80]

Other firms, such as More-Medavoy (*Dharma & Greg*) and Addis-Wechsler (*Eve's Bayou, The Player, Love Jones*) have produced television shows and/or films with their management clients. Prominent longtime agent Lou Pitt recently left ICM to set up The Pitt Co.

Then came the return of Michael Ovitz. Having left CAA for the presidency of The Walt Disney Co., Ovitz and Disney parted company after 14 months. However, Ovitz did not go away quietly. In addition to his other activities,[81] Ovitz recently organized Artists Management Group, creating instant headlines by attracting two of Hollywood's hottest managers, Rick Yorn and his sister-in-law, Julie Silverman Yorn. Together, they brought with them such names as Leonardo DiCaprio, Claire Danes, Samuel L. Jackson, Cameron Diaz, Geena Davis, and Matt Dillon. Then Ovitz brought in Michael Menchel, a senior agent at CAA, who represents Robin Williams. For CAA, this was the last straw; the agency announced it would no longer represent any talent which signed with AMG for management services.[82] This appears to have been only the first challenge in what may turn out to be a lengthy duel.

### The Labor Commission's View

It appears that managers can lawfully develop film and television productions with their management clients, without running afoul of the Talent Agencies Act. If a manager and his/her client set up a joint venture or a corporation—under an agreement which provides that the manager is responsible for financing and producing entertainment programming, and the talent is responsible for acting in it—this may provide an eight-lane highway through the heart of the Talent Agencies Act. However, based upon the decisions reviewed on pages 9-13, *supra*, the Commissioner will not object as long as the entity actually functions in the manner for which it is intended.

Of course, agents engaged in "packaging" producers, writers, directors, and actors on the same project can make serious money from their share of the license fees charged to the purchaser of the package. This is not considered by the Labor Commissioner to be within the scope of the Talent Agencies Act. In an opinion letter dated June 22, 1959, then-Commissioner Sigmv Arywitz stated that a packaging agreement form,

> is not such as requires the approval of the Labor Commissioner ... [because] this type of contract is concerned exclusively with "creative property or package show" and contains nothing with respect to the employment of an artist.[83]

This policy was confirmed by Commissioner Jose Millan in an October 30, 1998, letter which stated that the Commissioner,

> lack[s] jurisdiction with respect to "Packaging Agreements." ... A "packaging agreement" or "package program" as the term is customarily understood in the television and motion picture industries is more analogous to selling an idea or a concept. In packaging agreements, the requisite obtaining or getting possession elements are not present. The concept of packaging is a "pitch" that must be sold prior to any procurement of employment. ... [It] is more analogous to selling an idea or a concept ... prior to any procurement of employment. After the idea is sold, and once the artist begins work under the signed package agreement, only then would jurisdiction of the Labor Commissioner commence. ... Furthermore, it appears that artists benefit from packaging agreements.

The letter then cited the SAG, AFTRA, DGA, and WGA guild agreements, all of which approve packaging arrangements while precluding agents from receiving fees from artists when the agent also represents the owners or producers of programs. This saves expenses for the artists. However, while the agent can reap significant rewards from the packaging fees, the agent can not share in the ownership of the packaged property.

Can a manager also package in this manner, without the "cover" of working in conjunction with a licensed talent agent? Discussions with the office of the Division of Labor Standards, together with the Labor Commission decisions cited above, indicates that a manager can do this if the talent is already employed by the production company and the manager is therefore literally not attempting to secure employment for the talent. Moreover, under this model, the manager—unlike the

agent—*can* share in the ownership of the package.

If a manager does not wish to (or is not in a position to) follow the production company model, is there safety in distance?

Many managers, of course, make their offices outside of California and would never—until now—have dreamed of applying for an agent's license in California. Is there safety for a manager based out of state who represents talent resident in California, and who either works strictly by phone, fax, and e-mail or makes only occasional trips to California? Does it matter to the Labor Commission whether or not the talent resides in California? Because the Talent Agencies Act is remedial in nature and expressive of a strong public policy designed to protect artists and performers, the Commission maintains that it will invoke "long-arm" jurisdiction to the fullest extent permitted by the United States Supreme Court in International Shoe Co. v. Washington[84] and in the subsequent cases deriving therefrom. As an example of the expansiveness of "long-arm" jurisdiction, in Burger King Corporation v. Rudzewicz,[85] the Supreme Court held that a Florida franchisor was able to obtain jurisdiction over a Michigan franchisee which had never physically entered Florida, because:

> it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State within which business is being conducted. So long as a commercial actor's efforts are "purposefully directed" toward residents of another state, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there.[86]

## "This conflict is not going to go away": The Kuehl Amendment

Assembly Bill 884 was introduced by California Assembly Member Sheila James Kuehl on February 25, 1999. Although some observers interpreted the timing of the bill as a sign that it was focused on the present dispute, a memorandum issued by Member Kuehl's office states that the bill intends to remedy,

> fraudulent representations made to potential child actors and others by scam artists posing as "talent managers" ... [and] to ensure that actors breaking into the business know whether they are dealing with a reputable manager who is licensed by the state.

Kuehl's memorandum states that "AB 884 does not alter the working relationships that exist among agents, managers, and their clients."[87] For example, the memorandum states,

> managers, in addition to their career development responsibilities, *will retain the right to produce*. Agents will remain the only entities licensed to procure employment for their clients (emphasis in original).

Nevertheless, to underscore her intention to avoid interference with the relationships between agents and managers and their respective clients, Kuehl met with 80 managers on March 12, 1999, at the Hollywood Roosevelt Hotel. There, she stated her willingness to revise and amend AB 884. "I'm very likely to narrow the bill to deal with the fraud aspect. ... I'm not interested in regulating an industry that doesn't need to be regulated." However, she said, "I'm telling you that this conflict between managers and agents, if there is any, is not going to go away."[88]

The Amendment would add a new Chapter 4.5, entitled "Artist's Manager," to Division 2 of the Labor Code. An "artist's manager" is defined as a person who does one or both of the following:

> (1) Engages in the occupation of advising, counseling, or directing an artist in the development or advancement of his or her professional career.
>
> (2) Offers, advertises, or represents that the artist's manager can or will provide any of the following services to artists for a fee: career counseling, vocational guidance, aptitude testing, executive consulting, personal consulting, career management, evaluation, or planning, or the development of resumes and other promotional materials relating to the preparation

Since talent agencies "may counsel, or direct artists in the development of their professional careers," it is easy to see why the traditional agents are alarmed at what they perceive as an increasing invasion of their turf by essentially unregulated competition.

for employment as an artist.[89]

The definition "does not include a person licensed as a talent agency" pursuant to §1700.5.[90]

Apart from "vocational guidance" and "aptitude testing," which would appear to be categories found in the child actor arena—Assembly Member Kuehl's avowed area of concern—all of the above describes the typical personal manager.

AB 884 would require an artist's manager to obtain a license from the Labor Commissioner,[91] the application for which must disclose "the business or occupation engaged in by the applicant for at least [the last] two years,"[92] and must be accompanied by affidavits of:

> at least two reputable residents of the city or county in which the business is to be conducted who have known or been associated with the applicant for two years, [and who attest] that the applicant is a person of good moral character or, in the case of a corporation, has a reputation for fair dealing.[93]

As is the case with agents, the initial license fee would be $25,[94] and there would be a $225 annual renewal fee,[95] as well as a $10,000 bond.[96]

If the Commissioner revokes a manager's license, there can be no new license for three years thereafter.[97]

As is now required of agents,[98] a manager would be required to submit proposed forms of contracts to the Commissioner for approval, which could not be withheld "unless the proposed form of contract is unfair, unjust and oppressive to the artist."[99] As is the case with agents,[100] a manager would have to file a schedule of fees.[101] Like the agent,[102] the manager would have to establish a trust fund for monies collected for clients, and would have to disburse (subject to legitimate offset) within 30 days after receipt.[103]

The rest of the bill similarly parallels the provisions of the existing Chapter 4, with one major exception: there are no provisions equivalent to the dispute determination procedure set forth §1700.44.[104] Therefore, a licensed manager and his/her/its client would resolve their contractual disputes in the same manner as now prevails in New York—in the courts (or, if the parties so provide in their contracts, by arbitration). However, that would apply presumably only where the dispute involved conduct by a manager within the scope of the license; if the manager were to procure, offer to procure, attempt to procure, or promise to procure employment for a client, the client could then invoke the doctrines described on pages 9-13, *supra*.

Therefore, it seems to the author that—at least as presently written—AB 884 would accomplish precisely what Assembly Member Kuehl's explanatory memorandum suggests: "Agents will remain the only entities licensed to procure employment for their clients."

Thus, the basic conflict between agents and managers in California remains to be resolved.

## WAITING FOR THE HOLLYWOOD HAPPY ENDING

The essential issues which divide agents and managers show no signs of abating any time soon. At this writing, the statutory and case law of New York appears to afford considerably more lenient treatment to the manager who procures work for a client than does the statutory and case law of California. However, California managers can achieve considerable "wiggle room" either by working in conjunction with licensed agents or by establishing working production companies with their clients. The ultimate outcome of the latest feud between the agents and the managers in California cannot be predicted, although it would seem that the managers are thriving at the present moment. They may take a considerable amount of business away from the agents through judicious use of the "packaging exemption," originally accorded to agents, and by establishing real production entities. However, as presently written the Kuehl Amendment does not address the concerns of managers such as Robert Wachs who, rightly or wrongly, feel that they are treated unfairly because they act as agents by default—only to be discarded once their clients achieve success, often with ruinous repayment obligations. A licensed California attorney negotiating contracts (other than a recording contract) for a client may be at risk, and managers or attorneys based outside of New York and California may find themselves subject to long-arm jurisdiction in those states if the "minimum standards" requirement of the International Shoe line of cases are met. ◆

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[1] This was upheld in H.A. Artists & Associates, Inc v. Actors' Equity Ass'n, 451 U.S. 704 (1981).

[2] In New York, however, a measure of comfort is provided by an "incidental booking" exception. See discussion *infra* page 9.

[3] Telephone interview by Daniel A. Cohen with Robert Wachs (Mar. 1, 1999). For a view sympathetic to the position articulated by Robert Wachs, see Heath B. Zarin, Note, *The California Controversy Over Procuring Employment: A Case For The Personal Managers Act*, 7 FORDHAM INTELL. PROP., MEDIA & ENT. L.J. 927 (Spring 1997).

[4] An appropriate person to sponsor such legislation, Kuehl was a child actress who played Zelda on the late-1950s sitcom *The Many Lives of Dobie Gillis*. Claudia Eller, *Ovitz, Kuehl Rocking Boat For Agents, Managers*, L.A. TIMES, Feb. 23, 1999, at C1.

[5] Peter Bart, *When Worlds Collide: Managing The Managers*, DAILY VARIETY, Feb. 1, 1999, at 42.

[6] Gregg Kilday, *Barbarians At The Gate*, L.A. MAGAZINE, Mar. 1999, at 93 (quoting Tom Pollock).

[7] Oliver Jones and Chris Petrikin, *New Line Orbits With AMG On Pic*, DAILY VARIETY, Mar. 19, 1999, at 1.

[8] CAL. LAB. CODE §§1700 et. seq. (Deering 1999) [hereinafter "Labor Code"].

[9] N.Y. GEN. BUS. LAW §§170-190 (Consol. 1998) [hereinafter "General Business Law"].

[10] Stein and Wasserman started out booking bands as Music Corporation of America, based in Chicago. After moving to Los Angeles, they became perhaps the most influential agents who ever worked in movies and television. Wasserman's signing of Jack Benny to then-also-ran CBS-TV is credited with putting the CBS network on the map. MCA then acquired Universal Pictures from the founding Laemmle family and, under pressure from the Justice Department, stuck with production and renounced the agency business forever. Wasserman continued to wield enormous influence within the entertainment industries until MCA was taken over by Matsushita of Japan and, later, Seagrams of Canada. The history of the great agencies is recounted in FRANK ROSS, THE AGENCY: WILLIAM MORRIS AND THE HIDDEN HISTORY OF SHOW BUSINESS (1995) [hereinafter "ROSS"].

[11] William Morris—born Zelman Moses, a Jewish immigrant—had founded the William Morris Agency in 1898 as a clearing house for vaudevillians. Abe Lastfogel went to work for Morris in 1929 and stayed for the rest of his long life. In its heyday, WMA represented such megastars as James Cagney, George Raft, Al Jolson, Eddie Cantor, Louis Armstrong, Duke Ellington, and Will Rogers. In its later years, it represented, for varying periods of time, Frank Sinatra, Marilyn Monroe, Kevin Costner, Mel Gibson, Richard Gere, and Michelle Pfeiffer.

[12] Ovitz, Haber, and Meyer left William Morris to form CAA, taking with them WMA's top "packaging" agents: people who put together entire slates of talent (e.g., stars, directors, writers, producers) for film and television projects. This "transform[ed] agenting from a sporting enterprise to cutthroat competition." See ROSS, *supra* note 10.

[13] The late Lazar's post-Academy Awards parties were perennially one of Hollywood's hottest tickets.

[14] The legendary Geffen started out in the William Morris mail room, went on to manage such stars as Laura Nyro and the Eagles, founded Asylum Records and, later, Geffen Records (now part of the Universal Music Group), produced such films as *Personal Best* and *Beetlejuice*, and, still later, became (with Steven Spielberg and Jeffrey Katzenberg) a founder of Dreamworks SKG, which recently released the worldwide hit *Saving Private Ryan*.

[15] [1984] 3 W.L.R. 448 (C.A. Aug. 10, 1984) (U.K.).

[16] Buchwald v. Superior Court, 62 Cal. Rptr. 364 (Cal. Ct. App. 1967).

[17] See Kilday, *supra* note 6.

[18] This is spreading, however, to other states with significant entertainment involvement, such as Minnesota, which adopted Minn. Stat. Ch. 184A, Entertainment Services, in 1993.

[19] General Business Law §171(1), (8).

[20] General Business Law §173.

[21] General Business Law §174.1. An applicant must be of good character and have at least two years' experience in the area or in equivalent business (at §174.1(2)) and must secure the Commissioner's approval of the contract forms to be used by the agent, such approval to be granted where the terms of the form "fairly and clearly represent contractual terms and conditions." General Business Law §173(2)(b).

[22] General Business Law §185.

[23] Because of the comprehensive definition of "theatrical employment agency" in General Business Law §171(8), this is essentially comprehensive of the entertainment industries.

[24] General Business Law §185. This language is perhaps vague enough to offer comfort to managers of rock bands and other performers who perform live—an interesting concept since many managers establish their fees at 15 to 25 percent of gross compensation for such activities.

[25] General Business Law §189(5).

[26] The "Supreme Court," despite its title, is New York's court of general jurisdiction, comparable to the "Superior Court" in California.

[27] N.Y. C.P.L.R. §§7803-04 (Consol.). Revocation of a license is a quasi-judicial act. Matter of 125 Bar Corp v. State Liquor Authority, 24 N.Y.2d 174 (N.Y. 1969) (stating that the "substantial evidence" test applies); Matter of Older v. Board of Education, 27 N.Y.2d 333, 337 (N.Y. 1941).

[28] General Business Law §190.

[29] Id.

[30] Labor Code §1700.5.

[31] Labor Code §1700.6(d).

32 This is implicit from Labor Code §1700.6(c). However, the statute does not say that the experience must be in the agency business or the equivalent, which New York does require. General Business Law §174(2).

33 Labor Code §1700.12.

34 Labor Code §1700.23. This appears to permit the Commissioner to be more pro-active than would be the case in New York, where, under General Business Law §173(2)(b), proposed forms "must be approved" if they "fairly and clearly represent contractual terms and conditions ... such as are permitted by this article."

35 Id.

36 Labor Code §1700.25. New York does not mandate a separate trust fund in the statute; however, given the obvious fiduciary nature of the relationship, it would seem to be implicit.

37 Labor Code §1700.1(a).

38 Labor Code §1700.4.

39 Labor Code § 1700.44(d).

40 Id.

41 Labor Code §1700.44(a). Although, strictly speaking, the agency determination is entitled to no deference in a trial de novo (in contrast to N.Y. C.P.L.R. §§7803-04, under which the New York commissioner's ruling is upheld if supported by substantial evidence), it is "generally the case that courts give considerable weight to administrative agency rulings." Chester L. Migden, *Arsenio Hall Case: The Novel Aspect*, 14 ENT. L. RPTR. 3 (Oct. 1992).

42 Mandel v. Liebman, 100 N.E.2d 149 (N.Y. 1951).

43 Pine v. Laine, 321 N.Y.S.2d 303 (N.Y. App. Div. 1971).

44 Gershunov v. Panov, 430 N.Y.S.2d 299 (N.Y. App. Div. 1980).

45 There was, additionally, a provision whereby Liebman acknowledged that any employment opportunities which might come his way after the term also would be attributable to Mandel's efforts—a provision which the Court of Appeals scorned.

46 Here, again, New York marches to a different drummer in naming its courts. The "Court of Appeals" is New York's highest court.

47 Raden v. Laurie, 262 P.2d 61 (Cal. 1953). The client, Piper Laurie, went on to a long and distinguished film and television career. A similar result was reached in Azizi v. Stein, Labor Commission Case No. TAC 11- 96 (Sept. 15, 1997) (stating that "employment may 'derive from' a personal manager's efforts while having been 'procured' by someone else").

48 Buchwald v. Superior Court, 62 Cal. Rptr. 364 (Cal. Ct. App. 1967).

49 Bob Donnelly, *Managers Shouldn't Be Endangered Species*, BILLBOARD, Feb. 20, 1999, at 4.

50 See, e.g., Croce v. Kurnit, 565 F. Supp. 884 (S.D.N.Y. 1982).

51 See *supra* note 42.

52 Ivy v. Howard, Labor Commission Case No. TAC 18-94 (1994).

53 Pryor v. Franklin, Labor Commission Case No. TAC 17 1 (1982).

54 Telephone Interview by Daniel A. Cohen with David Gurley, Staf Counsel for the Division of Labor Standards Enforcement of the Department of Industrial Relations (Mar. 2, 1999).

55 CAL. BUS. & PROF. CODE §§6000 et seq. (Deering 1999) [hereinafter B&PC].

56 B&PC §6060.

57 B&PC §6068.

58 B&PC §§6146 et seq.

59 B&PC §§6200 et seq.

60 James M. O'Brien III, *Regulation of Attorneys Under California's Talent Agencies Act: A Tautological Approach to Protecting Artists*, 80 CAL. L. REV. 471, 492-3 (Mar. 1992).

61 Tobin v. Chinn, Labor Commission Case No. TAC 17-96 (1997).

62 Barr v. Rothberg, Labor Commission Case No. TAC 14-90 (1992).

63 Snipes v. Dolores Robinson Entertainment, Labor Commission Case No. TAC 36-96 (1998).

64 Wachs v. Curry, 16 Cal. Rptr. 2d 496 (Cal. Ct. App. 1993). This was the outgrowth of a trial de novo after the decision of the Lab Commissioner that voided Wachs' agreement with Hall. Arsen v. X Management, Inc., Labor Commission Case No. TAC No. 19-[illegible] (1992).

65 The old definition in the Artists' Managers Act of 1943 described a manager as "a person who engages in the occupation of advising, counseling, or directing artists in the development or advancement of their careers and who procures, offers, promises or attempts to procure employment ... only in connection with and as part of the duties and obligations of such person," a formulation similar to that in General Business Law §171(8).

66 Wachs, 16 Cal. Rptr. 2d at 503 (emphasis supplied).

67 Id.

68 Church v. Brown, Labor Commission Case No. TAC 52-92 (1994).

69 An interesting aspect of this case is that even though the procurement acts had occurred more than a year before Church filed his petition, and therefore Church could not recover commissions paid more than a year prior to filing, he was able to use the procurement acts defensively to void the remainder of the agreement.

70 Waisbren v. Peppercorn Productions, Inc., 48 Cal. Rptr. 2d 437 (Cal. Ct. App. 1995).

71 Gurley, *supra* note 54.

72 Telephone Interview with David Gurley, Staff Counsel for the Division of Labor Standards Enforcement for the Department of Industrial Relations (Mar. 15, 1999).

73 Tobin v. Chinn, Labor Commission Case No. TAC 17-96 (1997). However, assuming the status of employer can have its downside. In another decision, Kern v. Entertainers Direct, Inc., Labor Commission Case No. TAC 25-96 (1997), a manager who functioned as a "clearing-house of entertainers" who worked at private parties, established the rates of payment by customers, and set the rates to be paid by the entertainers was held to be the employer and was therefore liable for wages when a customer defaulted.

74 Tobin v. Chinn, Labor Commission Case No. TAC 17-96 (1997).

75 Humes v. MarGil Ventures, Inc., 220 Cal. Rptr. 186 (Cal. Ct. App. 1985).

76 Rose v. Reilly, Labor Commission Case No. TAC 43-97 (1998).

77 Kilday, *supra* note 6.

78 See Barr v. Rothberg, Labor Commission Case No. TAC 14-90 (1992) (describing such a situation).

79 Kilday, *supra* note 6.

80 Brillstein-Grey counterclaimed, alleging that Shandling's erratic behavior had damaged *The Larry Sanders Show*. Trial of this action is anticipated in June.

81 Ovitz and his colleagues took over theatrical production power-house Livent just before it was forced into bankruptcy, and Ovitz was also part of a group negotiating to bring NFL football back to Los Angeles.

82 This is serious: Claire Danes, Marisa Tomei, Lauren Holly, Minnie Driver, Mimi Rogers, Martin Scorsese, and Sydney Pollack were clients common to CAA and AMG. As of January 29, 1999, Scorsese, Tomei, and Rogers had elected AMG. Claudia Eller, *To His Old Partners, Ovitz Hasn't Changed A Bit*, L.A. TIMES, Jan. 29, 1999, at C1. Bill Murray and producer-director Ivan Reitman were reported to be staying with CAA. Stephen Galloway and David Robb, *The Great CAA-Ovitz War: Whose Side Are You On?*, THE HOLLYWOOD REPORTER, Jan. 27, 1999, at 1.

83 Letter from Sigmund Arywitz, State Labor Commissioner, *State of Cal. Dept. of Industrial Relations* to Gang, Tyre, Rudin & Brown, attorneys (June 22, 1959) (File No. '59 IAc. A24E233-T).

84 International Shoe Co. v. Washington, 326 U.S. 310 (1945).

85 Burger King v. Rudzewicz, 471 U.S. 462 (1985).

86 Id. at 476.

87 However, it should be noted that the statute of limitations under Labor Code §1700.44(c) for bringing proceedings for violations of the Act would be extended from one year to three years. Cal. Assembly Bill 884 §9, 1999-00 Reg. Sess. (Cal. 1999).

88 David Robb, *Kuehl Manages Managers*, THE HOLLYWOOD REPORTER, Mar. 15, 1999, at 1.

89 Cal. Assembly Bill 884 §11, 1999-00 Reg. Sess. (Cal. 1999), proposed addition of Labor Code §1701.4(a).

90 Cal. Assemb. Bill 884 §11, proposed addition of Labor Code §1701.4(b).

91 Cal. Assemb. Bill 884 §11, proposed addition of Labor Code §1701.5.

92 Cal. Assemb. Bill 884 §11, proposed addition of Labor Code §1701.6(a)(3).

93 Cal. Assemb. Bill 884 §11, proposed addition of Labor Code §1701.6(b). This tracks the language applicable to agents. See Labor Code §1700.5(d).

94 Cal. Assemb. Bill 884 §11, proposed addition of Labor Code §1701.12. The comparable agency fee is found in Labor Code §1700.12.

95 Cal. Assemb. Bill 884 §11, proposed addition of Labor Code §1701.12(b). The comparable agency fee is found in Labor Code §1700.12(b).

96 Cal. Assemb. Bill 884 §11, proposed addition of Labor Code §1701.15. The comparable agency bond is found in Labor Code §1700.15.

97 Cal. Assemb. Bill 884 §11, proposed addition of Labor Code §1701.9(b). Again, this is the same as for agents. See §1700.9(b).

98 Labor Code §1700.23.

99 Cal. Assemb. Bill 884 §11, proposed addition of Labor Code §1701.23(a).

100 Labor Code §1700.24.

101 Cal. Assemb. Bill 884 §11, proposed addition of Labor Code §1701.24(a). Although the bill does not specifically grant the Commissioner power to approve or disapprove fee rates, the Commissioner considers fees one of the elements subject to the Commissioner's approval.

102 Labor Code §1700.25.

103 Cal. Assemb. Bill 884 §11, proposed addition of Labor Code §1701.25(a).

104 Labor Code §1700.44(a) provides that the statute governs "cases of controversy arising under *this* chapter" (emphasis supplied). The Kuehl Amendment would create a new—and different—Chapter 4.5 of Division 2 of the Labor Code. See Cal. Assemb. Bill 884 §11.

# The Packaging Game

by J.A. Clement

Your running mates can make you famous

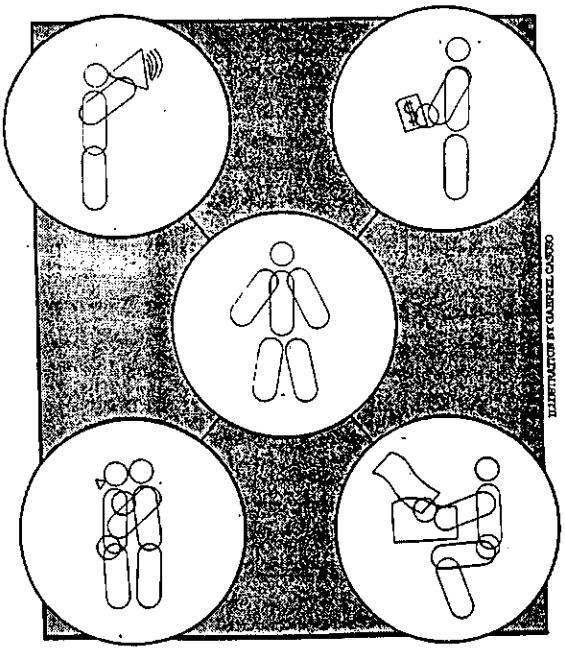


ILLUSTRATION BY GABRIEL CASSO

Ordinary agents *sell* movie scripts; superagents *package* them.

This in a nutshell is the essence of today's packaging game. There's a world of difference between selling and packaging. One is a time-hallowed, slightly stuffy procedure that's as old as show business. The other is a fast-track entrepreneurial crapshoot inherited from the days of the Hollywood studio czars. The new breed of packagers—superagents in Hollywood parlance—are perhaps the prime movers-and-shakers in today's entertainment industry.

There are not many of them. At the highest level, probably not more than eight or 10 on both coasts. Agents like Sam Cohn at ICM in New York; Marty Bauer at William Morris in New York; Sue Mengers at ICM in Los Angeles; and Stan Kamen and John Ptak, William Morris West Coast big guns.

The art of packaging, as practiced by these adepts, consists of bringing together a script, a star (or stars), a director, and a producer in such a way that a movie irresistibly results.

In essence, it's not much different from what the Darryl Zanucks, the L.B. Mayers, or the Adolph Zukors used to do during Hollywood's golden age. In this sense, today's agent/packagers are the true heirs of the old studio bosses. Those moguls packaged movies. So do modern superagents. The only difference is that they're employed by different outfits.

And the power of some of today's agents approaches that of old-time studio heads. The proof of the pudding is the fact that agents can—and do—job-hop between agencies and Hollywood boardrooms. Take David Begelman, for instance. He was CMA's top packager in the early 70's. (CMA, for those who don't remember, was one of the parents of ICM.) Then he defected to Columbia Pictures to become head of motion picture production. Now he has switched to M-G-M, holding the same post.

Agents picked up the packaging reins from the studios when the downfall of the contract system set hoards of stars, directors, and writers free from the dictatorial confines of the studios. With all of this talent no longer tied down, studios lost much of their ability—indeed, their desire—to put together film packages.

But *someone* had to assemble movies—come up with the essential brew of writers, directors, and actors that was necessary if films were ever to find their way onto the screen. The job fell more and more to the agents, for the simple and cogent reason that the agents had the inside track with the "talent."

"Access to talent is the name of the game," says Marty Bauer, William Morris' top East Coast packager. "A movie is put together by whomever has access to the stars, the writers, the directors. And it's usually big agencies that have that access."

