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7 Attorneys for Plaintiff National Conference
8 of Personal Managers

9 UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 NATIONAL CONFERENCE OF
12 PERSONAL MANAGERS, INC. a
13 NEVADA non-for-profit corporation

14 Plaintiff,

15 Vs.

16 EDMUND G. BROWN, JR., Governor
of the State of California, *in his official*
17 *capacity*; KAMALA D. HARRIS,
Attorney General of California, *in her*
18 *official capacity*; JULIE A. SU,
California Labor Commissioner, *in her*
19 *official capacity* and Does 1-10

20 Defendants.

21
22 Plaintiff, by and through its undersigned attorneys, brings this Complaint for
23 Declaratory Relief and Injunctive Relief against the above named Defendants, their
24 employees, agents, and successors in office, and in support thereof alleges the
25 following upon information and belief:
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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

FILED
12 NOV - 9 AM 10:19
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

Civil Case No. **CV12-09620** DDP(RZ)

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

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INTRODUCTION

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2 1. This is a facial and as applied constitutional challenge to California
3 Labor Code Section 1700.5 which provides, “No person shall engage in or carry on
4 the occupation of a talent agency without first procuring a license therefore from the
5 Labor Commissioner.”¹ Plaintiff National Conference of Personal Managers, Inc.
6 (“NCOPM”) request declaratory and injunctive relief on the grounds that the current
7 enforcement and interpretation of this law, part of California Labor Code §§1700 et
8 seq., commonly referred to as the “Talent Agencies Act” (“TAA”), violates its rights
9 under multiple Amendments and provisions of the United States Constitution.

10 2. Plaintiff alleges that its rights are being directly violated pursuant to
11 Article I, Sections 8 and 10, the 13th Amendment and The Due Process and Equal
12 Protection Clauses of the 14th Amendment of the United States Constitution.

13 3. As of the filing of this action, California Labor Code §§ 1700 et seq. as
14 detailed herein is in full effect and continues to harm Plaintiff and others on a daily
15 basis as a result of its construction and the unpredictable, prejudicial and
16 inconsistent manner it is being enforced.

17 4. This a case of first impression; it is the first time the Court has been
18 asked to consider and rule on the constitutional and statutory issues raised herein.

JURISDICTION AND VENUE

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21 5. Jurisdiction is conferred on this Court by existence of a federal question
22 and questions arising under particular statutes, to wit, Article I, section 8 of the
23 United States Constitution, the First, Thirteenth and Fourteenth Amendments to the
24 United States Constitution, 28 U.S.C. §§ 1331. This action arises under 42 U.S.C. §
25 1983 and the United States Constitution.

26 6. Plaintiff’s claim for declaratory relief is authorized by 28 U.S.C. §§
27

28 ¹ California Labor Code Section 1700.5

1 2201 and 2202, and by Rules 57 and 65 of the Federal Rules of Civil Procedure.

2 7. The Defendants are all public officials of the State of California or its
3 political subdivisions. Each of the Defendants resides within this District and/or
4 performs official duties within the State of California. This Court, accordingly, has
5 personal jurisdiction over each of the Defendants.

6 8. Venue properly lies within this District under 28 U.S.C. §1391(b). One
7 or more of the named Defendants perform their official duties in this District, and
8 substantial part of the events or omissions giving rise to Plaintiff's claims have
9 occurred or will continue to occur in this District.

10
11 **INTRADISTRICT ASSIGNMENT**

12 9. Pursuant to Local Rule 3-2, this action may properly be assigned to the
13 Los Angeles division of this Court.

14
15 **THE PARTIES**

16 **Plaintiff**

17 10. Plaintiff National Conference of Personal Managers, Inc. ("NCOPM")
18 is a non-for-profit Nevada Corporation based in Las Vegas, NV. It is a national trade
19 association of United States citizens employed as personal managers who provide
20 representation of talent engaged in entertainment, media and performing arts.
21 Originally founded in 1942, NCOPM is committed to the advancement of personal
22 managers and their clients through advocacy, education and ethical trade practices.
23 NCOPM members are gainfully employed throughout California, the United States
24 and the World as personal managers to artists as defined under the TAA.² Members

25
26 ² Cal.Lab. Code 1700.4(b) states "Artists" means actors and actresses rendering services on the legitimate stage and in
27 the production of motion pictures, radio artists, musical artists, musical organizations, directors of legitimate stage,
28 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.

