ENOUGH ALREADY: TIME FOR PERSONAL MANAGERS TO ACCEPT
CALIFORNIA’S TALENT AGENCIES ACT AS ITS REGULATORY SCHEME

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I. INTRODUCTION

In 2014, the entertainment and media market in the United States was valued at $573.57 billion. By 2020, the entertainment and media market in the United States is expected to have a value of over $720.38 billion. With California being home to a large share of the entertainment industry, this paper focuses on the laws of that state alone.

With so much capital flowing through the entertainment industry, it comes without surprise that several different professions practice within the entertainment industry. Included in these professions are the individuals doing the entertaining, such as actors, musicians, writers, as well as various other artists and performers. This paper refers to these individuals as “entertainers”. These entertainers, generally speaking, are not well versed in the legal and business affairs that must be addressed before, during, and after an artistic project is created. This leads to a secondary group of professionals in the industry, consisting mostly of managers, agents, and attorneys for the entertainers. The two supporting professions at issue here are the entertainers’ personal managers and the entertainers’ agents.

As the industry has grown, and continues to grow, so does the need for supporting professionals for entertainers. It comes as no surprise that California felt the need to regulate these supporting professionals as their businesses and roles in the industry.

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2 Id.
4 Michael J. Plonsker and Jeanine Percival Wright, Entertainment Law & Litigation §8.01 (2014).
5 Id.
continued to expand. California’s legislature has attempted to regulate these supporting professions over time. Currently the primary piece of legislation regulating the entertainment industry in California is the Talent Agencies Act (TAA). As the name suggests, the TAA aims to regulate the business practices of talent agencies and talent agents individually. The applicability of the TAA to personal managers has been heavily debated, as personal managers are not talent agents by definition because they are not licensed as such under the TAA. Personal managers argue that the TAA should not apply to personal managers because they are not agents registered under the Act. The California legislature and courts have taken the opposite position.

Despite the strong objection of the TAA’s applicability to personal managers by personal managers practicing in the industry, the TAA’s far-reaching regulatory powers have been used in disputes between personal managers and entertainers since its inception. The California state courts, as well as the Labor Board, have recognized the

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8 California Labor Code, §1700 et seq. (Lexis Advance 2016); California Administrative Code, Title 8 §12000 et seq. (Lexis Advance 2016).
9 Id.
10 Michael J. Plonsker and Jeanine Percival Wright, *Entertainment Law & Litigation* §8.02 Page 3 (2014); *Buchwald v. Superior Court*, 254 Cal. App. 2d 347 (1967) (holding that an artists’ unlicensed manager that procured employment for the client Jefferson Airplane was subject to the Artists’ Managers Act even where the management contract explicitly stated that the personal manager was not authorized to procure employment for the band).
11 Id.
12 Id.
practical applications of the TAA as it relates to personal managers. The California state
courts, and the Labor Board, have applied the TAA to personal managers in a uniform
manner, with only slight deviations in particular circumstances.\(^{14}\) It is time for individuals
seeking to enter the entertainment industry as a supporting professional to accept the
current applicability of the TAA to the personal manager industry, and make an informed
business decision on whether or not to be a licensed agent under the TAA.

**II. INDUSTRY OVERVIEW**

Before discussing the specific issues relating to the application of the TAA to
personal managers, it is necessary to have a general understanding of the entertainment
industry in California as a whole. With so many unique needs within the industry, it
naturally follows that the industry is quite complex. From the entertainers themselves all
the way to the governmental body regulating the industry, it is difficult to understand the
significance of one role within the industry without having some basic knowledge about
the industry as a whole.

**A. OVERVIEW OF THE ENTERTAINMENT INDUSTRY**

In discussing the application of the TAA to personal managers, it is first important
to make the distinction between the roles of personal managers and the roles of talent
agents. When an entertainer is new to the entertainment industry and does not have any
contacts or representation, the entertainer is placed in a very vulnerable position. Often

\(^{14}\) Id.
times, the new entertainer does not have an agent to represent him/her to the market. Additionally, at this stage in the entertainer’s career, it is typically very difficult for an entertainer to get an agent without being able to show a history of success. This is due to the fact that agents are compensated by receiving a percentage of the entertainer’s pay in the form of commission. Therefore, without the ability to show that the entertainer is able to land roles in artistic productions, the agent is very unlikely to take on such an entertainer or to spend much time working on developing that entertainer’s career in comparison to an established entertainer. This transitional stage of a young entertainer’s career is where the need for personal managers stemmed from.

Unlike talent agents, personal managers generally have a relatively intimate relationship with the entertainers that they represent. When an entertainer is first getting started in the entertainment industry, it is usually a personal manager that is his/her first means of representation. Personal managers have contacts in the industry, including talent agents they may work with in representing other entertainers. At the early stages of an entertainer’s career, his/her personal manager’s primary objective is often to obtain a talent agent to represent the entertainer.