The role of the studios—the "majors"—in today's movie making is relatively passive. In the words of one packager: "The studios are merely receptacles—receptacles for movies made by other people." What *do* the studios do, then? They provide financing for already assembled packages, and they distribute the finished product.

True, studios still do buy properties—scripts, novels, treatments, original screenplays—but in most cases they prefer not to get too deeply involved in the development stages of a film. They'd rather see a proposal in more advanced form, preferably a full-blown package on which they can bestow a simple yes or no. Studios like to know exactly what they're plunking down their money for, and every studio producer will tell you that a star/director/writer combination is a much more attractive investment than a "naked" unpackaged script.

The basis of every package is a Story. (Story with a capital S, to indicate the reverence Hollywood holds for this item.) The story can be in the form of a screenplay, a treatment, or an adaptation from a novel or a play. It has become orthodoxy in the entertainment business that a good story is the basic element of every successful movie. More than anything else these days, studios are looking for good stories: widely appealing subjects, interesting plots, sympathetic characters.

But in spite of the bedrock importance of the script, a package is rarely sold to a studio on the basis of a screenplay alone. A "bankable" star or director usually has to be committed to the project before a studio will agree to finance a picture. A big name on the marquee is money in the bank to producers, and in view of the fact that studios regularly shell out $10 to $15 million for a single movie, such concern is understandable. The script itself rarely offers this type of built-in insurance; it's not a proven quality, like a box-office star. Robert Redford's name on a picture will sell tickets; Bob Fosse's name will sell tickets; but John Q. Screenwriter's *won't*. Occasionally one of the rare "name" screenwriters (Paddy Chayefsky, William Goldman, or Robert Towne, for instance) will find himself the prime attraction in a film package, but it still doesn't happen often. However, the climate is changing daily. More and more screenwriters are the box-office draws.

Agents say that a successful package usually contains one particular element that stands out, that catches the studio's eye and results in a sale.

"My job as an agent," say one packager, "is to make sure that each package I put together has that one magic element—usually a star or prominent director—that will whet a studio's appetite and make the production chief say, 'OK, I want to make this picture.' "

A good agent will tailor the package to highlight whichever element is likely to prove the prime selling point. If a script contains a juicy central role, for instance, he'll go after a big star to play it; the star will be the centerpiece of the package. (Think of *Kramer vs. Kramer*, *Norma Rae*, or *Simon*.) If on the other hand, it's an ensemble piece, then a strong director will be the crucial element. (*Breaking Away* or *Happy Birthday, Gemini*, among the current crop.)

In the case of *Simon*, for instance, it was the presence of a star—Alan Arkin—that sold the package. Marshall Brickman was the writer/director, and while his screenwriting credentials were impeccable (as Woody Allen's frequent co-scenarist), he had never directed a picture before. Paramount, for whom the script was originally written, was nervous about that. Then, Orion Pictures told Brickman's agent at William Morris that Orion would make the movie on condition that a star could be found for the leading role. Brickman's agent got Arkin interested, and the deal was made.

With *Happy Birthday, Gemini*, it was not a star but a director that was crucial to the selling of the completed package. *Gemini* contains a baker's dozen roles, most of them of relatively equal prominence. There is no plum role that stands out above the rest, and there are no stars in the film. (Madeline Kahn, although a talented actress, is not considered a bankable star in the financial sense.) The packaging of *Gemini* began when a William Morris television agent asked several producers to see the Albert Innaurato play, which was then playing Off Broadway in New York. Several of them liked the play and thought there might be a movie in it. The idea was then put on the desk of the Morris agency's top New York film packager, whose job it was to put the property together with a suitable director who would be attractive to a major studio. Richard Benner, who had made a name for himself with *Outrageous*, the low-budget Canadian *succes de scandale*, was his eventual choice. On the basis of Benner's involvement, United Artists agreed to get involved. The Morris agency then assembled the rest of the cast and delivered the finished package to UA.

One New York agent estimates that only in about 10 percent of the cases is the screenplay—or the screenwriter—the decisive factor in selling a package to a studio. By contrast, perhaps 50 percent of all packages ride on the name of the star. In the remaining 40 percent or so, it's the director who tips the scales.

This is, of course, a generalization. Some studio production chiefs, particularly younger ones, claim that they are not unduly influenced by stars and directors ("The day of the $3 million star is going fast," they say), but give more weight to the story or the script. Kathrin Seitz, for instance: she's the East Coast VP for CBS's new feature film division. She says her first concern in every case is a strong story. In any package, she tends to evaluate the writer (or the property) first, the producer second, the director third, and the star (or stars) fourth and last. "Story is everything nowadays," she says. "You can't sell a package on a star's name alone. You can put the biggest box-office star together with the hottest director, and you'll still end up with a bomb if you don't have a good story to start with."

Every package develops differently. Each one has a life of its own. Sometimes it's not the agent who initiates the package, but the studio. If, for instance, a studio has an undeveloped property on its shelves—say, a bestselling novel to which the studio owns the rights—the producer may take the item to an agent and say, in effect: "Here, see what you can do with this." It then becomes the agent's job to build a package around the property. The completed ensemble-with a director, a cast, and a screenwriter—is then tossed back into the studio's lap for actual production.

Producers develop a pretty good sense of which agent to go to for packag-

ing. Basically, the producer will approach whichever agent represents the particular talent demanded by the story. "If, say, I have a script that sounds right for [director] Peter Yates," says Kathrin Seitz, "then I'll go to Sam Cohn at ICM. Or, if the script has a starring role for a woman, I'll go to whomever has the particular actress I want."

The growth of the big agencies—octopuses like ICM and William Morris, with literary, motion picture, television, music, and theatre arms—can give rise to some fairly convoluted deals. The literary department of the Morris agency recently sold the screen rights to Gay Talese's controversial *Thy Neighbor's Wife* to United Artists for $2.5 million. United Artists is currently looking for a director for the film version. A screenwriter will be assigned to the property after the director is hired. It is completely possible that UA might find itself turning full circle and coming back to the Morris agency—the film department this time—for a director, a screenwriter, or indeed for an entire package.

Many, if not most, agent/packagers like to start building a package even before the screenplay is completed. A director, especially, is often brought in to keep an eye on the writing and to work hand-in-hand with the writer, the object being to produce a camera-ready script by the time the package is submitted to the studio. Marty Bauer says, "The director's contribution to a developing script can be crucial. Film is a collaborative medium, and the earlier the collaboration begins, the better."

The director's contribution is most important on "concept" films, i.e., movies in which the subject matter and the story are the most important elements. (*The China Syndrome* is an example. So is *An Unmarried Woman*.) The direction will usually be the major element in defining the film's viewpoint and giving the film its overall flavor. This is opposed, say, to a comedy, where the writer's contribution—the script, the jokes, the actual words—is often of much greater importance. In general, packagers like to assign a director to a concept film as early as possible, usually before the script is completed and occasionally even before a writer is hired.

With new or inexperienced writers, packagers are unanimous in their advice: get a good director, and bring him in early to supervise the writing of the entire script. An experienced director can tell whether a particular scene or bit of business, as written, will work on the screen. If there's a potential trouble spot, he/she should be able to put a finger on it. By providing a running commentary on exactly what the camera can and cannot do, the experienced director can keep a fledgling writer out of hot water.

Not all directors will consent to work with screenwriters. A few are so notoriously disruptive, or intolerant, or demanding that a producer wouldn't dream of letting them near a writer. Needless to say, these directors don't often find themselves involved in packages. One prominent East Coast packager says, wryly: "I can think of at least ten bankable directors who shouldn't be involved in the development of material. I won't tell you who they are, though. If I did, none of them would ever speak to me again."

In such cases, adjustments must be made. If the director can't or won't work with the writer, often the producer *will*. A sensitive producer can take up much of the slack left by a tempermental director. And contrary to popular opinion, there *are* sensitive producers. Many of the younger studio producers, in particular, have come up through story departments or have had previous experience in publishing houses. As a group, they tend to have good editorial sense combined with instinctive "camera smarts." And they all proclaim the necessity of working closely with their writers. These are executives such as Sherry Lansing (president of 20th Century-Fox Productions) and Kathrin Seitz, to name two of the most prominent.

Seitz, for instance, says she varies her approach on each script with which she becomes involved. In most packages, she likes to have a director involved from the beginning. "But not always," she says. "Some stories are so dependent on the writer's individual talent or vision that another person's involvement in the script would probably be a bad idea. Bringing in a director too soon might only dilute the quality of the script." A case of too many cooks spoiling the broth. In these (admittedly rare) cases, she prefers to give her writers free rein until the script is in final form. She admits she'll go to great lengths to protect her writers when she feels it's necessary. "Not every property should be packaged early in the game. Comedy is the most sensitive area. It's so dependent on the author's particular gift, his brand of humor. I have a script in development now, for instance—a romantic comedy. My instinct tells me the writers should get the script in final form before we try to package it or bring in a director. It has to develop at its own pace. I'm being very patient—it's the only way to handle this particular property."

The current consensus among agents is that the business of packaging is about to take a big leap upward, as cable and subscription TV networks proliferate and videodisks come onto the market. An explosion in demand for film packages will be the inevitable result as studios and independent producers scramble for product.

If packagers have one universal complaint, it's the difficulty in finding enough good scripts to satisfy the demand of the market. There just aren't enough workable screenplays and properties to go around, and every packager spends literally hours a day reading, trying to mine every last bit of potential out of the scripts that cross his desk.

"We're starved, and I mean *starved*, for good basic material," says Marty Bauer. "Any writer who can turn out a good commercial script is sitting on a gold mine." •

# Taking Credit

## WEARY OF SHARING TOP BILLING, HOLLYWOOD'S WORKING PRODUCERS SPEAK UP

BY AMY WALLACE

DIRECTORS DIRECT. ACTORS act. Editors edit. But who can fathom what producers do—especially as the ranks of those credited on each film and TV show expand like so much algae on a stagnant pond?

Consider the movie *Beautiful*, starring Minnie Driver, which was released by Destination Films last fall. Fourteen people received producing credit on the comedy. That's more humans than it took to write, cast, direct, shoot, edit, score, and art-direct the project. And it's probably at least 11 too many.

"Depending on the scope of the picture, one or two producers can do the work. And you *know* there aren't over three," says producer Saul Zaentz, whose films include *The English Patient*, *The Unbearable Lightness of Being*, and *One Flew Over the Cuckoo's Nest*. So how to explain the producer glut? "The problem is the studios. They'll give anybody a credit."

Here's how it often works: Movie Studio X wants to sign Hot Actor Y to appear in a film. Actor Y's manager demands producer credit and a fee. This is good for the actor, who no longer has to pay his manager a full commission. It's good for the manager, who yearns to be seen as not just a deal maker but a creative player. The studio is happy to get the star on deck. But the producers who actually developed the material and will live day and night on the set feel, well, shafted.

"A real producer compromises so much to get their movie made," says Debra Hill, who produced *Halloween* and *The Fisher King*, among other films. "But even our parents say to us, '*What* did you do on this movie again?'"

Weary of such questions, the Producers Guild of America has come up with a definitive answer. Or, more precisely, 112 of them.

Determined to cull the genuine movie and TV producers from the phonies, the PGA has compiled a list of duties that producers perform. The functions—42 for movies, 70 for TV—are spelled out on a PGA questionnaire that asks respondents to characterize their involvement in such areas as securing financing and hiring staff. Aware that the entertainment industry's favorite pastime is overstatement, the PGA verifies the answers and draws its own conclusions.

David Franzoni, for example, was one of three screenwriters on *Gladiator*. He also is one of three full producers credited, and so earlier this year he submitted his name for consideration for a 2001 PGA Golden Laurel Award, the guild's top honor. But a PGA accreditation panel, while acknowledging that Franzoni had performed some producing duties, ruled that only Douglas Wick and Branko Lustig should be eligible to win the producing award for Best Picture. Franzoni appealed the decision and lost.

In a town of overfed egos, the producers' campaign to curb credit inflation is easy to mock. For one thing, several people in Hollywood who've made their name in other jobs also legitimately produce—manager Craig Baumgarten, director Cameron Crowe, actors Drew Barrymore and Sean Connery, and writer Aaron Sorkin, to name a few. So what if some manager (or stunt coordinator, personal assistant, or masseuse) gets his name up in lights for a job he didn't do? Does anyone outside the 310 area code even notice, let alone care?

Producers think we should. They say strong producers—those whose power is not diluted by the presence of half a dozen wanna-bes—keep costs down and enhance the quality of a movie or TV show.

"A producer is kind of like the builder of a home," says Jerry Bruckheimer, the prolific producer of action films. "The builder doesn't actually build the house. But he supervises, hires the architect, chooses materials. You'll never see him out there with a hammer and a nail. But he'll get the permits, make sure there are water and sewer lines, and eventually try to sell the house. There wouldn't be a movie without us producers."

And yet, says producer Gale Anne Hurd,

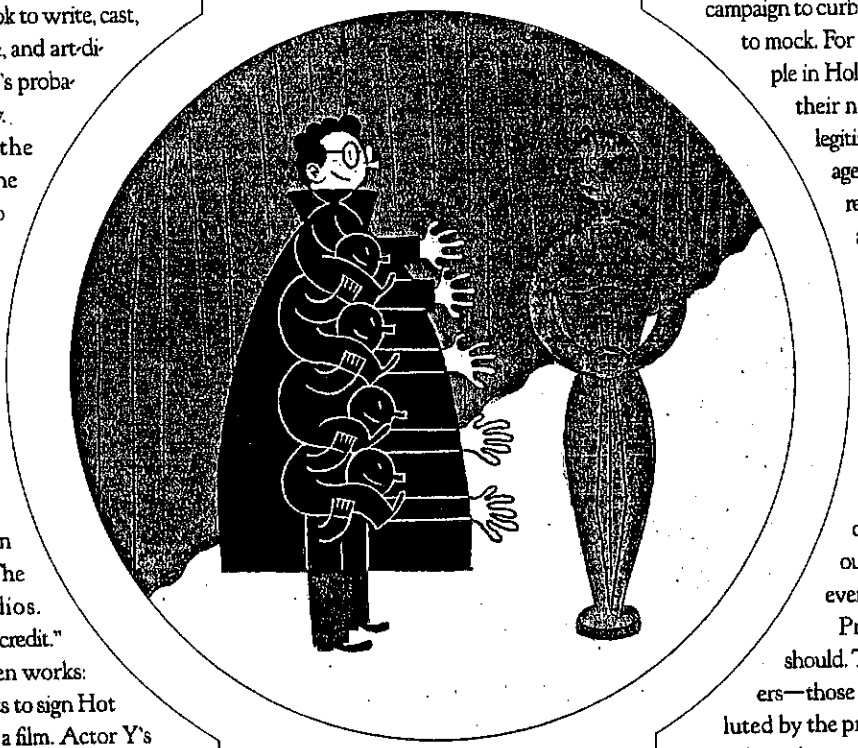


ILLUSTRATION BY STEVEN GUARNACCIA

whose credits include *The Terminator*, *Aliens*, and *Armageddon*, too many builders make for trouble. "Imagine if you've got six people with six different agendas," she says, "all having equal say. You've got the actor's manager, who wants to protect their client regardless of whether the position they're taking is best for the movie overall. You've got a writer, who wants first and foremost to protect their words. You have anyone else who's capable of negotiating a credit, who thinks because they have the credit, they've earned the right to exercise their opinion. Imagine that every design on a film has to be approved not only by the director but by 14 producers. How can the prop master ever get anything accomplished?"

The problem, Hurd notes, is self-perpetuating. Getting a producer credit doesn't necessarily mean compensation, but it's invaluable in setting up one's next project. No matter how a credit is obtained, it can be built upon. "The way Hollywood works is, once you've gotten something, it becomes part of the terms of your deal," Hurd says. "There is precedent. If you got executive producer last time, you want coproducer now. I don't think there's an end in sight."

IN CONTRAST TO THE GUILDS THAT are representing Hollywood's writers and actors in current contract negotiations, the PGA—by order of the National Labor Relations Board—may not collectivize its 650 members to strike. A professional organization, it lacks the power of a union. So while writers' and directors' credits are arbitrated by the guilds, studios and networks determine producers' credits. To change that, the PGA must cajole, not demand.

Fortunately for the PGA, its executive director, a lawyer and former business affairs executive for Universal Television named Vance Van Petten, is indefatigable. His Hollywood office, located across from the Cinerama Dome on Sunset Boulevard, is crammed with huge black-and-white photographs of famed producers like David Brown and Howard W. Koch, and Van Petten gestures toward them as he rails against the "ludicrous" credit mess.

**"A real producer compromises so much to get their movies made. But even our parents say to us, 'What did you do on this movie again?'"**

Although many say Van Petten can't win, he refuses to listen. He would rather launch into a story about one producer who felt so mistreated he came to the PGA office in tears. Already, Van Petten says, he has gotten "a couple" of TV networks, three movie studios, and several independent production companies to agree to the PGA's newly minted accreditation process—provided that he can get a majority of entertainment companies on board.

"We haven't yet approached every studio," says Van Petten. He wants the studios and the networks to have eligible producers use the guild's new certification mark, a laurel leaf encircling the initials PGA, in onscreen credits (just as cinematographers use ASC, for the American Society of Cinematographers, to indicate their professionalism). "I think within a year we can do it. But I admit, I'm an optimist."

The PGA first got serious about the issue last year, when it created several credit determination panels to ascertain which producers really produce. Their first time out, the panels identified 22 credited producers and executive producers of episodic TV shows who had not been "predominantly responsible for the producer functions." Those people, who included a few of Hollywood's biggest names—producer Brian Grazer, director Ron Howard, and manager Brad Grey among them—were scratched from the list of nominees for the 2000 Golden Laurel Awards. (Although, just to prove there were no hard feelings, at this year's Golden Laurel ceremony in March, the PGA gave Grazer—whose films include *Splash*, *Apollo 13*, and *How the Grinch Stole Christmas*—a Lifetime Achievement Award.)

This year the PGA again found a few people who, despite receiving contractual credit, had not performed a preponderance of the producing duties. That's what knocked Franzoni out of the running for a 2001 Golden Laurel for Producer of the Year. At least one actor-producer took her own name out of contention. Ellen DeGeneres, who as an executive producer of HBO's *If These Walls Could Talk 2* could have been a Golden Laurel contender, wrote Van Petten to say the project's other producers deserved the accolades.

The Academy of Motion Picture Arts and Sciences also has taken action on the credit issue. After years of discussion—and especially after five producers mounted the stage in 1999 to accept the Best Picture Oscar for *Shakespeare in Love*—the Academy's producers branch decreed that a maximum of three producers may receive Best Picture Oscars for any given feature.

"We spent over a year trying to figure out whether it should be one or two. Three was more than enough," says Zaentz, who served on the committee that made the decision, which took effect last year. "It's silly to give five Oscars when you know at least two of the people had nothing to do with the actual making of the movie. They may have put up the money, but so do banks, and they don't come in and say, 'We want to be a producer.'"

> "It's silly to give five Oscars when you know at least two of the people had nothing to do with the actual making of the movie."

In Hollywood, though, such restraint is rare, as producer David T. Friendly learned when he was trying to cast *Big Momma's House*, last year's blockbuster comedy. Friendly desperately wanted Martin Lawrence to star, and Lawrence's managers, Michael Green and Jeff Kwatinetz, said fine. But both wanted full producer credit.

"At that point in my career, I could not afford for this movie not to get made," Friendly says. "I was on my own. Nobody at the studio was saying, 'We'll back you up.' They were saying, 'Get Martin Lawrence.' So I forged a compromise. I didn't think it was 100 percent appropriate, but I did the best I could."

Friendly and Green received full producer credit, Kwatinetz and Lawrence himself were among four executive producers, and another of Lawrence's managers, Aaron Ray, was among three coproducers, for a total of nine. (A publi-

cist for Green, Kwatinetz, and Ray's management company, the Firm, said the three declined to comment.)

"If all these people would find an idea, hire the writers, find the director, get the studio on board, attend all the casting sessions, go on every tech scout, travel on location scouts, be on the set every day at call and stay until wrap, watch the dailies, participate in every marketing meeting, and attend every preview, then I would have no issue with them being called producers," Friendly says. "I don't call myself a manager."

FIVE'S A CROWD: Shakespeare in Love's *winning producers*

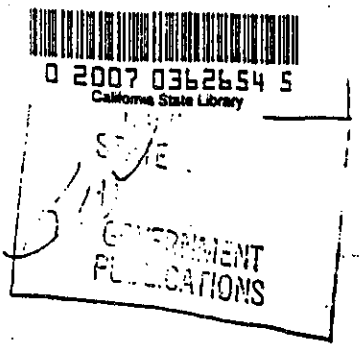
Still, many managers call themselves producers. Eric Gold, for example, who manages Damon, Marlon, Shawn, and Keenen Ivory Wayans, has received producing credit on nine of their movies since 1992. On last year's *Scary Movie*, he and one of his associates were among a whopping 11 producers.

Managers are by no means the only aspiring producers in town. Of the 14 *Beautiful* producers, for example, 6 worked at Destination Films, the movie's distributor. The company's top honchos at the time, Steve Stabler, Brent Baum, and Barry London, each took an executive producer credit. Mark Morgan, a Destination production executive, had read the script first, so he picked up a coproducer credit. So did Jade Ramsey, a production exec whose main contribution was that she put the script into the hands of Minnie Driver's manager's assistant.

John Bertolli, then the cohead of production at Destination, shared full producer credit with B.J. Rack, an experienced producer whose company, Prosperity Pictures, had put up 60 percent of the film's $8 million budget. Bertolli and Rack, along with line producer Richard Vane, who gained an exec producer credit, performed the bulk of the producing duties.

Who, then, were the other six? Marty Fink was Rack's boss at Prosperity Pictures, which apparently was enough to win him an exec producer credit. The two heads of Flashpoint Ltd., the British entertainment financier that was Prosperity Pictures' largest investor, took exec producer credits as well. The screenwriter, Jon Bernstein, chalked up a coproducer credit (at his agent's insistence) after he deferred payment on a rewrite. Kate Driver, Minnie's sister and producing partner, became an executive producer when her sibling agreed to play the lead. Wendy Japhet, an associate of Sally Field, received the same title when Field signed on to direct.

In the end, it seemed the only person involved with *Beautiful* who didn't seek a producer credit was Driver's manager, Julie Yorn, whose assistant, Kim Greitzer, had fielded the script. At Artists Management Group—the firm Yorn, along with brother-in-law Rick Yorn, runs with Michael Ovitz—Greitzer has since been promoted. She is now a manager, which means that someday she, too, may call herself a producer. (LA)




# EXECUTIVE SUMMARY

## Report of the California Entertainment Commission

The California Entertainment Commission was created by the California Legislature in 1982 and was activated on the effective date of the statute, January 1, 1983. The Commission was mandated to recommend to the Governor and the Legislature any changes deemed appropriate to California's Talent Agencies Act which might serve to make the Act a model bill regarding the licensing of agents and other representatives of artists in the entertainment industry.

The Commission which sunsets on January 1, 1986, consists of 10 members: 3 appointed by the Governor, 3 by the Senate Rules Committee and 3 by the Speaker of the Assembly. Each appointing power was required to appoint an artist, a talent agent and a personal manager. The 10th member of the Commission was statutorily designated as the Labor Commissioner.

The Commission is required by statute to submit its report not later than January 1, 1986.

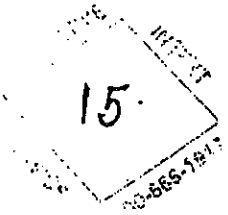
The attached report submitted by the Commission was prepared on the basis of the study of relevant materials and discussions at 15 meetings held between June 20, 1983, and January 10, 1985.

The Commission considered six principal issues, and came to conclusions and has submitted recommendations with respect to each. The issues and conclusions and recommendations are as follows:

Issue 1. Under what conditions or circumstances, if any, should a personal manager or anyone other than a licensed talent agent be allowed to procure, offer, promise or attempt to procure employment or engagements for an artist without being licensed as a talent agent?

Conclusion:

No person, including personal managers, should be allowed to procure employment for an artist in any manner or under any circumstances without being licensed as a talent agent.



Issue 2. What changes, if any, should be made in the provisions of the Act exempting from the Act a person who procures recording contracts for an artist?

Conclusion:

No change should be made in the provisions of the present Act which exempt from the licensure requirements of the Act a person who procures recording contracts for an artist.

Issue 3. Should the criminal sanctions of the Act, removed by AB 997 (Stats. 1982), be reinstated and, if so, in what form?

Conclusion:

Criminal sanctions removed from the Act by AB 997 should not be restored to the Act.

Issue 4. Should the sunset provisions added to the Act by AB 997 be deleted?

Conclusion:

The sunset provisions added to the Act by AB 997 should be deleted.

Issue 5. Should the entire Act be repealed and/or should there be a separate licensing law for personal managers?

Conclusion:

The entire Act should not be repealed, and there is no need for a separate licensing law for personal managers.

Issue 6. What other language changes, if any, should be made in the Act?

Conclusion:

Several changes to the present Talent Agencies Act should be made and are recommended in the report.

Certain of these proposed amendments address aspects of the qualifications necessary to become a talent agent. The bond required from applicants is proposed to be increased and certain other conditions to the issuance of a license have been added for the purpose of provided added protection to the artist. Certain other provisions address the fudiciary relationship between the talent agent and the artist and provide, among other things, for the establishment of a trust fund to provide for the proper accounting for income received by the talent agents which is payable to the artist. Certain other proposed amendments are in the nature of housekeeping.

The Commission believes that if the amendments to the Talent Agencies Act recommended in the report are made a part of the Act by statute, the Talent Agencies Act of California will, in pursuance to the legislative mandate to the Commission, become a model statute of its kind in the United States.

Dated: December 2, 1985

C. Robert Simpson, Jr.
Chair
California Entertainment Commission

# CALIFORNIA ENTERTAINMENT COMMISSION

This report relating to the California Talent Agencies Act (sometimes referred to as the Act) is submitted by the California Entertainment Commission (Commission) to the Governor and the Legislature pursuant to California Labor Code Sections* 1701 to 1704**. These sections, as amended, established the Commission, directed the preparation of this report containing recommended changes in the Act and required that this report be submitted not later than January 1, 1986.

Labor Code Section 1701, which established the Commission, provides as follows:

> There is hereby created in State government the California Entertainment Commission consisting of 10 members. Three members of the commission shall be appointed by the Governor, three members by the Speaker of the Assembly, and three members by the Senate Rules Committee. Each appointing power shall



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*Reference to Section is to the California Labor Code, unless otherwise noted.

**California Statutes (Stats) of 1982, Chapter (Ch.) 682. Effective January 1, 1983.

appoint a licensed talent agent, a personal manager of at least three artists, and an artist. The Labor Commissioner shall also be a member of the commission.

Appointments to the Commission were made in late 1982. The members of the Commission and their respective appointing powers are as follows:

| Commission Member | Appointed by |
|---|---|
| **Artist** | |
| Ed Asner | Senate Rules Comm. |
| John Forsythe | Governor Brown |
| Cicely Tyson | Speaker of Assembly |
| **Talent Agent** | |
| Jeffrey Berg | Speaker of Assembly |
| Roger Davis | Governor Brown |
| Richard Rosenberg | Senate Rules Comm. |
| **Personal Manager** | |
| Bob Finklestein | Governor Brown |
| Patricia McQueeney | Senate Rules Comm. |
| Larry Thompson* | Governor Deukmejian |

The State Labor Commissioner, C. Robert Simpson, Jr., is also a member of the Commission, pursuant to Labor Code Section 1701, above, and served as Chair.

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*Appointed by Governor Deukmejian following the resignation of Irving Azoff.

The Commission met 15 times between June 20, 1983, the date of its first meeting, and January 10, 1985, the date of the last meeting held by the Commission. At its first meeting, the Commission adopted the following rules of procedure:

a) A quorum for any meeting would be five.

b) Any action of the Commissioner would require the attendance of at least two artists, two personal managers and two talent agents, and would require the vote of a majority of the Commission.

c) The Chair would not be a voting member except to break a tie.

The Commission was mandated by Section 1702* to recommend a model bill relating to the licensing of agents and representatives of artists in the entertainment industry in general and the recording industry in particular.

