National Conference of Personal Managers Inc v. Edmund G Brown Jr et al Doc. 27

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NATIONAL CONFERENCE OF PERSONAL MANAGERS, INC., a Nevada non-for-profit corporation, Plaintiff, v. EDMUND G. BROWN, JR., Governor of the State of California, in his official capacity; KAMALA D. HARRIS, Attorney General of California, in her official capacity; JULIE A. SU, California Labor Commissioner, in her official capacity, Defendants.	Case No. CV 12-09620 DDP (RZx) **ORDER GRANTING MOTION TO DISMISS IN ACCORDANCE WITH THE MANDATE OF NINTH CIRCUIT COURT OF APPEALS** [Dkt. Nos. 11, 24]

Presently before the Court is a motion to dismiss Plaintiff's Complaint brought by Defendants Edmund G. Brown, Jr., Governor of the State of California, in his official capacity (the "Governor"); Kamala D. Harris, Attorney General of California, in her official capacity (the "Attorney General"); and Julie A. Su, California Labor Commissioner, in her official capacity (the "Labor

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Commissioner"). Although the Court previously ruled on the motion, that order was vacated by the Ninth Circuit and remanded with instructions to rule on certain jurisdictional and case-or-controversy questions. (See Dkt. No. 24 (memorandum of the Ninth Circuit panel vacating previous order and remanding).) The Court therefore resumes consideration of the motion in this order.

I. BACKGROUND

Plaintiff National Conference of Personal Managers, Inc. is a national trade association of United States citizens employed as personal managers who provide representation to "artists" as defined in Cal. Labor Code § 1700.4(b). (Compl. ¶ 10.) As explained in Plaintiff's Opposition papers, a personal manager oversees the work of others working for the artist, such as the publicist, business manager, transactional attorney, and various talent agents.[1] (Opp. at 2.)

California's Talent Agencies Act ("TAA") provides that "[n]o person shall engage in or carry on the occupation of a talent agency without first procuring a license therefor from the Labor Commissioner." Cal. Labor Code § 1700.5. A "[t]alent agency" is defined as "a person or corporation who engages in the occupation

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[1]The California Supreme Court has explained:

> Agents procure roles; they put artists on the screen, on the stage, behind the camera; indeed, by law, only they may do so. Managers coordinate everything else; they counsel and advise, take care of business arrangements, and chart the course of an artist's career.
>
> This division largely exists only in theory. The reality is not nearly so neat. The line dividing the functions of agents, who must be licensed, and of managers, who need not be, is often blurred and sometimes crossed.

Marathon Ent., Inc. v. Blasi, 42 Cal. 4th 974, 980 (2008).

of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists . . . ." Cal. Labor Code § 1700.4. If a person has procured employment for an artist without a license, the Labor Commissioner is empowered to void the contract. (Compl. ¶ 38.)

The California Supreme Court case Marathon Ent., Inc v. Blasi demonstrates how the TAA functions. 42 Cal. 4th 974 (2008). There, Marathon, a personal manager, sued Rosa Blasi, an actress, for its commission on her earnings from a television show, alleging that Blasi had reneged on her oral agreement to pay a commission on her employment earnings. Id. at 981. Blasi obtained a stay of the action and filed a petition with the Labor Commissioner, alleging that Marathon had violated the TAA by procuring employment for her without a talent agency license. Id. The Commissioner agreed and voided the contract. Id. Marathon appealed the Commissioner's ruling to the superior court. Id. at 981-82. After a series of appeals, the California Supreme Court held that the TAA does apply to personal managers and that personal managers may not recover fees for employment procured in violation of the TAA. Id. at 986. It affirmed the court of appeal's decision, which had severed and voided the illegal portion of the contract only. Id. at 982.

Plaintiff challenges the constitutionality of the TAA on several grounds. Plaintiff asserts that its members do not have notice of which acts they can or cannot perform for its clients without obtaining a license. It alleges that the TAA is unconstitutionally vague because it does not define "procure employment," that it results in involuntary servitude because Plaintiff is not properly compensated for its labor in violation of

the Thirteenth Amendment, that it interferes with interstate commerce because it discriminates against out-of-state personal managers in violation of the Commerce Clause, and that it restricts Plaintiff's commercial speech in violation of the First Amendment.

