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BEFORE THE LABOR COMMISSIONER  
OF THE STATE OF CALIFORNIA

ERICA BURNS, an individual,

Petitioner,

vs.

JORDAN McKIRAHAN, an individual dba  
JORDAN McKIRAHAN TALENT  
AGENCY,

Respondent.

CASE NO. TAC 52739

**DETERMINATION OF CONTROVERSY**

**I. INTRODUCTION**

This Petition to Determine Controversy pursuant to Labor Code section 1700.44, was filed on October 7, 2019, by ERICA BURNS, an individual (hereinafter "Petitioner"), alleging that JORDAN McKIRAHAN, an individual dba JORDAN McKIRAHAN TALENT AGENCY (hereinafter "Respondent"), failed to pay Petitioner her earnings (less commission) on a voiceover acting job Respondent booked for Petitioner in March 2019.

On December 12, 2019, a hearing was held by the undersigned attorney specially designated by the Labor Commissioner to hear this matter. Petitioner appeared in *pro per* and gave sworn testimony. Respondent failed to appear and failed to file an Answer in response to BURNS' Petition to Determine Controversy. Due consideration having been given to the testimony of all

1 parties present, documentary evidence and oral argument presented, the Labor Commissioner  
2 adopts the following determination of controversy.

3 **II. STATEMENT OF FACTS**

4 1. Petitioner is an actor in commercials.

5 2. Respondent was a licensed talent agency registered with the State Labor  
6 Commissioner and remained a licensed talent agent throughout the relevant period.

7 3. Petitioner was introduced to Respondent through a friend while looking for a talent  
8 agent to represent her in late 2018. Petitioner and Respondent met in person in early December of  
9 2018. On December 13, 2018, Petitioner signed an “Exclusive General Service Agreement Between  
10 Artist and Jordan McKirahan Talent Agency,” an IRS W-9 tax form, and a “Check Authorization  
11 Form”, returning them to Respondent by email on December 17, 2018. The “Exclusive General  
12 Service Agreement Between Artist and Jordan McKirahan Talent Agency” provided by Petitioner  
13 at hearing omitted an amount of commissions to be charged, leaving those spaces ostensibly to be  
14 filled in by hand, blank.

15 4. In March of 2019, Respondent booked an audition for Petitioner for an acting role.  
16 After auditioning, the casting director hired Petitioner to do a voiceover acting job. The voice-over  
17 job took about an hour on a day in mid-March 2019, and the production company told Petitioner  
18 that she would be paid \$300, and that her agent would get a “plus percentage of 20%.”

19 5. By April 18, 2019, Petitioner had not been paid by Respondent and she began  
20 inquiring with him by email to find out when she would be paid. After sending repeated emails  
21 through May 3, 2019, Respondent had still not responded to her inquiries about payment.

22 6. After being abandoned by her agent, without receiving her pay, Petitioner reached  
23 out the production company she did the voiceover acting for, and was informed that Respondent  
24 had received and cashed her check, and there was nothing they could do to help her.

25 7. In an attempt to get her wages, Petitioner erroneously filed a Wage Claim with the  
26 Labor Commissioner’s Office in May 2019, and was informed eventually by the Labor  
27 Commissioner’s staff to instead file her Petition to Determine Controversy, resulting in the matter  
28 here.

1 III. LEGAL ANALYSIS

2 1. Labor Code section 1700.4, subsection (b), includes “actors” in the definition of  
3 “artist” and Petitioner is therefore an “artist” thereunder.

4 2. At all times relevant, Respondent was a licensed talent agent.

5 3. Labor Code section 1700.23 provides that the Labor Commissioner is vested with  
6 jurisdiction over “**any controversy between the artist and the talent agency relating to the**  
7 **terms of the contract,**” and the Labor Commissioner’s jurisdiction has been held to include the  
8 resolution of contract claims brought by artists or agents seeking damages for breach of a talent  
9 agency contract. *Garson v. Div. Of Labor Law Enforcement* (1949) 33 Cal.2d 861; *Robinson v.*  
10 *Superior Court* (1950) 35 Cal.2d 379. Therefore, the Labor Commissioner has jurisdiction to  
11 determine this matter, which stems from a violation of the express terms of the Contract.

12 4. Labor Code section 1700.25 provides in pertinent part:

13 (a) A licensee who receives any payment of funds on behalf of an artist **shall**  
14 **immediately deposit that amount in a trust fund account** maintained by him or  
15 her in a bank or other recognized depository. The funds, less the licensee's  
16 commission, **shall be disbursed to the artist within 30 days after receipt.**  
However, notwithstanding the preceding sentence, the licensee may retain the funds  
beyond 30 days of receipt in either of the following circumstances:

17 (1) To the extent necessary to offset an obligation of the artist to the talent  
agency that is then due and owing.

18 (2) When the funds are the subject of a controversy pending before the  
19 Labor Commissioner under Section 1700.44 concerning a fee alleged to be  
owed by the artist to the licensee.

20 (b) A separate record shall be maintained of all funds received on behalf of an artist  
21 and the record shall further indicate the disposition of the funds.

22 ...

23 (e) If the Labor Commissioner finds, in proceedings under Section 1700.44, that  
24 the **licensee's failure to disburse funds to an artist within the time required by**  
**subdivision (a) was a willful violation, the Labor Commissioner may, in**  
**addition to other relief under Section 1700.44 , order the following:**

25 (1) Award reasonable attorney's fees to the prevailing artist.

26 (2) Award interest to the prevailing artist on the funds wrongfully withheld  
27 at the rate of 10 percent per annum during the period of the violation.

28 ...

Labor Code §1700.25 [emphasis added].

