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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BRETT DANIELS, an individual; and BRETT DANIELS PRODUCTIONS, INC., a Wisconsin corporation,
Plaintiffs,
v.
SIMON PAINTER, an individual; TIMOTHY LAWSON, an individual; INTERNATIONAL SPECIAL ATTRACTIONS, LTD., a Colorado corporation; TML ENTERPRISES, PTY, LTD., a foreign corporation; ASIA LIVE NETWORK, PTE, LTD., a foreign corporation; and THE WORKS ENTERTAINMENT INC., a Nevada corporation,
Defendants.

CV 16-3782-RSWL-E
ORDER re: Plaintiffs' Application for Confirmation of Arbitration Award [71]; Defendants' Motion to Vacate or Correct Arbitration Award [77]; Respondent MagicSpace Entertainment's Motion to Vacate or Correct Arbitration Award [76]

Currently before the Court is Plaintiffs Brett Daniels and Brett Daniels Productions, Inc.'s

1 (collectively, "Plaintiffs") Application for Order for
2 Confirmation of Final Arbitration Award ("Plaintiffs'
3 Application") [71], Defendants Simon Painter; Timothy
4 Lawson; International Attractions, Ltd.; TML
5 Enterprises, PTY, Ltd.; and Asia Live Network PTE,
6 Ltd.'s (collectively, "Defendants") Motion to Vacate or
7 Correct Arbitration Award ("Defendants' Motion") [77],
8 and Respondent MagicSpace Entertainment Inc.'s
9 ("MagicSpace") Motion to Vacate or Correct Arbitration
10 Award ("MagicSpace's Motion") [76]. Having reviewed
11 all papers submitted pertaining to these Motions, the
12 Court **NOW FINDS AND RULES AS FOLLOWS:** the Court **GRANTS**
13 **in part** and **DENIES in part** Plaintiffs' Application,
14 **DENIES** Defendants' Motion, and **DENIES** MagicSpace's
15 Motion.

16 I. BACKGROUND

17 A. Factual Background

18 Plaintiff Brett Daniels ("Daniels") is a
19 professional magician, who conducted business through
20 his solely-owned corporate entity, Plaintiff Brett
21 Daniels Productions, Inc. ("BDPI"). Decl. of Tyler R.
22 Andrews in Supp. of Pls.' Appl. to Confirm Arbitration
23 Award ("Andrews Decl."), Ex. A ("Final Award") at 8:19-
24 22, ECF No. 71-2.

25 Defendant Simon Painter ("Painter") is a producer
26 and promoter of live events who worked as the Creative
27 Producer at International Special Attractions, Ltd.
28 ("ISA") beginning in 2011. Id. at 7:20-23. Since

1 2012, Painter conducted his business through several
2 corporate entities, including, among others, Defendant
3 Asia Live Network ("ALN") and Defendant The Works
4 Entertainment, Inc. ("The Works"). Id. at 7:25-8:1.

5 Painter collaborated with promoter and producer
6 Timothy Lawson ("Lawson") to produce *The Illusionists*
7 ("The Show"), a live stage magic show. Id. at 8:2-3.

8 Lawson conducted business through several entities,
9 including, among others, Defendant TML Enterprises,
10 Pty, Ltd. ("TML") and ALN. Id. at 8:3-6.

11 MagicSpace is a promoter and live stage production
12 company. Id. at 8:7-8. MagicSpace and ALN entered
13 into an agreement in 2013 for MagicSpace to promote and
14 present The Show for a term of three years. Id. at
15 8:8-9. ALN and MagicSpace then extended their
16 agreement through October 2020. Id. at 8:10.

17 MagicSpace's wholly-owned subsidiary, The Illusionists
18 North America, LLC, currently possesses the right to
19 promote and present The Show. Id. at 8:11-12.