1 of the NCOPM are actually and directly impacted by the TAA and each has and
2 continues to suffer violations of their Constitutional rights under the TAA and the
3 manner in which it has been interpreted and applied.

4 **Defendants**

5 11. All Defendants are sued in their official capacities only.

6 12. Defendant Edmund G. Brown, Jr. is Governor of the State of California
7 and responsible for executing the laws of California.

8 13. Defendant Kamala D. Harris is the Attorney General of the State of
9 California. Under Article 5, Section 13 of the California State Constitution, she is
10 the "chief law officer of the State," with a duty "to see that the laws of the State are
11 uniformly and adequately enforced." It is her ultimate decision to enforce and/or
12 direct others to enforce California Labor Code §§ 1700 et seq.

13 14. Defendant Julie A. Su (or her successor) is the Labor Commissioner for
14 the State of California appointed by Governor Brown and is also responsible for the
15 application and enforcement of California Labor Code §§ 1700 et seq.

16 15. DOES 1 through 10, inclusive, are sued herein pursuant to Cal Civ.
17 Proc. Code § 474. PLAINTIFF is ignorant of the true names or capacities of the
18 Defendants sued herein under fictitious names DOES 1 through 10, inclusive.
19 PLAINTIFF will amend this Complaint to allege their true names and capacities
20 when the same are ascertained. PLAINTIFF is informed and believes and thereon
21 alleges that each of the fictitiously named Defendants is responsible in some manner
22 for the occurrences alleged herein, and that the real party in interest's damages were
23 proximately caused by such Defendants.

1 HISTORICAL BACKGROUND OF TAA

2 16. The Act's roots extend back to 1913, when the California Legislature
3 passed the Private Employment Agencies Law and imposed the first licensing
4 requirements for employment agents.

5 17. The law was created expressly to stop employers from masquerading as
6 employment counselors purporting to obtain work for their clients. Self proclaimed
7 "agents" would send clients out to houses of prostitution, or other unsavory venues
8 they themselves controlled and/or owned.

9 18. The law was also created to stop employers from enticing young
10 ingénues just arriving to Hollywood to work for them under the aegis of looking to
11 find them third party employment. This has no semblance to how the Act is
12 enforced today.

13 19. The Private Employment Agencies Law of 1913 was amended in 1937
14 when the legislature adopted into the state's labor code the Artist Manager Law.³
15 This added further protections for artists by establishing criminal penalties for
16 agents who employed their artist/clients in exploitative activities (Ibid.). In 1943, the
17 legislature amended the statute renaming it the Artist Managers' Act ("AMA"). As
18 written, these laws allowed only true employment counselors to hold themselves out
19 as talent agents; defining Artists' Managers in California Labor Code section 1700.4
20 as...

21 "a person who engages in the occupation of advising,
22 counseling, or directing artists in the development or
23 advancement of their professional careers and who
24 procures, offers, promises or attempts to procure
25 employment or engagements for an artist only in
26 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 artists.

27 ³ At that time, those who worked for talent agencies (i.e. The William Morris Agency) now thought of as talent agents
28 were then commonly referred to as artist managers.

1 20. The Artist's Managers Act had no statute limiting any of the above
2 activities to licensees. It contained a statute limiting the use of the title of 'artist's
3 manager' to those who obtained the proper certification.

4 21. While the Act had restrictions on what an artist's manager could and
5 could not do, the only statute giving notice of any penalty was §1700.30 which
6 stated that "No licensee shall sell, transfer or give away any interest in or the right to
7 participate in the profits of the artists' manager without the written consent of the
8 Labor Commissioner. A violation of this section shall constitute a misdemeanor, and
9 shall be punishable by a fine of not less than one hundred dollars (\$100) or more
10 than five hundred dollars (\$500), or imprisonment for not more than 60 days, or
11 both."

12 22. The AMA did not end the confusion as to whom or what was being
13 regulated. This confusion expanded as more personal managers, a complementary
14 occupation that did not exist at the time of the AMA's enactment, entered the
15 marketplace. This confusion led to a discussion on whether talent agents and
16 personal managers should be licensed, culminating with the eventual passage of the
17 Talent Agencies Act.