1. ROLE OF AGENTS

“According to the TAA, talent agents and agencies are individuals or institutions that engage in the occupation of ‘procuring, offering, promising, or attempting to procure

16 Id.
18 Id. at 86.
19 Id. at 86-87.
employment or engagements for an artist.”

Talent agents play a very important role in advancing an entertainer’s career; typically by getting an entertainer auditions, pitching the entertainer to industry leaders, negotiating and re-negotiating contracts, and similar activities working towards securing employment for the entertainer. “Talent agents are generally compensated on a percentage of the artist’s earnings through the employment opportunities they procure, and these fees are customarily ten percent.” In a sense, a talent agent acts as a broker between the entertainer and the party that is seeking to utilize the entertainer’s talent.

Talent agents typically have several clients that they represent, and therefore do not generally participate in the day-to-day decision making about an entertainer’s specific career path, personal image, or the like. Put simply, a talent agent is generally not involved in preparing an entertainer to go to market, but is responsible for taking the

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21 Id. at 3-4; See also Keith Warren and Ryan Wechsler, An Offer California Can’t Refuse: How an Efficient and Adaptable Framework Can Improve Remedies Under the Talent Agency Act and Correct the Issues With its Interpretation, 21 UCLA Ent. L. Rev. 79, 85-86 (2014) (discussing the role of personal managers); See also Michael J. Plonsker and Jeanine Percival Wright, Entertainment Law & Litigation §8.01, 2-3 (2014) (discussing the role of personal managers).


23 Id. at 3-4; See also Keith Warren and Ryan Wechsler, An Offer California Can’t Refuse: How an Efficient and Adaptable Framework Can Improve Remedies Under the Talent Agency Act and Correct the Issues With its Interpretation, 21 UCLA Ent. L. Rev. 79, 85-86 (2014) (discussing the role of personal managers); See also Michael J. Plonsker and Jeanine Percival Wright, Entertainment Law & Litigation §8.01, 2-3 (2014) (discussing the role of personal managers).

entertainer to market and representing the entertainer to the market to the best of his/her ability.25

2. ROLE OF PERSONAL MANAGERS

Talent agents generally do not manage the personal aspects of their clients’ careers, as they are primarily focused on finding employment opportunities for their clients.26 The talent agent will not be able to obtain many employment opportunities for an entertainer if that entertainer is not ready to go to market. For example, if the entertainer is not a good entertainer, misses meetings and auditions, has a terrible public image, it will be very difficult for a talent agent to present that entertainer with viable employment opportunities. It is not a talent agent’s responsibility, however, to ensure that the entertainer is ready to go to market.27 Entertainers often times are not good at managing these more personal and specific responsibilities on their own, and therefore choose to hire personal managers to assist in doing so.

Personal managers focus primarily on managing and developing the personal lives of their clients with the entertainer’s long-term career goals in mind.28 “Essentially, a manager advises the artist on which employment opportunities to accept that are procured by an agent.”29 With the personal manager being so involved in the day-to-day activities of their clients, it naturally follows that the number of clients a personal manager can take on is relatively small in comparison to that of a talent agent. Personal managers are often physically going to auditions and meetings with their clients, working with the entertainer to develop a personal image that is presentable to the public, and taking care of other needs of the entertainer as they arise.

Similar to talent agents, personal managers are generally compensated by receiving a percent of the entertainer’s gross earnings in the form of commission.30 The commission charged by personal managers ranges widely.31 Generally, the commissions that personal managers charge tend to be higher than that of talent agents for several reasons that will be discussed later in this paper.32

In an ideal working relationship in California’s entertainment industry, an entertainer would have both a talent agent and a personal manager. Both the talent agent and the personal manager should be working with each other to advance the entertainer’s

31 Id.
32 Id.
career goals within the scope of their relationship with the entertainer. 33 “Operating within the law, the agent will procure employment opportunities for the artist and the manager will counsel the artist on employment opportunities.” 34 This would allow for the personal manager to have input on what employment the entertainer pursues, without personally going out and procuring the employment opportunity on their own.

B. REGULATION OF AGENTS & PERSONAL MANAGERS

As a result of the massive appeal that the entertainment industry has to young aspiring entertainers, it is not uncommon for young aspiring entertainers to move to California and attempt to break in to the industry. As the aspiring entertainers are beginning their journey into the entertainment industry, they are typically doing so with little knowledge of the business aspects of the industry. Prior to any legislation regulating the business of talent agencies/agents, these young aspiring entertainers were extremely vulnerable, and their careers were essentially at the mercy of the talent agents because of the intertwined networks in the industry and their lack of business acumen. Talent agents were not employing the best, or morally acceptable, practices for signing entertainers as clients. 35 Talent agents were also not employing the best, or morally acceptable, practices for procuring employment for the young aspiring entertainers once they were clients. 36 Talent agents were charging excessive for their representation. Entertainers trying to

34 Id.
35 Id. at 116; See also Marathon Entm’t., Inc. v. Blasi, 42 Cal. 4th 974, 984 (2008) (discussing entertainers’ representatives taking advantage of clients financially); See also Keith Warren and Ryan Wechsler, An Offer California Can’t Refuse: How an Efficient and Adaptable Framework Can Improve Remedies Under the Talent Agency Act and Correct the Issues With its Interpretation, 21 UCLA Ent. L. Rev. 79, 84-85 (2014) (demonstrating examples of agents taking advantage of clients to receive commissions such as sending young women to nude photo shoots).
36 Id.
break into the industry were left with no other options than to accept the rates or not have representation, and in turn, not to have employment.