Defendants moved to dismiss on the grounds that the Governor and Attorney General have sovereign immunity, no case or controversy exists with the Labor Commissioner, Plaintiff lacks standing, and the Complaint fails on the merits. On March 5, 2013, the Court granted Defendants' Motion to Dismiss on the merits after finding that the Plaintiff "likely has standing," that the Labor Commissioner "was likely the appropriate party to sue," and that the Governor and Attorney General "likely have sovereign immunity." (Dkt. No. 17.)

On March 6, 2015, the Ninth Circuit vacated the Court's order and remanded for a determination of the jurisdictional and standing issues. (Dkt. No. 24.)

II. LEGAL STANDARD

A complaint will survive a motion to dismiss when it contains "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). When considering a Rule 12(b)(6) motion, a court must "accept as true all allegations of material fact and must construe those facts in the light most favorable to the plaintiff." Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint need not include "detailed factual allegations," it must offer "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or

allegations that are no more than a statement of a legal conclusion "are not entitled to the assumption of truth." Id. at 679. In other words, a pleading that merely offers "labels and conclusions," a "formulaic recitation of the elements," or "naked assertions" will not be sufficient to state a claim upon which relief can be granted. Id. at 678 (citations and internal quotation marks omitted).

"When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement of relief." Id. at 679. Plaintiffs must allege "plausible grounds to infer" that their claims rise "above the speculative level." Twombly, 550 U.S. at 555. "Determining whether a complaint states a plausible claim for relief" is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Iqbal, 556 U.S. at 679.

III. DISCUSSION

A. Jurisdiction

Defendants argue that the Governor and the Attorney General have sovereign immunity and that no case or controversy exists between Plaintiff and the Labor Commissioner. They also assert that Plaintiff does not have standing to bring the case. The Court finds that the Governor and Attorney General have sovereign immunity. The Court also finds that the Labor Commissioner was the appropriate party to sue for her non-adjudicatory acts and that Plaintiff has standing to bring its claims.

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1. Governor and Attorney General

Federal courts can adjudicate only those cases that the Constitution and Congress authorize them to adjudicate. Finley v. United States, 490 U.S. 545, 558-59 (1990). Under the Federal Rules of Civil Procedure, the court must dismiss an action if it determines "at any time" that it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(h).

With certain exceptions, the Eleventh Amendment has been construed to bar an action brought in federal court by a private person against a state or a state agency. Edelman v. Jordan, 415 U.S. 651, 662-63 (1974); Alabama v. Pugh, 438 U.S. 781, 782 (1978). One such exception permits suits brought against named state officials in which the plaintiff seeks prospective relief. Quern v. Jordan, 440 U.S. 332, 337 (1979).

To sue a state official under this exception, the official "must have some connection with the enforcement of the act, or else it is merely making him a party as a representative of the state, and thereby attempting to make the state a party." Ex Parte Young, 209 U.S. 123, 157 (1908). See, e.g., Nat'l Audubon Soc'y, Inc. v. Davis, 307 F.3d 835, 846-47 (9th Cir. 2002)(when seeking to enjoin the enforcement of a statute banning certain animal traps, a suit against the Governor and the Secretary of Resources was barred because there was "no showing that they have the requisite enforcement connection," but a suit against the Director of the California Department of Fish & Game, who had "direct authority over and principal responsibility for enforcing" the statute, was not barred). Cf. Culinary Workers Union, Local 226 v. Del Papa, 200 F.3d 614, 619 (9th Cir. 1999) (finding that the Attorney

General's cease and desist letter, which threatened to refer information about violations to prosecutors, established sufficient connection with the enforcement of the statute).

Here, the Governor and Attorney General are not alleged to have any specific connection to the enforcement of the TAA. The Complaint states that the Governor is "responsible for executing the laws of California" and that the Attorney General is "the 'chief law officer of the State,' with a duty to 'see that the laws of the State are uniformly and adequately enforced.'" (Compl. ¶¶ 12-13.) Plaintiff claims that "before the Governor signed the TAA (or any bill) into law, he should have ordered an investigation of the legality and constitutionality of the law." (Opp. at 17.) Because the Attorney General is "obligated to recognize any deficiencies in state law . . . and to work to end such wrongful enforcement," she is "either actively or passively allowing an unconstitutional enforcement on the people of California." (Id.)

However, these allegations of general enforcement of laws do not establish the "requisite enforcement connection" between the defendants and the TAA. See Nat'l Audubon Soc'y, 307 F.3d at 846-47; see also Long v. Van de Kamp, 961 F.2d 151, 152 (9th Cir. 1992) (per curiam) ("We doubt that the general supervisory powers of the California Attorney General are sufficient to establish the connection with enforcement required by Ex parte Young").

