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7
8 BEFORE THE LABOR COMMISSIONER
9 OF THE STATE OF CALIFORNIA

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11 SPORTS UNLIMITED TALENT AGENCY,
INC.,

12 Petitioner,

13 vs.

14 JEROME BROWN, an individual,

15 Respondent.
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CASE NO. TAC 44366

**DETERMINATION OF
CONTROVERSY**

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18 **I. INTRODUCTION**

19 The above-captioned matter, a Petition to Determine Controversy under Labor Code section
20 1700.44, came on regularly for hearing in Long Beach, California on August 30, 2018 (hereinafter,
21 referred to as the "TAC Hearing"), before the undersigned attorney for the Labor Commissioner
22 assigned to hear this case. Petitioner SPORTS UNLIMITED TALENT AGENCY, INC., a
23 California corporation (hereinafter, referred to as "SUTA") appeared, Karen Osborn in person and
24 Dave Weiss and Paul Herschel telephonically. Respondent JEROME BROWN failed to appear
25 despite being put on notice of the Hearing. The matter was taken under submission on September
26 6, 2018 after Petitioner submitted post-hearing documents.

27 Based on the evidence presented at this hearing and on the other papers on file in this matter,
28 the Labor Commissioner hereby adopts the following decision.

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II. FINDINGS OF FACT

1. BROWN is an artist in the live action entertainment business.

2. SUTA is a California licensed talent agency.

3. On July 18, 2013 BROWN entered into a General Services Agreement with SUTA, calling for SUTA to be BROWN's exclusive agent for a period of at least two years and providing that SUTA take a 10% commission off of his gross earnings for all work SUTA procured for him.

4. In early February of 2014 SUTA procured BROWN employment as a live action actor on a nationwide tour with a "Marvel Universe Live" show, and on February 10, 2014 BROWN entered into "Marvel Universe Live Employment Contract" with Feld Entertainment, Inc. (hereafter "Marvel Contract"). The Marvel Contract called for BROWN to perform in a touring live show from July 10, 2014 through May 3, 2015. Feld Entertainment, Inc. paid BROWN \$56,298.84 in gross for his work on the completed Marvel Contract, which Feld Entertainment, Inc. paid directly to BROWN.

5. Despite conceding to SUTA in several emails that he owed them 10% commission, due to his own financial problems BROWN never paid SUTA its commission on the Marvel Contract per the terms of SUTA and BROWN's General Services Agreement.

6. As BROWN failed to appear at hearing, SUTA's testimony and evidence were wholly undisputed.

7. SUTA incurred attorneys' fees in prosecuting this Talent Agency Controversy in the amount of \$460.00, along with costs of \$196.31 representing: \$129.50 in service fees, \$5.04 in postage, \$16.39 in copying, \$10.50 for parking and \$34.88 in mileage to and from the hearing for Karen Osborn.

III. ISSUES

1. Does BROWN owe SUTA a 10% commission on the \$56,298.84 earned by BROWN on the Marvel Contract SUTA allegedly procured for BROWN?

2. If yes, was BROWN's withholding of that commission willful so as to give rise to an award of attorneys' fees and costs and interest pursuant to Labor Code section 1700.25(e)?

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IV. LEGAL ANALYSIS

Labor Code section 1700.4(a) defines "talent agency" as:

[A] person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists, except that the activities of procuring, offering, or promising to procure recording contracts for an artist or artists shall not of itself subject a person or corporation to regulation and licensing under this chapter.

Labor Code section 1700.4(b) defines "artist" as:

[A]ctors and actresses rendering services on the legitimate stage and in the production of motion pictures, radio artists, musical artists, musical organizations, directors of legitimate stage, motion picture and radio productions, musical directors, writers, cinematographers, composers, lyricists, arrangers, models, and other artists and persons rendering professional services in motion picture, theatrical, radio, television and other entertainment enterprises.

BROWN is an "artist" within the meaning of Labor Code section 1700.4(b).

SUTA is a licensed talent agent corporation which procures, offers, promises, or attempts to procure employment or engagements for an artist or artists. (See Labor Code § 1700.4(a)). The Labor Commissioner has ruled, "[p]rocurement could include soliciting an engagement; negotiating an agreement for an engagement; or accepting a negotiated instrument for an engagement." (*McDonald v. Torres*, TAC 27-04; *Gittelman v. Karolat*, TAC 24-02). Additionally, "[p]rocurement" includes any active participation in a communication with a potential purchaser of the artist's services aimed at obtaining employment for the artist, regardless of who initiated the communication or who finalized the deal. (*Hall v. X Management*, TAC 19-90).