Given that California is home to a large share of the entertainment industry in the United States and the questionable business practices being used by talent agents, it comes as no surprise that California enacted a law regulating the practices of talent agents. This law, in current form, is the Talent Agencies Act of 1978.\textsuperscript{37} “The TAA’s history extends back to 1913 with the passing of the Private Employment Agencies Law, which imposed licensing requirements for employment agents.\textsuperscript{38} The legislature was primarily concerned with agents taking advantage of artists.”\textsuperscript{39} It is clear that the California legislature has always had the protection of entertainers from business-savvy representatives in mind when addressing the regulation of the entertainment industry.\textsuperscript{40}

In addition to the legislature’s desire to protect the entertainers, the entertainers themselves have formed unions over time to further protect themselves. These unions and guilds have provided a tremendous amount of bargaining power to the entertainers in their negotiations with talent agents. When coupled with the TAA, there is little to no aspect of the relationship between entertainers and talent agents that is left unregulated.

1. TALENT AGENCIES ACT

a. TALENT AGENCIES ACT: REGULATION OF AGENTS

The TAA governs several aspects of the talent agent’s role in the entertainment industry, with the general goal being that agents are not exploiting entertainers. “The

\textsuperscript{37} California Labor Code, §1700 et seq. (Lexis Advance 2016); California Administrative Code, Title 8 §12000 et seq. (Lexis Advance 2016).
\textsuperscript{39} Id.
\textsuperscript{40} Id.
TAA essentially prohibits unlicensed individuals from acting as a talent agent. Licensed talent agencies must comply with the procedural requirements of the TAA, which include submitting form contracts and fees to the state, posting bond, and prohibitions against discrimination and certain types of conflicts of interest.”41 Through the procedural requirements of the TAA, California effectively limits the potential for conflicts of interest and self-dealing arising from talent agencies representing several entertainers.

The TAA regulates actions rather than individual job titles or professions.42 Under the TAA, any person or business entity acting as a “talent agency” is required to be licensed by the California Labor Commissioner.43 A “talent agency” is defined in the TAA 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, 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.”44 The recording contract exception is in place because the dynamic of the music industry differs from that of other forms of entertainment, and the legislature recognized that. “In the music business, (1) as a practical matter, recording artists cannot secure the services of an agent without already having a recording contract in place, and (2) a musician’s representative other than his or her talent agent – for instance, a personal manager or entertainment attorney – is

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41 Id. at 119; Cal. Lab. Code §1700.5; Cal. Lab. Code §§1700.23-1700.47.
43 Id.
ordinarily the one to negotiate the recording contract.” Talent agencies and talent agents are the business entities and individuals that voluntarily choose to be licensed as such by, and subject to the regulation of, the TAA.

Several requirements must be met in order to become a licensed talent agent under the TAA, including posting a surety bond and submitting form contracts. These requirements can be quite burdensome for smaller talent agencies as well as solo practicing talent agents. Being licensed under the TAA also does have its benefits. Often times the large actors guilds, that hold the vast majority of desirable prospective clientele, will have contractual agreements with the more established licensed talent agencies.

b. TALENT AGENCIES ACT: REGULATION OF PERSONAL MANAGERS

There is currently no regulatory scheme specifically for the relationship between personal managers and entertainers. Although the TAA does not explicitly include personal managers as being subject to regulation under the Act, as mentioned above, the TAA regulates activity not professional titles. Therefore, personal managers can find themselves in violation of the TAA if they procure employment for their client despite not being licensed under the Act. As discussed above, aspiring entertainers often times

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45 Michael J. Plonsker and Jeanine Percival Wright, Entertainment Law & Litigation §8.01 (2014); Cal. Lab. Code §1700.5.
47 Michael J. Plonsker and Jeanine Percival Wright, Entertainment Law & Litigation §8.01 (2014).
50 Id.
are only able to get a personal manager when first entering the industry. This is where personal managers most often find themselves violating the TAA.