18 23. Assembly Bill 2535 was introduced in February of 1978. Before the
19 Legislature voted to replace the Artists' Managers Act with the Talent Agencies Act
20 in October 1978, effective as of January 1, 1979, the bill was amended five times.
21 Most relevant was the proposed third amendment, A.B. 2535 as amended May 1,
22 1978, which contained statutes that would have regulated the occupation of personal
23 management:

24 Every personal manager shall submit to the Labor
25 Commissioner a form or forms of contract to be utilized
26 by such personal manager in entering into written
27 contracts with artists for the employment of the services of
28 such personal manager by such artists, and secure the
approval of the Labor Commissioner thereof. Such
approval shall not be withheld as to any proposed form of

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contract unless such proposed form of contract is unfair, unjust and oppressive to the artist.

Every personal manager shall file with the Labor Commissioner a schedule of fees to be charged and collected in the conduct of such occupation. The fee or commission of a personal manager shall not exceed 20 percent of an artist's annual income, unless such fee or commission is approved by the Labor Commissioner.

No person engaged in the business, or acting in the capacity of a personal manager, may bring or maintain any action in any court of this state for the collection of compensation for the performance of any act or contract for which registration is required by this chapter without alleging and proving that he or she was a duly registered personal manager at all times during the performance of such act or contract.

Any artist represented by a personal manger in engaged in unlawful activities pursuant to this chapter or Chapter 4 (commencing with Section 1700) shall have (2) the right to terminate an unlawful contract; and (2) the right to withhold any commissions accruing as a result of the unlawful activities from the date after which a personal manager has been determined to be engaged in such unlawful activities. An artist must exercise any remedies available pursuant to this section within one year from the time the unlawful activity is known or should have been known by a reasonable and prudent person.

Any artist represented by a talent agency licensed pursuant to section 1700.5 may also utilize the services of a registered personal manager for the purpose of soliciting or procuring employment." (Appendix 1, AB 2535, pgs. 199-200.)

24. Ten days later, the Legislature amended the bill a fourth time. This draft, A.B. 2535 (as amended May 10, 1978) removed these five provisions purporting to regulate and license personal managers. Likewise, the last draft, A.B.

1 2535 (as amended June 20, 1978), which went on to become the Act, left managers
2 intentionally unregulated by this Act. The Enrolled Bill Report of June 20, 1978
3 offers explanation: “originally this bill was intended to place solicitation regulations
4 on personal managers. However, the latest amendments are applicable only to
5 artists’ managers [*i.e.* talent agents].”

6 25. The existence and rejection of proposed amendments offering a unique
7 licensing scheme for personal managers confirmed that the legislature considered a
8 talent agent and a personal manager separate occupations.

9 26. The Legislature chose not to regulate personal managers. Instead, in the
10 Talent Agencies Act the regulated occupation in Labor Code § 1700.5 was expressly
11 changed from artists’ manager to talent agent: “No person shall engage in or carry
12 on the occupation of a **talent agency** without first procuring a license therefore from
13 the Labor Commissioner.”

14 27. “Talent agency” means a person or corporation who engages in the
15 occupation of procuring, offering, promising, or attempting to procure employment
16 or engagements for an artist or artists, except that the activities of procuring,
17 offering, or promising to procure recording contracts for an artist or artists shall not
18 of itself subject a person or corporation to regulation and licensing under this
19 chapter.” (AB 2535, pg. 288.)

20 28. The Legislature did not entitle it the Talent Representatives Act, but
21 specifically entitled it the Talent Agencies Act. That made it clear the occupation of
22 talent agent is what is being regulated and not personal managers, publicists or
23 attorneys, others who procure employment opportunities for artists.

24 29. Only one penalty statute was in the newly enacted TAA; a
25 recodification of the AMA’s 1700.30. § 1700.30 made it a criminal offense – a
26 misdemeanor – if the owner(s) of a licensed talent agency transferred ownership or
27 interest in the profit participation of their business without first getting the written
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1 consent of the Labor Commissioner. (Id., pg. 292.) That penalty was repealed
2 conditionally in 1982, permanently in 1986.