The Court finds that these general duties do not establish a sufficient connection between the Governor or the Attorney General and the enforcement of the TAA to meet the requirements of Ex Parte Young.

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2. Labor Commissioner

Unlike the Governor and the Attorney General, the Labor Commissioner has particular responsibility in the enforcement of the TAA. She has the authority and duty to issue licenses (§ 1700.3), accept license applications (§ 1700.6), perform investigations in relation to licenses (§ 1700.7), collect the bond for licenses (§ 1700.15), and revoke and suspend licenses (§ 1700.21). She may "adopt, amend, and repeal such rules and regulations as are reasonably necessary" to enforce the TAA (§ 1700.29). She therefore is the proper party to sue under the Ex Parte Young analysis, as she has "some connection with the enforcement of the act." Ex Parte Young, 209 U.S. at 157. Plaintiffs allege that the Labor Commissioner is responsible for applying, enforcing, and interpreting the TAA in a way that violates their rights. (Compl. ¶¶ 1, 14.)

Section 1983 creates a civil cause of action for the "deprivation of any rights, privileges, or immunities secured by the Constitution and laws" by any person acting "under color of any statute, ordinance, [or] regulation." 42 U.S.C. § 1983. Injunctive relief shall not be granted "in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity," unless declaratory relief is unavailable or a declaratory decree was violated. Id. "[A]t least ordinarily, no 'case or controversy' exists between a judge who adjudicates claims under a statute and a litigant who attacks the constitutionality of the statute." Grant v. Johnson, 15 F.3d 146, 148 (9th Cir. 1994) (quoting In re Justices of Supreme Court of Puerto Rico, 695 F.2d 17, 21 (1st Cir. 1982). Thus, "judges

adjudicating cases pursuant to state statutes may not be sued under § 1983 in a suit challenging [a] state law." Id.

Defendants argue that the Labor Commissioner "acts in a quasi-judicial capacity" and therefore may not be sued for injunctive relief under section 1983. (MTD at 9.) The Labor Commissioner acts "solely as an adjudicator in disputes involving the TAA, and otherwise exercises no regulatory authority over personal managers." (MTD at 10.) When a controversy arises under the TAA, the matters in dispute shall be referred to the Labor Commissioner, "who shall hear and determine the same, subject to an appeal within 10 days after determination, to the superior court where the same shall be heard de novo." Cal. Labor Code § 1700.44(a). If an appeal is not timely filed, the Commissioner's determination is final and binding. Preston v. Ferrer, 552 U.S. 346, 355 (2008) (citing REO Broad. Consultants v. Martin, 81 Cal. Rptr. 2d 639, 642-643 (Ct. App. 1999)).

However, it is not clear that these adjudicatory functions are the sole basis for Plaintiff's suit. Though a decision on a particular controversy is an adjudicatory decision, the Labor Commissioner's role in establishing the parameters of such proceedings and relevant regulations is not adjudicatory, but instead part of her function as an agency executive. Additionally, Plaintiff alleges that the Labor Commissioner is responsible for licensing, for her "wrongful interpretation that the Act restricts any activity relevant to procurement," and for her discrimination against out-of-state participants in the entertainment industry by not allowing licenses for non-Californians. (Compl. ¶¶ 69, 80.)

Although the Complaint is not explicit in its factual allegations pertaining to the Labor Commissioner's non-adjudicatory functions, the Court finds that the Labor Commissioner is the appropriate party to sue in such a case.

3. Standing

The federal judiciary can hear cases involving a controversy arising under the Constitution or other laws of the United States. U.S. Const. art. III, § 2, cl. 1. A controversy must be "real and substantial" and "definite and concrete, touching the legal relations of parties having adverse legal interests." Aetna Life Ins. Co. of Hartford, Conn. v. Haworth, 300 U.S. 227, 240-41 (1937). Three requirements must be met to establish Article III standing:

> (1) injury in fact, which means an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical; (2) a causal relationship between the injury and the challenged conduct, which means that the injury fairly can be traced to the challenged action of the defendant, and has not resulted from the independent action of some third party not before the court; and (3) a likelihood that the injury will be redressed by a favorable decision, which means that the prospect of obtaining relief from the injury as a result of a favorable ruling is not too speculative.