The problem is that, as a result of the commission caps discussed below, talent agents are incentivized to have a large number of clients that the talent agent can find high paying employment opportunities for to increase their commission. This leaves entertainers that are not yet established without representation from a talent agent. The entertainer then finds a personal manager, typically promising industry contacts and the ability to get a talent agent to represent the entertainer, and enters into an agreement with the personal manager. The personal manager generally will charge a higher commission than the cap on talent agents discussed below.\textsuperscript{51} Now the personal manager has an incentive to find the new client some work to receive compensation. Not being a licensed talent agent under the TAA, the personal manager cannot procure employment opportunities for the client without violating the Act.\textsuperscript{52} The problem is clear. The talent agent has no incentive to sign this entertainer and the personal manager has all of the incentive to find the entertainer employment.\textsuperscript{53}

Because the chances of an entertainer who is not established in the industry getting a talent agent are so low, it comes as no surprise that personal managers often are involved in procuring employment for entertainers early in their career. This leaves the personal manager subject to the regulatory scheme of the TAA. This can be avoided to some extent if the personal manager does in fact have strong relationships with talent

\textsuperscript{52} Id.; Cal. Lab. Code §1700.
agents and is able to obtain representation for the entertainer. If the talent agent is only providing subpar employment offers, the personal manager has the ability to work in conjunction with the talent agent to negotiate the employment agreement.\textsuperscript{54} The TAA provides a safe harbor provision, stating “it is not unlawful for a person or corporation which is not licensed… to act in conjunction with, and at the request of, a licensed talent agency in the negotiation of an employment contract.”\textsuperscript{55} The talent agent has little incentive in finding small offers for the entertainer, but the personal manager has a large incentive to find any reasonable offer for the entertainer.\textsuperscript{56} Therefore, the personal manager is likely to represent the entertainer more passionately to the party offering the employment.

Despite the theoretical scenario in which the safe harbor exception would apply, this is hardly ever found to apply in practice.\textsuperscript{57} Under the safe harbor exception, a personal manager can only assist in negotiating the terms of a contract once the contract has already been procured by a talent agent.\textsuperscript{58} As discussed above, personal managers are often found to have unlawfully procured employment when the client’s talent agent is not actively seeking employment opportunities, or when the client doesn’t have a talent agent at all. Therefore, personal managers that engage in any employment opportunity

\textsuperscript{54} Michael J. Plonsker and Jeanine Percival Wright, \textit{Entertainment Law & Litigation} §8.01 (2014); Cal. Lab. Code §1700.44 (2010).
\textsuperscript{55} Id.
\textsuperscript{57} Michael J. Plonsker and Jeanine Percival Wright, \textit{Entertainment Law & Litigation} §8.01 (2014); \textit{See also Snipes v. Dolores Robinson Entertainment} (Cal.Lab.Com. Apr. 4, 1998), TAC No. 36-96 (finding that the safe harbor exception applied to the case at hand).
\textsuperscript{58} Cal. Lab. Code §1700.44 (2010)
procurement activity are almost always found to have violated the TAA.\footnote{Id.}
The consequences of violating the TAA are harsh. Violations of the TAA result in the management agreement being voided, no further commissions due, and/or disgorgement of commissions previously paid under the management contract.\footnote{Keith Warren and Ryan Wechsler, \textit{An Offer California Can’t Refuse: How an Efficient and Adaptable Framework Can Improve Remedies Under the Talent Agency Act and Correct the Issues With its Interpretation}, 21 UCLA Ent. L. Rev. 79, 91-92 (2014).} The consequences of violating the TAA and the procedural steps involved in disputes arising from the TAA are discussed in greater detail below.

2. AGREEMENTS WITH UNIONS/GUILDS

a. AGREEMENTS WITH UNIONS/GUILDS: REGULATION OF TALENT AGENTS

The TAA’s requirements further the goal of regulating the relationship between the talent agents and entertainers to prevent the talent agents from taking advantage of entertainers. The large unions and guilds representing entertainers reinforced this desire to protect entertainers by requiring any agent representing a member actor to enter contractual agreements regulating that representation.\footnote{Michael J. Plonsker and Jeanine Percival Wright, \textit{Entertainment Law & Litigation} §8.01 (2014) (recognizing that talent agents are subject to both statutory law and private regulations established via contract).} Some of these unions and guilds include the American Federation of Musicians (AFM), the American Federation of Television and Radio Artists (AFTRA), the Screen Actors Guild (SAG), the Writers Guild of American (WGA), and the Directors Guild of America (DGA).\footnote{Id.} The Association of Talent Agents (ATA), a union representing talent agents, generally represents talent agents when negotiating with the entertainment unions and guilds.\footnote{Id.}
The ATA has historically entered into agreements with the various entertainment unions and guilds that impose additional rules that govern the relationship between the entertainer and the talent agent.64 “Under these agreements, talent agents who work with their artist-members are obligated to be certified (“franchised”) and to obtain franchise licenses from the unions or guilds.”65 This franchising process is how the agreements avoid violating collective bargaining laws, as neither the union nor the talent agent is the entertainer’s employer. Under the agreements between the ATA and the entertainers’ guilds/unions, the talent agent must become franchised by the union/guild, essentially making the talent agent an affiliate of the union/guild.66 Because the talent agent is now a franchise of the union/guild, the talent agent is subject to the additional rules and requirements imposed by the union/guild’s bylaws, including those pertaining to relationships between talent agents and entertainers.67 Some of these franchise agreements also limit a talent agent from representing clients that are not members of the union under which the talent agency is franchised.68