Pursuant to this statutory mandate, the Commission studied the laws and practices of California and of New York and other

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*Section 1702 provides, as follows:

The commission shall study the laws and practices of this state, the State of New York, and other entertainment capitals of the United States relating to the licensing of agents and representatives of artists in the entertainment industry in general, and the recording industry in particular, so as to enable the commission to recommend to the Legislature a model bill regarding this licensing.

entertainment capitals of the United States. In the course of its deliberations, it analyzed the Act in minute detail.

In the judgment of a majority of the members of the Commission, the Talent Agencies Act of California is a sound and workable statute and the recommendations contained in this report will, if enacted by the California Legislature, make that Act a model statute of its kind in the United States.

The recommendations of the Commission submitted in this report were, in all cases, supported by the majority of the members of the Commission. A few recommendations were approved unanimously. Minority views of members of the Commission on specific issues were invited at the close of the Commission's final meeting: none was received.

This report is submitted in accordance with Section 1703.* The sections of the report which follow are a summary of the major issues addressed by the Commission and a discussion with conclusions and recommendations of the Commission on each. A short background summary of the legislation leading up to the Talent Agencies Act is attached as Appendix A.

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*Section 1703 provides, as follows:

Deadline for Report--Expenses. The commission shall report to the Legislature and the Governor not later than January 1, 1986. All expenses of the commission shall be appropriated in the Budget Act.

ISSUES

The principal issues addressed by the Commission were as follows:

1. Under what conditions or circumstances, if any, should a personal manager or anyone other than a licensed talent agent be allowed to procure, offer, promise or attempt to procure employment or engagements for an artist without being licensed as a talent agent? (Hereinafter these basic functions of a talent agent which comprise the statutory definition of talent agent, will be referred to collectively as "procure employment.")

2. What changes, if any, should be made in the provisions of the Act exempting from the Act a person who procures recording contracts for an artist?

3. Should the criminal sanctions of the Act, removed by AB 997, be reinstated and, if so, in what form?

4. Should the sunset provisions added to the Act by AB 997 be deleted?

5. Should the entire Act be repealed and/or should there be a separate licensing law for personal managers?

6. What other changes, if any, should be made in the Act?

to be a person or corporation who engages in the occupation of procuring, offering, promising or attempting to procure employment or engagements for an artist or artists, except that the activities of procuring, offering or promising to procure recording contracts for an artist or artists shall not of itself subject a person or corporation to regulation and licensing under this chapter. Talent agencies may, in addition, counsel or direct artists in the development of their professional careers.

Section 1700.5 provides in pertinent part, that--

> 1700.5. No person shall engage in or carry on the occupation of a talent agency without first procuring a license therefor from the Labor Commissioner.

The principal, and philosophically the most difficult, issue before the Commission, the discussion of which consumed a substantial portion of the time of most of the meetings of the Commission, was this first issue: When, if ever, may a personal manager or, for that matter, anyone other than a licensed Talent Agent, procure employment for an artist without obtaining a talent agent's license from the Labor Commissioner?

No clear legislative intent can be discerned to assist in answering this critical and fundamental question.

When the artists' manager provisions of the Employment Agencies Act were removed from that Act in 1959 (see Appendix A) the personal manager profession was still in its infancy.

The Talent Agencies Act of 1978, originally introduced as AB 2535, would have required a separate personal manager license for all personal managers, whether or not they procured employment for an artist at any time. However, that portion of the bill relating to personal managers was deleted.

In 1982, AB 997 was enacted by the Legislature and amended the Act in several significant respects. One of these amendments was the addition of the following language to Section 1700.44.

> It shall not be unlawful for a person or corporation who is not licensed under this chapter to act in conjunction with, and at the request of, a duly licensed and franchised talent agency in the negotiations of an employment contract.

The controversy over the question of whether anyone other than a licensed talent agent should be permitted to procure employment for an artist is long-standing in the entertainment industry.

The position of the talent agents is that anyone who performs the same function as they in procuring employment for an artist should be subject to the same statutory and regulatory obligations as they are--nothing more and nothing less. Those obligations include regulation of contract terms and fees by the

Labor Commissioner and the requirements of franchise agreements with unions representing the artists. Talent agents increasingly find themselves in competition with personal managers and others in seeking employment for clients. In the opinion of the talent agents, the issue is simply one of fairness: all who seek employment for an artist should be licensed or none should be licensed.

Personal managers contend that the reality of the entertainment industry requires that, in the normal course of the conduct of their profession, they must engage in limited activities which could be construed as procuring employment. Such activity is only a minor and incidental part of their services to the artist. The essence of their service, which is counseling the artist in the development of his/her professional career, is not the kind of activity which can feasibly or legitimately be made the subject of licensure. They argue that if they are required to be licensed, they will not only be required to procure employment for their clients, which is not the essence of their service to clients, but their fees, the length of the contracts, and other aspects of their service will be controlled by the Labor Commissioner and the unions. The fees charged by personal managers are generally higher than agents' fees charged for procuring employment, and managers believe that they reflect not only the value of an intangible service but the greater risk which is assumed by the personal manager in the eventual artistic success of their clients.

The Commission attempted over many hours, and by diligent exploration and analysis of alternatives, to find a common ground of compromise on which an answer to this long-standing industry controversy could be formulated, but without success.

The Commission considered, and rejected, alternatives which would have allowed:

- The personal manager to engage in "casual conversations" concerning the suitability of an artist for a role or part, subject, however, to the other restrictions of 1700.44 above. (A causal relationship between conversation and illegal unlicensed activity has not been established in decided opinions or cases but remains susceptible of proof.)
- The artist, with or without the consent of the licensed talent agent, to call a personal manager into the negotiations of an employment contract. (Under 1700.44 (above), a personal manager can become involved in the negotiations of an employment contract only at the request of a duly licensed and franchised talent agent.)
- The personal manager to act in conjunction with the talent agent in the negotiation of an employment contract whether or not requested to do so by the talent agent. (Under 1700.44,

a personal manager can act in conjunction with the talent agent, only at the request of the talent agent.)

The Commission also reviewed and rejected proposals that would have exempted from the Act:

- Anyone who does not charge a fee or commission or other form of compensation for procuring employment for an artist;

and

- Anyone who is a bona fide employer of the artist who does not represent the artist in procuring employment.

Thus, in searching for the permissible limits to activities in which an unlicensed personal manager, or anyone, could engage in procuring employment for an artist without being licensed as a talent agent, the Commission concluded that there is no such activity, that there are no such permissible limits, and that the prohibitions of the Act over the activities of anyone procuring employment for an artist without being licensed as a talent agent must remain, as they are intended to be, total. Exceptions in the nature of incidental, occasional or infrequent activities relating in any way to procuring employment for an artist cannot be permitted: one either is, or is not, licensed as a talent agent, and, if not so licensed, one cannot expect to engage, with impunity, in any activity relating to the services which a talent agent is licensed to render. There can be no "sometimes" talent

## Issue 2

What changes, if any, should be made in the provisions of the Act exempting from the Act a person who procures recording contracts for an artist?

### Conclusion

It is the majority opinion of the Commission that the exemption of the Act for anyone procuring a recording contract for an artist should be retained in the Act.

### Recommendation

The Commission recommends that no change be made in the present language of the Act exempting procurement of recording contracts.

### Discussion

For purposes of the discussion of this issue, reference is again made to the definitive section of the Act--Section 1700.4--which provides in pertinent part as follows:

> The activities of procuring, offering, or promising to procure recording contracts for an artist or artists shall not of itself subject a person or corporation to regulation and licensing under this chapter.

A recording contract is an employment contract of a different nature from those in common usage in the industry involving personal services. The purpose of the contract is to produce a

permanent and repayable showcase of the talents of the artist. In the recording industry, many successful artists retain personal managers to act as their intermediaries, and negotiations for a recording contract are commonly conducted by a personal manager, not a talent agent. Personal managers frequently contribute financial support for the living and business expenses of entertainers. They may act as a conduit between the artist and the recording company, offering suggestions about the use of the artist or the level of effort which the recording company is expending on behalf of the artist. The personal manager may become involved in travel arrangements on behalf of the artist, sometimes accompanying the artist to oversee arrangements for planes and hotels.

However, the problems of attempting to license or otherwise regulate this activity arise from the ambiguities, intangibles and imprecisions of the activity.

The majority of the Commission concluded that the industry would be best served by resolving these ambiguities on the side of preserving the exemption of this activity from the requirements of licensure.

Issue 3

Should the criminal sanctions of the Act removed by AB 997 be reinstated and, if so, in what form?

Conclusion

It is the majority view of the Commission that the industry would be best served without the imposition of civil or criminal sanctions for violations of the Act.

Recommendation

The Commission recommends that the criminal sanctions which were removed from the Act by AB 997, not be restored to the Act.

It is further recommended that a new sentence be added to Section 1700.44 of the Act as follows:

> Any provision of any law or regulation of the State of California to the contrary notwithstanding, failure of any person to obtain a license from the Labor Commissioner under this Act shall not be considered a criminal act under any law of this State.

Discussions

The criminal sanctions in the nature of misdemeanor violations which were contained in the Act prior to their removal by AB 997 have been invoked on a number of occasions.

There is, however, an inherent inequity--and some question of constitutional due process--in subjecting one to criminal sanctions for the violation of a law which is so unclear and

ambiguous as to leave reasonable persons in doubt about the meaning of the language or whether a violation has occurred.

"Procure employment" is just such a phrase. While a majority of the Commission believes that there should be no unlicensed activity involving any aspect of procuring of employment for artists, the uncertainty of knowing when such activity may or may not have occurred at pain of criminal sanctions has left the personal manager uncertain and highly apprehensive about the permissible parameters of their daily activity.

Therefore, the Commission indicated in its early discussions that if criminal penalties were to be reinstated, the failure to obtain a license should be no more than an infraction, meaning that monetary but no criminal penalties should attach to the failure to obtain a license.

The Commission then considered the addition to the Act of the following:

> Any provision of any law or regulation of the State of California to the contrary notwithstanding, any person who violates any provisions of this chapter is guilty of a misdemeanor punishable by a fine not to exceed $1,000 for the first offense, $5,000 for the second offense and $10,000 for the third and each succeeding offense, or by imprisonment for a period of not more than six months, or both, except that violation of Section 1700.5

of this Act* shall be considered an infraction, punishable only by a fine in the above amounts.

Upon further deliberation, the Commission took no action on this proposed addition. Instead, it concluded that the industry would be best served by having no criminal sanctions of any kind attached to the Act.

The majority of the Commission believes that existing civil remedies, which are available by legal action in the civil courts, to anyone who has been injured by breach of the Act, are sufficient to serve the purposes of deterring violations of the Act and punishing breaches. These remedies include actions for breach of contract, fraud and misrepresentation, breach of fiduciary duty, interference with business opportunity, defamation, infliction of emotional distress, and the like. Perhaps the most effective weapon for assuring compliance with the Act is the power of the Labor Commissioner, at a hearing on a Petition to Determine Controversy, to find that a personal manager or anyone has acted as an unlicensed talent agent and, having so found, declare any contract entered into between the parties void from the inception and order the restitution to the

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*Section 1700.5 is the section which requires the talent agent to obtain a license from the Labor Commissioner.

## Issue 4

Should the sunset provisions added to the Act by AB 997 be deleted?

### Conclusion

The sunset provisions of the Act should be deleted.

### Recommendations

The following sections of the Act should be deleted:

1700.4(b). This section shall remain in effect only until January 1, 1985, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1985, deletes or extends that date.

1700.44: This section shall remain in effect only until January 1, 1985, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1985, deletes or extends that date.

### Discussion

This recommendation is supported by the basic premise of the Commission that, as modified by the recommendations of this report, the California Talent Agencies Act will be an exemplary statute and one which can serve as a model on this subject. It should, therefore, in all of its provisions, be made a permanent part of the laws of this state.

## Issue 5

Should the entire Act be repealed, and/or should there be a separate licensing law for personal managers?

### Conclusion

The Commission concludes that there is a need for the licensing of talent agents and that the Act should be retained. There is no need to license personal managers.

### Recommendation

The Talent Agencies Act as amended by the recommendations of this report is an exemplary statute which should be retained.

There is no rationale or practical justification for the enactment of a law requiring the licensing of personal managers.

### Discussion

For protection of artists, anyone who procures employment for an artist should be licensed. Such person has been legally defined as a talent agent, and licensure requirements and other regulatory provisions of the Talent Agencies Act are necessary and sufficient.

There is no justification for licensing personal managers. A significant fact should be underscored: It is not a person who is being licensed by the Talent Agencies Act: rather, it is the activity of procuring employment. Whoever performs that activity is legally defined as a talent agent and is licensed, as such. Therefore, the licensing of a personal manager--or anyone else who undertakes to procure employment for an artist--with the

Talent Agencies Act already in place would be a needless duplication of licensure activity.

The Commission concluded that the licensing provisions of the Talent Agencies Act are meaningful, and it reviewed and rejected amendments which would have added testing and other additional qualifying criteria for licensure over and above those already contained in the Act.

ISSUE 6

What other language changes, if any, should be made in the Act?

Conclusion

The Commission, by majority vote, and sometimes unanimously concluded that several administrative, technical and housekeeping changes would strengthen the Talent Agencies Act, make it more workable and enable it to serve the entertainment industry more effectively.

Recommendation

The several changes in the Act recommended by the Commission are set forth below, together with a brief statement of the reasons for each of the changes.

I. Add to Section 1700.2 the following:

> (d) Registration fee means any charge made or attempted to be made to an artist: (1) for registering or listing an applicant for employment in the entertainment industry; (2) for letter writing; (3) for photographs, film strips, video tapes or other reproductions of the applicant; (4) for costumes for the applicant; or (5) any charge of a like nature made, or attempted to be made to the applicant.

Reason: "Registration fee" is not presently defined in the Act and must be defined because it is later proposed that the

collection of a registration fee be prohibited. The prohibition against the collection of a registration fee has been added to Section 1700.40.

2. Add to that paragraph of Section 1700.4(a) which defines "artists" the word "models" as follows:

> The word "artists" as used herein refers to actors and actresses rendering services on the legitimate stage and in the production of motion pictures; radio artists; musical artists; musical organizations; directors of legitimate stage, motion picture and radio productions; musical directors; writers; cinematographers; composers; lyricists; arrangers; models and other entertainment enterprises.

Reason: As persons who function as an integral and significant part of the entertainment industry, models should be included within the definition of artist.

3. Amend the last paragraph of Section 1700.6 (d) by adding the following language which establishes the requirement for fingerprinting as a part of the application for a license as a talent agent, and which makes other minor changes, as follows:

> The application must be accompanied by two sets of fingerprints and affidavits of at least two reputable residents, ~~who have known or been associated with the applicant for two~~

~~years,~~ of the city or county in which the business of the talent agency is to be conducted who have known, or been associated with, the applicant for two years, that the applicant is a person of good moral character or, in the case of a corporation, has a reputation for fair dealing.

Reason: Fingerprints are necessary and should be required as a part of background checking of talent agents. The changes relating to the affidavits are intended to add to the credibility of those documents. The remaining changes are for clarification only.

4. Amend Section 1700.9 to read as follows:

1700.9 No license shall be granted to conduct the business of a talent agency:

~~(a) In rooms used for living purposes.~~

~~(b) Where boarders or lodgers are kept.~~

~~(c) Where meals are served.~~

~~(d) Where persons sleep.~~

~~(e) In connection with a building or premises where intoxicating liquors are sold or consumed.~~

(a) In a place that would endanger the health, safety, or welfare of the artist.

~~(f)~~(b) To a person whose license has been

revoked within three years from the date of application.

Reason: Existing language is somewhat archaic and difficult to enforce. The proposed revision accomplishes the purposes to be served in governing the location in which a talent agent may conduct business, and the language conforms to the Employment Agency Act.

5. Amend Section 1700.15 by increasing the bond required for issuance of the license from $1,000 to $10,000, as follows:

1700.15 A talent agency shall also deposit with the Labor Commissioner, prior to the issuance of renewal of a license, a surety bond in the penal sum of ~~one-thousand-dollars ($1,000)-ten-thousand-dollars-($10,000)~~ ten thousand dollars ($10,000).

Reason: Increase in the bond from $1,000 to $10,000 will serve as a truer test of the financial credibility of the applicant and will provide more meaningful protection to the artist who may have to have recourse to the bond.

6. Amend Section 1700.19 as follows:

1700.19 Each license shall contain:

(a) The name of the licensee.

(b) A designation of the city, street, and number of the-house premises in which the licensee is authorized to carry on the business of a talent agency.

(c) The number and date of issuance of the

license.

Reason: A housekeeping change to correspond to the changes suggested for Section 1700.9 (d)--(above).

7. Add to Section 1700.21 the following additional basis in subsection (d) for the revocation or suspension of licensing:

The Labor Commissioner may revoke or suspend any license when it is shown that:

(a) The licensee or his agent has violated or failed to comply with any of the provisions of this chapter, or

(b) The licensee has ceased to be of good moral character, or

(c) The conditions under which the license was issued have changed or no longer exist, or

(d) Licensee has made any material misrepresentation or false statement in his application for a license.

Reason: To give added protection to the artist against misrepresentation or falsity by the applicant.

8. Amend Section 1700.24 as follows:

Every ~~person engaged in the occupation of a~~ talent agency shall file with the Labor Commissioner a schedule of fees to be charged and collected in the conduct of such occupation, and shall also keep a copy of such schedule posted in a conspicuous place in the

office of such talent agency. Changes in the schedule may be made from time to time, but no fee or change of fee shall become effective until seven days after the date of filing thereof with the Labor Commissioner and until posted for not less than seven days in a conspicuous place in the office of such talent agency.

Reason: The language proposed to be deleted is inconsistent with references to talent agents in other sections of the Act and is redundant with the definition in Section 1700.4. Other changes are for clarification.

9. Delete Section 1700.25 as unnecessary and burdensome and add the following new section:

~~Before making any theatrical engagement, other than an emergency engagement, every person doing business as a talent agency, shall prepare, sign, and keep in his files a verified statement setting forth how long the applicant employer has been engaged in the theatrical business. Such statement shall set forth whether or not the applicant employer has failed to pay salaries or left stranded any companies, in which the applicant employer and, if a corporation, any of its officers or directors, have been financially interested~~

~~during-the-five-years-preceding-the-date-of application-and,-further,-shall-set-forth-the names-of-at-least-two-persons-as-references. If-the-applicant-is-a-corporation,-the statement-shall-set-forth-the-names-of-the officers-and-directors-thereof-and-the-length of-time-the-corporation-or-any-of-its-officers have-been-engaged-in-the-theatrical-business and-the-amount-of-its-paid-up-capital-stock. If-any-allegation-in-the-statement-is-made upon-information-and-belief,-the-person verifying-the-statement-shall-set-forth-the sources-of-his-information-and-the-grounds-of his-belief.--The-statement-shall-be-kept-for the-benefit-of-any-person-whose-services-are sought-by-any-such-applicant-employer.~~

A licensee who receives any payment (on behalf of an artist) shall immediately deposit same in a trust fund account maintained by him in a bank or other recognized depository.

Said fund, less licensee's commission, shall be disbursed to the artist within 15 days after receipt.

A separate record shall be maintained of all monies received subject to this section and said record shall further indicate the disposition thereof.

Reason: The deleted language is unnecessary and burdensome. The new language affords additional protection to the artist by providing safeguards for monies due and owing to an artist which are paid to the talent agency.

10. Delete the following language from Section 1700.26:

> Every talent agency shall keep records approved by the Labor Commissioner, in which shall be entered: (1) the name and address of each artist employing such talent agency; (2) the amount of fee received from such artist; ~~(3) the employment in which such artist is engaged at the time of employing such talent agency, and the amount of compensation of the artist in such employment, if any, and~~ (3) the employments ~~subsequently~~ secured by such artist during the term of the contract between the artist and the talent agency, and the amount of compensation received by the artists pursuant thereto; and (4) other information which the Labor Commissioner requires. No talent agency, its agent or employees, shall make any false entry in any such records.

Reason: The deleted language is redundant, unnecessary and burdensome.

11. Add and delete the following language to Section 1700.30:

No talent agency shall sell, transfer, or give away to any person other than a director, officer, manager, employee or shareholder of the talent agency any interest in or the right to participate in the profits of the talent agency without the written consent of the Labor Commissioner. ~~A violation of this section shall constitute a misdemeanor and shall be punishable by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500), or imprisonment for not more than 60 days, or both.~~

Reason: The proposed exceptions are required to avoid the necessity of having the Labor Commissioner act as an approving authority on such matters as stock issues, bonuses, compensation plans and testamentary instruments. The Labor Commissioner has no administrative qualifications or regulatory jurisdiction as to such matters.

The criminal penalty provisions have been stricken in accordance with the Commission's unanimous view, which is consistent with AB 997, that all criminal sanctions should be removed from the Act.

12. Amend Section 1700.33 to read as follows:

No talent agency shall send or cause to be sent, ~~any woman or minor as an employee to any~~

~~house-of-ill-fame,-to-any-house-or-place-of amusement-for-immoral-purposes,-to-places resorted-to-for-the-purposes-of-prostitution,~~ artist to any place where the health, safety, or welfare of the artist could be adversely affected, the character of which places the talent agency could have ascertained upon reasonable inquiry.

Reason: To broaden the protections to the artist in terms of places of permissible employment.

13. Add to Section 1700.40 the following first sentence:

No talent agent shall collect a registration fee.

Reason: To prohibit the collection of a registration fee which is unnecessary, burdensome and often subject to abuse.

14. Amend the third paragraph of Section 1700.44 as follows:

No action or proceeding may be ~~prosecuted~~ brought under this chapter with respect to any violation occurring or alleged to have occurred more than one year prior to commencement of the action or proceeding.

Reason: A language change to clarify the statutory period within which an action for alleged violation of the Act must be instituted.

15. Amend the fourth paragraph of Section 1700.44, as follows:

It shall not be unlawful for a person or

corporation who is not licensed under this chapter to act in conjunction with, and at the request of, a duly licensed ~~and-franchised~~ talent agency in the negotiations of an employment contract.

Reason: The reference to franchised talent agencies is unnecessary and unduly restrictive. Whether a franchise agreement exists between a talent agent and a union, guild or other franchising entity is irrelevant to the considerations of the Labor Commissioner in determining whether a person has acted as an unlicensed talent agent.

16. Amend the four lettered paragraphs of Section 1700.45 by adding the following underlined words to the end of subsections (a) and (b) thereof, as follows:

Notwithstanding Section 1700.44, a provision in a contract providing for the decision by arbitration of any controversy under the contract or as to its existence, validity, construction, performance, non-performance, breach, operation, continuance, or termination, shall be valid:

(a) If the provision is contained in a contract between a talent agency and a person for whom such talent agency under the contract undertakes to endeavor to secure employment, or

(b) If the provision is inserted in the contract pursuant to any rule, regulation, or contract of a bona fide labor union regulating the relations of its members to a talent agency, and

(c) If the contract provides for reasonable notice to the Labor Commissioner of the time and place of all arbitration hearings, and

(d) If the contract provides that the Labor Commissioner or his authorized representative has the right to attend all arbitration hearings.

Reason: To clarify the application of the enumerated conditions which must be met before an arbitration provision may be regarded as valid and enforceable.

17. Delete Section 1700.47 as obsolete and unnecessary and substitute the following:

~~Any persons who held an unrevoked or unsuspended license as a musician booking agency 90 days prior to the effective date of the repeal of the musician booking agency license law may apply for and be issued a talent agency license for the remaining term of such license without examination or fee. Any musician booking agency application pending 90 days prior to the effective date of~~

~~such repeal shall be reprocessed as a talent agency application upon written request of the applicant. Any fee on file will be applied to the talent agency application, the application shall meet all other requirements, including investigation, for a talent agency license before a talent agency license may be issued.~~

It shall be unlawful for any licensee under this Act to refuse to represent any artist on account of that artist's race, color, creed, sex, national origin, religion or handicap.

Reason: The Act should provide protection to the artist against breaches of these fundamental civil rights.

The foregoing report is respectfully submitted on this date of December 2, 1985.

C. Robert Simpson, Jr.
Chair
California Entertainment
Commission

## APPENDIX A

### Summary of Legislation Preceding the Talent Agencies Act

When the California Labor Code was enacted in 1937, the provisions of the Employment Agencies Act of 1913 (Stats. 515, Ch. 282) were re-enacted and incorporated in the new code. Two categories of employment agencies had been denominated by that Act and made subject to regulation: "general employment agencies" and, in recognition of California's infant entertainment industry, the "theatrical employment agencies." The latter were delineated as operating within the context of "circuses, vaudeville, theatrical and other entertainers, exhibitors and performers."

The 1937 Code established another category of employment agency, namely, "the motion picture employment agency" (Stats. 230, Ch. 90).

Regulatory controls over each of these categories of employment agencies were established, including licensing requirements and other restrictions on the operations of such agencies.

In 1943, the "artist manager" was added to the Employment Agencies Act (1943, Stats, 1326, Ch. 329). The artist manager was defined as:

> A person who engages in the occupation of advising, counseling, or directing artists in the development or advancement of their professional careers and who procures, offers, promises or attempts to procure employment or engagements of an artist only in connection with and as a part of the duties and obligations of such person under a contract with such artist by which such person contracts to render services of the nature above mentioned to such artist.

In 1959, those provisions of the Employment Agencies Act pertaining to the "artist manager" were removed from that Act and were placed in the Labor Code as a separate group of sections (1959, Stats. 2929, Ch. 888).

These four categories of agents--employment agent, theatrical employment agent, motion picture employment agent and the artists' manager--existed under 1967. In the year, the California Legislature repealed the Employment Agencies Act, abolished the categories of theatrical employment agent and motion picture employment agent, transferred the provisions

relating to employment agencies to the Business and Professions Code and placed such agencies under the jurisdiction of the Department of Professional and Vocational Standards (since 1971, the Department of Consumer Affairs). Regulation of artists' manager remained in the Labor Code in the Artists' Manager Act, and, for purposes of administration, under the jurisdiction of the Labor Commissioner.

In 1978, the Act was renamed the Talent Agencies Act (1978, Ch. 1382) and that remains the name of the statute today. (The Talent Agencies Act will hereinafter be referred to as the Act.) Also by the same enactment, artists' managers became "talent agents", and the definition of an artists' manager, now a talent agent, was changed to read, as follows:

> A talent agency is hereby defined to be a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists. Talent agencies may, in addition, counsel or direct artists in the development of their professional careers.

In 1982, AB 997 (1983, Ch. 682) made several significant changes in the Act. First, it excluded the procuring of recording contracts from the licensure requirements under the Act. To accomplish this exclusion, Section 1700.4 was amended by the addition of the following underlined language:

1700.4. (a) A talent agency is hereby defined to be a person or corporation who engages in the occupation of procuring, or attempting to procure employment or engagements for an artist or artists, except that the activities or procuring, offering, or promising to procure recording contracts for an artist or artists shall not of itself subject a person or corporation to regulation and licensing under this chapter. Talent agencies may, in addition, counsel or direct artists in the development of their professional careers.

It was also provided in AB 997 that the above exception would sunset on January 1, 1985, unless such sunsetting provision was deleted or further extended.

Also under AB 997, Section 1700.44 of the Act was amended by the addition of the following language, which established a statute of limitations of one year for bringing a legal action for violation of the Act:

> No action or proceeding may be prosecuted under his chapter with respect to any violation occurring or alleged to have occurred more than one year prior to

commencement of the action or proceeding.

A highly significant exception to the licensure requirements of the Act was also added to AB 997 to Section 1700.44. That exception, which was a central point of debate in the deliberations of the Commission, is the following:

> It shall not be unlawful for a person or corporation who is not licensed under this chapter to act in conjunction with, and at the request of, a duly licensed and franchised talent agency in the negotiations of an employment contract.

The final amendment of AB 997 to Section 1700.44 was the sunset provision which reads:

> This section shall remain in effect only until January 1, 1985, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1985, deletes or extends that date.

The above sunset dates were extended by Stats. 1984, Ch. 553, to January 1, 1986, unless deleted or further extended.

AB 997 also established the California Entertainment Commission by the enactment of the above-quoted sections of the Labor Code--Sections 1701, 1702 and 1703. Section 1704, which sunsetted the Commission on January 1, 1985, was amended by Cal. Stats., Ch. 553 by extending the existence of the Commission to January 1, 1986.