Bras v. Cal. Pub. Util. Comn'n, 59 F.3d 869, 872 (9th Cir. 1995)(citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 559 (1992)).

To obtain declaratory and injunctive relief, a Plaintiff must "show a very significant possibility of future harm in order to have standing." Bras, 59 F.3d at 873. The "mere existence" of a statute that "may or may not ever be applied to plaintiffs" is insufficient to establish a case or controversy for the purposes of Article III or the Declaratory Judgment Act. W. Mining Council v. Watt, 643 F.2d 618, 627 (9th Cir. 1981).

Defendants argue that the TAA is not generally applied to Plaintiff because the "activities for which a license is required . . . are not an inherent part of the functions for which personal managers contract with artists." (MTD at 15.) However, there is no clear dividing line between the roles of talent agencies and managers; the line is "often blurred and sometimes crossed." Blasi, 42 Cal. 4th at 980. "Agents sometimes counsel and advise; managers sometimes procure work. Indeed, the occasional procurement of employment opportunities may be standard operating procedure for many managers and an understood goal when not-yet-established talents . . . hire managers to promote their careers." Id. Personal managers "advise, counsel, direct, and coordinate" an artist's career and "advise in both business and personal matters." Id. at 984 (citing Park v. Deftones, 71 Cal. App. 4th 1465, 1469-1470 (1999)). Therefore, to the extent that personal managers engage in conduct that is considered procuring employment, the TAA is appropriately applied to managers. See id. at 986-89.

Defendants argue that Plaintiff has not alleged an actual injury suffered as a result of the Labor Commissioner's conduct.[2] (MTD at 14.) The Complaint generally asserts that Plaintiff's members are "actually and directly impacted by the TAA and the manner in which it has been applied." (Compl. ¶ 10.) Plaintiff alleges that it has been "unfairly singled out without due process and denied its ability to pursue lawful business opportunities to the detriment of Plaintiff and the Artists that it represents." (Compl. ¶ 33.) Plaintiff also makes a conclusory allegation that "Defendants' wrongful enforcement has destroyed careers, ruined, even shortened lives." (Opp. at 10.) Plaintiff has not alleged that any one of its members has actually been engaged in a dispute that has been referred to the Labor Commissioner, and it is not clear if the Labor Commissioner will imminently determine a controversy against Plaintiff's members.

However, "a real and reasonable apprehension that [a plaintiff] will be subject to liability" creates a case or controversy suitable to seek declaratory relief that a patent is invalid. Societe de Conditionnement en Aluminium v. Hunter Eng'g Co., 655 F.2d 938, 944 (9th Cir. 1981). The defendant's actions must cause the apprehension. Hal Roach Studios, Inc. v. Richard Feiner and Co., 896 F.2d 1542, 1556 (9th Cir. 1989). The showing of apprehension "need not be substantial" if the plaintiff is

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[2]Defendants do not address the existence of a case or controversy between Plaintiff and the Governor and Attorney General, concentrating instead on Eleventh Amendment immunity. Because the Court agrees that the Governor and Attorney General were not appropriate parties under Ex Parte Young, Plaintiff's standing will be addressed solely as to the Labor Commissioner.

engaged in an ongoing activity that could be a violation. Id. (citing Societe de Conditionnement, 655 F.2d at 944).

By comparison here, Plaintiff has a "real and reasonable apprehension" that its members will be subject to liability if they do not receive a declaration that the TAA is unconstitutional. (See Compl. ¶ 44.) Prior cases reveal that other unlicensed parties have indeed faced liability because of the Labor Commissioner's actions. See Marathon Ent., Inc. v. Fox & Spillane, LLP, 2011 WL 4357854, at *2 (Cal. Ct. App. September 20, 2011) ("The other two matters were heard by the Labor Commission, and eventually proceeded to trial."); Blasi, 42 Cal.4th at 981 ("the Commissioner voided the parties' contract *ab initio* and barred [the manager] from recovery"). Plaintiff asserts that, due to the nature of personal managers' professional responsibilities, its members are "threatened by this enforcement on a round-the-clock basis" and are "always at risk" of enforcement to their detriment. (Opp. at 2-3.)

Defendants assert that even if the Labor Commissioner were enjoined from enforcing the TAA, a contract made in violation of the TAA would still be voidable as contrary to public policy, and thus the remedy that Plaintiff seeks would not provide proper redress. (MTD at 14.)