Franchising agreements typically cap the commission the talent agent can receive as a percentage of the client’s gross earnings.69 “For instance, the AFTRA and SAG franchise agreements with talent agents have historically limited an agent’s commissions to 10 percent of an artist’s gross earnings.”70 This 10 percent is the industry standard for talent agents’ commission in California. Additionally, franchise agreements generally limit the duration of the representation of an entertainer by a talent agent and allow for

64 Id.
65 Id.
66 Id.
67 Id.
68 Id.
69 Id.
70 Id. (citing Screen Actors Guild, Codified Agency Regulations Rule 16(g) XVI (Jan. 1, 1991).
the entertainer to terminate the representation agreement if the talent agent does not
procure work in a specified time frame. The AFTRA and SAG franchise agreements
have historically imposed a three-year term limit on most agent-artist employment
agreements.

The additional terms in the agreements between the ATA and the various
unions and guilds representing entertainers expand on the legislature’s already
burdensome requirements. Franchise agreements and the TAA together provide the
entertainers with the level of protection sought by the legislation and entertainers
themselves.

b. AGREEMENTS WITH UNIONS/GUILDS: REGULATION OF PERSONAL
MANAGERS

Personal managers are not subject to the regulations imposed by the private
contractual agreements entered between the ATA and the various unions and guilds
representing entertainers. The personal managers are not a party to those agreements;
therefore they are not subject to the terms of those agreements. Personal managers do not
have a cap on the commissions that they can receive from their clients, and generally
charge a much higher percent of the entertainer’s gross earnings than talent agents that
are capped at 10 percent.

In addition to not being subject to the cap on commissions, personal managers are
not subject to the term limits imposed by the agreements between the ATA and the

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71 Michael J. Plonsker and Jeanine Percival Wright, Entertainment Law & Litigation §8.01 (2014).
72 Id. (citing Heath B. Zarin, The California Controversy over Procuring Employment: A Case for
the Personal Managers Act, 7 Fordham Intell. Prop. Media & Ent. L.J. 927, 959-60 (1997)).
73 Michael J. Plonsker and Jeanine Percival Wright, Entertainment Law & Litigation §8.01 (2014).
74 Keith Warren and Ryan Wechsler, An Offer California Can’t Refuse: How an Efficient and
Adaptable Framework Can Improve Remedies Under the Talent Agency Act and Correct the
Issues With its Interpretation, 21 UCLA Ent. L. Rev. 79, 86 (2014).
various unions and guilds representing entertainers.\textsuperscript{75} Personal managers’ agreements with entertainers are subject only to the applicable contract laws, unless they are found to have procured employment in violation of the TAA.\textsuperscript{76}

Personal managers are not subject to the terms of the agreements between the ATA and the various unions and guilds representing entertainers, just as they do not receive the benefits of those agreements. Personal managers are not able to become “franchised” under those agreements, and do not receive the benefits of being franchised versus not as talent agents do.\textsuperscript{77} There is no way for a personal manager to promote itself as more qualified than another based on a designation; this must be done purely by merit. Entertainers’ guilds/unions could enter into agreements with personal managers similar to those with talent agents if they desired. The absence thereof, however, indicates that the TAA sufficiently regulates the relationship between personal managers and entertainers.

\textbf{III. APPLICATION OF THE TALENT AGENCIES ACT TO PERSONAL MANAGERS}

As discussed above, talent agents have little incentive to find employment opportunities for entertainers that are not yet established in the industry, and personal managers have a great incentive to find employment opportunities for these entertainers. This dynamic is the foundation for the most prevalent examples of personal managers being found to have violated the TAA. The question of whether it is fair to punish a personal manager for procuring employment (by forfeiture of commissions due on work

\textsuperscript{75} Michael J. Plonsker and Jeanine Percival Wright, \textit{Entertainment Law & Litigation} §8.01 (2014).


\textsuperscript{77} Michael J. Plonsker and Jeanine Percival Wright, \textit{Entertainment Law & Litigation} §8.01 (2014).
performed necessary to secure any employment for the entertainer at all) for an entertainer who is not established in the industry and who likely would not have found employment otherwise is a valid one, indeed. The argument that forcing personal managers to forfeit and/or disgorge commissions earned on the work performed to get an unestablished entertainer employment, that likely would not have received any employment opportunities otherwise, is unfair has its merits; but the TAA is clear that it regulates the activity of procurement, and that is in fact what the personal manager did. Therefore, the TAA becomes applicable to the activities of personal managers and the agreements they have with entertainers.78

Allegations of violations of the TAA are raised in one of two ways when involving disputes between personal managers and entertainers.79 Both of these routes lead to the dispute being heard before the Labor Commissioner, as “the TAA grants the Labor Commissioner original and exclusive jurisdiction to resolve disputes arising under the TAA.”80 The disputes between personal managers and entertainers that reach the litigation stages all boil down to money. Either the personal manager is seeking to recover unpaid commissions from the entertainer or the entertainer is seeking to void the management contract and not have to pay the personal manager commissions due under the contract.81 The ways that personal managers and entertainers raise these disputes differs.