## § 1699. Rules and regulations

The Labor Commissioner may, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371), Part 1, Division 3, Title 2 of the Government Code, adopt, amend, and repeal such rules and regulations as are reasonably necessary for the purpose of enforcing and administering this chapter and as are not inconsistent with this chapter.

(Added by Stats.1951, c. 1746, p. 4165, § 2. Amended by Stats.1957, c. 2034, p. 3605, § 5; Stats.1967, c. 125, p. 1155, § 5.)

# Chapter 4

# TALENT AGENCIES



*Chapter 4 was added by Stats.1959, c. 888, p. 2920, § 1.*

*Heading of Chapter 4, Artists' Managers, was amended by Stats. 1978, c. 1382, p. 4575, § 3 to read as it now appears.*

# Article 1

# SCOPE AND DEFINITIONS



*Article 1 was added by Stats.1959, c. 888, p. 2920, § 1.*

### Code of Regulations References

Rules and regulations, see 8 Cal. Code of Regs. 12000 et seq.

### Law Review Commentaries

Personal manager in the California entertainment industry. Neville L. Johnson and Daniel Webb Lang (1979) 52 So.Cal.L.R. 375.

## § 1700. "Person" defined

As used in this chapter, "person" means any individual, company, society, firm, partnership, association, corporation, manager, or their agents or employees.

(Added by Stats.1959, c. 888, p. 2920, § 1.)

### Library References

Labor Relations ⇐18.
Licenses ⇐11(7).
WESTLAW Topic Nos. 232A, 238.

C.J.S. Labor Relations § 19.
C.J.S. Licenses § 34.

### Notes of Decisions

Validity 1

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**1. Validity**

Artists' Managers Act is remedial statute enacted for protection of those seeking employment and is constitutional exercise of the police of the state. Buchwald v. Superior Court In and For City and County of San Francisco (1967) 62 Cal.Rptr. 364, 254 C.A.2d 347.

## § 1700.1. "Theatrical engagement," "motion picture engagement," and "emergency engagement" defined

As used in this chapter:

(a) "Theatrical engagement" means any engagement or employment of a person as an actor, performer, or entertainer in a circus, vaudeville, theatrical, or other entertainment, exhibition, or performance.

(b) "Motion picture engagement" means any engagement or employment of a person as an actor, actress, director, scenario, or continuity writer, camera man, or in any capacity concerned with the making of motion pictures.

(c) "Emergency engagement" means an engagement which has to be performed within 24 hours from the time when the contract for such engagement is made.

(Added by Stats.1959, c. 888, p. 2920, § 1.)

### Library References

Words and Phrases (Perm.Ed.)

## § 1700.2. Definitions

(a) As used in this chapter, "fee" means any of the following:

(1) Any money or other valuable consideration paid or promised to be paid for services rendered or to be rendered by any person conducting the business of a talent agency under this chapter.

(2) Any money received by any person in excess of that which has been paid out by him or her for transportation, transfer of baggage, or board and lodging for any applicant for employment.

(3) The difference between the amount of money received by any person who furnished employees, performers, or entertainers for circus, vaudeville, theatrical, or other entertainments, exhibitions, or performances, and the amount paid by him or her to the employee, performer, or entertainer.

(b) As used in this chapter, "registration fee" means any charge made, or attempted to be made, to an artist for any of the following purposes:

(1) Registering or listing an applicant for employment in the entertainment industry.

(2) Letter writing.

(3) Photographs, film strips, video tapes, or other reproductions of the applicant.

(4) Costumes for the applicant.

(5) Any activity of a like nature.

(Added by Stats.1959, c. 888, p. 2920, § 1. Amended by Stats.1978, c. 1382, p. 4575, § 4; Stats.1986, c. 488, § 1.)

### Library References

Words and Phrases (Perm.Ed.)

## § 1700.3. "License" and "licensee" defined

As used in this chapter:

(a) "License" means a license issued by the Labor Commissioner to carry on the business of a talent agency under this chapter.

(b) "Licensee" means a talent agency which holds a valid, unrevoked, and unforfeited license under this chapter.

(Added by Stats.1959, c. 888, p. 2921, § 1. Amended by Stats.1978, c. 1382, p. 4576, § 5.)

### Historical Note

Section 41 of Stats.1978, c. 1382, p. 4575, provided:

"It is the intent of the Legislature that those individuals and organizations previously licensed as musician booking agencies shall henceforth be licensed as talent agencies."

### Library References

Licenses ⇐1.
WESTLAW Topic No. 238.

C.J.S. Licenses §§ 2 to 4.
Words and Phrases (Perm.Ed.)

### Notes of Decisions

**Construction and application 1**

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**1. Construction and application**

Artists' Managers Act (now, Talent Agencies Act) refers to and covers two classes of persons, "licensees" who are artists' managers with valid licenses, and "artists' managers" ("Talent Agency") who may not be so licensed. Buchwald v. Superior Court In and For City and County of San Francisco (1967) 62 Cal. Rptr. 364, 254 C.A.2d 347.

## § 1700.4. "Talent agency" and "artists" defined

(a) "Talent agency" means a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists, except that the activities of procuring, offering, or promising to procure recording contracts for an artist or artists shall not of itself subject a person or corporation to regulation and licensing under this chapter. Talent agencies may, in addition, counsel or direct artists in the development of their professional careers.

(b) "Artists" means actors and actresses rendering services on the legitimate stage and in the production of motion pictures, radio artists, musical artists,

musical organizations, directors of legitimate stage, motion picture and radio productions, musical directors, writers, cinematographers, composers, lyricists, arrangers, models, and other artists and persons rendering professional services in motion picture, theatrical, radio, television and other entertainment enterprises.

(Added by Stats.1982, c. 682, p. 2815, § 2, operative Jan. 1, 1986. Amended by Stats.1984, c. 553, § 2, eff. July 17, 1984, operative Jan. 1, 1986; Stats.1986, c. 488, § 2, operative January 1, 1986.)

### Historical Note

The 1984 amendment of Stats.1982, c. 682, § 2, changed the operative date of the section from January 1, 1985 to January 1, 1986.

Section 19 of Stats.1986, c. 488, provides:

"The amendments made by this act to subdivision (a) of Section 1700.4, and subdivisions (c) and (d) of Section 1700.44, of the Labor Code shall be deemed operative on January 1, 1986."

Former § 1700.4, added by Stats.1959, c. 888, p. 2921, § 1, amended by Stats.1978, 1382, c. 1382, p. 4576, § 6; Stats.1982, c. 682, p. 2814, § 1, and Stats.1984, c. 553, § 1, relating to the same subject matter, was repealed by its own terms January 1, 1986.

**Derivation:** Former § 1700.4, added by Stats.1959, c. 888, p. 2921, § 1, amended by Stats.1978, c. 1382, p. 4576, § 6; Stats.1982, c. 682, p. 2814, § 1; Stats.1984, c. 553, § 1.

Former § 1650, added by Stats.1943, c. 329, § 1.

### Law Review Commentaries

Personal manager in the California entertainment industry. Neville L. Johnson and Daniel Webb Lang (1979) 52 So.Cal.L.R. 375.

### Library References

Labor Relations ⇐17.
WESTLAW Topic No. 232A.
C.J.S. Labor Relations § 19.

### Notes of Decisions

**Construction and application 1**

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**1. Construction and application**

Artists' Managers Act (now, Talent Agencies Act) refers to and covers two classes of persons, "licensees" who are artists' managers with valid licenses, and "artists' managers" (now, "Talent Agency") who may not be so licensed. Buchwald v. Superior Court In and For City and County of San Francisco (1967) 62 Cal.Rptr. 364, 254 C.A.2d 347.

Artists' managers whether they be licensed or unlicensed are bound and regulated by Artists' Managers Act (now, Talent Agencies Act). Id.

## Article 2

## LICENSES

**Section**

Section
1700.11. Application for renewal; contents.
1700.12. Filing fee; annual fee.
1700.13. Application for consent to transfer or assign license; filing fee; consent to change location.
1700.14. Temporary or provisional license.
1700.15. Surety bond; deposit with labor commissioner.
1700.16. Payee of bond; conditions.
1700.17. Repealed.
1700.18. Disposition of fees and fines.
1700.19. Contents of license.
1700.20. Person and place covered by license; transferability.
1700.20a. Estate certificate of convenience; grounds for issuance.
1700.20b. Eligibility for estate certificate of convenience; duration; renewal.
1700.21. Revocation or suspension of license; grounds.
1700.22. Hearing; conduct of proceedings; powers of commissioner.

*Article 2 was added by Stats.1959, c. 888, p. 2921, § 1.*

## § 1700.5. Necessity of talent agency license; posting; renewal of prior licenses

No person shall engage in or carry on the occupation of a talent agency without first procuring a license therefor from the Labor Commissioner. Such license shall be posted in a conspicuous place in the office of the licensee.

Licenses issued for talent agencies prior to the effective date of this chapter shall not be invalidated thereby, but renewals of such licenses shall be obtained in the manner prescribed by this chapter.

(Added by Stats.1959, c. 888, p. 2921, § 1. Amended by Stats.1978, c. 1382, p. 4576, § 7.)

### Historical Note

**Derivation:** Former § 1651, added by Stats. 1943, c. 329, p. 1327, § 2.

### Forms

See West's California Code Forms, Labor.

### Cross References

Licensing of managers of boxers and wrestlers, see Business and Professions Code §§ 18628, 18642.
Talent agency, exemption, see, Business and Professions Code § 9914.

### Library References

Licenses ⇐3, 11(3).
WESTLAW Topic No. 238.
C.J.S. Licenses §§ 5, 34.

## Notes of Decisions



### 1. Talent agency

One who published a "casting" directory containing photographs, descriptions, and telephone numbers of persons seeking employment in the entertainment and motion picture field, and who agreed to circulate the directory among motion picture producers and talent agents for an annual fee to be paid by those seeking employment, was not operating an employment agency and was not required to obtain a license. 15 Ops.Atty.Gen. 155.

Agencies, bureaus, or businesses, which referred applicants for employment to prospective employers and received fees solely from the employer, came within licensing provisions of the Employment Agency Act. 11 Ops.Atty. Gen. 156.

### 2. Construction and application

It would be unreasonable to construe Artists' Managers Act (now, Talent Agencies Act) as applying only to licensed artists' managers (Talent agency) and thereby allow artists' manager by nonsubmission to licensing provisions of Act to exclude himself from its restrictions and regulations. Buchwald v. Superior Court In and For City and County of San Francisco (1967) 62 Cal.Rptr. 364, 254 C.A.2d 347.

### 3. Rescission of employment agreement

Actress who filed action in superior court seeking rescission of employment agreement with manager based on manager's fraud, duress and undue influence was not precluded by election of remedies doctrine from filing petition before Labor Commissioner seeking to have employment agreement voided based on manager's violation of licensing requirements. Humes v. Margil Ventures, Inc. (App. 2 Dist. 1985) 220 Cal.Rptr. 186, 174 C.A.3d 486.

## § 1700.6. Application; contents; fingerprints; character affidavits

A written application for a license shall be made to the Labor Commissioner in the form prescribed by him or her and shall state:

(a) The name and address of the applicant.

(b) The street and number of the building or place where the business of the talent agency is to be conducted.

(c) The business or occupation engaged in by the applicant for at least two years immediately preceding the date of application.

(d) If the applicant is other than a corporation, the names and addresses of all persons, except bona fide employees on stated salaries, financially interested, either as partners, associates, or profit sharers, in the operation of the talent agency in question, together with the amount of their respective interests.

If the applicant is a corporation, the corporate name, the names, residential addresses, and telephone numbers of all officers of the corporation, the names of all persons exercising managing responsibility in the applicant or licensee's office, and the names and addresses of all persons having a financial interest of 10 percent or more in the business and the percentage of financial interest owned by those persons.

The application shall be accompanied by two sets of fingerprints of the applicant and affidavits of at least two reputable residents of the city or county in which the business of the talent agency is to be conducted who have known, or been associated with, the applicant for two years, that the applicant is a person of good moral character or, in the case of a corporation, has a reputation for fair dealing.

(Added by Stats.1959, c. 888, p. 2921, § 1. Amended by Stats.1978, c. 1382, p. 4576, § 8; Stats.1986, c. 488, § 3.)

**Library References**

Licenses ⇐22.
WESTLAW Topic No. 238.
C.J.S. Licenses § 43.

## § 1700.7. Investigation of character and responsibility of applicant

Upon receipt of an application for a license the Labor Commissioner may cause an investigation to be made as to the character and responsibility of the applicant and of the premises designated in such application as the place in which it is proposed to conduct the business of the talent agency.

(Added by Stats.1959, c. 888, p. 2922, § 1. Amended by Stats.1978, c. 1382, p. 4577, § 9.)

## § 1700.8. Refusal to grant license; hearing; conduct of proceedings; power of commissioner

The commissioner upon proper notice and hearing may refuse to grant a license. The proceedings shall be conducted in accordance with Chapter 5 (commencing at Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the commissioner shall have all the power granted therein.

(Added by Stats.1959, c. 888, p. 2922, § 1.)

## § 1700.9. Places or persons not entitled to license

No license shall be granted to conduct the business of a talent agency:

(a) In a place that would endanger the health, safety, or welfare of the artist.

(b) To a person whose license has been revoked within three years from the date of application.

(Added by Stats.1959, c. 888, p. 2922, § 1. Amended by Stats.1978, c. 1382, p. 4577, § 10; Stats.1986, c. 488, § 4.)

**Historical Note**

The 1978 amendment substituted, in the introduction, "a talent agency" for "an artists' manager"; deleted subd. (f) which read, "In connection with pool halls or soft drink parlors"; and relettered former subd. (g) to be subd. (f).

The 1986 amendment rewrote the section, which previously read:

"No license shall be granted to conduct the business of a talent agency:

"(a) In rooms used for living purposes.

"(b) Where boarders or lodgers are kept.

"(c) Where meals are served.

"(d) Where persons sleep.

"(e) In connection with a building or premises where intoxicating liquors are sold or consumed.

"(f) To a person whose license has been revoked within three years from the date of application."

**Library References**

Licenses ⇐20
WESTLAW Topic No. 238.
C.J.S. Licenses §§ 39 to 41.

## § 1700.10. Duration of license; renewal; application; bond; fee; branch office license

The license when first issued shall run to the next birthday of the applicant, and each license shall then be renewed within the 30 days preceding the licensee's birthday and shall run from birthday to birthday. In case the applicant is a partnership, such license shall be renewed within the 30 days preceding the birthday of the oldest partner. If the applicant is a corporation, such license shall be renewed within the 30 days preceding the anniversary of the date the corporation was lawfully formed. Renewal shall require the filing of an application for renewal, a renewal bond, and the payment of the annual license fee, but the Labor Commissioner may demand that a new application or new bond be submitted.

If the applicant or licensee desires, in addition, a branch office license, he shall file an application in accordance with the provisions of this section as heretofore set forth.

(Added by Stats.1978, c. 1382, p. 4577, § 11.5.)

### Historical Note

Former § 1700.10, added by Stats.1959, c. 888, § 1, relating to similar subject matter, was repealed by Stats.1978, c. 1382, § 11.

**Derivation:** Former § 1700.10, added by Stats.1959, c. 888, p. 2922, § 1.

### Library References

Licenses ⇐38.
WESTLAW Topic No. 238.
C.J.S. Licenses §§ 48, 50 to 63.

## § 1700.11. Application for renewal; contents

All applications for renewal shall state the names and addresses of all persons, except bona fide employees on stated salaries, financially interested either as partners, associates or profit sharers, in the operation of the business of the talent agency.

(Added by Stats.1959, c. 888, p. 2922, § 1. Amended by Stats.1978, c. 1382, p. 4577, § 11.8.)

## § 1700.12. Filing fee; annual fee

A filing fee of twenty-five dollars ($25) shall be paid to the Labor Commissioner at the time the application for issuance of a talent agency license is filed.

In addition to the filing fee required for application for issuance of a talent agency license, every talent agency shall pay to the Labor Commissioner annually at the time a license is issued or renewed:

(a) A license fee of two hundred twenty-five dollars ($225).

(b) Fifty dollars ($50) for each branch office maintained by the talent agency in this state.

(Added by Stats.1959, c. 888, p. 2922, § 1. Amended by Stats.1965, c. 234, p. 1206, § 1; Stats.1978, c. 1382, p. 4577, § 12; Stats.1983, c. 323, § 61, eff. July 21, 1983.)

### Historical Note

Sections 151.37, 157 of Stats.1983, c. 323, eff. July 21, 1983, provided:

"Sec. 151.37. Unless otherwise provided, the provisions of this act shall be deemed to have become effective on July 1, 1983."

"Sec. 157. The provisions of this act shall not become operative unless and until the Budget Act of 1983 [Stats.1983, c. 324, eff. July 21, 1983] becomes law."

**Derivation:** Former § 1652, added by Stats. 1943, c. 329, p. 1327, § 3.

### Library References

Licenses ⇐29.
WESTLAW Topic No. 238.
C.J.S. Licenses § 66.

## § 1700.13. Application for consent to transfer or assign license; filing fee; consent to change location

A filing fee of twenty-five dollars ($25) shall be paid to the Labor Commissioner at the time application for consent to the transfer or assignment of a talent agency license is made but no license fee shall be required upon the assignment or transfer of a license.

The location of a talent agency shall not be changed without the written consent of the Labor Commissioner.

(Added by Stats.1959, c. 888, p. 2922, § 1. Amended by Stats.1978, c. 1382, p. 4578, § 13.)

### Library References

Licenses ⇐37.
WESTLAW Topic No. 238.
C.J.S. Licenses § 49.

## § 1700.14. Temporary or provisional license

Whenever an application for a license or renewal is made, and application processing pursuant to this chapter has not been completed, the Labor Commissioner may, at his or her discretion, issue a temporary or provisional license valid for a period not exceeding 90 days, and subject, where appropriate, to the automatic and summary revocation by the Labor Commissioner. Otherwise, the conditions for issuance or renewal shall meet the requirements of Section 1700.6.

(Added by Stats.1984, c. 557, § 3.)

### Historical Note

Former § 1700.14, added by Stats.1959, c. 888, p. 2923, § 1, and derived from former § 1653, added by Stats.1943, c. 329, p. 1327, § 4, related to payment of single fee for application for employment agency license and artists' manager license.

## § 1700.15. Surety bond; deposit with labor commissioner

A talent agency shall also deposit with the Labor Commissioner, prior to the issuance or renewal of a license, a surety bond in the penal sum of ten thousand dollars ($10,000).

(Added by Stats.1959, c. 888, p. 2923, § 1. Amended by Stats.1978, c. 1382, p. 4578, § 14; Stats.1986, c. 488, § 5.)

### Forms

See West's California Code Forms, Labor.

### Library References

Licenses ⇐26.
WESTLAW Topic No. 238.
C.J.S. Licenses § 42.

## § 1700.16. Payee of bond; conditions

Such surety bonds shall be payable to the people of the State of California, and shall be conditioned that the person applying for the license will comply with this chapter and will pay all sums due any individual or group of individuals when such person or his representative or agent has received such sums, and will pay all damages occasioned to any person by reason of misstatement, misrepresentation, fraud, deceit, or any unlawful acts or omissions of the licensed talent agency, or its agents or employees, while acting within the scope of their employment.

(Added by Stats.1959, c. 888, p. 2923, § 1. Amended by Stats.1978, c. 1382, p. 4578, § 15.)

## § 1700.17. Repealed by Stats.1982, c. 517, p. 2404, § 306

### Law Revision Commission Comment
### 1982 Repealed

The substance of former Section 1700.17 is continued in Code of Civil Procedure Section 996.340 (effect of cancellation) [16 Cal.L.Rev. Comm. Reports 501 (1982)].

### Historical Note

The repealed section, added by Stats.1959, c. 888, § 1, amended by Stats.1978, c. 1382, § 16, related to suspension of a license upon failure to file a bond. See, now, C.C.P. § 996.340.

## § 1700.18. Disposition of fees and fines

All moneys collected for licenses and all fines collected for violations of the provisions of this chapter shall be paid into the State Treasury and credited to the General Fund.

(Added by Stats.1959, c. 888, p. 2923, § 1.)

### Cross References

General fund, see Government Code § 16300 et seq.

### Library References

Licenses ⇐33. WESTLAW Topic No. 238.

C.J.S. Licenses § 71.

## § 1700.19. Contents of license

Each license shall contain all of the following:

(a) The name of the licensee.

(b) A designation of the city, street, and number of the premises in which the licensee is authorized to carry on the business of a talent agency.

(c) The number and date of issuance of the license.

(Added by Stats.1959, c. 888, p. 2923, § 1. Amended by Stats.1978, c. 1382, p. 4578, § 17; Stats.1986, c. 488, § 6.)

### Library References

Licenses ⇐23.
WESTLAW Topic No. 238.
C.J.S. Licenses § 44.

### Notes of Decisions

**Licensee** 1

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**1. Licensee**

Term "licensee" as used in Artists' Managers Act (now, Talent Agencies Act) applies to licensed artists' manager. Buchwald v. Superior Court In and For City and County of San Francisco (1967) 62 Cal.Rptr. 364, 254 C.A.2d 347.

## § 1700.20. Person and place covered by license; transferability

No license shall protect any other than the person to whom it is issued nor any places other than those designated in the license. No license shall be transferred or assigned to any person unless written consent is obtained from the Labor Commissioner.

(Added by Stats.1959, c. 888, p. 2923, § 1.)

## § 1700.20a. Estate certificate of convenience; grounds for issuance

The Labor Commissioner may issue to a person eligible therefor a certificate of convenience to conduct the business of a talent agency where the person licensed to conduct such talent agency business has died or has had a conservator of the estate appointed by a court of competent jurisdiction. Such a certificate of convenience may be denominated an estate certificate of convenience.

(Added by Stats.1965, c. 252, p. 1238, § 1. Amended by Stats.1978, c. 1382, p. 4578, § 18; Stats.1979, c. 730, p. 2509, § 89, operative Jan. 1, 1981.)

### Legislative Committee Comment—Assembly 1979 Amendment

Section 1700.20a is amended to delete the reference to a declaration of incompetence. The provisions relating to guardianship of an incompetent person (Prob.Code §§ 1460–1463) have been repealed, and under Section 1700.20a the appointment of a conservator of the estate invokes the section.

**Library References**

Labor Relations ⇐18.
Licenses ⇐11(7).
WESTLAW Topic Nos. 232A, 238.
C.J.S. Labor Relations § 19.
C.J.S. Licenses § 34.

Recommendations relating to Guardianship-Conservatorship Law 14 Cal.L.Rev.Comm. Reports 501 (1978); 79 A.J. 4341; 15 Cal.L. Rev.Comm. Reports 1095 (1980).

## § 1700.20b. Eligibility for estate certificate of convenience; duration; renewal

To be eligible for a certificate of convenience, a person shall be either:

(a) The executor or administrator of the estate of a deceased person licensed to conduct the business of a talent agency.

(b) If no executor or administrator has been appointed, the surviving spouse or heir otherwise entitled to conduct the business of such deceased licensee.

(c) The conservator of the estate of a person licensed to conduct the business of a talent agency.

Such estate certificate of convenience shall continue in force for a period of not to exceed 90 days, and shall be renewable for such period as the Labor Commissioner may deem appropriate, pending the disposal of the talent agency license or the procurement of a new license under the provisions of this chapter.

(Added by Stats.1965, c. 252, p. 1239, § 2. Amended by Stats.1978, c. 1382, p. 4579, § 19; Stats.1979, c. 730, p. 2509, § 90, operative Jan. 1, 1981.)

**Law Revision Commission Comment**
**1979 Amendment**

Section 1700.20b is amended to delete the reference to a guardian of an incompetent person. The provisions relating to guardianship of an incompetent person (Prob.Code §§ 1460–1463) have been repealed.

**Library References**

Labor Relations ⇐18.
Licenses ⇐20.
WESTLAW Topic Nos. 232A, 238.
C.J.S. Labor Relations § 19.
C.J.S. Licenses §§ 39 to 41.
Recommendations relating to Guardianship-Conservatorship Law 14 Cal.L.Rev.Comm. Reports 501 (1978).

## § 1700.21. Revocation or suspension of license; grounds

The Labor Commissioner may revoke or suspend any license when it is shown that any of the following occur:

(a) The licensee or his or her agent has violated or failed to comply with any of the provisions of this chapter.

(b) The licensee has ceased to be of good moral character.

(c) The conditions under which the license was issued have changed or no longer exist.

(d) The licensee has made any material misrepresentation or false statement in his or her application for a license.

(Added by Stats.1959, c. 888, p. 2923, § 1. Amended by Stats.1986, c. 488, § 7.)

### Historical Note

The 1986 amendment added the subd. relating to material misrepresentations or false statements in applications.

**Derivation:** Former § 1659, added by Stats. 1943, c. 329, p. 1328, § 10.

### Library References

Licenses ⇐38.
WESTLAW Topic No. 238.
C.J.S. Licenses §§ 48, 50 to 63.

### Notes of Decisions

**Licensee 1**

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**1. Licensee**

Term "licensee" as used in Artists' Managers Act (now, Talent Agencies Act) applies to licensed artists' manager. Buchwald v. Superior Court In and For City and County of San Francisco (1967) 62 Cal.Rptr. 364, 254 C.A.2d 347.

## § 1700.22. Hearing; conduct of proceedings; powers of commissioner

Before revoking or suspending any license, the Labor Commissioner shall afford the holder of such license an opportunity to be heard in person or by counsel. The proceedings shall be conducted in accordance with Chapter 5 (commencing at Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all the powers granted therein.

(Added by Stats.1959, c. 888, p. 2924, § 1.)

# Article 3

# OPERATION AND MANAGEMENT

**Section**

Section
1700.40. Registration fee prohibited; refunds to artists failing to procure employment; additional refund for delayed compliance.
1700.41. Reimbursement for traveling expenses.
1700.42, 1700.43. Repealed.
1700.44. Dispute; hearing; determination; bond; certification of no controversy; failure to obtain license; limitations of actions.
1700.45. Arbitration; contract provisions.
1700.46. Repealed.
1700.47. Unlawful discrimination.

*Article 3 was added by Stats.1959, c. 888, p. 2924, § 1.*

## § 1700.23. Approval of talent agency contracts; grounds for disapproval; required statements in contracts

Every talent agency shall submit to the Labor Commissioner a form or forms of contract to be utilized by such talent agency in entering into written contracts with artists for the employment of the services of such talent agency by such artists, and secure the approval of the Labor Commissioner thereof. Such approval shall not be withheld as to any proposed form of contract unless such proposed form of contract is unfair, unjust and oppressive to the artist. Each such form of contract, except under the conditions specified in Section 1700.45, shall contain an agreement by the talent agency to refer any controversy between the artist and the talent agency relating to the terms of the contract to the Labor Commissioner for adjustment. There shall be printed on the face of the contract in prominent type the following: "This talent agency is licensed by the Labor Commissioner of the State of California."

(Added by Stats.1959, c. 888, p. 2924, § 1. Amended by Stats.1978, c. 1382, p. 4579, § 20.)

### Historical Note

**Derivation:** Former § 1655, added by Stats. 1943, c. 329, p. 1327, § 6.

### Library References

Labor Relations ⇐17.
WESTLAW Topic No. 232A.
C.J.S. Labor Relations § 19.

### United States Code Annotated

Federal Fair Labor Standard Act, see 29 U.S.C.A. § 201 et seq.

### Notes of Decisions

**Unlicensed agency 2**
**Validity 1**

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**1. Validity**

Artists' Managers Act (now, Talent Agencies Act) is remedial statute enacted for protection of those seeking employment and is constitutional exercise of the police power of the state. Buchwald v. Superior Court In and For City and County of San Francisco (1967) 62 Cal. Rptr. 364, 254 C.A.2d 347.

**2. Unlicensed agency**

Contract between unlicensed artists' manager (now, Talent Agency) and artist is void.

Buchwald v. Superior Court In and For City and County of San Francisco (1967) 62 Cal. Rptr. 364, 254 C.A.2d 347.

Artists are ordinarily not considered to be in pari delicto as to contracts which are void because they violate Artists' Managers Act. Id.

If party was in fact acting as artists' manager, application of Artists' Managers Act may not be circumvented by allowing written language of contract to circumvent application of the Act. Id.