The Court disagrees that declaratory or injunctive relief would not resolve Plaintiff's injury. Without enforcement of the TAA, there is no cause of action for procuring employment without a talent agency license. Individual contract claims can be brought for breach, unconscionablility, or public policy reasons, but that is true with or without enforcement of the TAA. Plaintiff is not seeking to avoid liability for those causes of action. Declaratory

and injunctive relief, as Plaintiff seeks (Compl., Prayer ¶¶ 1-5), will provide redress for the injury claimed. (See Compl. ¶¶ 10, 33.)

The Court finds that there is a case or controversy and that Plaintiff has standing to bring suit against the Labor Commissioner. The Court therefore addresses the merits of Plaintiff's claims.

B. Vagueness

Plaintiff makes a facial challenge to § 1700.44, alleging that its failure to define the meaning of "procure employment" renders the statute unconstitutionally vague in violation of the Fourteenth Amendment. Plaintiff alleges that "'[p]rocure employment' has never been defined by any court. The uncertainty of knowing when such activity may or not have occurred has left Plaintiff uncertain and highly apprehensive about the permissible parameters of its daily activity." (Compl. ¶ 59.)

A law is not unconstitutionally vague if it provides a "person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." Grayned v. City of Rockford, 408 U.S. 104, 108 (1972). "When Congress does not define a term in a statute, we construe that term according to its ordinary, contemporary, common meaning." Human Life of Washington Inc. v. Brumsickle, 624 F.3d 990, 1021 (9th Cir. 2010) (quoting United States v. Kilbride, 584 F.3d 1240, 1257 (9th Cir. 2009)). A statute may be unconstitutional if it "is so standardless that it authorizes or encourages seriously discriminatory enforcement." Holder v. Humanitarian Law Project, 130 S.Ct. 2705, 2718 (2010) (quoting United States v. Williams, 553 U.S. 285, 304 (2008)).

Plaintiff has not made any allegations that suggest that the statute is standardless. In its Opposition, Plaintiff claims that "[a]lmost any act undertaken by Plaintiff, even as innocuous as helping choose a headshot, could and has been linked to the ultimate goal of any artist represented by Plaintiff to get a job." (Opp. at 20.) However, this allegation, which does not appear in the Complaint, indicates only that the phrase "procure employment" could be interpreted so as to comprise a broad range of activities, broader than is desirable in the eyes of Plaintiff. This breadth does not render the statute standardless; it may indicate that the activities of personal managers and talent agents have significant overlap with respect to procuring employment for artists.

Even if such an allegation were sufficient to be the basis for a claim that the statute is standardless, it is not sufficient to state a claim when California courts have previously interpreted the phrase and determined that its meaning is not vague. "To 'procure' means 'to get possession of: obtain, acquire, to cause to happen or be done; bring about." Wachs v. Curry, 13 Cal. App. 4th 616, 628-29 (1993)(quoting Webster's New Int'l Dict. (3d Ed. 1981) at p. 1809). The TAA uses the word "procure" in this ordinary sense. The California Court of Appeal pointed out that "[t]he term 'procure' in connection with employment is used in numerous California statutes. The fact none of these statutes has ever been challenged is some evidence the term is well understood." Id. (footnote omitted).

The Court finds that the TAA is not unconstitutionally vague.

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C. Thirteenth Amendment

The Thirteenth Amendment is "an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States." Jones v. Alfred H. Mayer Co., 392 U.S. 409, 438 (1968) (quoting Civil Rights Cases, 109 U.S. 3, 20 (1883)). The Supreme Court has traditionally found involuntary servitude to exist only where "the victim had no available choice but to work or be subject to legal sanction." United States v. Kozminski, 487 U.S. 931, 943 (1988). See also, e.g., United States v. Reynolds, 235 U.S. 133 (1914) (finding that a criminal surety system imposing criminal sanctions on those who failed to work off a debt constituted involuntary servitude); Clyatt v. United States, 197 U.S. 207, 218 (1905) (finding that the state of peonage, in which the threat of legal sanction coerces a debtor to work off a debt, constitutes involuntary servitude).

