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STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
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8 BEFORE THE LABOR COMMISSIONER
9 OF THE STATE OF CALIFORNIA
10

11 RACHEL WATT, an Individual,
12 Petitioner,
13 vs.

CASE NO. TAC 51594
DETERMINATION OF CONTROVERSY

14 NOUVEAU MODEL & TALENT MGMT.,
15 INC.; PETER HAMM, an Individual,
16 Respondents.

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19 **I. INTRODUCTION**

20 The above-captioned matter, a Petition to Determine Controversy pursuant to Labor Code
21 section 1700.44, was filed on April 24, 2018, by RACHEL WATT, an individual (hereinafter
22 “Petitioner”), alleging that NOUVEAU MODEL & TALENT MANAGEMENT, INC.
23 (hereinafter “Nouveau”) and PETER W. HAMM, an individual (hereinafter “Hamm”) violated
24 the Talent Agencies Act (hereinafter “Act”) at Labor Code section 1700.00, *et seq.* Petitioner
25 seeks monies due, declaratory relief, penalties, and interest.

26 On April 3, 2019, a hearing was held by the undersigned attorney specially designated by
27 the Labor Commissioner to hear this matter. Petitioner appeared and represented herself. Hamm
28 appeared on behalf of himself and Nouveau (hereinafter collectively referred to as

1 “Respondents”). Due consideration having been given to the testimony and documentary
2 evidence of the parties, the Labor Commissioner adopts the following determination of
3 controversy.

4 **II. BACKGROUND FACTS**

5 1. Petitioner is a model.

6 2. Nouveau was a California licensed talent agent until approximately 2010 when its
7 license expired. Hamm acted as Nouveau’s CEO throughout this period. Nouveau failed to renew
8 its talent agency license starting in 2010.

9 3. Nouveau was Petitioner’s talent agent and working under the terms of an
10 agreement from approximately 1994 to 2009. During that time, Nouveau procured numerous
11 modeling projects for Petitioner. Nouveau ceased procuring modeling work for Petitioner after
12 2009.

13 4. Sometime in 2010, after Nouveau ceased procuring work on Petitioner’s behalf,
14 Hamm and Petitioner discussed Nouveau’s intent to sue some of its former clients for the
15 unauthorized use of Petitioner’s image, in violation of Nouveau’s agreement with those former
16 clients.

17 5. In preparation for litigation against Nouveau’s former clients, on or about March
18 15, 2011, Petitioner and Nouveau entered into a Model/Talent Assignment of Rights Agreement
19 (hereafter “Assignment Agreement”). In the Assignment Agreement, Petitioner assigned her
20 rights from three print modeling jobs performed by Petitioner and procured by Nouveau in 2001,
21 enabling Nouveau to seek damages, *inter alia*, for the unauthorized usage of Petitioner’s likeness.
22 Nouveau entered into similar Assignment Agreements with approximately fifty other models.

23 6. Pursuant to these Assignment Agreements, Nouveau commenced litigation against
24 its former clients Disguise, Inc. and Jakks Pacific, Inc., in Los Angeles Superior Court, Case
25 Number SC111112, for among other things, breach of contract and common law
26 misappropriation of publicity (hereinafter “Civil Litigation”). On or about December 09, 2013,
27 the Los Angeles Superior Court entered judgment in favor of Nouveau on some of the claims and
28 against Nouveau on other claims. The Superior Court awarded Nouveau \$87,862.65 in damages,
\$27,003.00 in costs, and \$120,000.00 in attorney’s fees. The Superior Court also found Nouveau

1 liable for \$53,770 in costs, and \$320,000.00 in attorney's fees.

2 7. In or about August 2013, Hamm informed Petitioner that Nouveau would appeal
3 the judgment in the Civil Litigation. In 2018, Petitioner learned that Nouveau had settled the Civil
4 Litigation in or about August 2016.

5 8. In this proceeding, Petitioner seeks monies due pursuant to the Assignment
6 Agreement, declaratory relief, a penalty for breach of the agreement, and interest. In short,
7 Petitioner seeks her portion of the proceeds stemming from the settlement of the Civil Litigation.

8 **III. LEGAL ANALYSIS**

9 1. Labor Code section 1700.4, subsection (b), includes "models" in the definition of
10 "artist." Petitioner is therefore an "artist" under the Act.

11 2. Nouveau was a licensed talent agent until 2010. Petitioner argues Respondents
12 were acting as her talent agents beyond 2013 and throughout the Civil Litigation. The language of
13 the Assignment Agreement supports Petitioner's claim as Nouveau describes itself as a full
14 service agency specializing in protecting the rights of its modes/talent. However, both parties
15 agree Nouveau ceased procuring any work for Petitioner after 2009. In addition, the evidence
16 supports a finding that Nouveau did not renew its talent agency license after 2010.

17 3. Labor Code section 1700.23 vests the Labor Commissioner with jurisdiction over
18 "any controversy between the artist and the talent agency relating to the terms of the contract."
19 The Labor Commissioner's jurisdiction has been held to include the resolution of contract claims
20 brought by artists or agents seeking damages for breach of a talent agency contract. *Garson v.*
21 *Div. Of Labor Law Enforcement (1949) 33 Cal.2d 861; Robinson v. Superior Court (1950) 35*
22 *Cal.2d 379.* The Labor Commissioner has exclusive jurisdiction over the merits of controversies
23 arising under the Act, and also to determine its jurisdiction over claims or defenses that colorably
24 arise under the Act. *Styne v. Stevens (2001) 26 Cal.4th, 42, 59.* The question is whether the
25 Assignment Agreement is an extension of the parties' 1994 agreement and therefore colorably
26 arises under that Act or whether the Assignment Agreement is a separate and distinct lawsuit filed
27 by Respondent, and therefore failing to arise under the Act within the meaning of *Styne*.

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1 Although the issue in this case involves a model and her former talent agent or agents, the
2 specific dispute is not about breach of the parties' agreement for talent agency services. The
3 Assignment Agreement involves an assignment of rights by Petitioner to Nouveau for prosecution
4 and recovery of damages from third parties for the unauthorized use of Petitioner's likeness.

5 Here, Petitioner is a third party beneficiary to the Civil Litigation. Specifically, Petitioner
6 seeks her share of what Nouveau recovered under the judgment and/or subsequent settlement of
7 the Civil Litigation. Petitioner does not seek damages related to Nouveau's work as her agent
8 under the terms of the 1994 agreement and consequently this dispute does not arise under the Act.
9 This petition relates to a breach of an assignment agreement by a third party beneficiary to the
10 Civil Litigation, signed by the parties after the agency relationship dissolved. Based on the facts
11 of this case, the Labor Commissioner declines to exercise jurisdiction to determine the merits of
12 this matter.


13 **IV. ORDER**

14 For the reasons set forth above, the Petition to Determine Controversy is
15 **DENIED.**

16 **IT IS SO ORDERED.**


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18 Dated: February 11, 2020

Respectfully Submitted,

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20 By: 
21 Abdel Nassar
22 Attorney for the Labor Commissioner

23 **ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER**

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26 Dated: February 12, 2020

27 By: 
28 Lilia Garcia-Brower
California State Labor Commissioner

