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May 26, 2021
Chief Justice Tani Cantil-Sakauve
And the Associate Justices of the California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: Bacall v. Shumay, S268407/B302787

Dear Chief Justice and Associates,

Pursuant to Rule 8.500(g), I am respectfully requesting that this Court grant Petitioners' petition in the matter of *Bacall v. Shumway* (*Bacall*).

My name is Matthew Katz. I have spent over 70 years in the music business as a personal manager, producer, and publisher. I am the party in *Buchwald v. Superior Court* (*Buchwald*) that is still cited as giving authority to void the contracts of those found to have engaged in procuring without first obtaining a talent agency license.

My journey, my knowledge, and my empathy for those who have been similarly compromised offers me a perspective that I respectfully hope shall prove worthy of your collective consideration.

MY PERSONAL HISTORY

In January 1965, I entered into a personal management agreement with a group of Bay Area musicians soon known as the Jefferson Airplane. By August of 1966, just a year-plus into our five-year contract, the band was already reaching the precipice of stardom. It was then I was fired; replaced not by another seasoned professional, but by Marty Balin's (nee Buchwald) friend and roommate.

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After Balin refused to honor his and the band's financial obligations, I filed suit for breach of contract. In response, Balin claimed my successful efforts to change their career plateau violated the Artists' Managers Act (now known as the Talent Agencies Act ("Act," "TAA").

In September 1967, a Court of Appeals affirmed that claim, and cited four State Supreme Court holdings which, according to *Buchwald*, directed them to void my contractual rights. I lost some $12,000,000 in 1968 dollars.

WHAT I KNOW NOW THAT I DID NOT KNOW THEN

By the time Balin and his bandmates hired me, I knew a great deal about how to promote, produce and raise the profile of musicians.But like most laypeople, I had only cursory knowledge of law.

If I knew then what I knew now, I would have focused my 1967 petition for review in this Court on the conflict in *Buchwald* between how it interpretated the four high court precedents and what those cases in fact held.

Each of those cases, in different ways, hold that adjudicators only have the authority to interfere with one's contractual rights if there is a penalty provision for the found offense. Like the Talent Agencies Act, the Artist's Manager's Act had no penalty provision for procuring without a license.

Wood v. Krepps, 168 Cal. 382 (1914) requires there be a provision inside a licensing scheme detailing that the failure to be licensed would "affect in any degree the right of contract" for an adjudicator to have the authority to extinguish one's contractual rights. *Id.* at 386.

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Smith v. Bach, 183 Cal. 259 (1920) holds that the authority to void a contract is the "imposition" of a statutory penalty, thus "impl[ying] a prohibition of the act to which the penalty is attached." *Id.* at 262. *Buchwald* takes that authority without that imposition.

Loving & Evans v. Blick, 33 Cal. 2d 603 (1945) holds that the authority to impair contractual rights is ignited only when the contract is contrary "to the terms of a law designed for the protection of the public" and not or, but and the statute "prescrib[es] a penalty for the violation thereof is illegal and void." *Id. at* 608-609.

Severance v. Knight- Counihan Co., 29 Cal. 2d 561, 568 (1946) holds that one's contractual rights must be upheld unless the statute expressly provides "that its violation will deprive the parties to sue on the contract and the denial of the relief is wholly out of proportion to the requirements of public policy or appropriate individual punishment."

In summary, I would have asked for review based on how all four of the State Supreme Court holdings *Buchwald* cited hold just the opposite of what *Buchwald* said they did. Permit me for thinking this argument would have led to having my petition for review in this Court being affirmed, and that this Court would have righted the wrongs of *Buchwald.*

Your honors, I know how one is affected by working for a client's success, have your client achieve that success, and then having the Labor Commissioner or Court find that you do not have the legal right to share in that success.

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I know how the Act's enforcement has cost people jobs, compromised businesses, created bankruptcies, been the catalyst for divorces, even shortened lives. In rereading *Marathon* to help me craft this document, it is clear Justice Werdegar was beseeching the Legislature to act because of her recognition of the failure of that body to create the definitions, prohibitions and remedies that good laws have.

I believe that one of my secrets to longevity is learning what I now know that I did not know then. I believe this argument is worthy of your consideration, and by reviewing it, you will allow me to either be educated as to how an adjudicator has the right to affect unlicensed talent representatives' contracts when the Legislature withheld this or any other remedy, or that perhaps your final determination will assuage some of the pain and blame I put on myself that I have not been able to shake for some 54 years.

PRAYER FOR ACTION

While my primary interest is in the Court's consideration as to the validity of affecting contracts of those who choose to be producers, personal managers, or marketers versus talent agents, I recognize the Petitioner is asking if the arbitrator exceeded his authority by concluding that by Shumway's negotiating and redlining contracts, he was engaging in the unlicensed practice of law.

I wish to lend my voice in requesting review not just on the TAA penalty issue, but on this as well. To be put simply, I believe there is a difference between defined and regulated activities. I believe defined activities in a licensing scheme explains what professionals like psychologists, accountants,

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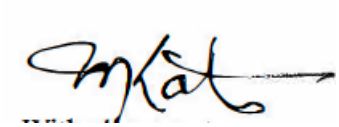
landscape architects, nurses and others do, but does not reserve any of those activities for those with the requisite licenses. Conversely, a regulated activity is one, like those in the State Contractors Act, Pharmacists Act, Real Estate Act and others, where there exists provisions that reserve activities for licensees.

I pray the Court will accept this case to determine if these negotiating steps are defining or regulated activities. As the implications of leaving the law as *Buchwald* stands will affect others long after I have moved on, it is a decision more than worthy of your affirmation or rejection.

With all respect,



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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 21350 Lassen St., Chatsworth CA, 91311. On May 26, 2021, I served this AMICUS LETTER on the interested parties as follows:

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The Honorable Ruth Ann Kwan
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. May 24, 2021, Los Angeles, California.

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/s/Terrel Miller
Terrel Miller