20 In late 2010, Painter and Daniels began discussing
21 the concept of creating a live ensemble magic show.
22 Id. at 8:24-25. After a successful meeting with Sydney
23 Opera House executives in September 2011, the Sydney
24 Opera House confirmed The Show for its premiere during
25 the January 2012 season. Id. at 10:22-23. Daniels
26 performed in The Show as the "Grand Illusionist" and
27 was compensated \$12,500 per week during The Show's
28 initial run at the Sydney Opera House per a written

1 performance agreement with ISA. Id. at 11:8-10. After
2 The Show's premiere at the Sydney Opera House, Daniels
3 continued his efforts to add new material, recruit new
4 performers, and make substantial creative improvements
5 to The Show. Id. at 11:10-12.

6 On March 15, 2012, Daniels sent an email to Painter
7 stating,

8 This is an agreement between Brett Daniels
9 Productions, Inc. and the 'producers' of 'The
10 Illusionists' aka/ 'Simon Painter/ISA/Tim
11 Lawson' and shall include any other entities
12 they bring into, or work through, in presenting
13 the theatrical product known as 'The
14 Illusionists' in any of its variations. Brett
15 Daniels Productions, Inc. shall receive, on an
16 ongoing basis, in perpetuity, 10% of the total
17 'act fee budget.' The 'act fee budget' shall be
18 defined as the total cumulative amount that the
19 'magic based acts' are contracted for to appear
20 in the production. This fee, shall be
21 authorized by the 'producers' and paid by
22 'acts'-unless, in certain cases, due to
23 'producers' independent preference, producers
24 choose to not burden a particular 'act' with
25 this fee, in which case 'producers' shall pay
26 this (10% act) additional fee to directly to
27 Brett Daniels Productions, Inc.
28 Id. at 16:5-10. Painter responded to the email stating
that he and Lawson agreed to the terms of the agreement
(the "Creator Agreement"). Id. at 16:12-13.

21 Following alleged violations of the Conduct and
22 Behavior clause of Daniels' performance agreement,
23 Daniels ceased performing for The Show and did not
24 enter into any additional performance agreements. Id.
25 at 11:22-12:9. Defendants ceased paying Daniels the
26 10% act fee contained in the Creator Agreement in
27 November 2013. Id. at 12:10-11. Defendants continued
28 to develop other magic shows following Daniels'

1 departure, and Daniels claimed that these shows all
2 fell under the Creator Agreement, entitling him to 10%
3 of the total act fee budget. Id. at 12:13-22.

4 **B. Procedural Background**

5 On November 9, 2015, Plaintiffs filed their
6 Complaint [1] in the United States District Court for
7 the Eastern District of Wisconsin ("Wisconsin Action").¹
8 On January 8, 2016, Plaintiffs filed their First
9 Amended Complaint ("FAC") in the Wisconsin Action,
10 which added The Works as a party and advanced eleven
11 claims: (1) breach of oral contract, (2) breach of
12 written contract, (3) breach of TV Agreement,
13 (4) breach of the covenant of good faith and fair
14 dealing, (5) unjust enrichment, (6) conversion,
15 (7) copyright infringement, (8) misappropriation of
16 trade secrets, (9) accounting, (10) breach of fiduciary
17 duty, and (11) declaratory relief. Pls.' First Am.
18 Compl., ECF No. 19. The Eastern District of Wisconsin
19 transferred the case to this Court on May 27, 2016
20 [48].

21 Defendants filed a Motion to Compel Arbitration
22 [58] on July 21, 2016, which the Court granted on
23 September 16, 2016 [67]. The parties participated in
24 an arbitration hearing in front of Robert C. O'Brien

25
26 ¹ On November 16, 2015, Defendants filed a complaint in the
27 Central District of California ("California Action") for specific
28 performance of the arbitration agreement. See Painter et al. v. Daniels et al., 2:15-cv-08913-RSWL-E, ECF No. 1. Plaintiffs subsequently filed a Motion to Dismiss the Case [14] on December 15, 2015, which the Court granted on July 6, 2016 [35].