To prove compulsion, the plaintiff must show that he had, or believed he had, no choice but to continue his state of servitude. See Kozminski, 487 U.S. at 963 (Brennan, J., concurring) (requiring the plaintiff to show that he or she "actually felt compelled to live in a slavelike condition of servitude"); United States v. Shackney, 333 F.2d 475, 486 (2d Cir. 1964) (requiring the plaintiff to show that he had, or believed he had, "no way to avoid continued service or confinement"); Watson v. Graves, 909 F.2d 1549, 1552 (5th Cir. 1990) (stating that "[w]hen the employee has a choice, even though it is a painful one, there is no involuntary servitude.") Upon demonstrating compulsion, it is for the trier of fact to decide "whether the physical or legal coercion or threats thereof could plausibly have compelled the victim to serve." United

States v. Veerapol, 312 F.3d 1128, 1132 (2002) (quoting Kozminksi, 487 U.S. at 952) (O'Connor, J., majority)).

Here, Plaintiff alleges that the enforcement of the TAA infringes on its right to be free from involuntary servitude except as punishment for a crime. (Compl. ¶¶ 66-74.) Plaintiff alleges that its unlicensed members are subject to involuntary servitude when they are denied a commission due to the voiding of their contracts by the Labor Commissioner. Plaintiff is incorrect. Not being compensated for work performed does not inevitably make that work involuntary servitude. Plaintiff's members have choices. They have the choice to refrain from procuring employment for their clients, to procure employment without a license and risk the voiding of parts of their contracts, or to obtain a license. Because they have a range of options, Plaintiffs have not stated a claim for involuntary servitude in violation of the Thirteenth Amendment.

D. Commerce Clause

Plaintiff alleges that the TAA interferes with interstate commerce because it "has no provision for the issuance of a License to an applicant with an out-of-state business address." (Compl. ¶ 76.) Plaintiff's sole factual basis for this allegation is that § 1700.19(b) of the Act states that a license must contain "a designation of the city, street, and number of the premises in which the licensee is authorized to carry on the business of a talent agency." Based on this single factual allegation, Plaintiff draws the inference that "[n]o provision is made in the Act for identification of any State location other than California." (Compl. ¶ 77.)

The Court finds that this inference is weak and is not plausible in light of public documents offered by Defendants indicating that an applicant for a license must indicate city, state, and zip code. (See RJN Exh. 1, http://www.dir.ca.gov/dlse/talent_agency_license.html.) Because this evidence makes Plaintiff's inference implausible, and because Plaintiff does not allege that any of its members were refused licenses because they were located outside of California, Plaintiff has not stated a claim for violation of the Commerce Clause.

E. First Amendment

Plaintiff alleges that the TAA and its enforcement violate the First Amendment because it "restricts Plaintiff's commercial speech and does not directly advance a substantial state interest and is far more extensive than necessary. 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." (Compl. ¶¶ 94-95.) The Court disagrees. The TAA regulates conduct, not speech. It does not limit the speech of a personal manager; it limits the personal manager's ability to enforce contractual obligations when that person engages in the conduct of procuring employment.

The fact that the activity of procuring employment takes place through speech does not mean that the TAA is a regulation of speech. "[I]t has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed." Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 502 (1949). Here, speech

is not made illegal. The Court agrees with Defendants that "the TAA licenses the *conduct* of procuring employment for artists, not the expressive means by which employment is procured." (Mot. at 22.)

F. Contracts Clause

The Contracts Clause of the United States Constitution provides that "[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts." Art. I, § 10, cl. 1. The inquiry generally asks three questions: "whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the impairment is substantial." Gen. Motors Corp. v. Romein, 503 U.S. 181, 186 (1992). The contract must be in existence when the law allegedly impairing it is enacted or altered; a party who enters into a contract after a law is enacted is subject to that law. See, e.g., Veix v. Sixth Ward Bldg. & Loan Ass'n of Newark, 310 U.S. 32, 38 (1940) (when the petitioner "purchased into an enterprise already regulated in the particular to which he now objects, he purchased subject to further legislation upon the same topic.").

Here, Plaintiff does not allege that the law has been altered in any way subsequent to the formation of a particular contract. Because Plaintiff points to no contract in existence when the TAA was enacted or altered, Plaintiff has failed to state a claim for a violation of the Contracts Clause of the Constitution.

IV. CONCLUSION

The Court finds that, while Plaintiff has standing and has appropriately sued the Labor Commissioner, Plaintiff has failed to state a claim. For these reasons, the motion to dismiss is

GRANTED. Because any amendment would be futile, the Court grants the Motion with prejudice.

IT IS SO ORDERED.

Dated: August 13, 2015

DEAN D. PREGERSON
United States District Judge