78 Cal. Lab. Code §1700
79 Michael J. Plonsker and Jeanine Percival Wright, Entertainment Law & Litigation §8.03 (2014).
81 Id. at 91-92; See also Michael J. Plonsker and Jeanine Percival Wright, Entertainment Law & Litigation §8.03 (2014).
If the entertainer is seeking to have the agreement with their personal manager voided on the grounds that the personal manager violated the TAA by procuring employment, the entertainer must file a Petition to Determine Controversy with the California Labor Commissioner. The Labor Commissioner will then hear the matter and enter judgment based on the merits of the case, imposing any penalties or remedies that the Labor Commissioner deems equitable.

On the other hand, if the personal manager were the one seeking to have the contract enforced and the commissions due under the contract, the personal manager would file a breach of contract claim in state court. After the personal manager files the claim in state court to enforce the contract, the entertainer will typically claim that the contract is void because the personal manager violated the TAA by procuring employment without being licensed under the Act. The entertainer does this by filing a Petition to Determine Controversy with the Labor Commissioner to determine the validity of the contract. This results in the state court entering a stay in the personal managers’ proceeding, pending the Labor Commissioner’s ruling.

The Labor Commissioner has original jurisdiction to determine controversies under the TAA. Because the Labor Commissioner has original jurisdiction to hear these disputes, the doctrine of exhaustion of administrative remedies requires that disputes between personal managers and entertainers arising under the TAA must be heard before

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82 Id.
83 Id.
84 Id.
85 Id.
86 Id.
87 Id.
88 Michael J. Plonsker and Jeanine Percival Wright, Entertainment Law & Litigation §8.05 (2014).
the Labor Commissioner prior to the court system. The Labor Commissioner then will hear the merits of the dispute and enter a ruling either upholding the contract as valid or voiding the contract in part or in whole. “If the contract is voided, the manager no longer has a viable contract claim to bring in state court, and any benefits conferred or commissions earned through the contract, irrespective of legality, are thus unattainable.” This gives the Labor Commissioner jurisdiction to hear disputes involving not only agents, but personal managers as well. Challenges to determinations made by the Labor Commissioner are reviewable de novo by the Superior Court.

A. CONSEQUENCES OF PERSONAL MANAGERS PROCURING EMPLOYMENT

As mentioned above, a personal manager that has been found to have procured employment for an entertainer client is subject to the TAA. Violations of the TAA have been handled in a uniform manner since its inception. If a personal manager is found to have violated the TAA by procuring employment, the personal manager’s agreement with the entertainer can be deemed void, the personal manager will forfeit any unpaid commissions due under the contract, and the personal manager may have to disgorge

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89 Id.
90 Michael J. Plonsker and Jeanine Percival Wright, Entertainment Law & Litigation §8.03 (2014).
92 Id.
93 Michael J. Plonsker and Jeanine Percival Wright, Entertainment Law & Litigation §8.05 (2014).
94 Michael J. Plonsker and Jeanine Percival Wright, Entertainment Law & Litigation §8.01 (2014); Cal. Lab. Code §1700
95 Keith Warren and Ryan Wechsler, An Offer California Can’t Refuse: How an Efficient and Adaptable Framework Can Improve Remedies Under the Talent Agency Act and Correct the Issues With its Interpretation, 21 UCLA Ent. L. Rev. 79, 94 (2014) (recognizing that since the inception of the TAA the Labor Commissioner has generally mandated contract rescission and disgorgement of commissions previously received even in cases of only incidental procurement of employment).
previously paid commissions under the contract. All of these outcomes are very detrimental to the personal manager profession. The ability for personal managers to charge higher commissions than talent agents can offset this deterrent effect to some degree.

1. SEVERABILITY

The Labor Commissioner is granted an extraordinary amount of discretion in determining the validity of a contract between a personal manager and an entertainer when a dispute is raised. The Labor Commissioner has the authority to void an entire management agreement between a personal manager and an entertainer even in the event that there was only one instance of procurement activity. The Labor Commissioner can also apply the doctrine of severability in disputes arising from personal manager and entertainer agreements, if that is the most equitable outcome. Despite having the ability to apply the doctrine of severability and uphold all legal portions of a management contract between a personal manager and an entertainer, the Labor Commissioner has only done so in a few instances. It has come to be expected that if the Labor Commissioner finds that the personal manager procured employment for their client that the entire management agreement will be held void.

