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8 DIVISION OF LABOR STANDARDS ENFORCEMENT

9 DEPARTMENT OF INDUSTRIAL RELATIONS

RECEIVED

10 STATE OF CALIFORNIA

JAN 22 2015

12 PHILLIP PHILLIPS, an individual,
13 Petitioner,

14 vs.

15 19 ENTERTAINMENT, INC., a California
corporation; 19 RECORDINGS, INC., a
16 California corporation; and 19 PUBLISHING,
INC., a California corporation,

17 Respondents.
18

CASE NO. State of California
Labor Commissioner
San Francisco
PETITION TO DETERMINE
CONTROVERSY Licensing & Registration
(Labor Code § 1700.44)

[Notice to Answer and Request for Hearing in
Los Angeles, California filed concurrently
herewith]

19
20 Petitioner Phillip Phillips ("Petitioner") alleges as follows:

21 1. Petitioner, singer-songwriter and winner of Season 11 of the iconic singing
22 competition television series American Idol, remains grateful for the opportunity American Idol
23 provided him to demonstrate to the world and capitalize upon his talent, creativity and diligence.
24 The appreciation does not extend to the oppressive, fatally conflicted 19 Entertainment, Inc.
25 ("19"), co-producer of American Idol, which has been structured to assure strict control of its
26 winners to their detriment and for 19's benefit.

27 2. Through a complex series of related companies and contracts, 19, developer and
28 co-producer of American Idol, and various affiliated entities, have acted as Petitioner's personal

1 manager, music publisher, merchandise company and record label. In disregard and contravention
2 of the fiduciary duties applicable to its role as personal manager, 19 has constantly manipulated
3 Petitioner into accepting jobs and entering into other transactions that were for the benefit of 19
4 and its affiliated companies rather than for Petitioner.

5 3. Respondent has repeatedly violated the Talent Agencies Act (the "Act") by
6 attempting to procure and actually procuring employment for Petitioner. These violations have
7 been committed with regularity by each of the 19 entities, either in concert with each other or
8 individually. The use of different entities by 19 in a misguided attempt to insulate each company
9 from the consequences of transgressions by other affiliated companies should not defeat any of
10 Petitioner's claims.

11 4. This case presents exactly the kind of situation that the Act absolutely forbids: a
12 purported artist manager and its related entities openly operating as an unlicensed talent agency.

13 5. Petitioner is, and at all times material hereto has been, an individual residing in the
14 State of Georgia, and was at all times material hereto, an "artist" as that term is defined in Section
15 1700.4 of the Labor Code in that he was a recording artist, musical artist, composer, lyricist and
16 performer.

17 6. Respondent 19 is a creative production, recording, touring, and artist management
18 company doing business in California, involved in the development and production of "American
19 Idol" and "So You Think You Can Dance."

20 7. Respondent 19 Recordings, Inc. is a record label doing business in California and is
21 owned by 19.

22 8. Respondent 19 Publishing, Inc. is a publishing company doing business in
23 California and is owned by 19.

24 9. 19, 19 Recordings, Inc. and 19 Publishing, Inc. are sometimes referred to
25 collectively as "Respondent."

26 10. Petitioner and Respondent entered into the following agreements:

27 a. Management Agreement between Petitioner and 19 Entertainment, Inc.
28 dated January 27, 2012 (the "Management Agreement");

1 b. Merchandising Agreement between Petitioner and 19 Entertainment, Inc.
2 dated January 27, 2012 as amended on November 30, 2012 to provide for Petitioner's
3 wholly-owned corporation, Unkommon, Inc., to provide Petitioner's services thereunder (the
4 "Merchandise Agreement");

5 c. Exclusive Recording Agreement between Petitioner and 19 Recordings, Inc.
6 dated January 27, 2012 (the "Recording Agreement"); and

7 d. Exclusive Songwriter and Co-Publishing Agreement between Petitioner and
8 19 Publishing, Inc. dated January 27, 2012 (the "Publishing Agreement").

9 11. The Management Agreement, Merchandise Agreement, Recording Agreement and
10 Publishing Agreement are sometimes referred to collectively as the "Agreements" herein. The
11 Agreements contain confidentiality provisions and will be filed under seal with the Labor
12 Commissioner.

13 12. Respondent has engaged in a pattern and practice of flagrant violations of the Act.
14 The Act specifically protects artist by prohibiting non-licensed companies, such as Respondent,
15 from "engag[ing] in or carry[ing] on the occupation of a talent agency without procuring a license
16 therefor from the Labor Commissioner." (Labor Code § 1700.5). A non-licensed person violates
17 the Act by "procuring, offering, promising, or attempting to procure employment or engagements
18 for an artist."