3 30. The permanent removal was ratified after the California Entertainment
4 Commission recommended “that the criminal sanctions which were removed [in
5 1982] not be restored to the Act” after a majority of the Commission concluded “**the**
6 **industry would be best served without the imposition of civil or criminal**
7 **sanctions for violation of the Act.**” (Appendix 2, The Report of the California
8 Entertainment Commission, pg. 24.)

9 31. The Commission, made up of four agents, four managers, four members
10 of the Screen Actors Guild, and tellingly, chaired by the State Labor Commissioner,
11 (Id, pg. 6) also recommended and the Legislature codified a statute clarifying that no
12 violation of the Act can be considered criminal (§ 1700.44(b)). These changes were
13 based in part on the thinking that there was:

14 “... an inherent inequity – and some question of constitutional
15 due process – in subjecting one to criminal sanctions in
16 violation of a law which is so unclear and ambiguous as to leave
17 reasonable persons in doubt about the meaning of the language
18 or whether a violation has occurred.

19 “‘Procure employment’ is just such a phrase ... the uncertainty
20 of knowing when such activity may or not have occurred ... has
21 left the personal manager uncertain and highly apprehensive
22 about the permissible parameters of their daily activity.”

23 (Id, p. 25.)

24 32. California has **never**: (1) codified any TAA statutes specifically
25 limiting any activity to licensees, (2) enacted a statute expressly giving notice for
26 penalty for engaging in any activity associated with the definition of either an artist
27 manager or talent agent, or, (3) since 1982, any notice of penalty for any action.

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2 **GENERAL ALLEGATIONS**

3 33. As presently worded and applied the TAA has resulted in Plaintiff
4 being unfairly singled out without due process and denied its ability to pursue lawful
5 business opportunities to the detriment of Plaintiff and the Artists that it represents.

6 34. The vagueness of the TAA does not provide Plaintiff with adequate
7 notice as to what specific behavior is to be restrained. It fails to state with specificity
8 who is subject to regulation and what act or acts specifically constitutes a violation
9 of the regulation.

10 35. Per Article 1, Section 10 of the United States Constitution, "No State
11 shall enter into any ... ex post facto Law, or Law impairing the Obligation of
12 Contracts."

13 36. This prohibition can be waived to oblige States' inherent police power
14 to safeguard the interests of its people. When substantial impairments are found and
15 challenged, the State or state agency that has impaired the contract must be able to
16 show a significant and legitimate public purpose behind the regulation and show that
17 the adjustment of the contracting parties' rights and responsibilities of a character
18 appropriate to the public purpose justifying the legislation's adoption.

19 37. The California Legislature never adopted any statute that instructs,
20 guides or provides the Labor Commission, which is empowered to hear all relevant
21 controversies, to impair the contract when it finds an individual or business has
22 violated the California Talent Agencies Act.

23 38. The TAA unfairly restricts interstate commerce by granting a
24 monopoly to individuals licensed and domiciled in California to conduct business
25 not only nationwide but globally.

26 39. The stated purpose of the TAA is specious and does not provide any
27 further protections to Artists than those readily available via the laws of contract.
28

1 presently and continuously injured by the TAA in so far as it precludes Plaintiff
2 from effectively exercising its rights under Article I Sections 8 and 10, the 13th
3 Amendment and the Due Process and Equal Protection Clauses of the 14th
4 Amendment of the United States Constitution.

5 46. If not enjoined by this Court, Defendants will continue to wrongfully
6 apply and enforce the TAA in degradation of Plaintiff's Constitutional Rights.

7 47. Plaintiff has no plain, speedy and adequate remedy at law. Damages are
8 indeterminate or unascertainable and, in any event, would not fully redress any harm
9 suffered by Plaintiff as a result of the continued application and random
10 enforcement of the TAA.

11 48. Finally, the "irreparable harm" and unascertainable "damage" that
12 could result from Defendants continued application and random enforcement of the
13 TAA in violation of Plaintiff's Constitutional Rights includes Plaintiff's right to
14 earn a living and Plaintiff's right to life, liberty and the pursuit of happiness as
15 intended by our forefathers.

16 49. Accordingly, injunctive relief is appropriate.