1 (the "Arbitrator") from November 13-17, 2017. Final
2 Award 1:11-12. After hearing closing arguments on
3 December 13, 2017, the Arbitrator issued his Final
4 Award on March 19, 2018. Id. In the Final Award, the
5 Arbitrator entered an award in favor of Plaintiffs and
6 against Defendants in the amount of \$2,607,287.40,
7 which included past and future contract damages and
8 prejudgment interest. Id. at 43:1-7. The Arbitrator
9 also awarded Plaintiffs post-judgment interest at a
10 rate of 10% per year. Id. at 44:23-24. The Arbitrator
11 modified the Final Award on April 17, 2018 to add
12 MagicSpace as a defendant jointly and severally liable
13 for the Final Award. Andrews Decl., Ex. B.

14 Plaintiffs filed their instant Application [71] on
15 May 1, 2018.² Defendants filed their Opposition [72] to
16 Plaintiffs' Application on May 8, 2018. MagicSpace
17 also filed an Opposition [73] to Plaintiffs'
18 Application on May 8, 2018. Plaintiffs filed their
19 Replies [74, 75] to Defendants' and MagicSpace's
20 Oppositions on May 15, 2018.

21 MagicSpace and Defendants filed their Motions [76,
22 77] on May 22, 2018. Plaintiffs opposed [80, 81] on
23

24 ² Defendants and MagicSpace argue that Plaintiffs failed to
25 meet and confer prior to filing the Application in violation of
26 Local Rule 7-3. However, a motion to confirm is a case-
27 initiating document not subject to Local Rule 7-3. See Voltage
28 Pictures, LLC v. Gulf Film, LLC, No. LACV1800696VAPSKX, 2018 WL
2110937, at *5 (C.D. Cal. Apr. 17, 2018). Further, even if such
a filing was subject to Local Rule 7-3, Defendants and MagicSpace
have not demonstrated any prejudice suffered because of
Plaintiffs' failure to meet and confer.

1 May 29, 2018, and Defendants and MagicSpace replied
2 [82, 83] on June 5, 2018.

3 **II. DISCUSSION**

4 **A. Legal Standard**

5 Under 9 U.S.C. § 9, "a court 'must' confirm an
6 arbitration award 'unless' it is vacated, modified, or
7 corrected 'as prescribed' in §§ 10 and 11." Hall St.
8 Assocs., L.L.C. v. Mattel, Inc., 552 U.S. 576, 582
9 (2008). "[C]onfirmation is required even in the face
10 of 'erroneous findings of fact or misinterpretations of
11 law.'" French v. Merrill Lynch, Pierce, Fenner &
12 Smith, Inc., 784 F.2d 902, 906 (9th Cir. 1986)
13 (quotation omitted). "An arbitrator's decision must be
14 upheld unless it is 'completely irrational,' or it
15 constitutes a manifest disregard of the law.'" Id.
16 (internal citations omitted). This standard provides
17 "an extremely limited review authority." Kyocera Corp.
18 v. Prudential-Bache T Servs., 341 F.3d 987, 998 (9th
19 Cir. 2003). "The burden of establishing grounds for
20 vacating an arbitration award is on the party seeking
21 it." U.S. Life Ins. Co. v. Superior Nat'l Ins. Co.,
22 591 F.3d 1167, 1173 (9th Cir. 2010).

23 **B. Discussion**

24 In seeking to vacate the Final Award, Defendants
25 and MagicSpace raise three separate issues where the
26 Arbitrator allegedly manifestly disregarded the law.
27 Each will be discussed in turn.

28 ///

1 1. Application of the Talent Agencies Act ("TAA")

2 Defendants first argue that the Court should vacate
3 the arbitration award because the Arbitrator
4 disregarded the TAA, Cal. Lab. Code § 1700 et seq.
5 More specifically, Defendants argue that the Creator
6 Agreement was void from its inception because the TAA
7 prohibits a person from acting as a talent agent
8 without obtaining a license, and Daniels did not have a
9 talent agent license at the time he entered into the
10 Creator Agreement. This is the exact same argument
11 Defendants made to the Arbitrator during the
12 arbitration. In the Final Award, the Arbitrator
13 discussed this defense at length and concluded that
14 Daniels was not acting as a talent agent when he
15 procured talent for The Show because he acted on behalf
16 of The Show, not the artists. Final Award 28:6-9.
17 According to the Arbitrator, "Daniels functioned in a
18 role similar to a casting director for the Show, and,
19 therefore, he did not need to be licensed under the TAA
20 when recruiting and booking the Show's talent." Id. at
21 28:8-9.