## § 1700.24. Filing and posting of talent agency fee schedule; changes in schedule

Every talent agency shall file with the Labor Commissioner a schedule of fees to be charged and collected in the conduct of that occupation, and shall also keep a copy of the schedule posted in a conspicuous place in the office of the talent agency. Changes in the schedule may be made from time to time, but no fee or change of fee shall become effective until seven days after the date of filing thereof with the Labor Commissioner and until posted for not less than seven days in a conspicuous place in the office of the talent agency.

(Added by Stats.1959, c. 888, p. 2924, § 1. Amended by Stats.1978, c. 1382, p. 4579, § 21; Stats.1986, c. 488, § 8.)

### Historical Note

**Derivation:** Former § 1656, added by Stats. 1943, c. 329, p. 1327, § 7.

## § 1700.25. Trust funds; records

(a) A licensee who receives any payment of funds on behalf of an artist shall immediately deposit that amount in a trust fund account maintained by him or her in a bank or other recognized depository. The funds, less the licensee's commission, shall be disbursed to the artist within 15 days after receipt.

(b) A separate record shall be maintained of all funds received on behalf of an artist and the record shall further indicate the disposition of the funds.

(Added by Stats.1986, c. 488, § 10.)

### Historical Note

Former § 1700.25, added by Stats.1959, c. 888, § 1, amended by Stats.1978, c. 1382, § 22, relating to a statement concerning applicant employer, was repealed by Stats.1986, c. 488, § 9.

## § 1700.26. Records of talent agency; required entries

Every talent agency shall keep records in a form approved by the Labor Commissioner, in which shall be entered all of the following:

(1) The name and address of each artist employing the talent agency.

(2) The amount of fee received from the artist.

(3) The employments secured by the artist during the term of the contract between the artist and the talent agency, and the amount of compensation received by the artists pursuant thereto.

(4) Any other information which the Labor Commissioner requires.

No talent agency, its agent or employees, shall make any false entry in any records.

(Added by Stats.1959, c. 888, p. 2925, § 1. Amended by Stats.1978, c. 1382, p. 4580, § 23; Stats.1986, c. 488, § 11.)

**Historical Note**

**Derivation:** Former § 1661, added by Stats. 1943, c. 329, p. 1328, § 12.

**Forms**

See West's California Code Forms, Labor.

## § 1700.27. Inspection of books and records; furnishing copies to commissioner; reports

All books, records, and other papers kept pursuant to this chapter by any talent agency shall be open at all reasonable hours to the inspection of the Labor Commissioner and his agents. Every talent agency shall furnish to the Labor Commissioner upon request a true copy of such books, records, and papers or any portion thereof, and shall make such reports as the Labor Commissioner prescribes.

(Added by Stats.1959, c. 888, p. 2925, § 1. Amended by Stats.1978, c. 1382, p. 4580, § 24.)

## § 1700.28. Posting copies of laws in office of talent agency

Every talent agency shall post in a conspicuous place in the office of such talent agency a printed copy of this chapter and of such other statutes as may be specified by the Labor Commissioner. Such copies shall also contain the name and address of the officer charged with the enforcement of this chapter. The Labor Commissioner shall furnish to talent agencies printed copies of any statute required to be posted under the provisions of this section.

(Added by Stats.1959, c. 888, p. 2925, § 1. Amended by Stats.1978, c. 1382, p. 4580, § 25.)

**Historical Note**

**Derivation:** Former § 1658, added by Stats. 1943, c. 329, p. 1328, § 9.

## § 1700.29. Rules and regulations

The Labor Commissioner may, in accordance with the provisions of Chapter 4 (commencing at Section 11370), Part 1, Division 3, Title 2 of the Government Code, adopt, amend, and repeal such rules and regulations as are reasonably necessary for the purpose of enforcing and administering this chapter and as are not inconsistent with this chapter.

(Added by Stats.1959, c. 888, p. 2925, § 1.)

## § 1700.30. Sale or transfer of interest or rights to profit

No talent agency shall sell, transfer, or give away to any person other than a director, officer, manager, employee, or shareholder of the talent agency any interest in or the right to participate in the profits of the talent agency without the written consent of the Labor Commissioner.

(Added by Stats.1959, c. 888, p. 2925, § 1. Amended by Stats.1978, c. 1382, p. 4580, § 26; Stats.1983, c. 1092, § 214, eff. Sept. 27, 1983, operative Jan. 1, 1984; Stats.1986, c. 488, § 12.)

### Historical Note

The 1978 amendment substituted "talent agency" for "artists' manager".

The 1983 amendment increased the maximum fine from $500 to $1,000.

The 1986 amendment inserted the exceptions to the prohibition on transfer of profits; and deleted the second sentence which read:

"A violation of this section shall constitute a misdemeanor, and shall be punishable by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or imprisonment for not more than 60 days, or both."

### Library References

Licenses ⇐40.
WESTLAW Topic No. 238.
C.J.S. Licenses §§ 82, 83.

## § 1700.31. Employment in violation of law

No talent agency shall knowingly issue a contract for employment containing any term or condition which, if complied with, would be in violation of law, or attempt to fill an order for help to be employed in violation of law.

(Added by Stats.1959, c. 888, p. 2926, § 1. Amended by Stats.1978, c. 1382, p. 4581, § 27.)

### Historical Note

The 1978 amendment substituted "talent agency" for "artists' manager".

### Cross References

Tasks prohibited to certain minors, see § 1292 et seq.

### United States Code Annotated

Federal Fair Labor Standards Act, see 29 U.S.C.A. § 201 et seq.

## § 1700.32. False, fraudulent or misleading information or advertisement

No talent agency shall publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisement. All advertisements of a talent agency by means of cards, circulars, or signs, and in newspapers and other publications, and all letterheads, receipts, and blanks shall be printed and contain the licensed name and address of the talent agency and the words "talent agency." No talent agency shall give any false information or make any false promises or representations concerning an

engagement or employment to any applicant who applies for an engagement or employment.

(Added by Stats.1959, c. 888, p. 2926, § 1. Amended by Stats.1978, c. 1382, p. 4581, § 28.)

**Historical Note**

The 1978 amendment substituted "talent agency" for "artists' manager".

## § 1700.33. Sending artist to unsafe place prohibited

No talent agency shall send or cause to be sent, any artist to any place where the health, safety, or welfare of the artist could be adversely affected, the character of which place the talent agency could have ascertained upon reasonable inquiry.

(Added by Stats.1959, c. 888, p. 2926, § 1. Amended by Stats.1972, c. 579, p. 1005, § 30; Stats.1978, c. 1382, p. 4581, § 29; Stats.1986, c. 488, § 13.)

**Cross References**

Farm labor contractors, similar provisions, see § 1698.4.
Minor defined, see Civil Code § 25.
Occupational privileges of minors, see § 1285 et seq.
Sending minor to immoral places or to places of questionable repute, see Penal Code §§ 273e, 273f.

## § 1700.34. Sending minor to saloon or on-sale liquor establishment

No talent agency shall send any minor to any saloon or place where intoxicating liquors are sold to be consumed on the premises.

(Added by Stats.1959, c. 888, p. 2926, § 1. Amended by Stats.1972, c. 579, p. 1005, § 31; Stats.1978, c. 1382, p. 4581, § 30.)

**Historical Note**

The 1978 amendment substituted "talent agency" for "artists' manager".

**Cross References**

Farm labor contractors, similar provisions, see § 1698.5.
Minor defined, see Civil Code § 25.
Occupational privileges and restrictions of minors, see § 1285 et seq.
Sending minor to immoral places or to places of questionable repute, see Penal Code §§ 273e, 273f.

## § 1700.35. Permitting persons of bad character to frequent or be employed in talent agency's place of business

No talent agency shall knowingly permit any persons of bad character, prostitutes, gamblers, intoxicated persons, or procurers to frequent, or be employed in, the place of business of the talent agency.

(Added by Stats.1959, c. 888, p. 2926, § 1. Amended by Stats.1978, c. 1382, p. 4581, § 31.)

### Cross References

Farm laborer contractors, similar provisions, see § 1698.6.

## § 1700.36. Unlawful employment of minors

No talent agency shall accept any application for employment made by or on behalf of any minor, as defined by subdivision (c) of Section 1286, or shall place or assist in placing any such minor in any employment whatever in violation of Part 4 (commencing with Section 1171).

(Added by Stats.1959, c. 888, p. 2926, § 1. Amended by Stats.1978, c. 1382, p. 4581, § 32; Stats.1983, c. 142, § 100.)

### Historical Note

The 1978 amendment substituted "talent agency" for "artists' manager"; substituted "minor, as defined in subdivision (c) of Section 1286" for "child"; and added, following "Part 4", the parenthetical reference.

The 1983 amendment made nonsubstantive changes to maintain this code.

### Cross References

Minor defined, see Civil Code § 25.
Sending minor to places of questionable repute, see Penal Code §§ 273e, 273f.

### Library References

Labor Relations ⇐1359.
WESTLAW Topic No. 232A.
C.J.S. Labor Relations § 1190.

## § 1700.37. Judicially approved contract not disaffirmable by minor

A minor cannot disaffirm a contract, otherwise valid, entered into during minority, either during the actual minority of the minor entering into such contract or at any time thereafter, with a duly licensed talent agency as defined in Section 1700.4 to secure him engagements to render artistic or creative services in motion pictures, television, the production of phonograph records, the legitimate or living stage, or otherwise in the entertainment field including, but without being limited to, services as an actor, actress, dancer, musician, comedian, singer, or other performer or entertainer, or as a writer, director, producer, production executive, choreographer, composer, conductor or designer, the blank form of which has been approved by the Labor Commissioner pursuant to Section 1700.23, where such contract has been approved by the superior court of the county where such minor resides or is employed.

Such approval may be given by the superior court on the petition of either party to the contract after such reasonable notice to the other party thereto as may be fixed by said court, with opportunity to such other party to appear and be heard.

(Added by Stats.1959, c. 888, p. 2926, § 1. Amended by Stats.1963, c. 1885, p. 3870, § 2; Stats.1978, c. 1382, p. 4581, § 33.)

### Historical Note

The 1963 amendment rewrote the first paragraph, which read:

"A minor cannot disaffirm a contract, otherwise valid, entered into with a duly licensed artists' manager to secure him an engagement as an actor, performer, or entertainer, the blank form of which has been approved by the Labor Commissioner pursuant to Section 1700.23, where such contract has been approved by the superior court of the county where such minor resides or is employed.".

The 1978 amendment substituted "talent agency" for "artists' manager".

### Cross References

Contracts not disaffirmable by minors, see Civil Code § 36.
Minor defined, see Civil Code § 25.

### Library References

Infants ⇐55, 58(1, 2).
WESTLAW Topic No. 211.
C.J.S. Infants §§ 113, 166 to 191.

## § 1700.38. Notice of labor dispute at place of employment

No talent agency shall knowingly secure employment for an artist in any place where a strike, lockout, or other labor trouble exists, without notifying the artist of such conditions.

(Added by Stats.1959, c. 888, p. 2926, § 1. Amended by Stats.1978, c. 1382, p. 4582, § 34.

### Historical Note

**Derivation:** Former § 1660, added by Stats. 1943, c. 329, p. 1328, § 11.

## § 1700.39. Fee-splitting

No talent agency shall divide fees with an employer, an agent or other employee of an employer.

(Added by Stats.1959, c. 888, p. 2926, § 1. Amended by Stats.1978, c. 1382, p. 4582, § 35.)

### Cross References

Repayment of wages to employer, see §§ 221, 225.
Similar provisions,
Employment agencies, see Business and Professions Code § 9976.
Farm labor contractors, see § 1698.8.
Nurses Registries, see Business and Professions Code § 9958.9.
Wage kickbacks in public works projects, see § 1778.

## § 1700.40. Registration fee prohibited; refunds to artists failing to procure employment; additional refund for delayed compliance

No talent agency shall collect a registration fee. In the event that a talent agency shall collect from an artist a fee or expenses for obtaining employment for the artist, and the artist shall fail to procure the employment, or the artist shall fail to be paid for the employment, the talent agency shall, upon demand therefor, repay to the artist the fee and expenses so collected. Unless

repayment thereof is made within 48 hours after demand therefor, the talent agency shall pay to the artist an additional sum equal to the amount of the fee.

(Added by Stats.1959, c. 888, p. 2927, § 1. Amended by Stats.1978, c. 1382, p. 4582, § 36; Stats.1986, c. 488, § 14.)

### Historical Note

The 1978 amendment substituted "talent agency" for "artists' manager".

The 1986 amendment added the first sentence prohibiting the collection of registration fees.

**Derivation:** Former § 1654, added by Stats. 1943, c. 329, p. 1327, § 5.

### Library References

Licenses ⇐41.
WESTLAW Topic No. 238.
C.J.S. Licenses §§ 78 to 81.

## § 1700.41. Reimbursement for traveling expenses

In cases where an artist is sent by a talent agency beyond the limits of the city in which the office of such talent agency is located upon the representation of such talent agency that employment of a particular type will there be available for the artist and the artist does not find such employment available, such talent agency shall reimburse the artist for any actual expenses incurred in going to and returning from the place where the artist has been so sent unless the artist has been otherwise so reimbursed.

(Added by Stats.1959, c. 888, p. 2927, § 1. Amended by Stats.1978, c. 1382, p. 4582, § 37.)

### Historical Note

**Derivation:** Former § 1657, added by Stats. 1943, c. 329, p. 1328, § 8.

## §§ 1700.42, 1700.43. Repealed by Stats.1982, c. 517, p. 2404, §§ 307, 308

### Law Revision Commission Comment
### 1982 Repeal

The substance of former Section 1700.42 is continued in Code of Civil Procedure Sections 996.430 (action to enforce liability) and 995.850 (enforcement by persons interested) (16 Cal. L. Rev. Comm. Reports 501).

The substance of former Section 1700.43 is continued in Code of Civil Procedure Sections 995.030 (manner of service) and 996.430 (action to enforce liability) (16 Cal.L.Rev. Comm. Reports 501).

### Historical Note

Section 1700.42, added by Stats.1959, c. 888, § 1, related to actions brought by licensees. See, now, C.C.P. §§ 995.850, 996.430.

Section 1700.43, added by Stats.1959, c. 888, § 1, amended by Stats.1978, c. 1382, § 38, related to service of summons. See, now, C.C.P. §§ 995.030, 996.430.

## § 1700.44. Dispute; hearing; determination; bond; certification of no controversy; failure to obtain license; limitations of actions

(a) In cases of controversy arising under this chapter, 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 for money, the party aggrieved shall execute a bond approved by the superior court in a sum not exceeding twice the amount of the judgment. In all other cases the bond shall be in a sum of not less than one thousand dollars ($1,000) and approved by the superior court.

The Labor Commissioner may certify without a hearing that there is no controversy within the meaning of this section if he or she has by investigation established that there is no dispute as to the amount of the fee due. Service of the certification shall be made upon all parties concerned by registered or certified mail with return receipt requested and the certification shall become conclusive 10 days after the date of mailing if no objection has been filed with the Labor Commissioner during that period.

(b) Notwithstanding any other provision of law to the contrary, failure of any person to obtain a license from the Labor Commissioner pursuant to this chapter shall not be considered a criminal act under any law of this state.

(c) No action or proceeding shall be brought pursuant to this chapter with respect to any violation which is alleged to have occurred more than one year prior to commencement of the action or proceeding.

(d) 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.

(Added by Stats.1982, c. 682, p. 2816, § 4, operative Jan. 1, 1986. Amended by Stats.1984, c. 553, § 4, eff. July 17, 1984, operative Jan. 1, 1986; Stats.1986, c. 488, § 15 operative Jan. 1, 1986.)

### Historical Note

The 1984 amendment changed the operative date of the section from Jan. 1, 1985, to Jan. 1, 1986.

The 1986 amendment deleted a paragraph providing a Jan. 1, 1986, operative date and added subds. (b) to (d).

1986 amendment of subds. (c) and (d) of this section deemed operative Jan. 1, 1986, see Historical Note under § 1700.4.

Former § 1700.44, added by Stats.1959, c. 888, p. 2927, § 1; amended by Stats.1967, c. 1567, p. 3762, § 2, Stats.1982, c. 682, p. 2815, § 3, Stats.1984, c. 553, § 3, relating to similar subject matter, was repealed by its own terms January 1, 1986.

**Derivation:** Former § 1700.44, added by Stats.1959, c. 888, p. 2927, § 1, amended by Stats.1967, c. 1567, p. 3762, § 2, Stats.1982, c. 682, p. 2815, § 3, Stats.1984, c. 553, § 3.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### Notes of Decisions

**1. Rescission of employment agreement**

Petition filed by actress before Labor Commissioner seeking to have employment agreement voided based on manager's violation of licensing requirement was properly and necessarily brought before Labor Commissioner under doctrine of exhaustion of remedies, since West's Ann.Cal.Labor Code § 1700.44 which provides for hearing and determination of disputes by Labor Commissioner is mandatory, and Labor Commissioner had original jurisdiction to hear and determine the controversy. Humes v. Margil Ventures, Inc. (App. 2 Dist. 1985) 220 Cal.Rptr. 186, 174 C.A.3d 486.

**2. Time to file appeal**

Under this section the time to file an appeal does not begin to run until after service of notice of the determination. Sinnamon v. McKay (1983) 191 Cal.Rptr. 295, 142 C.A.3d 847.

**3. Bond**

Party appealing from labor commissioner's determination in arbitration proceeding under Artists' Managers Act (now, Talent Agencies Act) was required to file bond in order to stay enforcement of award although award had not been reduced to judgment by judicial confirmation, even though this section specifying bond referred to bond in sum not exceeding twice amount of "judgment." Buchwald v. Katz (1972) 105 Cal.Rptr. 368, 503 P.2d 1376, 8 C.3d 493.

On appeal from labor commissioner's determination in arbitration proceeding under Artists' Managers Act (now, Talent Agencies Act), superior court may only require bond in order to stay award and erred in requiring bond in order to prosecute appeal and abused discretion in dismissing appeal for failure to post bond. Id.

**4. Failure to file bond**

Where party appealing from labor commissioner's determination in arbitration proceeding under Artists' Managers Act (now, Talent Agencies Act) did not file bond, other party was free to enforce commissioner's money award; proper procedure is first to apply to superior court for judicial confirmation and to enforce ensuing judgment. Buchwald v. Katz (1972) 105 Cal.Rptr. 368, 503 P.2d 1376, 8 C.3d 493.

**5. Postponement or adjournment of hearings**

Powers of an arbitrator, which are shared by Labor Commissioner, include power to postpone a hearing on request of a party, for good cause, or upon his own determination. Humes v. Margil Ventures, Inc. (App. 2 Dist.1985) 220 Cal.Rptr. 186, 174 C.A.3d 486.

**6. Review**

Notice of appeal from determination of labor commissioner in arbitration proceeding under Artists' Managers Act (now, Talent Agencies Act) was not required to allege ground for review. Buchwald v. Katz (1972) 105 Cal.Rptr. 368, 503 P.2d 1376, 8 C.3d 493.

Superior court on appeal from labor commissioner's determination in proceeding under Artists' Managers Act (now, Talent Agencies Act) may call up pleadings or other papers or documents by which parties presented their claims and defenses before commissioner or may require parties to present such claims and defenses in more formal pleadings. Buchwald v. Katz (1972) 105 Cal.Rptr. 368, 503 P.2d 1376, 8 C.3d 493.

This section entitles appealing party to complete new trial that is in no way a review of prior proceedings, rather than to review only by writ of mandate. Id.

## § 1700.45. Arbitration; contract provisions

Notwithstanding Section 1700.44, a provision in a contract providing for the decision by arbitration of any controversy under the contract or as to its existence, validity, construction, performance, nonperformance, breach, operation, continuance, or termination, shall be valid:

(a) If the provision is contained in a contract between a talent agency and a person for whom the talent agency under the contract undertakes to endeavor to secure employment, or

(b) If the provision is inserted in the contract pursuant to any rule, regulation, or contract of a bona fide labor union regulating the relations of its members to a talent agency, and

(c) If the contract provides for reasonable notice to the Labor Commissioner of the time and place of all arbitration hearings, and

(d) If the contract provides that the Labor Commissioner or his or her authorized representative has the right to attend all arbitration hearings.

Except as otherwise provided in this section, any arbitration shall be governed by the provisions of Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.

If there is an arbitration provision in a contract, the contract need not provide that the talent agency agrees to refer any controversy between the applicant and the talent agency regarding the terms of the contract to the Labor Commissioner for adjustment, and Section 1700.44 shall not apply to controversies pertaining to the contract.

A provision in a contract providing for the decision by arbitration of any controversy arising under this chapter which does not meet the requirements of this section is not made valid by Section 1281 of the Code of Civil Procedure.

(Added by Stats.1959, c. 888, p. 2927, § 1. Amended by Stats.1961, c. 461, p. 1552, § 7; Stats.1978, c. 1382, p. 4582, § 39; Stats.1986, c. 488, § 16.)

## Historical Note

The 1961 amendment deleted a reference to § 1280 of the Code of Civil Procedure from the introductory clause, and added the final paragraph.

Section 8 of Stats.1961, c. 461, p. 1552, read as follows:

"This act applies to all contracts whether executed before or after the effective date of this act except that Section 1293 of the Code of Civil Procedure, as added by this act, does not apply to any contract executed before the effective date of this act but Section 1293 does apply to any renewal or extension of an existing contract on or after the effective date of this act."

The 1978 amendment substituted "talent agency" for "artists' manager".

The 1986 amendment amended the section without substantive change.

## Library References

Arbitration: Recommendation and study. Cal.Law Revision Comm. (1961) Vol. 3, pp. G–5, G–25.

## Notes of Decisions



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### 1. Jurisdiction of commissioner

Where evidence before labor commissioner created prima facie showing that contract between artists and representative was in fact artists' manager contract, labor commissioner had jurisdiction notwithstanding contract provision for arbitration. Buchwald v. Superior Court In and For City and County of San Francisco (1967) 62 Cal.Rptr. 364, 254 C.A.2d 347.

### 2. Waiver

Where artists brought proceeding in court to restrain representative from proceeding with arbitration provisions as provided in contract between representative and artists, artists did not waive right they had to proceed before labor commissioner under Artists' Managers Act. Buchwald v. Superior Court In and For City and County of San Francisco (1967) 62 Cal.Rptr. 364, 254 C.A.2d 347.

## § 1700.46. Repealed by Stats.1982, c. 682, p. 2816, § 5

The repealed section, added by Stats.1959, c. 888, § 1, provided the punishment for violation of the chapter.

## § 1700.47. Unlawful discrimination

It shall be unlawful for any licensee to refuse to represent any artist on account of that artist's race, color, creed, sex, national origin, religion, or handicap.

(Added by Stats.1986, c. 488, § 18.)

### Historical Note

Former § 1700.47, added by Stats.1978, c. 1382, p. 4583, § 40, relating to applications of musician booking agencies for talent agency licenses, was repealed by Stats.1986, c. 488, § 17.

# Article 4

# CALIFORNIA ENTERTAINMENT COMMISSION [REPEALED]

*Article 4, added by Stats.1982, c. 682, p. 2816, § 6, was repealed by the terms of § 1704 on Jan. 1, 1986.*

## §§ 1701 to 1704. Repealed by Stats.1984, c. 553, § 6, operative Jan. 1, 1986

### Historical Note

The repealed sections, added by Stats.1982, c. 682, § 6, amended by Stats.1984, c. 553, § 6, relating to the creation and operation of the commission, were repealed by the terms of § 1704 on Jan. 1, 1986.

# Chapter 5

# NURSES REGISTRIES [REPEALED]

*Chapter 5, consisting of sections 1710 to 1710.53, was added by Stats.1961, c. 242, p. 1261, § 2, and was repealed by Stats.1970, c. 1399, p. 2639, § 2.*

*Upon repeal of Chapter 5, similar provisions were enacted in the Business and Professions Code § 9890.1 et seq.*

## §§ 1710 to 1710.17. Repealed by Stats.1970, c. 1399, p. 2639, § 2

### Historical Note

The repealed sections, added by Stats.1961, c. 242, p. 1261, § 2; § 1710.4 amended by Stats. 1967, c. 1505, p. 3573, § 17; § 1710.17 amended by Stats.1965, c. 185, § 1; related to scope, definitions, and license applications. Upon repeal similar provisions were enacted in Business and Professions Code § 9890.1 et seq.

# West's
# ANNOTATED CALIFORNIA CODES

## LABOR CODE

## Sections 1 to 3200

**[Section 3200 now appears in Volume 44A]**

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Volume 44

**2001**
**Cumulative Pocket Part**

Replacing 2000 Pocket Part supplementing 1989 main volume

Includes laws through the 1999-2000
Regular and First Extraordinary Sessions
and the November 7, 2000, election

WEST GROUP

## § 1698.1. Transfer of interest of profits of agency

No licensee shall sell, transfer or give away any interest in or the right to participate in the profits said licensee's business without the written consent of the Labor Commissioner. A violation of th section shall constitute a misdemeanor, and shall be punishable by a fine of not less than two hundr dollars ($200) nor more than two thousand dollars ($2,000), or imprisonment for not more than 60 days, c both.

(Amended by Stats.2000, c. 917 (A.B.1338), § 7.)

# Chapter 4

# TALENT AGENCIES

## Article 1

## SCOPE AND DEFINITIONS

**Section**
1700. "Person" defined.

### Law Review and Journal Commentaries

Enforcement of the California Talent Agencies Act: Procedures of The Labor commissioner. Miles E.Locker, 14 Ent. & Sports Law. 11 (Fall 1996).

Regulation of attorneys under California's Talent Agencies Act: A tautological approach to protecting artists. 80 Cal.L.Rev. 471 (1992).

Talent Agencies Act: A personal manager's nightmare Edwin F. McPherson, 17 L.A.Law 17 (May 1994).

## § 1700. "Person" defined

As used in this chapter, "person" means any individual, company, society, firm, partnership, association corporation, limited liability company, manager, or their agents or employees.

(Amended by Stats.1994, c. 1010 (S.B.2058), § 184.)

### Historical and Statutory Notes

**1994 Legislation**

Subordination of legislation by Stats.1994, c. 1010 (S.B. 2058), see Historical and Statutory Notes under Business and Professions Code § 128.

**1996 Legislation**

Legislative declaration of Stats.1996, c. 57 (S.B.141), § 30, relating to the rendition of professional services by a limited liability company, see Historical and Statutory Notes under Code of Civil Procedure § 699.720.

### Library References

Cal Digest of Official Reports 3d Series, Labor §§ 1, 3, 6.

### Notes of Decisions

**Construction and application 2**

**1. Validity**

Talent Agencies Act is a remedial statute designed to protect those seeking employment. REO Broadcasting Consultants v. Martin (App. 2 Dist. 1999) 81 Cal.Rptr.2d 639, 69 Cal.App.4th 489.

**2. Construction and application**

To ensure personal, professional, and financial welfare of artist, Talent Agencies Act strictly regulates talent agent's conduct. Waisbren v. Peppercorn Productions, Inc. (App. 2 Dist. 1995) 48 Cal.Rptr.2d 437, 41 Cal.App.4th 246, rehearing denied, review denied.

## § 1700.4. "Talent agency" and "artists" defined

### Law Review and Journal Commentaries

Talent Agencies Act: A personal manager's nightmare. Edwin F. McPherson, 17 L.A.Law 17 (May 1994).

The Talent Agencies Act: Time for a change. Edwin F. McPherson, 19 Hastings Comm. & Ent.L.J. 899 (1997).

### Notes of Decisions



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**½. Validity**

Exemption from Talent Agencies Act licensing requirement for those engaged in procuring recording contracts but not other kinds of contracts has rational basis, and thus, classification does not violate equal protection; negotiations for recording contracts are commonly conducted by personal manager, rather than by talent agent. Wachs v. Curry (App. 2 Dist. 1993) 16 Cal.Rptr.2d 496, 13 Cal.App.4th 616.

Provision of the Talent Agencies Act requiring licensing of those engaged in the "occupation" of procuring employment imposes standard that measures significance of agent's employment procurement function compared to counseling function taken as whole and thus, provision is not void for vagueness. Wachs v. Curry (App. 2 Dist. 1993) 16 Cal.Rptr.2d 496, 13 Cal.App.4th 616.

