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STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
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7
8 BEFORE THE LABOR COMMISSIONER
9 OF THE STATE OF CALIFORNIA
10

11 BEVERLEE BAILEY, an individual,

12 Petitioner,
13

14 vs.
15

16 JORDAN MCKIRAHAN, an individual dba
JORDAN MCKIRAHAN TALENT
17 AGENCY,

18 Respondent.
19

CASE NO. TAC 52696

DETERMINATION OF CONTROVERSY

20 **I. INTRODUCTION**

21 This Petition to Determine Controversy pursuant to Labor Code section 1700.44, was filed
22 on April 9, 2019, by BEVERLEE BAILEY, an individual (hereinafter "Petitioner"), alleging that
23 JORDAN MCKIRAHAN, an individual dba JORDAN MCKIRAHAN TALENT AGENCY
24 (hereinafter "Respondent"), issued her a check for \$1,520.00 in residuals earned for a second year
25 run of a commercial, which when the check was attempted to be negotiated was returned by the
26 bank as the account lacked sufficient funds. The bank subsequently charged Petitioner \$12.00 for
27 the NSF check.
28

1 On July 17, 2019, a hearing was held by the undersigned attorney specially designated by
 2 the Labor Commissioner to hear this matter. Petitioner appeared in *pro per* and gave sworn
 3 testimony. Respondent failed to appear and failed to file an Answer in response to BAILEY's
 4 Petition to Determine Controversy. Due consideration having been given to the testimony of all
 5 parties present, documentary evidence and oral argument presented, the Labor Commissioner
 6 adopts the following determination of controversy.

7 **II. BACKGROUND FACTS**

8 1. Petitioner is an actor in commercials.

9 2. Respondent is a licensed talent agency registered with the State Labor
 10 Commissioner and remained a licensed talent agent throughout the relevant period.

11 3. On August 1, 2017 Respondent booked Petitioner a commercial with a client
 12 named Constant Contact, which was reduced to a contract entitled "Constant Contact Television
 13 Commercial Talent Release" which called the shoot "Doris is Down" and contemplated an initial
 14 payment of "\$2,075.00 (+20% agents fee) for fitting (\$75), session (\$500) and one years use
 15 (\$1,500.00) for 1:30 and 1:15 Version of "Doris is Down". The contract further contemplated
 16 additional payment to Petitioner for additional years of use: "2nd Year use at \$1,650.00 (+20%
 17 agents fee)..." and so on. The contract was admitted as evidence at hearing.

18 4. On August 11, 2017 Petitioner executed the commercial shoot, which included
 19 Petitioner having to fall repeatedly on a concrete floor without any consideration for her safety.

20 5. After completing the commercial shoot, Petitioner was paid residuals based upon
 21 the initial one-year term of use (see above). After that one year period ended, Petitioner still saw
 22 her commercial on television. So in early October 2018, Petitioner called Respondent asking if
 23 Constant Contact had picked up the "2nd Year Use" Option. Respondent told Petitioner that he
 24 had indeed just heard from Constant Contact. After having to call and email Respondent
 25 repeatedly, Respondent sent Petitioner a check for \$1,520.00 of residuals. Petitioner credibly
 26 testified that she received the check from Respondent shortly after the date it was issued, January
 27 6, 2019. Unfortunately, when Petitioner attempted to cash this check with her bank, it was
 28 returned as Respondent's bank account did not have sufficient funds to negotiate it.

1 6. The check and statement showing that the check was returned and a \$12.00 NSF
2 fee was charged to Petitioner was admitted as evidence, and establishes that Respondent not only
3 bounced the check he wrote to Petitioner for her residuals, but that Respondent failed to keep
4 these funds in a trust account as required by Labor Code section 1700.25.

5 7. On April 1, 2019, Petitioner attempted to terminate her contract with Respondent,
6 but he has failed to respond.

7 III. LEGAL ANALYSIS

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

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

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

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

19 (a) A licensee who receives any payment of funds on behalf of an artist **shall**
20 **immediately deposit that amount in a trust fund account** maintained by him or
21 her in a bank or other recognized depository. The funds, less the licensee's
22 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:

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

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

26 (b) A separate record shall be maintained of all funds received on behalf of an
27 artist and the record shall further indicate the disposition of the funds.
28 ...

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

- 5 (1) Award reasonable attorney's fees to the prevailing artist.
6 (2) Award interest to the prevailing artist on the funds wrongfully withheld
7 at the rate of 10 percent per annum during the period of the violation.