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98 Id.
99 Id.
100 Id. (citing *Marathon Entm’t, Inc. v. Blasi*, 42 Cal. 4th 974, 974 (Cal. 2008) (“noting that in the more recent decisions, courts have consistently upheld the Labor Commissioner’s adoption of the principle that severance is rarely, if ever, available to personal managers and the courts have upheld decisions to void these contracts in entirety”).
101 Id.
In Marathon Entertainment, Inc. v. Blasi, the California Supreme Court addressed whether the doctrine of severability should be considered in disputes arising from alleged unlawful procurement of employment. “The California Supreme Court held that if an unlicensed talent agent rendered services to an artist that were both lawful and unlawful under the TAA, the Labor Commissioner (and the Superior Court, on a trial de novo) has discretion, in some instances and under certain guidelines, to partially enforce otherwise void contracts by severing any unlawful parts thereof.” Despite being thought of as a big win by personal managers, the holding in Blasi has not had a significant impact on how the Labor Commissioner rules on disputes arising from alleged unlawful procurement. The Labor Commissioner has taken the discretionary language used in the Blasi decision very literally, and has only exercised to adopt the doctrine of severability in a few instances.

2. FORFEITURE OF COMMISSIONS DUE & DISGORGEMENT

Prior to the Blasi decision the Labor Commissioner had applied a very strict interpretation of the TAA, almost always finding entire contracts void and leaving personal managers with little to no recourse. Even after the court held that the doctrine

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102 Marathon Entm’t, Inc. v. Blasi, 42 Cal. 4th 974 (Cal. 2008)
103 Marathon Entm’t, Inc. v. Blasi, 42 Cal. 4th 974, 974 (Cal. 2008) (holding that the doctrine of severability is available in disputes arising from contracts between personal managers and entertainers).
104 Michael J. Plonsker and Jeanine Percival Wright, Entertainment Law & Litigation §8.04 (2014); Marathon Entm’t, Inc. v. Blasi, 42 Cal. 4th 974 (Cal. 2008)
106 Id.
107 Id.; See also Marathon Entm’t, Inc. v. Blasi, 42 Cal. 4th 974, 974 (Cal. 2008) (noting that in the more recent decisions, courts have consistently upheld the Labor Commissioner’s adoption of the principle that severance is rarely, if ever, available to personal managers and the courts have upheld decisions to void these contracts in entirety).
108 Id.
of severability applied to TAA disputes, the Labor Commissioner has continued to void entire contracts between personal managers and entertainers the vast majority of times.\textsuperscript{109} This becomes important when the Labor Commissioner is determining an equitable outcome for the controversies because it directly correlates with how much of the commissions under the contract are to be forfeited by the personal manager.

The fact that the Labor Commissioner has continued to find that even one instance of incidental procurement of employment is a violation of the TAA and is grounds for voiding an entire contract\textsuperscript{110} has far reaching implications. This has led to entertainers being able to use the TAA as a way to avoid paying their personal managers for work performed under the contract to further the entertainer’s career with relative ease.

In \textit{Waisbren v. Peppercorn Productions, Inc.},\textsuperscript{111} the court found that an oral agreement between a personal manager and entertainer was void because the personal manager had procured employment for the entertainer.\textsuperscript{112} The court not only held that the entire agreement was void and therefore unenforceable, but also that requiring the personal manager to pay back any previous commissions received within the past year under that contract was equitable and does not act as a criminal sanction.\textsuperscript{113} This decision has not been received well by personal managers as forfeiting all compensation earned under a contract even if the primary duties performed under the contract were legal and

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\textsuperscript{109} \textit{Id.} \\
\textsuperscript{110} \textit{Id.} \\
\textsuperscript{111} \textit{Waisbren v. Peppercorn Prod., Inc.}, 41 Cal. App. 4\textsuperscript{th} 246 (1995) \\
\textsuperscript{112} \textit{Id.} \\
\textsuperscript{113} \textit{Id.}
\end{flushright}
not in violation of the TAA is a severe consequence.\textsuperscript{114} “Managers’ outrage stems from the belief that, even if the act complained of qualified as “procurement” under the TAA, basic rules of \textit{quantum meruit} and unjust enrichment require that managers ultimately be compensated for managerial functions performed under the contract.”\textsuperscript{115}

\section*{IV. DECIDING WHETHER TO BE A PERSONAL MANAGER OR A LICENSED AGENT}

The broad reach of the TAA’s regulatory powers along with the harsh penalties for violating the TAA have complicated the business decisions that need to be made by supporting professionals wishing to enter the entertainment industry. Regardless of whether or not the application of the TAA to personal managers engaged in procurement activity is fair or effective, the application of the TAA to procurement of employment by unlicensed agents has been consistent and predictable.\textsuperscript{116} This should allow for supporting professionals to make an informed business decision to become licensed under the TAA or to become personal managers and not license under the TAA. The licensing requirements outlined in the TAA are quite burdensome, and the limitation on commissions can hinder a talent agent just getting started in the business. Accepting that there are some downsides to being a licensed talent agent under the TAA, the benefits are present as well. A talent agent who is acting in accordance with the regulations set forth under the TAA and is procuring employment for entertainers will not be subject to the

\textsuperscript{115} Id. at 96.
\textsuperscript{116} Id. at 94.
strict application of the TAA to procurement activities by non-licensed individuals.\textsuperscript{117}

Therefore, a talent agent acting within the scope of their engagement will not be found to have an unenforceable contract due to procurement activity, will not have to forfeit commissions due under the contract and will not have to disgorge commissions received under the contract.