22 Defendants fail to argue how the Arbitrator
23 manifestly disregarded the TAA when he ruled in favor
24 of Daniels. In reviewing an arbitration award for
25 manifest disregard of the law, the court "may not
26 reverse an arbitration award even in the face of an
27 erroneous interpretation of the law." Collins v. D.R.
28 Horton, Inc., 505 F.3d 874, 879 (9th Cir. 2007).

1 "[T]here must be some evidence in the record, other
2 than the result, that the arbitrators were aware of the
3 law and intentionally disregarded it." Bosack v.
4 Soward, 586 F.3d 1096, 1104 (9th Cir. 2009) (quotation
5 omitted). Defendants have not provided any evidence
6 that the Arbitrator intentionally disregarded the law.
7 In fact, the Arbitrator discussed the TAA at length
8 and, only after doing so, found that Daniels was not a
9 talent agent as the TAA defines.³ It is not the duty of
10 this Court to reexamine the merits of Defendants'
11 defense under the TAA. Because the Arbitrator
12 specifically addressed the TAA and found it did not
13 apply to Daniels, this Court cannot vacate the Final
14 Award for "a mere error in the law or failure on the
15 part of the arbitrators to understand and apply the
16 law." Collins, 505 F.3d at 879 (citation omitted).
17 The Court therefore **DENIES** Defendants' and MagicSpace's
18 Motions based on their arguments under the TAA.

19 2. Holding Defendants and MagicSpace Liable for
20 the Creator Agreement

21 Defendants and MagicSpace next argue that the
22 Arbitrator manifestly disregarded the law when he held
23 Defendants and MagicSpace jointly and severally liable
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26 ³ Defendants point to evidence showing Daniels worked on
27 behalf of the talent, but the Arbitrator took this evidence into
28 account along with other evidence showing Daniels worked on
behalf of The Show to procure talent in determining the TAA did
not apply to Daniels. This Court will not vacate the Final Award
based on the Arbitrator's weighing of evidence.

1 for a contract to which not all parties were
2 signatories. The Arbitrator specifically found
3 Defendants and MagicSpace liable under the Creator
4 Agreement. Final Award 16:15-22. With regard to
5 MagicSpace, the Arbitrator found that MagicSpace,
6 through an agreement with ALN, produces and presents
7 The Show, which includes providing "payroll,
8 logistics, and tour management, marketing,
9 advertisement, accounting, contracting and negotiation'
10 services for the Show." Id. at 16 n.2. The Arbitrator
11 noted that Defendants had previously argued that
12 MagicSpace controlled "the finances and budgets from
13 which the 10% fee to Daniels would be determined." Id.
14 Finally, the Arbitrator concluded that "because
15 MagicSpace did not appear at the Hearing to present a
16 defense to Daniels' claims, the Arbitrator finds that
17 [MagicSpace] cannot now argue that it is not bound by
18 the Creator Agreement." Id.

19 The Creator Agreement was between Plaintiffs and
20 Painter, ISA, and Lawson, but it also specifically
21 stated that it was to apply to "any other entities
22 [Painter, ISA, and Lawson] bring into, or work through,
23 in presenting the theatrical product known as 'The
24 Illusionists.'" Id. at 16:6-7. The Arbitrator held
25 Defendants and MagicSpace jointly and severally liable
26 for the Final Award because they all had a hand in
27 presenting The Show and thus were subject to the
28 Creator Agreement. See Vitarroz Corp. v. G. Willi Food

1 Int'l Ltd., 637 F. Supp. 2d 238, 246-47 (D.N.J. 2009)
2 (finding arbitrator "did not manifestly disregard
3 applicable law by finding that [the defendant] breached
4 the Agreement despite the fact that the breaching
5 conduct came from non-signatories to the Agreement").
6 This is specifically relevant to MagicSpace, which
7 admittedly has been responsible for producing The Show
8 since September 2013.