17
18 **FIRST CLAIM FOR RELIEF: Enforcement of the TAA**

19 **Violates the Due Process and Equal Protection Clauses**

20 (U.S. Constitution 14th Amendment)

21 50. Paragraphs 1-49 are realleged and incorporated herein by reference.

22 51. The 14th Amendment of the United States Constitution provides in part:
23 "No State shall make or enforce any law which shall abridge the privileges or
24 immunities of citizens of the United States; nor shall any State deprive any person of
25 life, liberty, or process without due process of law...."

1 52. The Fourteenth Amendment to the United States Constitution extends
2 through its Due Process Clause so as to apply against state government agencies
3 including Defendants.

4 53. Plaintiff's constitutional right to notice and a reasonable opportunity to
5 know what is required and what is prohibited is ignored by Defendants under the
6 TAA.

7 54. As a result Plaintiff's right to due process are being denied and
8 Plaintiff's property interests are being adversely affected to Plaintiff's detriment.

9 55. The vague, uncertain and inconsistent provisions and enforcement of
10 the TAA violate Plaintiff's substantive due process rights. As written, the TAA
11 permits multiple interpretations with no standards to govern application of its
12 provisions, in violation of law.

13 56. The enforcement of the Talent Agencies Act as directed by Defendants:
14 (1) regulates activity, allowing only licensed talent agents to engage in the
15 occupation's defined activity, attempting and/or procuring employment
16 opportunities for artists; and (2) that those found to have procured employment
17 without a license will lose their right to contract, an action that can only be proper
18 when meting out a penalty for a criminal act.

19 57. For this enforcement to pass the bar of constitutionality there must be
20 clear notice that: (1) anyone who attempts to procure is being regulated, (2) clear
21 notice that only those licensed as talent agents may procure, and (3) clear notice of
22 what the consequence/penalty will be if one wrongly engages in the regulated
23 activity. The TAA fails on all three fronts.

24 58. The current verbiage employed by the TAA fails to set forth with any
25 ascertainable certainty who or what person(s) are to be subject to the restrictions
26 contained in the TAA.

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1 59. “Procure employment’ has never been defined by any court. The
2 uncertainty of knowing when such activity may or not have occurred has left
3 Plaintiff uncertain and highly apprehensive about the permissible parameters of its
4 daily activity.

5 60. Defendants’ enactment and enforcement of the TAA, which mandates
6 that anyone who procures work for an artist be licensed, unreasonably precludes
7 Plaintiff from performing tasks directly related to its occupation of furthering its
8 clients’ careers while at the same time depriving Plaintiff of its right to be properly
9 compensated for its labor.

10 61. Defendants enactment and enforcement of the TAA under color of
11 State law impermissibly infringes upon the right of Plaintiff to pursue life, liberty
12 and the pursuit of happiness while denying Plaintiff compensation for its efforts.

13 62. Based on the aforementioned lack of specificity with regard to who or
14 what is to be regulated the TAA is Constitutionally deficient on its face and thus
15 should be found unconstitutional. Similarly, the Labor Commission’s creating
16 remedies that the state’s Legislature had withheld is unconstitutional as applied and
17 thus should be found unconstitutional. If there is no notice of penalties, no penalties
18 can be meted out.

19 63. As a direct result and proximate result of Defendants violation of
20 Plaintiff’s 14th Amendment Rights, Plaintiff has suffered and will continue to suffer
21 irreparable harm, including the loss of its Constitutional rights, entitling Plaintiff to
22 declaratory and injunctive relief, under 28 U.S.C. §§ 2201 and 2202.

23 64. Plaintiff seeks such equitable relief and other relief precluding
24 Defendants from applying and enforcing the TAA. Other than this action for
25 injunctive and declaratory relief, Plaintiff has no clear, speedy and effective remedy
26 for deprivation of its rights, privileges and immunities.

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**SECOND CLAIM FOR RELIEF: Enforcement of The Act
Conflicts With The 13^h Amendment Of The United States Constitution
(U.S. Constitution 13th Amendment)**

65. Paragraphs 1-64 are alleged and incorporated herein by reference.

66. Defendants enactment, application and enforcement of the TAA is contrary and infringes upon Plaintiff's Thirteenth Amendment Right against involuntary servitude unless as punishment for commission of a crime.