**1. Construction and application**

Personal manager's allegedly uncompensated activities in procuring employment for music group were subject to regulation under Talent Agencies Act; manager's contracts with group apparently provided for compensation for such services, manager would ultimately receive compensation for services from commissions for obtaining recording contract for group, Act neither expressly included nor exempted uncompensated procurement of employment, and general object of Act included prevention of abuses occurring in course of uncompensated representation. Park v. Deftones (App. 2 Dist. 1999) 84 Cal.Rptr.2d 616, 71 Cal.App.4th 1465, review denied.

**2. Parties**

Personal managers had standing to challenge facial constitutionality of Talent Agency's Act's licensing requirement, on its face, as they were persons aggrieved by alleged vagueness and members of class against whom it allegedly discriminated, but managers had no standing to challenge particular application of statute to them, because no particular facts were before Court of Appeal on appeal in suit against state officials charged with enforcing Act. Wachs v. Curry (App. 2 Dist. 1993) 16 Cal.Rptr.2d 496, 13 Cal.App.4th 616.

**3. Occupation of procuring**

Talent Agencies Act applies only if person engages in "occupation" of procuring employment for artist. Waisbren v. Peppercorn Productions, Inc. (App. 2 Dist. 1995) 48 Cal.Rptr.2d 437, 41 Cal.App.4th 246, rehearing denied, review denied.

"Occupation" of procuring employment, so as to be subject to licensing requirement of the Talent Agencies Act, must be determined according to standard that measures significance of agent's employment procurement function compared to agent's counseling function taken as whole; if employment procurement function is the significant part of agent's business as whole, then he is subject to licensing requirement, even if, with respect to particular client, procurement of employment was only incidental, but if counseling and directing clients' careers is the significant part of agent's business, then he or she is not subject to licensing requirement, even if with respect to particular client counseling was only incidental part of agent's overall duties. Wachs v. Curry (App. 2 Dist. 1993) 16 Cal.Rptr.2d 496, 13 Cal.App.4th 616.

## Article 2

## LICENSES



## § 1700.5. Necessity of talent agency license; posting an advertisement; renewal of prior licenses

No person shall engage in or carry on the occupation of a talent agency without first procuring a license therefor from the Labor Commissioner. The license shall be posted in a conspicuous place in the office of the licensee. The license number shall be referred to in any advertisement for the purpose of the solicitation of talent for the talent agency.

Licenses issued for talent agencies prior to the effective date of this chapter shall not be invalidated thereby, but renewals of those licenses shall be obtained in the manner prescribed by this chapter. (Amended by Stats.1989, c. 480, § 1.)

### Notes of Decisions

**Unlicensed agent's authority 6**

**2. Construction and application**

Even incidental activity in procuring employment for artist is subject to regulation under Talent Agencies Act. Park v. Deftones (App. 2 Dist. 1999) 84 Cal.Rptr.2d 616, 71 Cal.App.4th 1465, review denied.

Because Talent Agencies Act is remedial, it should be liberally construed to promote its general object. Park v. Deftones (App. 2 Dist. 1999) 84 Cal.Rptr.2d 616, 71 Cal. App.4th 1465, review denied.

Talent Agencies Act requires license to engage in procurement activities even if no commission is received for the service. Park v. Deftones (App. 2 Dist. 1999) 84 Cal.Rptr.2d 616, 71 Cal.App.4th 1465, review denied.

**4. Personal manager**

Unlike talent agents, personal managers are not covered by Talent Agencies Act. Park v. Deftones (App. 2 Dist. 1999) 84 Cal.Rptr.2d 616, 71 Cal.App.4th 1465, review denied.

For purposes of Talent Agencies Act, "personal managers" primarily advise, counsel, direct, and coordinate development of artist's career; they advise in business and personal matters, frequently lend money to artists, and serve as spokespersons for artists. Park v. Deftones (App. 2 Dist. 1999) 84 Cal.Rptr.2d 616, 71 Cal.App.4th 1465, review denied.

Personal manager's activities in procuring employment for music group, even if incidental to purpose of procuring recording contract for group, were subject to regulation under Talent Agencies Act. Park v. Deftones (App. 2 Dist. 1999) 84 Cal.Rptr.2d 616, 71 Cal.App.4th 1465, review denied.

Personal manager's allegedly uncompensated activities in procuring employment for music group were subject to regulation under Talent Agencies Act; manager's contracts with group apparently provided for compensation for such services, manager would ultimately receive compensation for services from commissions for obtaining recording contract for group, Act neither expressly included nor exempted uncompensated procurement of employment, and general object of Act included prevention of abuses occurring in course of uncompensated representation. Park v. Deftones (App. 2 Dist. 1999) 84 Cal.Rptr.2d 616, 71 Cal.App.4th 1465, review denied.

Personal manager is not covered by Talent Agencies Act requiring licensing of those engaged in occupation of procuring employment for artists working in entertainment field. Waisbren v. Peppercorn Productions, Inc. (App. 2 Dist. 1995) 48 Cal.Rptr.2d 437, 41 Cal.App.4th 246, rehearing denied, review denied.

Personal manager who procured employment for artist had to be licensed under Talent Agencies Act. Waisbren v. Peppercorn Productions, Inc. (App. 2 Dist. 1995) 48 Cal.Rptr.2d 437, 41 Cal.App.4th 246, rehearing denied, review denied.

Labor Commissioner's position that license was required under Talent Agencies Act for employment procurement activities that were only incidental to personal manager's business was reasonable, to be entitled to deference on review. Waisbren v. Peppercorn Productions, Inc. (App. 2 Dist. 1995) 48 Cal.Rptr.2d 437, 41 Cal.App.4th 246, rehearing denied, review denied.

**5. Contracts with unlicensed agents**

Since clear object of Talent Agencies Act is to prevent improper persons from becoming talent agents and to regulate agents' activity for protection of public, contract between unlicensed agent and artist is void. Waisbren v. Peppercorn Productions, Inc. (App. 2 Dist. 1995) 48 Cal. Rptr.2d 437, 41 Cal.App.4th 246, rehearing denied, review denied.

Agreement between unlicensed agent and artist that violated licensing requirement of Talent Agencies Act was illegal and unenforceable despite lack of criminal penalties for licensing violations. Waisbren v. Peppercorn Productions, Inc. (App. 2 Dist. 1995) 48 Cal.Rptr.2d 437, 41 Cal.App.4th 246, rehearing denied, review denied.

**6. Authority of unlicensed agents**

Performer's representatives who were not licensed talent agents did not have authority to make binding promises on behalf of performer. Trans-World Intern., Inc. v. Smith-Hemion Productions, Inc., C.D.Cal.1997, 972 F.Supp. 1275.

Performer's managers, who were not licensed talent agents, were not apparent or ostensible agents of performer for purposes of promissory estoppel claim by production company based on performer's alleged commitment to appear on television show, as company was aware of limits to the managers' legal authority and record did not suggest that performer either acted in a way such as to imply that managers had such authority or that he remained silent knowing that manager had held himself out as having such authority. Trans-World Intern., Inc. v. Smith-Hemion Productions, Inc., C.D.Cal.1997, 972 F.Supp. 1275.

## § 1700.22. Hearing; conduct of proceedings; powers of commissioner

### Notes of Decisions

**Construction and application 1**

**1. Construction and application**

Labor Commissioner has the authority to hear and determine various disputes, including the validity of artists' manager-artist contracts and the liability of the parties under the Talent Agencies Act. REO Broadcasting Consultants v. Martin (App. 2 Dist. 1999) 81 Cal.Rptr.2d 639, 69 Cal.App.4th 489.

Article 3

OPERATION AND MANAGEMENT

§ 1700.25. Trust funds; disbursements; records; disputes; penalties; attorney's fees

(a) A licensee who receives any payment of funds on behalf of an artist shall immediately deposit that amount in a trust fund account maintained by him or her in a bank or other recognized depository. The funds, less the licensee's commission, shall be disbursed to the artist within 30 days after receipt. However, notwithstanding the preceding sentence, the licensee may retain the funds beyond 30 days of receipt in either of the following circumstances:

(1) To the extent necessary to offset an obligation of the artist to the talent agency that is then due and owing.

(2) When the funds are the subject of a controversy pending before the Labor Commissioner under Section 1700.44 concerning a fee alleged to be owed by the artist to the licensee.

(b) A separate record shall be maintained of all funds received on behalf of an artist and the record shall further indicate the disposition of the funds.

(c) If disputed by the artist and the dispute is referred to the Labor Commissioner, the failure of a licensee to disburse funds to an artist within 30 days of receipt shall constitute a "controversy" within the meaning of Section 1700.44.

(d) Any funds specified in subdivision (a) that are the subject of a controversy pending before the Labor Commissioner under Section 1700.44 shall be retained in the trust fund account specified in subdivision (a) and shall not be used by the licensee for any purpose until the controversy is determined by the Labor Commissioner or settled by the parties.

(e) If the Labor Commissioner finds, in proceedings under Section 1700.44, that the licensee's failure to disburse funds to an artist within the time required by subdivision (a) was a willful violation, the Labor Commissioner may, in addition to other relief under Section 1700.44, order the following:

(1) Award reasonable attorney's fees to the prevailing artist.

(2) Award interest to the prevailing artist on the funds wrongfully withheld at the rate of 10 percent per annum during the period of the violation.

(f) Nothing in subdivision (c), (d), or (e) shall be deemed to supersede Section 1700.45 or to affect the enforceability of a contractual arbitration provision meeting the criteria of Section 1700.45.

(Amended by Stats.1994, c. 1032 (A.B.1901), § 1.)

**Law Review and Journal Commentaries**

Review of selected 1994 California legislation. 26 Pac. L.J. 202 (1995).

§ 1700.37. Judicially approved contract not disaffirmable by minor

**Law Review and Journal Commentaries**

The regulation of minors' entertainment contracts: Effective California law or Hollywood grandeur? 19 J.Juv.L. 376 (1998).

§ 1700.40. Registration fees; refunds; referrals; conflicts of interest

(a) No talent agency shall collect a registration fee. In the event that a talent agency shall collect from an artist a fee or expenses for obtaining employment for the artist, and the artist shall fail to procure the employment, or the artist shall fail to be paid for the employment, the talent agency shall, upon demand therefor, repay to the artist the fee and expenses so collected. Unless repayment thereof is made within 48 hours after demand therefor, the talent agency shall pay to the artist an additional sum equal to the amount of the fee.

(b) No talent agency may refer an artist to any person, firm, or corporation in which the talent agency has a direct or indirect financial interest for other services to be rendered to the artist, including, but not limited to, photography, audition tapes, demonstration reels or similar materials, business management, personal management, coaching, dramatic school, casting or talent brochures, agency-client directories, or other printing.

(c) No talent agency may accept any referral fee or similar compensation from any person, association, or corporation providing services of any type expressly set forth in subdivision (b) to an artist under contract with the talent agency.

(Amended by Stats.1994, c. 1032 (A.B.1901), § 2.)

## Law Review and Journal Commentaries

Review of selected 1994 California legislation. 26 Pac. L.J. 202 (1995).

## § 1700.44. Dispute; hearing; determination; bond; certification of no controversy; failure to obtain license; limitations of actions

### Cross References

Trust fund retention, controversies pending under this section, see Labor Code § 1700.25.

### Law Review and Journal Commentaries

Talent Agencies Act: A personal manager's nightmare. Edwin F. McPherson, 17 L.A.Law. 17 (May 1994).

### Notes of Decisions

Construction and application ¾
Judicial appeal 5.5
Limitation of actions, generally 1.5
Validity ½

½. Validity

Exemption from Talent Agencies Act licensing requirement for those engaged in procuring recording contracts but not other kinds of contracts has rational basis, and thus, classification does not violate equal protection; negotiations for recording contracts are commonly conducted by personal manager, rather than by talent agent. Wachs v. Curry (App. 2 Dist. 1993) 16 Cal.Rptr.2d 496, 13 Cal.App.4th 616.

¾. Construction and application

Reference of disputes involving Talent Agencies Act to Labor Commissioner is mandatory; disputes must be heard by the Commissioner, and all remedies before the Commissioner must be exhausted before the parties can proceed to the superior court. REO Broadcasting Consultants v. Martin (App. 2 Dist. 1999) 81 Cal.Rptr.2d 639, 69 Cal.App.4th 489.

1.5. Limitation of actions, generally

One-year statute of limitations applicable to music group's petition before Labor Commissioner to void management agreement, and to affirmative defense of violation of Talent Agencies Act raised by group and record company against former manager's action for payment of commissions, began to run on date former manager brought action to collect commissions claimed by him under challenged management agreement. Park v. Deftones (App. 2 Dist. 1999) 84 Cal.Rptr.2d 616, 71 Cal. App.4th 1465, review denied.

5.5. Judicial appeal

Once the parties have exhausted their administrative remedies, Talent Agencies Act confers upon any party aggrieved by a determination of Labor Commissioner the right to a trial de novo in the superior court provided he or she notices the appeal within 10 days, which begins to run after service of notice of the determination. REO Broadcasting Consultants v. Martin (App. 2 Dist. 1999) 81 Cal.Rptr.2d 639, 69 Cal.App.4th 489.

Under Talent Agencies Act, 10–day time limit for taking an appeal from a decision of Labor Commissioner was mandatory and jurisdictional, and the superior court could not consider an appeal taken after the expiration of the statutory period even if the appeal was late because of mistake, inadvertence or other excuse. REO Broadcasting Consultants v. Martin (App. 2 Dist. 1999) 81 Cal. Rptr.2d 639, 69 Cal.App.4th 489.

Timeliness within which a notice of appeal from a decision of the Labor Commissioner has been filed depends on the date upon which the Commissioner's final determination was mailed to the parties. REO Broadcasting Consultants v. Martin (App. 2 Dist. 1999) 81 Cal.Rptr.2d 639, 69 Cal.App.4th 489.

Career consultants could not amend their complaint to allege constitutionally-based attack on Labor Commissioner's determination that their conduct constituted procurement of employment subject to Talent Agencies Act since Commissioner was acting with fundamental jurisdiction when it acted pursuant to the authority of the Act and since Commissioner's determination became final because consultants failed to file a timely request for a trial de novo. REO Broadcasting Consultants v. Martin (App. 2 Dist. 1999) 81 Cal.Rptr.2d 639, 69 Cal.App.4th 489.

## Chapter 4.5

## ADVANCE–FEE TALENT SERVICES

*Chapter 4.5 was added by Stats.1999, c. 626 (A.B.884), § 1.*

Article 1

DEFINITIONS



*Article 1 was added by Stats.1999, c. 626 (A.B.884), § 1.*

## § 1701. Definitions

For purposes of this chapter, the following terms have the following meanings:

(a)(1) "Advance fee" means any fee due from or paid by an artist prior to the artist obtaining actual employment as an artist or prior to the artist receiving actual earnings as an artist or that exceeds the actual earnings received by the artist as an artist.

(2) "Advance fee" does not include reimbursements for out-of-pocket costs actually incurred by the payee on behalf of the artist for services rendered or goods provided to the artist by an independent third party if all of the following conditions are met:

(A) The payee has no direct or indirect financial interest in the third party.

(B) The payee does not accept any referral fee or other consideration for referring the artist.

(C) The services rendered or goods provided for the out-of-pocket costs are not represented to be, and are not, a condition for the payee to register or list the artist with the payee.

(D) The payee maintains adequate records to establish that the amount to be reimbursed was actually advanced or owed to a third party and that the third party is not a person in which the payee has a direct or indirect financial interest or from which the payee receives any consideration for referring the artist.

(E) The burden of producing evidence to support a defense based upon an exemption or an exception provided in this paragraph is upon the person claiming it.

(b) "Advance-fee talent service" means a person who charges, attempts to charge, or receives an advance fee from an artist for one or more of the following:

(1) Procuring, offering, promising, or attempting to procure employment or engagements for the artist.

(2) Managing or directing the development or advancement of the artist's career as an artist.

(3) Career counseling, career consulting, vocational guidance, aptitude testing, evaluation, or planning, in each case relating to the preparation of the artist for employment as an artist.

* * *

(c) "Artist" or "artists" means persons who seek to become or are actors or actresses rendering services on the legitimate stage or in the production of motion pictures, radio artists, musical artists, musical organizations, directors of legitimate stage, motion picture and radio productions, musical directors, writers, cinematographers, composers, lyricists, arrangers, models, extras, and other artists or persons rendering professional services in motion picture, theatrical, radio, television, and other entertainment enterprises.

(d) "Fee" means any money or other valuable consideration paid or promised to be paid by or for an artist for services rendered or to be rendered by any person conducting the business of an advance-fee talent service.

(e) "Person" means any individual, company, society, firm, partnership, association, corporation, limited liability company, trust, or other organization.

(Added by Stats.1999, c. 626 (A.B.884), § 1. Amended by Stats.2000, c. 878 (A.B.2860), § 1, eff. Sept. 29, 2000.)

### Historical and Statutory Notes

**1999 Legislation**

The Assembly Daily Journal for the 1999-2000 Regular Session, page 4374, contained the following letter dated September 8, 1999, from Assembly Member Kuehl, regarding A.B. 884 (Stats.1999, c. 626):

"September 8, 1999

"Mr. E. Dotson Wilson

"Chief Clerk, California State Assembly

"Assembly Desk, State Capitol

"Sacramento, California

"RE: AB 884 (Kuehl) Advance-Fee Talent Services

"Dear Mr. Wilson: As the author of Assembly Bill (AB) 884, I wish to clarify the intent and purpose of the bill.

"A concern was raised that piano teachers and those who provide similar services would inadvertently be brought within the scope of this bill. It is my intent that the language of Section 1701 (a)(1) of the Labor Code apply only to those persons offering services that are directly related to the future employment of the artist as an artist.

"Those persons offering employment counseling or services in exchange for a fee unrelated to future employment should not be considered within the scope of this bill.

"Sincerely,

"SHEILA JAMES KUEHL, Assembly Member

"Forty-first District"

### § 1701.1. Exemptions

This chapter does not apply to any person exempt from regulation under the Employment Agency, Employment Counseling, and Job Listing Services Act (Title 2.91 (commencing with Section 1812.500) of Part 4 of Division 3 of the Civil Code) pursuant to paragraph (2) of subdivision (b) of Section 1812.501 or Section 1812.502 of the Civil Code.

(Added by Stats.1999, c. 626 (A.B.884), § 1.)

### § 1701.2. Compliance with chapter; effect

Compliance with this chapter does not satisfy or is not a substitute for the requirements mandated by any other applicable law, including the obligation to obtain a license under the Talent Agencies Act (Chapter 4 (commencing with Section 1700)), prior to procuring, offering, promising, or attempting to procure employment or engagements for artists.

(Added by Stats.1999, c. 626 (A.B.884), § 1.)

## Article 2

## CONTRACT AGREEMENT PROVISIONS AND RECORDKEEPING



*Article 2 was added by Stats.1999, c. 626 (A.B.884), § 1.*

### § 1701.4. Contracts to be in writing; required provisions; refunds

(a) Every contract or agreement between an artist and an advance-fee talent service for an advance fee shall be in writing. The contract shall contain all of the following provisions and the additional provisions, if any, as may be set forth in regulations adopted by the Labor Commissioner from time to time:

(1) The name, address, and telephone number of the advance-fee talent service, the artist to whom the services are to be provided, and the representative executing the contract on behalf of the advance-fee talent service.

(2) A description of the services to be performed, a statement when those services are to be provided, the duration of the contract, and refund provisions if the described services are not provided according to the contract.

(3) The amount of any fees to be charged to or collected from the artist receiving the services or any other person and the date or dates when those fees are required to be paid.

(4) The following statements, in type no smaller than 10-point boldface type and in close proximity to the artist's signature, shall be included in the contract:

RIGHT TO REFUND

"If you pay all or any portion of a fee and you fail to receive the services promised or that you were led to believe would be performed, then (name of advance-fee talent service) shall, upon your request, return the amount paid by you within 48 hours of your request for a refund. If the refund is not made within 48 hours, then (name of advance-fee talent service) shall, in addition, pay you a sum equal to the amount of the refund."

YOUR RIGHT TO CANCEL

(enter date of transaction)

You may cancel this contract for advance-fee talent services, without any penalty or obligation, if notice of cancellation is given, in writing, within 10 business days from the above date.

To cancel this contract, mail or deliver a signed and dated copy of the following cancellation notice or any other written notice of cancellation, or send a telegram containing a notice of cancellation to (name of advance-fee talent service) at (address of its place of business), NOT LATER THAN MIDNIGHT OF (date).

ONLY A TALENT AGENT LICENSED PURSUANT TO SECTION 1700.5 OF THE LABOR CODE MAY ENGAGE IN THE OCCUPATION OF PROCURING, OFFERING, PROMISING, OR ATTEMPTING TO PROCURE EMPLOYMENT OR ENGAGEMENTS FOR AN ARTIST.

CANCELLATION NOTICE

I hereby cancel this contract.
Dated: _____

_____
Artist Signature.

(b) All contracts subject to this section shall be dated and shall be made and numbered consecutively in triplicate, the original and each copy to be signed by the artist and the person acting for the advance-fee talent service. The advance-fee talent service shall provide an original and one copy of the contract to the artist at the same time the artist signs the contract and before the artist or any person acting on his or her behalf becomes obligated to pay or pays any fee. The additional copy shall be kept on file at the advance-fee talent service's place of business.

(c) The full agreement between the parties shall be contained in a single document containing the elements set forth in this section.

(d) Any contract subject to this section that does not comply with subdivisions (a) to (c), inclusive, of this section shall be voidable at the election of the artist and, in that case, shall not be enforceable by the advance-fee talent service.

(e) Refunds shall be made as follows:

(1) In the event that an artist does not receive the services promised or that the artist was led to believe would be performed, the advance-fee talent service shall, upon demand therefor, repay the artist the fees collected for those services. If repayment is not made within 48 hours after the artist's demand, the advance-fee talent service shall pay the artist an additional sum equal to the amount of the fee.

(2) In the event that an artist cancels the contract, the advance-fee talent service shall refund in full any advance fees demanded by the artist in writing within 10 business days after delivery of the demand to the advance-fee talent service, provided that the artist furnishes a notice of cancellation to the advance-fee talent service in the manner specified in paragraph (4) of subdivision (a). Unless repayment is made within 10 business days after the demand, the advance-fee talent service shall pay the artist an additional sum equal to the amount of the fee.

(Added by Stats.1999, c. 626 (A.B.884), § 1.)

### § 1701.5. Records

(a) Every person engaging in the business of an advance-fee talent service shall keep and maintain records of the person's advance-fee talent service business. The records shall contain all of the following:

(1) The name and address of each artist employing that person as an advance-fee talent service.

(2) The amount of the advance fees paid by or for the artist during the term of the contract with the advance-fee talent service.

(3) A record of all advertisements by the advance-fee talent service, including the date and the publication in which the advertisement appeared, which shall be maintained for a period of three years following publication.

(4) Records described in subparagraph (D) of paragraph (2) of subdivision (a) of Section 1701.

(5) Any other information that the Labor Commissioner requires.

(b) All books, records, and other papers kept pursuant to this chapter by an advance-fee talent service shall be open at all reasonable hours to inspection by the Labor Commissioner and his or her representatives and to the representative of the Attorney General, any district attorney, or any city attorney. Every advance-fee talent service shall furnish to the Labor Commissioner and to the representative of the Attorney General, any district attorney, or any city attorney, upon request, a true

copy of those books, records, and papers, or any portion thereof, and shall make reports as the Labor Commissioner requires.

(c) Every advance-fee talent service shall post in a conspicuous place in the office of the advance-fee talent service a printed copy of this chapter and of other statutes as may be specified by regulation of the Labor Commissioner. Those copies shall also contain the name and address of the officer charged with the enforcement of this chapter. The Labor Commissioner shall furnish to the advance-fee talent service printed copies of any statute required to be posted under this section.

(Added by Stats.1999, c. 626 (A.B.884), § 1.)

Article 3

WRITTEN DISCLOSURE

**Section**

1701.8. Advance written disclosure.

*Article 3 was added by Stats.1999, c. 626 (A.B.884), § 1.*

**§ 1701.8. Advance written disclosure**

Prior to requesting any advance fee, an advance-fee talent service shall provide an artist with written disclosure of all of the following:

(a) The name, address, and telephone number of the advance-fee talent service, and evidence of compliance with any applicable bonding requirements, including the bond number, if any.

(b) A copy of the advance-fee talent service fee schedule and payment terms.

(Added by Stats.1999, c. 626 (A.B.884), § 1.)

Article 4

BOND REQUIREMENTS AND FEES

**Section**

1701.10. Bond; deposit in lieu of bond.

*Article 4 was added by Stats.1999, c. 626 (A.B.884), § 1.*

**§ 1701.10. Bond; deposit in lieu of bond**

(a) Prior to engaging in the business or acting in the capacity of an advance-fee talent service, a person shall file with the Labor Commissioner a bond in the amount of ten thousand dollars ($10,000) or a deposit in lieu of the bond pursuant to Section 995.710 of the Code of Civil Procedure. The bond shall be executed by a corporate surety qualified to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to ten thousand dollars ($10,000). The bond may be terminated pursuant to Section 995.440 of, or Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California and shall be for the benefit of any person damaged by any fraud, misstatement, misrepresentation, unlawful act or omission, or failure to provide the services of the advance-fee talent service while acting within the scope of that employment or agency.

(c) The Labor Commissioner shall charge and collect a filing fee to cover the cost of filing the bond or deposit.

(d) The Labor Commissioner shall enforce the provisions of this chapter that govern the filing and maintenance of bonds and deposits.

(e)(1) Whenever a deposit is made in lieu of the bond otherwise required by this section, the person asserting the claim against the deposit shall establish the claim by furnishing evidence to the Labor Commissioner of a money judgment entered by a court, together with evidence that the claimant is a person described in subdivision (b).

(2) When a claimant has established the claim with the Labor Commissioner, the Labor Commissioner shall review and approve the claim and enter the date of the approval thereon. The claim shall be designated an approved claim.

(3) When the first claim against a particular deposit has been approved, it shall not be paid until the expiration of a period of 240 days after the date of its approval by the Labor Commissioner. Subsequent claims that are approved by the Labor Commissioner within the same 240–day period shall similarly not be paid until the expiration of that 240–day period. Upon the expiration of the 240–day period, the Labor Commissioner shall pay all approved claims from that 240–day period in full unless the deposit is insufficient, in which case every approved claim shall be paid a pro rata share of the deposit.

(4) Whenever the Labor Commissioner approves the first claim against a particular deposit after the expiration of a 240–day period, the date of approval of that claim shall begin a new 240–day period to which paragraph (3) applies with respect to any amount remaining in the deposit.

(5) After a deposit is exhausted, no further claims shall be paid by the Labor Commissioner. Claimants who have had claims paid in full or in part pursuant to paragraph (3) or (4) shall not be required to return funds received from the deposit for the benefit of other claimants.

(6) Whenever a deposit has been made in lieu of a bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the assignor of the deposit, other than as to an amount as no longer needed or required for the purposes of this chapter and that would otherwise be returned to the assignor of the deposit by the Labor Commissioner.

(7) The Labor Commissioner shall return a deposit two years from the date it receives written notification from the assignor of the deposit that the assignor has ceased to engage in the business or act in the capacity of an advance-fee talent service or has filed a bond pursuant to subdivision (a), provided that there are no outstanding claims against the deposit. The written notice shall include all of the following:

(A) The name, address, and telephone number of the assignor.

(B) The name, address, and telephone number of the bank at which the deposit is located.

(C) The account number of the deposit.

(D) A statement that the assignor is ceasing to engage in the business or act in the capacity of an advance-fee talent service or has filed a bond with the Labor Commissioner. The Labor Commissioner shall forward an acknowledgement of receipt of the written notice to the assignor at the address indicated therein, specifying the date of receipt of the written notice and the anticipated date of release of the deposit, provided there are then no outstanding claims against the deposit.

(8) A municipal or superior court may order the return of the deposit prior to the expiration of two years upon evidence satisfactory to the court that there are no outstanding claims against the deposit, or order the Labor Commissioner to retain the deposit for a specified period beyond the two years to resolve outstanding claims against the deposit.

(9) This subdivision applies to all deposits retained by the Labor Commissioner. The Labor Commissioner shall notify each assignor of a deposit it retains and of the applicability of this section.

(10) Compliance with Sections 1700.15 and 1700.16 of this code or Section 1812.503, 1812.510, or 1812.515 of the Civil Code shall satisfy the requirements of this section.