19 13. Respondent has also failed to honor the fiduciary duty it owes Petitioner through
20 self-dealing and dealing in favor of parties other than Petitioner.

21 14. Petitioner alleges that Respondent violated the Act in at least the following
22 manners:

23 a. Respondent procured employment for Petitioner in the form of a musical
24 performance as part of the July 4, 2012 "Capitol Fourth" Show.

25 b. Respondent procured employment for Petitioner in the form of a musical
26 performance as part of Cumulus Radio event in Atlanta on August 31, 2012.

27 c. Respondent procured employment for Petitioner in the form of a musical
28 performance on October 9, 2012 as part of the "One World Harmony Concert."

1 d. Respondent procured employment for Petitioner in the form of a musical
2 performance on November 15, 2012 as part of the “2012 MTV Restore the Shore Telethon.”

3 e. Respondent procured employment for Petitioner in the form of a musical
4 performance on February 16, 2013 as part of the NBA All-Star Game.

5 f. Respondent procured employment for Petitioner in the form of an on-air
6 musical performance on November 15, 2013 for QVC.

7 g. Respondent procured employment for Petitioner in the form of a musical
8 performance as part of Walmart Soundcheck Live on December 5, 2013.

9 h. Respondent procured employment for Petitioner in the form of a musical
10 performance in the Superbowl Tailgate Party on February 2, 2014.

11 i. Respondent procured employment for Petitioner in the form of a musical
12 performance as part of the July 4, 2014 “Capitol Fourth” show.

13 j. Respondent procured employment for Petitioner in the form of a
14 performance for Boston radio station WBMX on September 12, 2014.

15 k. Respondent procured employment for Petitioner in the form of a corporate
16 performance for Pepsi-Cola in Oklahoma on August 2, 2014.

17 l. Respondent procured employment for Petitioner in the form of a
18 performance of the Star Spangled Banner at a World Series game on October 22, 2014.

19 m. Throughout the term of the Agreements, Respondent procured a large
20 number of engagements for Petitioner to appear and perform on various radio and television
21 shows, including without limitation, the following:

22 i. Letterman - November 19, 2012

23 ii. Good Day NY - November 21, 2012

24 iii. Today Show - November 27, 2012

25 iv. Ellen - January 15, 2013 (taped), January 16, 2013 (aired)

26 v. Jimmy Kimmel Live - January 16, 2013

27 vi. American Idol - March 14, 2013

28 vii. Much Music Awards - June 16, 2013

- 1 viii. Today Show - June 28, 2013
- 2 ix. The Tonight Show - July 29, 2013
- 3 x. American Idol - March 6, 2014
- 4 xi. Orange Lounge, Toronto - March 13, 2014
- 5 xii. Conan - April 1, 2014
- 6 xiii. Ellen - April 21, 2014
- 7 xiv. YouTube - April 22, 2014
- 8 xv. VH1 Buzz - May 19, 2014
- 9 xvi. Good Morning America - May 20, 2014
- 10 xvii. Live with Kelly and Michael - May 20, 2014
- 11 xviii. American Idol - May 21, 2014
- 12 xix. Today Show- June 27, 2014
- 13 xx. The View - July 8, 2014

14 15. The artist-management relationship is one of principal-agent requiring managers to
15 adhere to the rigid standards required of fiduciaries. As such a fiduciary, Respondent has a duty to
16 act with the utmost good faith for the benefit of Petitioner, always placing his interests above
17 theirs. The duty of a fiduciary embraces the obligation to render a full and fair disclosure to the
18 beneficiary of all facts which materially affect his rights and interest. Where there is a duty to
19 disclose, the disclosure must be full and complete, and any material concealment or
20 misrepresentation will amount to fraud.

21 16. Respondent has repeatedly engaged in conduct to the detriment of Petitioner and to
22 the advantage of Respondent and its various related entities, as well as third party entities. These
23 acts by Respondent are a blatant violation of Respondent's fiduciary duty to Petitioner. Petitioner
24 is entitled to terminate the Agreements by virtue of this breach of fiduciary duty, and he is entitled
25 to recompense for the damages he has suffered as a result of these breaches.

26 17. A partial list of those violations include the following:

27 a. In February 2013, 19 asked Petitioner to perform without compensation in a
28 live show promoting the company JetBlue on February 18, 2013 and to participate in other aspects

1 of a promotion for JetBlue. In response to Petitioner's questions about why this deal would make
2 sense, 19 admitted the deal was being entered into in exchange for JetBlue's support for the 2013
3 American Idol Live Appearance Tour. Since Petitioner was not performing on the 2013 Idol Tour,
4 the only conceivable purpose for Respondent booking the performance was to help the struggling
5 finances of Respondent's Idol Tour. This was also procurement of employment in violation of the
6 Act.

