

No. 06-1463

IN THE
Supreme Court of the United States

ARNOLD M. PRESTON,

Petitioner,

v.

ALEX E. FERRER,

Respondent.

**ON WRIT OF CERTIORARI TO THE
COURT OF APPEAL OF CALIFORNIA**

**RESPONDENT'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL
BRIEF AND SUPPLEMENTAL BRIEF**

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**RESPONDENT'S MOTION FOR LEAVE TO FILE
SUPPLEMENTAL BRIEF**

Pursuant to Rules 25.5 and 25.6 of the Rules of this Court, Respondent Alex E. Ferrer ("Ferrer") respectfully requests leave to file the attached supplemental brief addressing and including a copy of *Marathon Entertainment, Inc. v. Blasi*, a recent decision of the California Supreme Court issued on January 28, 2008. The *Marathon* decision is relevant because it reinforces several points made in Ferrer's brief, and is responsive to certain inquiries that the Court made at oral argument regarding, among other things, the scope and purpose of the California Talent Agencies Act, the role of the California Labor Commissioner in interpreting the Act, and the importance of the Labor Commissioner's interpretations in establishing a comprehensive body of law surrounding the Act.

Ferrer filed his brief in this case on December 3, 2007. The Court conducted oral argument on January 14, 2008. Because the California Supreme Court did not issue the *Marathon* decision until January 28, 2008, the decision was not available at the time Ferrer filed his brief or prior to oral argument. Because the decision addresses issues of state law relevant to this matter, Ferrer respectfully requests that

the Court grant leave to file the attached supplemental brief.

Respectfully submitted,

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Dated: February 1, 2008

Counsel for Respondent

SUPPLEMENTAL BRIEF FOR RESPONDENT

On January 28, 2008, the California Supreme Court issued its opinion in *Marathon Entertainment, Inc. v. Blasi*. Supp. App. (“SA”) 1a. In the *Marathon* case, the court construed the California Talent Agencies Act (“TAA” or “Act”) in a manner that reinforces several points made in Ferrer’s brief, and that is also responsive to certain inquiries that the Court made at oral argument regarding, among other things, the scope and purpose of the TAA, the role of the California Labor Commissioner in interpreting the Act, and the importance of the Labor Commissioner’s interpretations in establishing a comprehensive body of law surrounding the Act

Among its several conclusions, the court rejected the argument that “personal managers are categorically exempt from regulation under the Act.” SA 12a. Instead, the court determined that “contrary to the arguments of personal manager Marathon Entertainment, Inc. (Marathon), the strictures of the Talent Agencies Act . . . apply to managers as well as agents.” SA 2a-3a. The court explained that the “Act establishes its scope through a functional, not a titular, definition. It regulates *conduct*, not labels; it is the act of procuring (or soliciting), not the title of one’s business, that qualifies one as a talent agency and subjects one to the Act’s licensure and related requirements.” SA 13a (emphasis in original). It follows that “[a]ny person who procures employment -- any individual, any corporation, any manager -- is a talent agency subject to regulation.” SA 13a. In

sum, “a personal manager who solicits or procures employment for his artist-client is subject to and must abide by the Act.” SA 13a.

In addition to discussing the scope of the TAA, the California Supreme Court addressed its history and purpose, noting that “[f]rom an early time, the Legislature was concerned that those representing aspiring artists might take advantage of them.” SA 9a. The court added that the “[e]xploitation of artists by representatives has remained the Act’s central concern through subsequent incarnations to the present day.” SA 9a-10a.

Addressing the Labor Commissioner’s role in administering the TAA, the California Supreme Court recognized the importance of the Commissioner’s ongoing interpretation of the Act’s provisions and her development of a coherent body of law surrounding the Act through her consideration of individual disputes. *See* SA 15a-16a (noting that “the Labor Commissioner has uniformly interpreted the Act as extending to incidental procurement”) (citing Labor Commissioner’s decisions); *id.* at 20a (stating that “the Labor Commissioner has struggled over time to better delineate which actions involve mere general assistance to an artist’s career and which stray across the line to illicit procurement.”). Recognizing the Commissioner’s expertise, the court observed that the Commissioner’s precedential interpretations of the TAA “are entitled to substantial weight if not clearly erroneous.” SA 16a; *see also id.* at 13a-14a (noting that the court may look to the La-

bor Commissioner's interpretations of the TAA for guidance).

At the same time, the California Supreme Court recognized the non-binding nature of the Labor Commissioner's determinations in any particular matter. Specifically, the court stated that "under the Act's statutorily guaranteed trial de novo procedure, the Labor Commissioner's findings carry no weight." SA 21a. Thus, although the Labor Commissioner is charged *generally* with developing a body of law interpreting the TAA (and could not do so as the Act is structured if she has no disputes to resolve), any litigant in any *particular* case is entitled to complete *de novo* consideration following the Commissioner's determination in any particular case.

Respectfully submitted,

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