(Added by Stats.1999, c. 626 (A.B.884), § 1.)

## Article 5

## PROHIBITED ACTS

**Section**



*Article 5 was added by Stats.1999, c. 626 (A.B.884), § 1.*

### § 1701.12. Prohibited acts

An advance-fee talent service, or its agent or employee, may not do any of the following:

(a) Make, or cause to be made, any false, misleading, or deceptive advertisement or representation concerning the services the artist will receive or the costs the artist will incur.

(b) Publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisement.

(c) Give an artist any false information or make any false promise or misrepresentation concerning any engagement or employment, or make any false or misleading verbal or written promise or guarantee of any job or employment to an artist.

(d) Make any false promise or representation, by choice of name or otherwise, that the advance-fee talent service is a talent agency or will procure or attempt to procure employment or engagements for the artist as an artist.

(e) Charge or attempt to charge, directly or indirectly, an artist for registering or listing the artist for employment in the entertainment industry or as a customer of the advance-fee talent service.

(f) Charge or attempt to charge, directly or indirectly, an artist for creating or providing photographs, filmstrips, videotapes, audition tapes, demonstration reels, or other reproductions of the artist, casting or talent brochures, or other promotional materials for the artist.

(g) Charge or attempt to charge, directly or indirectly, an artist for creating or providing costumes for the artist.

(h) Charge or attempt to charge, directly or indirectly, an artist for providing lessons, coaching, or similar training for the artist.

(i) Charge or attempt to charge, directly or indirectly, an artist for providing auditions for the artist.

(j) Refer an artist to any person who charges the artist a fee for the services described in subdivisions (e) to (i), inclusive, in which the advance-fee talent service has a direct or indirect financial interest.

(k) Accept any compensation for referring an artist to any person charging the artist a fee for the services described in subdivisions (e) to (i), inclusive.

(Added by Stats.1999, c. 626 (A.B.884), § 1.)

## Article 6

## REMEDIES



*Article 6 was added by Stats.1999, c. 626 (A.B.884), § 1.*

### § 1701.13. Penalties for violations

A person who willfully violates any provision of this chapter is guilty of a misdemeanor. Each violation is punishable by imprisonment in the county jail for not more than one year, by a fine not exceeding ten thousand dollars ($10,000), or by both that fine and imprisonment. However, payment of restitution to an artist shall take precedence over the payment of a fine.

(Added by Stats.1999, c. 626 (A.B.884), § 1.)

### § 1701.15. Actions to restrain and enjoin violations

The Attorney General, any district attorney, or any city attorney may institute an action for a violation of this chapter, including, but not limited to, an action to restrain and enjoin a violation.

(Added by Stats.1999, c. 626 (A.B.884), § 1.)

### § 1701.16. Civil actions by aggrieved parties

A person who is injured by any violation of this chapter or by the breach of a contract subject to this chapter may bring an action for recovery of damages or to restrain and enjoin a violation, or both. The amount awarded for damages for a violation of this chapter may be up to three times the damages actually incurred, but not less than the amount paid by the artist to the advance-fee talent service. When an advance-fee talent service refuses or is unwilling to pay damages awarded by a judgment that has become final, the judgment may be satisfied from the bond or deposit maintained by the Labor Commissioner. If the plaintiff prevails in an action under this chapter, the plaintiff shall be awarded

reasonable attorney's fees and costs. If the court determines, by clear and convincing evidence, that the breach of contract or violation of this chapter was willful, the court, in its discretion, may award punitive damages in addition to any other amounts.

(Added by Stats.1999, c. 626 (A.B.884), § 1.)

### § 1701.17. Applicability of other laws

The provisions of this chapter are not exclusive and do not relieve any person subject to this chapter from the duty to comply with all other laws.

(Added by Stats.1999, c. 626 (A.B.884), § 1.)

### § 1701.18. Availability of other remedies

The remedies provided in this chapter are not exclusive and shall be in addition to any other remedies or procedures provided in any other law.

(Added by Stats.1999, c. 626 (A.B.884), § 1.)

### § 1701.19. Waiver of rights under this chapter

Any waiver by the artist of the provisions of this chapter is deemed contrary to public policy and void and unenforceable. Any attempt by an advance-fee talent service to have an artist waive his or her rights under this chapter is a violation of this chapter.

(Added by Stats.1999, c. 626 (A.B.884), § 1.)

### § 1701.20. Effect of unconstitutional provisions

If any provision of this chapter or the application thereof to any person or circumstances is held unconstitutional, the remainder of the chapter and the application of that provision to other persons and circumstances shall not be affected thereby.

(Added by Stats.1999, c. 626 (A.B.884), § 1.)

# Part 7

# PUBLIC WORKS AND PUBLIC AGENCIES

## Chapter 1

## PUBLIC WORKS



### Article 1

### SCOPE AND OPERATION

**ATA COMMENTS ON BACKGROUND PAPER**
**FOR SELECT COMMITTEE**
**ON REGULATION OF TALENT AGENTS**

The Committee staff's "Background Paper" seeks to inform the Committee for its preparation and the purpose of these comments is to similarly assist the Committee in selected areas covered by the "Background Paper." For ease of reference, we quote the "Background Paper" and then provide our comment.

Background Paper – page 1:

> "The genesis for creation of the Select Committee came from the ongoing negotiations between the Screen Actors Guild (SAG) and the Association of Talent Agents (ATA). These negotiations involve proposed changes to both the public and private rules of regulation for this important industry."

Comment:

- SAG and ATA have voluntarily entered cooperative contractual arrangements since 1939 and the results have been contained in Agency Regulations that address in detail a wide range of complex issues involving SAG's and ATA's joint service to SAG member actors.

- The Agency Regulations and all proposals exchanged between SAG and ATA in their current negotiation pertain only to standards for a SAG "franchise". ATA in the current negotiation has never proposed any change to the Talent Agency Act (TAA) or any other public regulation. To the contrary:

    - ATA's proposal makes it plain that all requirements of state law must be satisfied by any SAG franchised agent – regardless of what may be permitted for a franchise.

    - Any ATA member must be licensed by the State.

    - ATA believes that the TAA has worked well to protect actors, while at the same time permitting those who represent the actors adequate flexibility to deal with the myriad of complex issues involved in the representation of actors.

- ATA also has enjoyed long-standing contractual relationships with other guilds, including WGA, DGA and AFTRA; and the varying terms of their contractual arrangements reflect the wide array of complex and differing considerations that apply in this industry. These variations include differences in the range of areas including financial interests for agents franchised with each guild. The terms in each Guild agreement are different. Yet, each agreement includes contract forms incorporating the Guild/ATA agreements which have been approved by the Labor Commissioner of California, including provisions less restrictive than those in the SAG/ATA agency regulations.

- While in the past negotiations between ATA and the guilds may have been at times difficult, ATA and the respective guild involved have always reached agreement. ATA remains confident that continued good faith negotiations addressing all issues will result in new agency regulations.

Background Paper – page 1

> "Some questions for the members to consider: Should the legislature codify the conflict of interest provisions of the SAG Franchise Agreement?"

Comments:

- The fiduciary laws of California already protect against real conflicts of interest. Every prior SAG/ATA agreement and ATA's current proposals reconfirm and, in fact, emphasize the agent's fiduciary obligations to the actor.

- Agents and the Guilds have for decades dealt with conflict issues in differing ways to protect against conflicts in a manner practical to the representation of multiple actors. One example is Section IV of the SAG/ATA Agency Regulations which governs where agents represent actors of the same general qualifications and eligible for the same parts or roles.

- ATA does not agree that a "financial interest" either inevitably creates a real conflict or that any arising conflict–real or perceived–is incurable. To address the perception of conflict, its proposal on this subject goes to great lengths to insure that no actor can be affected adversely because the agent is "financially interested." These protections include, but are not limited to:

    - Disclosure and the right of the actor to terminate his agent;
    - Waiver of any commission to an agent for a client's work with a "financially interested" entity;
    - Special, expedited arbitration rights for the actor;
    - Third-party beneficiary rights for actors in contractual arrangements between the agent and a "financially interested" entity;
    - Reaffirmation of the agent's fiduciary duties and additional protections against and remedies for any third-party interference with such duties.

- Legislative codification of the "financial interest" provision in the expired SAG Franchise Agreement is not desirable. Doing so would not only regulate subjects long left to the involved parties representing actors to negotiate in the interests of all actors, but also would contravene existing agreements between agents and the other guilds representing actors, writers and directors.

Background Paper – page 2

> "Agents have increasingly confined themselves to the central task of sending the actors out for roles and negotiating the terms of the resulting deals."

Comment:

- The agent's duties are not limited to securing employment, but include the full representation of the actor in his career. Agents have always, and continue to, assist actors in starting and developing their careers.

- ATA member agents may represent approximately 95% of all working actors. Agents and managers work together as a team to deal with the many complex issues confronting working actors today.

- A common goal of SAG and ATA is to increase the number of agents available to serve SAG member actors, which has become increasingly difficult due to the changing economies in this industry. ATA believes that its many proposals made in its negotiations with SAG not only would help agents increase work opportunities for actors, but also result in an increased number of trained, licensed agents to represented actors still unrepresented.

- To assist toward achieving this common goal, ATA's "financial interest" proposal provides that any agent participating in a covered "financial interest" arrangement would be required to participate in the creation of a fund assisting SAG's membership in broadening actor representation by agents.

Background Paper – page 5

> "This (financial interest) waiver received initial approval by the SAG Board. However, the waiver deal was opposed by a majority of SAG membership, who anticipated that serious conflict of interest issues would arise if such a waiver were granted, and was never finalized."

Comment:

- Initial discussions between ATA and SAG concerning changes to the "financial interest" section of the SAG/ATA agency regulations began in 1999. SAG and ATA reached agreement on changes. Further, SAG and ATA discussed numerous legal issues pertaining to the changes, but SAG never raised any concerns that the changes it had agreed to violated state law.

- On February 15, 2000, SAG's National Board did approve a waiver permitting agents' ownership in or by persons and entities engaged in the production and distribution of motion pictures. SAG's Board issued a press release stating:

"In approving the motion, the Board of Directors acknowledged the numerous safeguards in the waiver to avoid potential conflicts of interest, including full disclosure of relevant transactions."

ATA's current proposal not only requires full disclosure, but also contains greater safeguards.

- The waiver was never submitted to SAG's membership. No vote of SAG's membership has ever been taken regarding any of ATA's proposals.

- Because there has been no vote taken, most SAG members remain uninformed regarding what ATA has proposed. ATA has offered to meet with SAG's "open forum" committee, but SAG has not responded to its offer.

- The SAG/ATA regulations provided that "No member of SAG may engage, use or deal through any agent for representation in motion pictures, as defined herein, either partially or exclusively, unless such agent holds a franchise issued hereunder." SAG has not enforced this rule in those instances where SAG members have retained non franchised representatives to procure employment.

Background Paper – Page 7

"Agents must be licensed by the state and franchised by the Screen Actors Guild (SAG) in order to represent actors."
Comment:

- Agents must be licensed by the state in order to represent actors and all ATA members are duly licensed agents in good standing. However, the TAA does not mandate that an agent be franchised to represent actors. To do so, would in effect delegate legislation to unilaterally imposed requirements of a non-legislative entity.

- Agents have relationships with guilds other than SAG and many actors as well engage in other functions, e.g. writing, producing and directing, that are governed by other ATA/Guild agreements. In all of these areas, agents must be licensed and comply with state law, but being franchised by any or all guilds is not a prerequisite to representing actors, nor should it be.

Background Paper – Page 7

"Managers can represent actors and get them jobs in productions in which the manager has a financial interest – and agents cannot. Under the TAA it is illegal. It is assumed that one will not try and get the best deal for an actor while at the same time trying to keep production costs down."

Comment:

- The TAA does not prohibit agents from having a financial interest. The only such prohibition has existed in the SAG/ATA Agency Regulations. The TAA requires an agency to disclose certain financial interests as part of the licensing process, but it neither proscribes such interest nor are such interests disqualifying for a license.

Background Paper – pages 13

page 13 – "It has been suggested that the language in Section 1700.30, which allows the Labor Commissioner to consent to profit sharing, would permit ATA and SAG to remove the financial conflict of interest provisions from the Franchise Agreement. However, that provision is intended to allow only case by case exceptions . . ."

Comment:

- ATA has since 1999 received consistent legal opinions from counsel that its proposals do not violate the TAA.

- As discussed above, any proposal between ATA and SAG relates only to the standards for a SAG franchise and do not seek to avoid any requirements for a licensed agent under state law.

- There is no prohibition under state law regarding financial interest. The purpose of Section 1700.30, evidenced by the Labor Commissioner's regulations implementing it, is to insure that all requisite disclosures from licensed agents are made in the limited circumstances enumerated in Section 1700.30.

- While SAG has expressed the view that ATA's proposal is illegal, representatives of SAG raised no such concern during negotiations and have refused ATA's request to explain the basis for its position.

- SAG and ATA have before, and can now, work through all the practical and legal issues through negotiation.

# ITA

*Independent Talent Agents*



9/24/2001

To: Dana Mitchell
State Capital
Room 3060
Sacramento, CA 95814

Fax# 916-327-3522

Dear Ms. Mitchell,

In a recent telephone conversation with Zino Macaluso (Agency Dept SAG) it became apparent that the Screen Actors Guild is confused as to the position of Independent Talent Agents who are part of our group.

This letter, then, is to try to clarify the position, which we as non-ATA/NATR members are taking regarding the issue of rule 16G.

At the onset of the notification of termination of 16G by the ATA/NATR, a negotiation meeting was set up which was open to all franchised agents. A small group of non-ATA/NATR members attended that first meeting. Unfortunately, at the end of the day we were told that ATA/NATR did not wish for us to be part of the negotiations. Since the end results of such negotiations affect all franchised agents, we felt it important to have input in the final agreement. SAG's negotiating committee then assured us that in fact we would have an opportunity to have such input.

As a result of the termination notification ATA/NATR submitted changes to 16G. Additionally, SAG responded with their proposed changes to rule 16G.

Our position as independents is that we endorse the proposed changes as submitted by the ATA/NATR. Where we object is in the proposed change that was submitted by SAG dealing with the issue of a million dollar bond required by all franchised talent agencies. As you are aware, the State of California requires a bond of $10,000 by all licensed agencies. This bond issue is of primary concern to us. Other issues that we feel are important to independents are issues of inclusion in all meetings, negotiations and forums that effect the disposition of our relationship with SAG and the talent we represent.

Our understanding is that ATA/NATR is willing to accept the bond issue as proposed by SAG. This is completely unacceptable to us. The majority of

independent agencies on our roster are small to medium in size. It is virtually impossible for agencies of this size to carry such a bond. That is not to say that we are unsympathetic to those SAG members who have lost money due to unscrupulous acts of some agencies. Our contention is that the whole should not be punished for the few. SAG's other proposal concerning the two-check system is also untenable to us and we reject it as well. We need our commissions to run our businesses. If payroll companies have to issue two checks there is a likelihood that agents will be waiting for their funds while talent receives their checks. At one time or another we have all been in the position of trying to collect commission either from talent or payroll companies with much difficulty.

Our suggestion to SAG regarding the future lose of funds is to more closely monitor those agencies who don't comply with the rules regarding talent payment. There is a responsibility with the talent and the Guild to ferret out the responsible talent agencies and if necessary issue warnings and fines.

Ultimately, whatever agreement is made between ATA/NATR and SAG will affect all franchised talent agents. There cannot be a two-tiered system for franchised agents in their relations and rules with SAG.

I thank you in advance for your attention to this matter.

Very truly yours,

Vivian Hollander

Vivian Hollander
Chairperson, ITA

September 2001

**MEMORANDUM TO ASSIST THE SELECT COMMITTEE**

## INTRODUCTION

This brief background paper is respectfully submitted by Brillstein-Grey Entertainment to assist the Select Committee on Regulation of Talent Agents which has been directed by the Senate Rules Committee to "study all issues related and ancillary to the representation of artists by talent agents and managers."

It is important to highlight at the outset that the very creation of the Select Committee was triggered by apparent difficulties in the delicate and ongoing negotiations of a new private contract, or "franchise agreement," between the Screen Actors Guild (SAG) and the Association of Talent Agents (ATA).

The current SAG-ATA franchise agreement governs the relationship between talent agents and their SAG clients, including how agents become franchised by SAG, the commissions agents may charge SAG members, the role of agencies in representing producers, and potential conflicts of interest.

The SAG-ATA negotiations over a new franchise agreement are expected to resume later this fall. Although the existing SAG-ATA contract has expired, both SAG and the ATA have been living under the current contract while they continue with their negotiations. It is expected that by early 2002, these negotiations will have concluded.

Of course, a successful, or for that matter, an unsuccessful conclusion of the SAG-ATA private negotiations may affect the opinions of the members of the Select

Committee and the legislature as a whole as to what, if any, changes should be made to California law in the best interests of public policy.

Our own recommendations, and the reasoning behind them are set out on pages 13 to 15 below.

## HOW ARTISTS ARE REPRESENTED NOW

### Talent Agents

Artists active in the entertainment industry generally seek to be represented by a talent agency. Collectively, the talent agencies represent many thousands of actors, writers, directors, musicians, producers and companies and "package" (i.e., represent the owners and producers of) many television shows.

A central job of a talent agent is to solicit, procure and negotiate employment for artists. Through their hard work, the benefit of the statutory exclusivity they enjoy under California law and the franchise agreement with SAG, many talent agencies have developed large and highly successful representation businesses, operated by departments of agents who solicit and negotiate employment on behalf of thousands of artists.

### Talent Managers

As the entertainment business has grown more complex and as the talent agencies have taken on large volumes of business, some artists have elected to hire other representatives to assist them with their careers in a more personalized fashion. These representatives include personal managers, business managers, lawyers and publicists.

Managers generally represent fewer clients than talent agents. The largest management firms represent fewer than 150 artists; the major talent agencies, by contrast, represent thousands of artists and have high-volume businesses.

**Having a Manager is Elective, Not Mandatory**

Artists are not required to have managers. Artists who choose to have (and pay) managers do so because they can pay close attention to their clients' overall creative goals, and sometimes have the experience and ability to help artists further these goals by getting deeply involved in actual entertainment production.

Good managers function like a chief executive officer of the client's artistic life. This involves knowing everything about the client's business, consulting with their clients on finding and/or choosing agents, business managers, acting coaches, public relations firms, and other representatives. Managers read scripts and consult closely on potential projects and roles both from a creative and business point of view. Managers often are hired partly to collaborate with the talent agencies and to ensure that the agencies zealously solicit the best roles--and make the best deals--for their clients. Also, some clients benefit from choosing managers who have experience as producers, as discussed more fully below.

**Managers Are Now, and Should Continue to be, Permitted to Participate in Negotiations**

From time to time, managers (and others) may assist agents in negotiating the terms of employment. This role is necessary in order to protect and advise the client, especially when negotiations are complex or protracted. Indeed, some clients active in multiple facets of the entertainment business (television, movies, books, personal appearances) have more than one agent (a commercial agent, a film agent, a television

agent, a book agent, etc.), and it is the manager's job to understand and advise the client on all matters, to coordinate the overall work, and to make sure the artist is maximizing his/her financial and creative goals. Accordingly, most clients expect - - and indeed, insist - - that their managers participate in negotiations with the agent. Most agents welcome this collaboration.

Under the present California Talent Agent Act ("TAA"), a manager may participate in negotiations as long as he acts "in conjunction with and at the request of" a licensed talent agent. The law thus provides a balance: it is the agent who is primarily responsible for seeking, booking and negotiating employment. Managers (and others, for that matter) may play an important role, but if they "procure" or negotiate employment, without working alongside licensed talent agents, they face statutory penalties under the TAA, including disgorgement of past commissions earned and forfeiture of future commissions. In this way, managers are in fact regulated now, and there have been quite a few cases before the Labor Commission in which artists have sought and received awards under the TAA against managers and others who violate this law. (Interestingly, in New York, talent agents do not enjoy the same statutory privileges, and managers there are more free to be involved in the solicitation and negotiation of entertainment opportunities for the clients. A copy of the relevant New York statute on artists and managers is attached as Exhibit 1.)

Recently, articles have appeared about the so-called "tension" between agents and managers and a desire to "level the playing field" among these groups. In fact, this is not a widespread problem in the entertainment industry and should not be the catalyst for repeal of existing law or enactment of new regulations. The agency and management

businesses are different. Talent agencies have a license which make them, exclusively, the representatives who can procure and book employment. They also have enormous revenue streams from their "packages" - - i.e., the contracts that give them profit participations in television shows. Managers cannot negotiate for clients without working with an agent, but can participate more fully in production services.

To be sure, there are rare instances when artists do not have talent agents and rely exclusively on attorneys, family members, and, sometimes, managers. This is relatively unusual, however, and most often occurs because an artist cannot get an agent or has become dissatisfied with his agent or the agency business in general. Even SAG, which in theory requires its members to have franchised agents, sometimes waives this requirement. However, any entity - - whether a current management company or a talent agency without a state license – that functions as an unlicensed talent agency does so at extreme peril: it faces significant (and uninsurable) potential financial liability, including claims for punitive damages, for functioning unlawfully.

In short, the overall balance between the role of agents and other representatives in the career of the artist does not necessitate new legislation, and artists should remain free to conduct their affairs under the current law. In this regard, we note that the major agencies have confirmed to us that they do not support legislation that would further regulate managers.

**The SAG Proposal**

Recent news articles have reported that the legislature may be considering a proposal, submitted by a SAG committee, to effectively repeal the current California law by: (1) eliminating the section of the TAA that allows others to work in conjunction with

agents in negotiations; (2) allowing the ATA and SAG to sue for violations of the TAA; and (3) instituting severe criminal penalties for violation of the TAA.

As discussed above, some artists **choose** to have their personal managers, business managers and others participate with their talent agents (and attorneys) in the negotiations. By so doing, the artist helps to ensure that the agent and attorney are acting in the client's best interests. In addition, the current law protects the artist by allowing managers and others to monitor negotiations, participate in them, and be able to provide the client with timely and informed advice and opinions concerning business proposals being made and the conduct of the negotiations. This is one reason artists choose to pay managers for their work. If it were not a valuable service for some artists, they simply would not hire (and choose to pay) any managers at all.

Existing law is sufficient to protect the interests of the artists and provides a workable balance between the functions of agents and managers. Further regulation would hinder artists, encumber negotiations, and interfere with a process that has been in place for years.

**Managers as Producers**

Over the years, some managers have developed expertise as producers of entertainment programming. These include, among many others, Brillstein-Grey Entertainment, 3 Arts Entertainment, Industry Entertainment, the Talent Entertainment Group, MBST Entertainment, and Mosaic Media Group. Some of these management companies operate and finance small, separate production units that produce programming with or without their management clients. Other management companies produce only with or for their clients. In either case, the production work is beneficial,

not only to SAG members, but also to the many groups, businesses and people involved in the entertainment community.

The following information focuses on Brillstein-Grey Entertainment ("BGE"), which is a long-established management/production company with a division that manages talent and a separate affiliated production company that has produced television shows and movies for many years. While the company is quite small compared to the major talent agencies and studios, its production work provides significant benefits to the artistic and entertainment communities at large, the management clients of Brillstein-Grey, and the State of California. From 1994 through 2001, for example, BGE has produced nearly 900 episodes of network and cable television, including "Just Shoot Me" (currently on NBC), "The Sopranos" (on HBO), "The Steve Harvey Show" (on the WB), "NewsRadio" (in syndication) and "Politically Incorrect" (on ABC).

Many of these shows were developed and nurtured from inception by Brillstein-Grey's television unit, a fully funded independent production division that operates separate and apart form the management business. The television company employs a small group of creative executives whose sole responsibility is to develop and produce television. Creatively, the television company has achieved success by concentrating on developing a fewer number of projects than the major entertainment studios (such as Twentieth Century Fox, Disney, and Warner Bros. Television) and working in a smaller, more independent environment that certain artists find creatively conducive. At the same time, because the major studios and networks have confidence in the production capability of Brillstein-Grey, the company has been able to attract the risk or "deficit"

financing required to develop, staff, produce and distribute television shows in a state of the art fashion.

**These Productions Create Thousands of Jobs in California**

From 1994 through 2001 (the last 7 television seasons), Brillstein-Grey's productions have cost over $500,000,000. The vast majority of this money—over a half a billion dollars—has been spent in the state of California. The majority of this money has been paid to so-called "above-the-line" personnel: including cast members, directors, and writers. Others active in the entertainment industry, including construction workers, production staff members, set designers, electricians, camera operators, propmasters, wardrobe consultants, and musicians have collectively received millions of dollars in carrying out their important and valuable functions.

In short, thousands of jobs have been created over the years through these productions, as well as those produced by the other management companies. Many workers, including members of SAG, IATSE, teamsters and other guilds and unions have supported their families through their association with, and employment on, productions developed by management firms. Most of these productions are developed and produced in the Los Angeles area.

**Clients Benefit From the Fact That Managers May Produce**

The fact that Brillstein-Grey and other management companies have production expertise and a vital production business is one reason some clients want to be represented by their company. Clients are able to draw upon their managers' production expertise, their knowledge of creative material and the production process, and their relationships in the community. For example, from time to time, Brillstein-Grey

management clients are appropriate for roles in a project which a Brillstein-Grey affiliated television company produces and in which the company has an ownership interest. The clients often find this to be advantageous. Because they are known to the company, these clients sometime have unique access to certain roles and parts in projects.

For example, Brillstein-Grey management client David Spade got the opportunity to become part of the "Just Shoot Me" television series cast after Brillstein-Grey developed the series and shot the initial pilot episode. At that point, Brillstein-Grey offered Mr. Spade the opportunity to play a role in the series (Mr. Spade, who was represented by agents and lawyers, also benefited by paying no commissions and by avoiding the arduous audition process). Mr. Spade's career has blossomed in his 5 years with the series and remains a valued client of the company.

From time to time, management clients at Brillstein-Grey and other management companies may ask a manager to help produce a project that is being developed and primarily produced by a *third party*. For example, Brillstein-Grey recently developed a television show idea for its client, Jim Belushi, and then, when both Belushi and ABC requested, Brillstein-Grey agreed to help produce the show in conjunction with ABC's affiliated production company. Mr. Belushi does not pay a commission on his acting services and enjoys the benefit of BGE's involvement as producers.

By serving as a producer in such instances, the manager is able to protect his client's interest very closely. When a manager functions in the producer capacity (as opposed to functioning solely as a manager), he can render producer-type services with greater day to day access to the production process, including attending and giving creative notes at "table readings" of scripts and "run-throughs" or rehearsals and

participating in promotion and publicity. Again, some clients prefer that their managers take on such a producer's role because, when functioning as producers, they are automatically more involved creatively on a day to day basis in a project and can better protect the client's interest as the production proceeds.

To ensure fairness and avoid potential conflicts in these situations, the procedures described below are followed, and the management company does not commission the client's show compensation. But the initial decision as to whether to become involved in a production with a manager or even to hire a manager who is involved in production is one for the artist, with the aid of his or her other advisors. No one is required to have a manager at all, much less one who produces.

**Dealing With Potential Conflicts of Interest**

Conflicts of interest can potentially arise when management companies engage in production. However, current laws (including the laws against breaching fiduciary duties) and self-regulation provide ample protection against these conflicts.

To begin, there is a serious misconception that sometimes arises in discussions of the Brillstein-Grey production business. The vast majority of the actors or writers in these productions are NOT clients of Brillstein-Grey's management company. Less than 4% of the actors or writers who have been involved in BGE television shows are clients of the company. Likewise, only a small percentage of Brillstein-Grey's clients have ever written or appeared in television shows or films which BGE has produced. No client of Brillstein-Grey has ever been forced or pressured in any way, to take any role in a Brillstein-Grey produced television show or film. This is not a situation even remotely

comparable to the days when MCA, which was both the dominant talent agency, as well as a "major" production company, with many of their clients under long-term contracts.

Accordingly, in most situations, the fact that Brillstein-Grey has an active, albeit boutique-like, television production division does not conflict at all with the responsibility of the managers at Brillstein-Grey towards their artist clients.