8 ...
9 Labor Code §1700.25.

10 5. Here, Petitioner credibly testified that in early October 2018, Respondent
11 confirmed by telephone that Constant Contact had picked up the second year option and that
12 Respondent had been paid by the production company for the additional year of use. Respondent
13 sent a check for \$1,520.00 in earned commissions to Petitioner on or around January 6, 2019.
14 Petitioner attempted to deposit that check in her bank account on January 16, 2019, and received
15 notice on January 18, 2019 that the check had bounced due to insufficient funds. The face of the
16 check does not indicate that the funds were drawn from a Client Trust Account, but rather look to
17 be drawn from Mr. McKirahan's personal bank account, which makes clear that Respondent
18 violated Labor Code section 1700.25 both as to failure to pay Petitioner within 30 days, but also a
19 failure to keep that money in a Client Trust Account.

20 6. Thus, pursuant to Labor Code section 1700.25(e), Respondent willfully violated
21 Labor Code section 1700.25(a), and pursuant to Labor Code section 1700.25(e)(2), Petitioner is
22 awarded \$1,520.00 in commissions earned but still unpaid, \$12.00 for the NSF bank fee and
23 interest thereupon at the rate of 10% per annum.

24 7. Petitioner's testimony regarding her repeated falls on a hard concrete floor raises
25 concerns about Respondent's violation of Labor Code section 1700.33 which provides: "No
26 talent agency shall send or cause to be sent, any artist to any place where the health, safety, or
27 welfare of the artist could be adversely affected, the character of which place the talent agency
28 could have ascertained upon reasonable inquiry."

8. From review of the "Constant Contact Television Commercial Talent Release"
submitted by Petitioner as evidence at the Hearing, Respondent seemingly negotiated an "agents

1 fee” or what is commonly referred to as a “plus percentage” for himself on the “Doris is Down”
2 commercial. While not plead here, this may violate Respondent’s fiduciary duty to negotiate the
3 maximum amount of monies for his client.

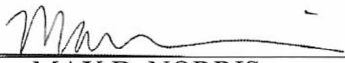
4 **ORDER**

5 For the reasons set forth above, **IT IS HEREBY ORDERED** that Respondent JORDAN
6 McKIRAHAN, an individual dba JORDAN McKIRAHAN TALENT AGENCY, pay Petitioner
7 BEVERLEE BAILEY \$1,520.00 in commissions earned, \$12.00 for the NSF Bank Fee and
8 interest on the commissions from November 1, 2018 (30 days after admitted owed) through the
9 date of the decision, or \$108.27, for a total due and owing by Respondent to Petitioner of
10 **\$1,640.27.**

11 **IT IS SO ORDERED.**

12
13 Dated: August 28, 2019

Respectfully Submitted,

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16 By: 
MAX D. NORRIS
Attorney for the Labor Commissioner

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18
19 **ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER**

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21 Dated: August __, 2019

22 By: 
Lilia-Garcia Brower,
California Labor Commissioner

1 **PROOF OF SERVICE**

2 (Code of Civil Procedure § 1013A(3))

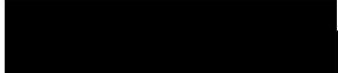
3 STATE OF CALIFORNIA)
4 COUNTY OF LOS ANGELES) S.S.

5 I, Lindsey Lara, declare and state as follows:

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

8 On September 24, 2019, I served the foregoing document described as:
9 **DETERMINATION OF CONTROVERSY** on all interested parties in this action by placing a
true copy thereof enclosed in a sealed envelope addressed as follows:

10 Beverlee Bailey



Jordan McKirahan
dba Jordan McKirahan Talent Agency
6303 Owensmouth Avenue
Woodland Hills, CA 91367

12 **(BY CERTIFIED MAIL)** I am readily familiar with the business practice for collection
13 and processing of correspondence for mailing with the United States Postal Service. This
14 correspondence shall be deposited with fully prepaid postage thereon for certified mail
15 with the United States Postal Service this same day in the ordinary course of business at
16 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.

17 **(BY E-MAIL SERVICE)** I caused such document(s) to be delivered electronically via
18 e-mail to the e-mail address of the addressee(s) set forth above.

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

20 Executed this 24th day of September 2019, at Long Beach, California.

21

22 _____
23 Lindsey Lara
24 Declarant