An individual seeking to enter the entertainment industry as a supporting professional could choose to represent clients as a personal manager instead of as a talent agent licensed by the TAA. Just as being a licensed talent agent under the TAA has its pros and cons, choosing to enter the industry as a personal manager has its benefits and downsides as well. The entertainers that are typically looking for representation by personal managers are those not able to obtain representation by a talent agent on their own because they are not established in the industry. This results in personal managers representing entertainers that do not have steady work, and require a great deal of time and energy to get their career on track. Often, even with the entertainer and personal manager doing everything they can to advance an unestablished entertainer’s career, the entertainer will not be successful in the industry and the personal manager is left without compensation as a result of the entertainer having no employment.

This risk of expending so much time and energy on developing new entertainers’ careers can be offset with the commission rates charged by a personal manager. As discussed above, licensed talent agents that have clients that are members of the unions

and guilds representing entertainers are capped on commissions received at 10 percent.\textsuperscript{118}

The talent agents’ commissions of 10 percent are not going to be forfeited under an unlawful procurement of employment claim so long as the talent agent has not otherwise acted unlawfully.\textsuperscript{119} Personal managers risk voiding contracts with entertainers, forfeiture of commissions due, and possibly disgorgement of past commissions received.\textsuperscript{120}

Therefore, when deciding whether to become a personal manager or a talent agent, it is relatively simple to conduct a basic cost-benefit analysis, and supporting professionals should choose to be licensed or not based on this cost-benefit analysis.

For example, an individual is seeking to enter the entertainment industry as a supporting professional. This individual knows that he/she will be able to sign 10 entertainers as clients once he/she establishes his/her professional role. Each client is a member of a union or guild, all of which cap commissions received by agents at 10 percent of the entertainer’s gross earnings. Hypothetically, each one of these 10 clients will earn $1 million in gross earnings annually. If the individual chooses to become licensed under the TAA and represent these entertainers as a talent agent, the most commission that can be received by the talent agent is 10 percent of all of the entertainers’ gross earnings. In this case that would be $1 million (10 clients $1 million x 10%). There is very little risk associated with this commission assuming that the entertainers do in fact earn $1 million each and there is no malfeasance by the talent agent. The talent agent can sue for unpaid commissions due by filing a breach of contract claim, and is entitled to receive that commission under the representation contract.

\textsuperscript{118} Michael J. Plonsker and Jeanine Percival Wright, \textit{Entertainment Law & Litigation} §8.01 (2014).
\textsuperscript{119} Cal. Lab. Code §1700
\textsuperscript{120} Michael J. Plonsker and Jeanine Percival Wright, \textit{Entertainment Law & Litigation} §8.03 (2014).
On the other hand, if this supporting professional decides to enter the entertainment industry as a personal manager and not get licensed by the TAA, there is no cap on commissions. This is where the individual needs to be informed about the industry and make informed decisions based on their observations. For example, using the same scenario outlined above, assume that the individual entering the industry as a personal manager finds that approximately 40% of all contracts between personal managers and entertainers are found to be void as a result of procurement activity. To mitigate the risk of violating the TAA and having to forfeit and/or disgorge commissions, the personal manager can set his/her commission rate higher in order to effectively insure against that risk. For example, using the same details as described above, the personal manager could choose to charge 20% commission to mitigate the risk of forfeiture. If none of the entertainers sought to have their contracts voided and all pay the entire 20% commissions, the personal manager will receive $2 million in compensation (10 clients x $1 million x 20%). Taking into account the estimated 40% of all contracts between personal managers and entertainers being found unenforceable, the personal manager would still receive $1.2 million (6 clients x $1 million x 20%); which is still greater than the commissions that would be received as a talent agent for all 10 clients.

While many still argue that the TAA does not effectively regulate the business practices of personal managers and their relationships with entertainers, the application of the TAA to personal managers has been strict, but consistent. It is time for individuals seeking to enter the entertainment industry as supporting professionals to recognize the TAA as the governing body of law when dealing with procurement activity for entertainers, and to accept the application thereof. With the consistency of the Labor
Commissioner’s application of the TAA to personal managers that unlawfully procure employment, it should be relatively simple to survey the industry, conduct a cost-benefit analysis, and make an informed business decision whether or not to become licensed under the TAA.