67. The 13th Amendment of the United States Constitution states in part: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, nor any place subject to their jurisdiction."⁵

68. The current application and enforcement of the Talent Agencies Act, with no language prohibiting enforcement of contracts by an unlicensed talent agent, is against every tenet of statutory construction, the doctrine of *ejusdem generis*, and is unconstitutional because it affects Plaintiff being paid for its labor without being convicted of a crime.

69. Plaintiff has, and continues to be compromised by the Defendants creating and courts accepting the Defendants wrongful interpretation that the Act restricts any activity relevant to procurement; it is time to stop these wrongful actions.

70. To be compliant with the 13th Amendment, the rights to the benefit of one's labor can only be voided when there is: (1) a statute stating that such labor was criminal; and (2) the person whose rights to payment for their labors have been forfeited must have been found duly convicted of that crime.

⁵ United States Constitution 13th Amendment

1 71. The Talent Agencies Act expressly states that the “failure of any
2 person to obtain a license from the Labor Commissioner pursuant to this chapter
3 shall not be considered a criminal act under any law of this state” (§ 1700.44(b)).

4 72. Plaintiff’s rightful commissions have been either wrongly disgorged by
5 the Labor Commissioner or negotiated away by a manager afraid to face a TAA
6 procurement controversy, wrongfully disgorging personal management practitioners
7 of hundreds of millions of dollars.

8 73. As a direct result and proximate result of Defendants violation of
9 Plaintiff’s 13th Amendment Rights, Plaintiff has suffered and will continue to suffer
10 irreparable harm, including the loss of its Constitutional rights, entitling Plaintiff to
11 declaratory and injunctive relief, under 28 U.S.C. §§ 2201 and 2202.

12 74. Plaintiff seeks such equitable relief and other relief precluding
13 Defendants from applying and enforcing the TAA. Other than this action for
14 injunctive and declaratory relief, Plaintiff has no clear, speedy and effective remedy
15 for deprivation of its rights, privileges and immunities.

16
17 **THIRD CLAIM FOR RELIEF: The TAA Interferes With**
18 **Interstate Commerce**

19 (U.S. Constitution Article I Section 8)

20 75. Paragraphs 1-74 are realleged and incorporated herein by reference.

21 76. The TAA has no provision for the issuance of a License to an applicant
22 with an out-of-state business address.

23 77. Under Sec. 1700.19 (b) of the Act, a License must contain “a
24 designation of the city, street, and number of the premises in which the licensee is
25 authorized to carry on the business of a talent agency.” No provision is made in the
26 Act for identification of any State location other than California.

1 78. Plaintiff is comprised of personal managers, many of whom reside in
2 locations other than the State of California.

3 79. The TAA deprives out-of-state personal managers access to the
4 California talent market on equal terms, which constitutes explicit discrimination
5 against interstate commerce.

6 80. Sec. 1700.44 (d) of TAA states, "It is not unlawful for a person or
7 corporation which is not licensed pursuant to this chapter to act in conjunction with,
8 and at the request of, a licensed talent agency in the negotiation of an employment
9 contract." Therefore, any out-of-state party, who is ineligible for a California
10 License, may engage in the negotiation of an employment contract *only* with the
11 involvement and consent of a licensed California talent agency, if such out-of-state
12 party desires to have access to the California talent market.

13 81. Sec. 1700.44(d) of TAA establishes a discriminatory two-tier system
14 for talent representation in violation of the dormant Commerce Clause. As the TAA
15 requires out-of-state entities, whether licensed or not in their home domicile, to
16 engage in the negotiation of an employment contract *only* with the involvement and
17 consent of a licensed California talent agency, the Act materially burdens and
18 discriminates against interstate commerce, impedes the flow of trade across state
19 lines and deprive out-of-state competitors of access to local markets.

20 82. The TAA, to Plaintiff's direct injury and detriment, discriminates in
21 favor of California economic activity and against out-of-state participants in the
22 entertainment industry. This grossly protectionist measure has insulated California
23 economic interests in talent representation from interstate competition.

24 83. The TAA as it is presently constructed, applied and enforced is
25 discriminatory in that it favors the State of California's economic interest over their
26 out of state counterparts and it therefore *per se* invalid.