7 b. In 2013 and 2014, Respondent entered into what it labeled as "endorsement
8 agreements" with an insurance company ("Insurance Company") in which it furnished the services
9 of Petitioner. Those agreements required that Petitioner perform live personal appearances at
10 corporate events staged by Insurance Company. Rather than have the performances contracted
11 through a licensed talent agency, Respondent took the position that those activities by Petitioner
12 were subject to the Merchandise Agreement, where Respondent was contractually entitled to a
13 much larger share of the income (as much as 40% of the gross). If Respondent was truly putting
14 Petitioner's best interest above their interests, Respondent should have taken the position that the
15 performances should be commissioned at the 20% commission rate provided for in the
16 Management Agreement. By treating these activities as endorsement activities and demanding a
17 40% fee, Respondent was violating its fiduciary obligation to Petitioner.

18 c. Respondent assisted Petitioner in engaging the services of a producer for
19 Petitioner's first two albums. 19 negotiated the agreement with the producer in a manner that
20 compromised Petitioner's interests to encourage and reward producer for assisting 19 in matters
21 unrelated to and of no benefit to Petitioner. Further, Respondent lied to Petitioner about
22 assurances that said producer would receive no greater of a mechanical royalty rate than
23 Petitioner.

24 d. Petitioner, after achieving substantial success as a recording artist,
25 frequently requested that Respondent secure for him various improvements to the terms of the
26 Recording Agreement, a typical event in the life of a rising star. Because 19 Recordings, Inc. is
27 also Petitioner's record company, 19, as Petitioner's management company, failed to secure even a

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1 single improvement to the terms of the Recording Agreement, in breach of Respondent's fiduciary
2 obligations to Petitioner.

3 18. Respondent has repeatedly withheld material information from Petitioner regarding
4 important career matters, including Respondent's exploitation of his intellectual property,
5 marketing matters relating to his records (for example, the title of Petitioner's most recent album
6 was decided without Petitioner's approval and then announced in the press without his even being
7 given advance notice), actions that are being taken with regard to Petitioner's live personal
8 appearances, and Respondent's interactions and negotiations with Interscope Records, Bravado
9 Merchandise, Universal Music Publishing and other third party companies with whom Respondent
10 has entered into contracts relating to Petitioner. This repeated failure to provide full and fair
11 disclosure of material facts constitutes a violation of Respondent's fiduciary obligation to
12 Petitioner.

13 19. Petitioner reserves the right to demonstrate additional violations of the Act based
14 on the documents that will be brought to the hearing in response to Petitioner's subpoenas and
15 based on the testimonial evidence that will be adduced.

16 20. Respondent has also repeatedly materially breached the Management Agreement
17 by failing to render the type of services that a first class personal manager would customarily
18 render and by failing to use its best reasonable efforts to enhance and develop Petitioner's career.
19 Respondent has not provided Petitioner with management resources that were capable of being
20 equal to those of first class personal managers, because Respondent regularly reduced and altered
21 its staff, focused on priorities other than Petitioner's and otherwise failed to respond to Petitioner
22 or address his needs. Respondent regularly favored the interests of Respondent's various entities,
23 affiliates and trading partners over the interests of Petitioner.

24 21. For all of the reasons described herein, Petitioner terminated each and every one of
25 the Agreements on December 22, 2014.

26 22. An actual controversy has arisen and now exists between Petitioner and
27 Respondent because of the foregoing, and Petitioner respectfully request the Labor Commissioner
28 to determine the controversy pursuant to the Act.

1 23. Petitioner respectfully requests a hearing on this Petition in Los Angeles,
2 California. A Request for Hearing in Los Angeles is being presented to the Labor Commissioner
3 concurrently herewith.

4 WHEREFORE, Petitioner respectfully prays for the following relief:

- 5 1. An order determining that Respondent has violated the Act;
6 2. A determination that Respondent's Agreements with Petitioner are illegal,
7 unenforceable, and void *ab initio*, that Petitioner has no liability to Respondent thereunder, and
8 that Respondent has no rights or privileges thereunder;
9 3. An order requiring Respondent to disgorge and repay Petitioner any and all monies,
10 consideration or things of value received by Respondent, directly or indirectly, pursuant to its
11 Agreements with Petitioner, including but not limited to, any and all commissions, fees, profits,
12 advances, expenses, costs or other monies, to the extent allowed by law, plus interest thereon at
13 the rate of 10% per annum;
14 4. Petitioner's costs and attorneys' fees incurred herein; and
15 5. Such other and further relief as the Labor Commissioner deems just and proper.

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17 DATED: January 21, 2015

KING, HOLMES, PATERNO & BERLINER, LLP

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19 By:

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