When a Brillstein-Grey management client is going to take part in a television series or film which the company is producing, there is a recognized potential for a conflict of interest. This potential conflict is similar to the conflict a talent agency has when it both "packages" a show (and has a financial interest) and represents talent who appear in the show. Accordingly, the situation is dealt with straightforwardly--in much the same way that the SAG-ATA currently addresses the potential conflict of agents who "package" and therefore own financial participations in shows in which they book their clients.

In these situations, Brillstein-Grey: (1) discloses to the client, in writing, that its affiliate is producing the project, (2) discloses to the client, in writing, that the company has a financial interest in the project, (3) ensures that the client must be represented in any financial negotiations with the BGE affiliate by an independent talent agent and/or attorney before entering into any contract, and (4) voluntarily agrees in writing not to "commission" the client's compensation in connection with any shows produced. This procedure comports with Section V of the SAG-ATA franchise language relating to packaging by agents and, in general, is consistent with the way most professionals, including attorneys and accountants, deal with potential conflicts of interest. (A copy of Section V of the SAG-ATA franchise agreement is attached as Exhibit 2.) That is, there

is full written disclosure of the relevant facts and, to ensure fairness and avoid any appearance of impropriety, the client must be represented independently by talent agents and attorneys in any negotiations.

**What about the Shandling case?**

We understand that the Committee has received certain information about a lawsuit filed a few years ago by Garry Shandling against Brillstein-Grey. Understandably, certain information the Committee has comes from media accounts and from an article written by a young law clerk who "assumed" in his analysis that Shandling's claims were true. They were not. Respectfully, we want to make sure that the committee does not rely on incorrect assumptions as a basis for drastic legislative action.

The fact is that Mr. Shandling had many valid reasons for choosing Brillstein-Grey in producing television: for example, he retained the creative control he could not obtain from a large studio, received the benefit of Brillstein-Grey's producing expertise, and enjoyed the financing and distribution resources Brillstein-Grey brought through its pre-existing contractual arrangement with Columbia-TriStar Television. Brillstein-Grey also helped provide and sustain a comfortable creative environment for Mr. Shandling and rendered extensive creative production services for years. Shandling, who was represented by experienced counsel, had a 50% partnership share in the shows, far greater than a studio would have given him for his work.

One claim of "conflict of interest" mentioned in the law clerk's article is that two writers were "siphoned" from the Sanders show to work on Brillstein-Grey's series. This is factually wrong. One writer left the Sanders show because he refused to work with Mr.

Shandling any longer after years of coping with personal and professional difficulty dealing with him. This writer's sworn testimony in the lawsuit is sealed—however, it reveals the true reasons the writer parted from Mr. Shandling. The other writer allegedly "siphoned" was in fact fired from the Sanders show by Mr. Shandling. Neither of these writers were managed by Brillstein-Grey. [1]

Ultimately, the Shandling case was settled, essentially by Brillstein-Grey trading its interest in Mr. Shandling's shows for Mr. Shandling's interest in one of Brillstein-Grey's other series. There is nothing about the Shandling case that suggests that managers should not be permitted to produce. (Indeed, Mr. Shandling is currently represented by Mosaic Media Group, a management/production company that actively produces projects with their clients.) On the contrary, the suit demonstrates that there are already existing remedies available to actors who feel they have been treated unfairly by their managers. Had Shandling's allegations been true, the court was there to protect him.

[1] Another inaccurate claim is that Brillstein-Grey "double-dipped" by charging commissions on Mr. Shandling's series compensation and receiving producer fees. This never happened. The only commissions Brillstein-Grey ever received was not for Mr. Shandling's services on the Sanders show, and the payment of those commissions was endorsed by Mr. Shandling's business manager precisely because there was no double-dipping.

## *CONCLUSION*

Radically changing the existing law to force managers out of the producing business would have the following adverse effects:

(1) cause the loss of thousands of jobs, primarily in California, including not only artists, but also teamsters, grips, electricians and other "below the line" and clerical workers;

(2) significantly reduce competition in television and motion picture production, allowing greater concentration of economic power in the hands of vertically integrated studios and networks;

(3) interfere with the creative relationships and partnerships in the talent community which managers/producers can sometimes forge and which have, historically, led to the creation of high-quality entertainment;

(4) limit the ability of artists to work with some producers in a smaller creative environment that is an alternative to the major entertainment studios;

(5) deprive artists who consider it a career advantage to select a manager active in production of the right to exercise their own judgment in the matter;

(6) reduce the selection of television programming and motion pictures available to the public.

Such a change is unnecessary because:

(1) artists are protected against breaches of fiduciary duty and other unlawful conduct by existing law and the ability to file civil actions as well as proceedings before the Labor Commissioner;

(2) artists are protected by the rules and regulations promulgated by the SAG and other talent guilds;

(3) artists are protected in dealings with most managers by self-policing measures, such as requiring independent representation when an artist is employed in his or her manager's production and foregoing any commission of the artists' compensation from such employment;

(4) artists are free to use their own judgment (and that of their attorneys or other advisors) in selecting a manager. They may prefer a manager in the production business. They may choose a manager who is not in that business. Or, they may choose to have no manager at all. There is no need for legislation depriving artists of the ability to make that choice.

Changing the existing law to bar managers from participating in clients' negotiations along with and at the request of a licensed talent agent and the artist would have the following damaging effects:

(1) deprive artists of a protective presence in entertainment business negotiations, a presence that helps ensure that the agent and/or attorney is diligently acting in the bests interests of the client;

(2) significantly encumber the negotiation of entertainment contracts and lessen the ability of the manager to provide the client with informed advice concerning the proposals being made and the conduct of the negotiations often in time-sensitive situations;

(3) deprive artists of the ability to decide for themselves whether they want their managers present during negotiations.

Such a change in the law is wholly unnecessary. It harms the interests of both the client and the manager and helps no one.

SUMMARY OF THE COMMENTS

BY THE CAUCUS OF PRODUCERS, WRITERS & DIRECTORS

TO THE SELECT COMMITTEE ON REGULATION OF TALENT AGENTS

The Caucus of Producers, Writers and Directors, founded in 1974, is a professional organization dedicated to promoting quality, diversity and creative freedom in the television industry. The Caucus thanks the Select Committee for the opportunity to assist it as it studies "... all issues related and ancillary to the representation of artists by talent agents and managers."

Though these hearings have been catalyzed by the impasse in negotiations between the Screen Actors Guild (SAG) and the Association of Talent agents (ATA), the underlying issues go directly to the intent of the California State Legislature as expressed in section 1700 of the State Labor Code. The legislature has determined that it is in the public interest for representatives of talent to be licensed by the State. The State promulgated the Talent Agencies Act (TAA) to counter a history of predatory practices that were exhibited by unregulated representatives of talent.

The intent of the TAA has been challenged by numerous recent developments, as well as by past amendments to the Act. Given the pivotal role played by the entertainment industry in our state, it is completely appropriate that the State Senate seek, through these hearings, to determine what, if any, changes to the TAA might be necessary to secure the intent of the original legislation.

Our presence here today is the inevitable result of two significant developments. The first - the success enjoyed by a committed group of media magnates who have crusaded for wholesale deregulation of the laws that were originally designed to insure free and open competition in the market place for news and entertainment. The sweeping deregulation of federal media policy has allowed Time/AOL, Viacom, NewsCorp, Disney and a few others to construct vertically and horizontally integrated empires that are unprecedented in our history.

Second, and perhaps inspired by the success of the deregulatory crusades, a group of gifted personal managers has challenged the traditional assumptions of talent representation. Encouraged by the 1982 revision of the Talent Agents Act that stripped the Labor Commissioner of meaningful enforcement power and created a safe harbor in which managers could negotiate, a number of agents reclassified themselves as managers. Their unprecedented and unregulated success has had a negative effect on the franchised talent agencies.

The current dispute between SAG and ATA is indicative of the ever increasing power of managers. And The Caucus believes that the talent agents are right in at least one respect. Loopholes in the Talent Agents Act have been exploited by managers and have put agents at a disadvantage.

While we agree with the ATA that there is a problem, we seriously disagree with them with respect to the solution. The ATA has argued that the cure will be found in relaxing the TAA and allowing agents to enjoy the same freedom to exploit various conflicts of interest currently enjoyed by managers. But The Caucus believes that the solution is to be found in clarifying and strengthening the provisions of Section 1700.

In a figurative sense, it could be said that managers are getting away with murder - and in response to the problem, agents propose to the state that we legalize homicide. While such a solution might enrich various members of the ATA, it would be a disservice to the creative community and to the public.

At a time when there is unprecedented concentration of power in the hands of a few media conglomerates, it is essential that actors, writers and directors are represented by agents whose loyalty is undivided and whose agenda is uncompromised. The people of California have seen the dangers of deregulation. It has mistakenly been assumed that regulation means inefficiency in the market place. The energy crunch has taught us all the fallacy of that assumption.

The Caucus believes that the State should maintain regulations to protect the rights of labor and of the consumer. When loopholes in existing regulations exist, it is appropriate that the legislature act to plug them. Deregulation isn't the answer to abuse of power.

The last attempt made by the State Legislature to study the efficacy of the TAA was undertaken in 1982. Unfortunately, the findings of the California Entertainment Commission, issued in 1985, were distorted by the composition of the panel. By design of the Legislature, the Commission was composed of three agents, three managers, three actors and the Labor Commissioner. Those who were to be regulated, the agents and mangers, held a majority of seats on the Commission. There were no writers, no directors nor any other members of the creative community represented on the Commission. The findings of the Commission were flawed from the outset and have long since been outdated.

In evaluating what steps should be taken to improve the TAA, The Caucus urges the Select Committee to affirm that the public interest is served by crafting a code that secures the fiduciary bond between an artist and their representative. The health and vitality of our industry is premised on free and open competition. Self-dealing and conflict of interest are an immediate threat to the public good.

There are a number of steps that can be taken to strengthen the TAA:

STEP 1: CLARIFY THE INTENT OF THE FEE SPLITTING RESTRICTIONS CODIFIED IN THE TAA.

Section 1700.39 of the Code provides, "No talent agency shall divide fees with an employer, an agent or other employee of an employer." This provision is elegantly simple and yet has been generally misconstrued. Presumably the Legislature intended this provision to protect the artist from the prospect that their agent or manager might enter an arrangement with management that profited the employer at the expense of the artist. Bluntly construed, 1700.39 seems to have been crafted by the Legislature to be a prohibition against kick-backs or extortion.

In 1964, the Writers Guild, concerned that agents were receiving payments from the producers of programs, approached the Labor Commissioner. The WGA had presumed that the agent as the representative of labor could not accept consideration from management. The Labor Commissioner contradicted the Guild by determining that "Section 1700.39 ... is interpreted to prohibit the artists' manager from sharing his fee; the language does not lend itself to a construction of the reverse, a prohibition of the artists' manager from obtaining a fee from the employer."

The astounding illogic of Sigmund Arywitz, the then seated Labor Commissioner, has gone unchallenged to this day. And that is, in many ways, the crux of the problem. According to the Labor Commission, the TAA prohibits agents and managers from paying a kickback, but it allows them to receive such payments. That's ridiculous. Did the Legislature that enacted the TAA truly intend to allow producers to kick back fees and profits to the representatives of talent?

Even in Commissioner Ayrwitz' twisted world, the prohibition against agents or managers passing fees to producers would seem to nullify the ATA's effort to have SAG amend the financial interest provision of the Guild Agreement. If agents are prohibited from sharing their profits with an employer, how can they sell an ownership interest to an entity that hires talent?

It is time that the Legislature make clear the intent of 1700.39. The Caucus believes it is appropriate that the provision clearly prohibit a representative of talent from receiving consideration from the employer of talent. It's a simple proposition: Those who represent talent cannot convert themselves into the employers of talent. The compensation of agents and managers should be in direct proportion to the enrichment obtained by their clients.

STEP 2: PROVIDE THE LABOR COMMISSIONER WITH MEANINGFUL ENFORCEMENT TOOLS.

In 1982 the Legislature passed AB 997 which, among other things, gutted the TAA of meaningful sanctions. The ill-conceived California Entertainment Commission affirmed the wisdom of neutering the act. The Caucus believes that the TAA will function properly only if the Labor Commissioner has access to serious enforcement tools including both financial penalties and criminal sanctions.

Agents and managers will no doubt argue that they should be trusted, that they are capable of policing themselves. Agents and managers are gifted in the art of salesmanship, but their claims of self-regulation defy common sense. It was the predatory practices of agents and managers that led the Legislature to enact the Act in the first place and there is no reason to believe that human nature has changed for the better in the last 50 years.

Though the ATA has argued that existing law and the ability to file civil action provides adequate protection for individual artists, their assertion is at the least naive and certainly misleading. Few artists can afford the expense, measured in both time and money, that is required to litigate a civil case against an agency. Moreover, any individual who does seek to litigate a grievance risks enormous professional peril.

The Labor Code (Section 1701.13) already sets out meaningful enforcement tools with respect to managers who operate in the advance fee service sector of our industry. It is completely appropriate that those same penalties apply to the mainstream agents and managers.

The Legislature intended the Labor Code to protect the individual against the power of institutions. Breaches of fiduciary duty are serious infractions and require that the Labor Commissioner have access to remedial tools that are sufficient to counter the threat.

STEP 3: REVISE THE TAA TO CLEARLY AND UNEQUIVICALLY STATE THAT ONLY LICENSED AGENTS CAN NEGOTIATE ON BEHALF OF TALENT.

In 1982 the TAA was amended to provide that "... it shall not be unlawful for a person or corporation who is not licensed to act in conjunction with, and at the request of, a duly licensed and franchised talent agency in the negotiations of an employment contract." This amendment to the Code, contained in Section 1700.44, created what managers have come to consider a safe harbor that allows them to secure employment for their clients in violation of the original intent of the law.

The Caucus believes that it serves the public interest for the state to determine categorically than only the individual artist or their licensed agent can secure employment or negotiate contracts on behalf of the artist. The safe harbor provisions of 1700.44

unwittingly invite unlicensed managers into the very process that licensing was devised to regulate.

STEP 4: ALLOW THE GUILDS AND OTHER RECOGNIZED PROFESSIONAL GROUPS TO BRING COMPLAINTS BEFORE THE LABOR COMMISSIONER.

Under current law, only the individual artist has standing before the Labor Commissioner. When violations of the TAA occur, it is up to the artist to personally seek redress. This is an unreasonable burden on the individual. Artists have created guilds to facilitate the protection of their interests and these guilds should have the right to initiate action before the Labor Commissioner. The individual artist often lacks the financial or emotional resources to challenge sophisticated agents and managers.

Likewise, the ATA should be entitled standing before the Commissioner. Some agencies, particularly the smaller ones, may lack the resources to press grievances against managers or others who have violated the TAA. The Caucus tried to bring certain violations of the Act to the attention of the Labor Commissioner in 1998 and we were told we lacked standing. It is in the interest of full enforcement of the law to expand the definition of who is granted standing to appear before the Commission.

STEP 5: CODIFY THE CONFLICT OF INTEREST PROVISIONS THAT ARE INCLUDED IN THE GUILD AGREEMENTS INTO SECTION 1700.

There should be no confusion as to what constitutes a conflict of interest under the TAA. It is not sufficient that agents or managers merely disclose potential conflicts. Talent can be unduly swayed by a representative in whom the artist has invested trust. That trust should be secured by a labor code that clearly delineates the rights and restrictions placed on licensed agents and managers.

No licensed representative of talent should be allowed to employ the talent that they represent. In this regard, there is compelling Federal authority. The 1962 antitrust action brought by the Department of Justice against MCA, held that "... the integration under common ownership of an agency, MCA Artists, and a production company, Revue Pictures, is declared to be a combination to restrain and monopolize interstate trade and commerce in violation of the Sherman and Clayton Acts." It is worth noting that the break-up of MCA did not cripple the agency business. Numerous new and highly nimble smaller agencies emerged from the break-up.

The ATA has argued that so long as conflicts of interest are disclosed there is no reason to worry about abuse. So many conflicts abound in the entertainment industry, it is doubtful that an artist could find informed and objective counsel on matters of conflict. Most entertainment lawyers represent artists, agencies and studios within the same firm.

Likewise, managers are often compromised by their own conflicts. Disclosure doesn't cure the conflict.

The waiver of conflict that the ATA has proposed will not work. The waiver scheme would allow the agent to resign from representing their client on a case-by-case basis. The ATA proposal gives the agent the unilateral right to temporarily suspend their fiduciary duties, while the artist remains bound to the agent under terms of the agency contract.

Furthermore, artists rely on agents and mangers not simply to solicit and negotiate, but also to evaluate submissions. Freed from conflict of interest restrictions, agents and managers could easily condition access to their clients on the extraction of rights and other consideration from bono-fide producers. Artists depend on the judgment of their fiduciary, but that judgment is compromised when the agent or manager is allowed profit from a revenue stream that is inversely proportional to the compensation paid to the performer.

If an agent or manager wishes to produce, they should give up their license to represent talent. Agents and managers enjoy unique access to and significant influence over the creative artists that they represent. It is contrary to public policy to convert that access and influence to the financial benefit of the representative at the expense of the represented.

The most important development in our industry over the past decade has not been the proliferation of new technologies - it has been the consolidation of control over those technologies in the hands of a few mega-corporations. The plight of the individual artist has accelerated in near direct correlation to this consolidation. As studios have bought networks and merged with cable companies that have combined with internet service providers, the creative freedom and economic opportunity afforded talent has sharply declined. The competitive market for creative services and the secondary market for the resale of programs have both been eroded by the self-dealing that is the bastard child of consolidation.

In the face of unprecedented challenges to the free market for talent, the creative community of artists is entitled to know that they are represented by agents and managers who are not in league with their employer. The Caucus believes the Select Committee can serve the public good by strengthening the Talent Agency Act. The individual artist needs strong, uncompromised representation to match the ever increasing power of the giant corporations that control the means of distribution.

# LIONEL S. SOBEL
Biography

Lon Sobel is the Editor and Publisher of the ENTERTAINMENT LAW REPORTER (a monthly periodical covering legal developments of importance to those in the entertainment industry), and a Distinguished Scholar at the University of California, Berkeley, School of Law (Boalt Hall) and its Berkeley Center for Law and Technology.

He has written one book, PROFESSIONAL SPORTS AND THE LAW, and is the co-editor of the Third Edition of the casebook LAW AND BUSINESS OF THE ENTERTAINMENT INDUSTRIES. He also has written chapters for several other books, including the Entertainment Law chapter of THE OXFORD COMPANION TO AMERICAN LAW (scheduled to be published in 2002), the chapters on royalty accounting and soundtrack music for the Music volume of ENTERTAINMENT INDUSTRY CONTRACTS, and the chapter on the regulation of player agents in THE LAW OF PROFESSIONAL AND AMATEUR SPORTS. He has written many articles – some of which have been cited by the Supreme Courts of the United States and state of California, and by federal Circuit and District Courts – on a wide variety of entertainment law topics, including idea protection, domestic and international copyright, and labor and antitrust law.

He received a B.A. degree in Economics from the University of California, Berkeley, in 1963, and a J.D. degree from UCLA School of Law in 1969.

From 1969 to 1982, he was in private law practice in Los Angeles, first as an associate with Loeb & Loeb and then as a partner in his own firm which was known as Freedman & Sobel. In 1982 he joined the faculty of Loyola Law School in Los Angeles where he taught Copyright, Trademark, Entertainment Law and other subjects until 1997. During the 1997-98 school year, he was a Visiting Professor at UCLA School of Law, teaching Copyright and Entertainment Law. In 1999 and 2001, he taught International Entertainment Law in London in the University of San Diego Law School's summer-abroad program. His law practice is now limited to consulting with other lawyers on copyright issues, plagiarism claims, script and title clearances, producers liability insurance, and film finance.

He has testified twice before the U.S. House of Representatives Judiciary Committee about Major League Baseball's exemption from the antitrust laws, before the California Assembly Judiciary Committee about then-pending right of publicity legislation, and before the California Senate Select Committee on the Entertainment Industry about remedies for the breach of music industry recording contracts. He also has testified as an expert witness before the United States Tax Court on intellectual property law and international licensing practices in the motion picture, music and computer software industries.

He is the Program Chair of the ABA Forum on the Entertainment and Sports Industries, and is a member of the Board of Directors of the UCLA School of Law Alumni Association.

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DAVID GURLEY, Staff Counsel

David Gurley is a member of the State Bar of California, a 1990 graduate of San Diego State University, and a 1994 graduate of Thomas Jefferson University School of Law. In 1997 David began public service as an assistant and legal consultant to the State Labor Commissioner. In 1998, David was appointed to Legal Counsel for the Division of Labor Standards Enforcement. In that capacity, his responsibilities include regulating - through enforcement of the California Labor Code - all talent agents in the State.

Having primary and exclusive jurisdiction, the California Labor Commissioner occupies the central role in enforcing the provisions of the Talent Agencies Act. David's role includes, presiding as Special Hearing Officer to determine controversies arising between artists and talent agencies, and prosecuting the denial and revocation of talent agency licenses. He is currently the primary attorney in the State overseeing those areas of responsibility.

Karen Stuart

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*Los Angeles, CA 90069*
*(310) 274-0628 fax 274-5063*
**E-mail: atastuart@aol.com**

## Professional Experience

**American Federation of Television and Radio Artists 1980-1995**

***National and Los Angeles Local Assistant Executive Director.*** Responsible for office and contract administration, including all tv programming, agency regulations and reuse. Served as the lead negotiator in countless radio and television contract negotiations. Developed and negotiated the first union Interactive Agreement for actors.

**Association of Talent Agents 1996 to present**
***Executive Director***

- Responsible for the management of a statewide organization representing more than one hundred talent agencies
- Advocate positions of ATA with respect to legislation
- Work closely with the Guilds and unions
- Responsible for daily implementation and interpretation and negotiation of agency contracts with SAG, AFTRA, WGA, DGA and Equity.
- Involved in State lobbying efforts and interfacing with the State Labor Commissioner and the Department of Industrial Relations.
- Responsible for providing member services and developing cooperative committees with the various guilds, casting directors and employers.
- Involved in ATA member conflict resolution and arbitration.
- The editor of a monthly newsletter

## Education

**Wayne State University**
Bachelor of Arts/Journalism, 1979

## Volunteer

Entertainment Industry Foundation-Allocations Motion Picture & Television Corp and Fund Board Member - MPTF Next Generation Council

# WILLIAM MORRIS AGENCY
# BIOGRAPHY

## WALTER ZIFKIN

Walter Zifkin, Chief Executive Officer of the William Morris Agency, joined WMA's Business Affairs Dept. in 1963 after two years in the legal department at CBS. He became a member of the Agency's Management Group in 1966, was appointed Corporate Vice President in 1975 and Executive VP in 1980, at which time he joined the Board of Directors. He was named Chief Operating Officer in 1989 and CEO in 1997.

Mr. Zifkin serves on the Executive Committee of Cedars-Sinai and on the Board of Vista Del Mar Child and Family Services. He was recently appointed Special Master by the U.S. District Court in New York (working pro bono) to conduct Austrian Holocaust settlement discussions, successfully resolving slave and forced labor claims allowing compensation and justice to more speedily reach elderly survivors.

Cunningham·Escott·Dipene
Talent Agency

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# Biography – T. J. Escott

T. J. Escott is the president and C.E.O. of Cunningham Escott Dipene Talent Agency and had held that position since 1982. He is responsible for the day to day business of both the Los Angeles and the New York offices. He has over 30 years experience as an agent. T. J. Escott established the New York office of Cunningham Escott Dipene in 1971. The New York office is a leading agency in its field.

Prior to that time, Mr. Escott worked as a Television/Motion Picture agent with several talent agencies in Los Angeles.

He has worked as a Theatrical stage manager in New York City and as a production assistant at KNBC/New York.

Mr. Escott is a Vice President and Board Member of The Association of Talent Agents.

He was honorably discharged from the U.S. Army in 1964.

He graduated from Carnegie Mellon University in 1962 with a Bachelor of Arts Degree.

HTG inc.

Hollander Talent Group

# Vivian R. Hollander

## RESUME

## PROFESSIONAL EXPERIENCE

| | | |
|---|---|---|
| Hollander Talent Group, Inc. | 1/96 to Present | Agent/Owner |
| Twentieth Century Artists | 6/85 to 1/96 | Talent Agent |

## INDUSTRY ASSOCIATIONS

ITA – Independent Talent Agents (Committee Chair)
Women in Film
Youth Entertainment Seminar Advisory Board
Advertising Business Affairs Association

## EDUCATION

| | |
|---|---|
| Brooklyn College | Theater Arts Major |
| California State University Northridge | Theater Arts Major |

# LEONARD HILL
# PERSONAL AND COMPANY BIO

**LEONARD HILL FILMS**, the Los Angeles-based independent television production company, was formed in September, 1980.

Under a variety of corporate banners, the Company has been responsible for an array of high-quality television projects over the past 20 years. In aggregate, LHF has supplied over 160 hours or primetime filmed entertainment representing nearly $350,000,000 in production, including movies, mini-series and dramatic series. The company has employed a wide variety of international stars, and has worked with an array of gifted directors and writers.

**LHF** is now in preproduction on its first theatrical feature. SLAY THE DREAMER will be produced as a joint venture with Stephen J. Cannell Productions. The film is a legal thriller that deals with the cover-up of the assassination of Martin Luther King.

From 1976 through 1980, Mr. Hill served as Vice President, Movies for Television at ABC Entertainment. During his tenure at ABC, Mr. Hill was responsible for overseeing the development of a slate of approximately 32 movies for television annually

Prior to joining ABC, Mr. Hill served two years with NBC; first as Manager, Primetime Series and later as Director, Movies for Television. Positions with Paramount Television, MTM Enterprises and Universal Television preceded his assignment at NBC. Mr. Hill broke into the industry as a writer on the series ADAM-12. He has been a member of the Writers Guild of America since 1972.

Mr. Hill was graduated Summa Cum Laude and Phi Beta Kappa from Yale University in 1969. He received a Master of Arts degree from Stanford University. He is the founder and past Chairman of ACI, a pioneering independent distribution company which was acquired by Pearson PLC for $50,000,000. Mr. Hill has served as a member of the Board of Directors of the Los Angeles Conservancy, the California Film Commission and the Caucus for Producers, Writers and Directors.

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September 2001

American Federation of Television and Radio Artists
Los Angeles
Branch Of The Associated Actors and Artistes of America
Affiliated with the AFL-CIO

John Connolly

John Connolly was elected National President of the American Federation of Television and Radio Artists (AFTRA) in August, 2001. The 80,000-member union represents professional actors, news broadcasters, announcers, vocalists and others who work in the fields of television, radio, sound recordings and industrial productions.

Prior to his election, Mr. Connolly served AFTRA in many capacities: as National First Vice-President, member of the National Board, member of the Los Angeles Local Board and Vice President and Board member of the New York Local. He has chaired four major labor negotiations, serves on numerous committees and, since 1990, has been a Trustee of the AFTRA Health & Retirement Funds.

An actor for more than 30 years, Mr. Connolly has worked in all media. He has worked extensively in films and television, appearing in major roles in 15 feature films, ten mini-series and Movies-of-the-Week and scores of episodic comedies and dramas. He has played recurring roles on TV's *NYPD Blue, General Hospital, All My Children, As The World Turns, Young and the Restless* and currently on Lifetime TV's *Any Day Now.* He has also guest starred on *The Practice, ER, Wings* and *Star Trek,* among many other TV appearances. While starring on Billy Crystal's HBO series, *Sessions,* Mr. Connolly was nominated for a Cable Ace Award as best actor in a comedy. He is also a veteran of more than 300 commercials, both on and off-camera.

On stage, he has performed at many of the nation's leading theatres from Broadway to Los Angeles in roles ranging from Shakespeare's Hamlet to Winston Churchill in *Only A Kingdom.* On Broadway he appeared as Pap Finn *Big River* and the Lion in *The Wizard of Oz.*

A native of Philadelphia, Mr. Connolly studied history at LaSalle University and was awarded a fellowship and his Master of Fine Arts in Acting from Temple University's School of Communications and Theatre. He serves on the School's Board of Visitors and, on May 5, 2001, was named 2001 Distinguished Alumni. He co-chairs a University Committee on Intellectual Property Rights of Performing Artists, and has helped launch an AFTRA/Temple Broadcaster mentoring program and other partnerships.

He and his wife, Bronni, live in Hollywood, California with his son, James, and two dogs, the neurotically human-loving Kate, and the psychotically squirrel-hating Tess.

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