9 While Defendants and MagicSpace argue that
10 Plaintiffs, through their arguments, aim to foreclose
11 any review of arbitration awards, this is not the case.
12 There may be instances where a court may vacate an
13 arbitration award, but "[i]t must be clear from the
14 record that the arbitrators recognized the applicable
15 law and then ignored it." Mich. Mut. Ins. Co. v.
16 Unigard Sec. Ins. Co., 44 F.3d 826, 832 (9th Cir.
17 1995). Defendants and MagicSpace continue to argue the
18 merits of the issues the Arbitrator specifically
19 addressed, but it is not the Court's duty to review
20 these arguments. If such review was not limited, an
21 arbitration would merely be "the prelude to a more
22 cumbersome and time-consuming judicial review process."
23 Hall, 552 U.S. at 588 (quotation omitted).

24 Defendants and MagicSpace fail to provide evidence
25 that the Arbitrator was aware of the applicable law and
26 purposely ignored it. While Defendants rely on Comedy
27 Club, Inc. v. Improv West Associates, 553 F.3d 1277,
28 1287 (9th Cir. 2009), that case dealt with the

1 arbitrator issuing an injunction, the power of which is
2 contained in Federal Rule of Civil Procedure 65. Here,
3 the Arbitrator did not issue any injunction. Further,
4 the arbitrator in Comedy Club issued an injunction that
5 affected people such as "cousins of former spouses" of
6 the plaintiff, who had no connection whatsoever to the
7 litigation. Id. Here, the Final Award is not so broad
8 as the injunction in Comedy Club. All parties that the
9 Arbitrator ruled were liable to Daniels were in some
10 form related to the production of The Show and
11 therefore benefitted from the services Daniels provided
12 to The Show. See id. (finding the inclusion of
13 relatives as parties to the injunction in the
14 arbitrator's award went "well beyond binding [the
15 plaintiff's] agents, employees, or people in active
16 concert or participation with it"). Because Defendants
17 and MagicSpace have not provided evidence that clearly
18 shows the Arbitrator knew of and specifically
19 disregarded controlling law, Defendants and MagicSpace
20 have failed to prove a manifest disregard of the law
21 worthy of vacating the Final Award. See Collins v.
22 D.R. Horton, Inc., 361 F. Supp. 2d 1085, 1100 (D. Ariz.
23 2005), aff'd, 505 F.3d 874 (9th Cir. 2007) ("Absent
24 evidence . . . reliably demonstrating that the
25 arbitrator actually misapplied the relevant law and did
26 so with knowledge of the error of that action and/or
27 the intention to nullify the law or an awareness that
28 he was doing so, vacatur is not appropriate."

1 (quotation omitted)). The Court therefore **DENIES**
2 Defendants' and MagicSpace's Motions with regard to
3 holding non-signatories of the Creator Agreement liable
4 for the Final Award.

5 3. Failure to Reduce Future Damages Award to
6 Present Value

7 Finally, Defendants argue that the Arbitrator
8 "manifestly disregarded California law, which requires
9 future damages to be reduced to present cash value."
10 Defs.' Mot. to Vacate Award 2:20-21, ECF No. 77. In
11 the Final Award, the Arbitrator awarded Daniels
12 \$1,580,453.40 in future damages for the period of April
13 2018 through the end of 2023. Final Award 42:20-21.
14 The Arbitrator calculated this number by reviewing the
15 total 2017 act fee budget, extending that budget for
16 the next six years, and then taking ten percent of that
17 figure. Id. at 42:7-13.