The burden of proof in actions before the Labor Commissioner is found at Evidence Code section 115, which states, "[e]xcept as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence." Evidence Code §115. "[T]he party asserting the affirmative at an administrative hearing has the burden of proof, including both the initial burden of going forward and the burden of persuasion by preponderance of the evidence . . ." (*McCoy v. Bd. of Ret.* (1986) 183 Cal.App.3d 1044, 1051-52). "[P]reponderance of the evidence standard . . ."

1 . simply requires the trier of fact' to believe the existence of a fact is more probable than its
2 nonexistence." (*In re Michael G.* (1998) 63 Cal.App.4th 700, 709, fn 6).

3 **A. Does BROWN owe SUTA a 10% commission on the \$56,298.84 earned by**
4 **BROWN on the Marvel Contract SUTA allegedly procured for BROWN?**

5 SUTA, as a licensed talent agent, procured the Marvel Contract for BROWN, and is thus
6 owed a commission from his earnings thereupon per the terms of the General Services Agreement
7 between SUTA and BROWN. As discussed above, the General Services Agreement calls for
8 SUTA to take a 10% commission from BROWN's gross earnings on jobs procured for BROWN
9 by SUTA. BROWN conceded this much in emails between SUTA and himself presented at
10 hearing. Thus, SUTA is owed a 10% commission on BROWN's gross earnings of \$56,298.84 or
11 **\$5,629.88.**

12 **B. If yes, was BROWN's withholding of that commission willful so as to give rise**
13 **to an award of attorneys' fees and costs and interest pursuant to Labor Code**
14 **section 1700.25(e)?**

15 Labor Code section 1700.25(e) provides:

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

20 (1) Award reasonable attorneys' fees to the prevailing artist.

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

23 Labor Code section 1700.25, subsection (e), in its clear and unambiguous language only
24 contemplates such relief for artists whose licensed talent agents withhold money from them
25 willfully. As such, no such relief can be awarded to Petitioners herein.

26 **C. If yes, was BROWN's withholding of that commission willful so as to give rise**
27 **to an award of attorneys' fees and costs and interest pursuant to Labor Code**
28 **section 1700.25(e)?**

IV. ORDER

For the reasons set forth above, IT IS HEREBY ORDERED that:

1. Per the terms of the General Services Agreement and Marvel Contract, JEROME

1 BROWN owes SPORTS UNLIMITED TALENT AGENCY, INC. \$5,629.88 as commissions.

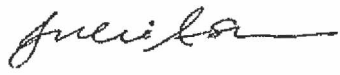
2 2. No award of attorneys' fees and costs for a talent agent is contemplated under Labor
3 Code section 1700.25(e) and as such none can be awarded here to Petitioner.

4 Dated: October 9^m, 2018

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6 _____
7 MAX D. NORRIS
8 Attorney for the Labor Commissioner

9 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

10 Dated: October 8, 2018

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12 _____
13 JULIE A. SU
14 State Labor Commissioner

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) S.S.
COUNTY OF LOS ANGELES)

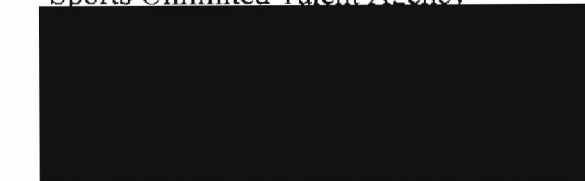
I, Lindsey Lara, declare and state as follows:

I am employed in the State of California, County of Los Angeles. I am over the age of eighteen years old and not a party to the within action; my business address is: 300 Oceangate, Suite 850, Long Beach, CA 90802.

On October 10, 2018, I served the foregoing document described as: **DETERMINATION OF CONTROVERSY**, on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Paul A. Herschell
Dave Weiss
Sports Unlimited Talent Agency

Jerome T. Brown

(BY CERTIFIED MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with fully prepaid postage thereon for certified mail with the United States Postal Service this same day in the ordinary course of business at our office address in Long Beach, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

(BY EMAIL SERVICE) I caused the above-referenced document(s) to be delivered electronically via email to the email address of the addressee(s) set forth above.

(STATE) I declare under penalty of perjury, under the laws of the State of California that the above is true and correct.

Executed this 10th day of October 2018, at Long Beach, California.



Lindsey Lara
Declarant