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1 84. This California-granted monopoly favors and protects the local
2 enterprise of licensed California talent agents to Plaintiff's detriment and in
3 violation of Plaintiff's constitutional rights.

4 85. The discriminatory effect of TAA cannot survive a traditional
5 Commerce Clause analysis. By its design and practical effect, TAA constitutes
6 plain economic protectionism, burdening out-of-state personal managers and
7 benefiting in-state talent agents.

8 86. Every artist representative, including Plaintiff, from the other 49 states
9 attempting to secure California-based career opportunities for their clients run into
10 the two-tiered Talent Agencies Act, a licensing system that infinitely and
11 prejudicially favors in-state talent agents. To get their clients work in California,
12 either the out-of-state representatives – be they agents or managers – must work at
13 the request of and in conjunction of a licensed California-based talent agent or be
14 vulnerable to the TAA and the inevitable direct pecuniary loss of the benefit of their
15 labors.

16 87. This statutory scheme is repressive, draconian and in direct violation of
17 interstate commerce.

18 88. As a direct result and proximate result of Defendants violation of
19 Plaintiff's Constitutional Rights under Article I Section 8 of the United States
20 Constitution Plaintiff has suffered and will continue to suffer irreparable harm,
21 including the loss of its Constitutional rights, entitling Plaintiff to declaratory and
22 injunctive relief, under 28 U.S.C. §§ 2201 and 2202.

23 89. Plaintiff seeks such equitable relief and other relief precluding
24 Defendants from applying and enforcing the TAA. Other than this action for
25 injunctive and declaratory relief, Plaintiff has no clear, speedy and effective remedy
26 for deprivation of its rights, privileges and immunities.

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**FOURTH CLAIM FOR RELIEF: Enforcement of The Act
Violates The 1st Amendment Of The United States Constitution**

(U.S. Constitution 1st Amendment)

90. Paragraphs 1-89 are realleged and incorporated herein by reference.

91. The First Amendment of the United States Constitution provides in part: “Congress shall make no law... abridging the freedom of speech... or the right of the people peaceably to assemble....”⁶

92. The First Amendment to the United States Constitution extends through its Due Process Clause so as to apply against state government agencies including Defendants.

93. The TAA and Defendants enforcement thereof has resulted in disgorgement of compensation payable to personal managers for their alleged attempts to procure employment as the result of such common commercial free speech activities as “sending out resumes and photographs” “distributing resume and videotapes” and sending “written materials.”

94. Defendants implementation and enforcement of the TAA restricts Plaintiff’s commercial speech and does not directly advance a substantial state interest and is far more extensive than necessary.

95. The TAA and Defendants’ enforcement of the TAA imposes more than an incidental burden on protected expression and imposes a burden based on the content of speech and the identity of the speaker.

96. The TAA and Defendants enforcement of the TAA has resulted in disgorgement of compensation payable to Plaintiff.

97. Freedom of association is the individual right guaranteed by the First Amendment to come together with other individuals and collectively express, promote, pursue and defend common interests.

⁶ United States Constitution First Amendment

1 enforcing, or attempting to enforce the California Labor Code §§1700 et seq.,
2 commonly referred to as the "Talent Agency Act";

3 3) For a declaration that the California Labor Code §§1700 et seq.,
4 commonly referred to as the "Talent Agency Act" is, on its face and as applied,
5 vague and overbroad and in violation of Plaintiff's right against indentured servitude
6 under the Thirteenth Amendment;

7 4) For a declaration that the California Labor Code §§1700 et seq.,
8 commonly referred to as the "Talent Agency Act" is, on its face and as applied, in
9 direct violation of the Commerce Clause of the United States Constitution;

10 5) For a declaration that the California Labor Code §§1700 et seq.,
11 commonly referred to as the "Talent Agency Act" is, on its face and as applied, in
12 violation of Plaintiff's right to Free Speech under the First Amendment;

13 6) For remedies pursuant to 42 U.S.C. § 1983 and for an award of
14 reasonable attorneys' fees, costs and expenses pursuant to 42. U.S.C. § 1988,
15 California Code of Civil Procedure § 1021.5 (private attorney general statute) and/or
16 other applicable and federal law;

17 7) For such other relief as may be just and proper.

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20 November 8, 2012

FOWLER & GOOD LLP

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24 By: 

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