18 Defendants argue that it was error for the
19 Arbitrator to not discount this award to present value.
20 Defendants do not offer argument to show that they
21 presented evidence to the Arbitrator regarding
22 discounting the award of future damages to present
23 value. As a preliminary matter, a calculation of
24 future lost profits is, by its nature, a "rough
25 approximation." Jones & Laughlin Steel Corp. v.
26 Pfeifer, 462 U.S. 523, 546 (1983), overruled on other
27 grounds by 33 U.S.C. § 905(b). Further, the Ninth
28 Circuit has specifically held that the burden is on the

1 defendant to put forth evidence regarding the proper
2 discount rate. Alma v. Mfs. Hanover Tr. Co., 684 F.2d
3 622, 626 (9th Cir. 1982). There is no evidence that
4 Defendants met this burden, and therefore, the
5 Arbitrator was not required to discount the future
6 damages award to present value. See Patel v. Verde
7 Valley Med. Ctr., No. CV-05-1129-PHX-MHM, 2009 U.S.
8 Dist. LEXIS 125463, at *10 (D. Ariz. Mar. 31, 2009)
9 (finding "failure to apply a discount rate to [a]
10 damages estimate is irrelevant because the burden of
11 producing evidence of an appropriate discount rate
12 rests with the defendant" (citation omitted)); see also
13 Budget Blinds Inc. v. LeClair, No. SACV 12-1101 DOC
14 (MLGx), 2013 U.S. Dist. LEXIS 7463, at *21 (C.D. Cal.
15 Jan. 16, 2013) (refusing to overturn arbitrator's award
16 of future damages because "it is not apparent on the
17 face of the award that the damages amount was blatant,
18 willful error"). Consequently, the Court **DENIES**
19 Defendants' and MagicSpace's Motions regarding the
20 Arbitrator's award of future damages.

21 Because Defendants and MagicSpace have not provided
22 any meritorious ground for vacating the Final Award,
23 the Court **GRANTS** Plaintiffs' Application **in part** and
24 confirms the Final Award.

25 4. Plaintiffs' Request for Attorneys' Fees

26 Plaintiffs argue that they are entitled to
27 attorneys' fees because Defendants "have unjustifiably
28 refused to comply with the Final Award." Pls.' Opp'n

1 to Defs.' Mot. to Vacate Award 11:7-8, ECF No. 80.
2 While parties typically bear their own attorneys' fees
3 absent a contract or statute authorizing otherwise, "a
4 court may assess attorneys' fees 'when the losing party
5 has acted in bad faith, vexatiously, wantonly, or for
6 oppressive reasons.'" Int'l Union of Petroleum &
7 Indus. Workers v. W. Indus. Maint., Inc., 707 F.2d 425,
8 428 (9th Cir. 1983) (quoting Alyeska Pipeline Serv. Co.
9 v. Wilderness Soc'y, 421 U.S. 240, 258-59 (1975)).

10 In Screen Actors Guild, Inc. v. Farm Fed
11 Productions, LLC, No. CV 09-6027-GW(VBKX), 2009 WL
12 10674391, at *3 (C.D. Cal. Nov. 5, 2009), a case on
13 which Plaintiffs rely, the court noted cases that have
14 distinguished International Union. These cases denied
15 attorneys' fees requests because the non-prevailing
16 party at arbitration was involved "in the litigation at
17 the district court level." Id. The court in Screen
18 Actors Guild ultimately awarded attorneys' fees because
19 the defendant failed to provide any legal arguments for
20 failing to comply with the arbitration award and in
21 fact, failed to even oppose the plaintiff's motion to
22 confirm the arbitration award. Id.

23 Here, while Defendants have failed to pay the
24 arbitration award, they have been involved in the
25 district court litigation, including opposing
26 Plaintiffs' Application and filing their own Motion to
27 Vacate. Defendants arguments may not lead the Court to
28 vacate the Final Award, but their actions do not

1 demonstrate bad faith. The Court therefore **DENIES**
2 Plaintiffs' request for attorneys' fees.

3 **III. CONCLUSION**

4 For the foregoing reasons, the Court **DENIES**
5 Defendants' and MagicSpace's Motions and **GRANTS**
6 Plaintiff's Application, confirming the Final Award in
7 full, but **DENIES** Plaintiff's request for attorneys'
8 fees.

9 **IT IS SO ORDERED.**

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DATED: July 16, 2018

s/ RONALD S.W. LEW

HONORABLE RONALD S.W. LEW
Senior U.S. District Judge