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DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
State of California

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Attorney for the Labor Commissioner

BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

PHOENIX PAREGIEN, a minor by and through
his guardian ad litem, GINA PAREGIEN,

Petitioner,

v.

ELEVEN TALENT AGENCY INC., a California
corporation,

Respondent.

Case No.: TAC 49576
**DETERMINATION OF
CONTROVERSY (LABOR CODE §
1700.44(a))**

Petition filed: October 16, 2017

1 **DETERMINATION**

2 **I.**

3 **INTRODUCTION**

4 On October 16, 2017, Phoenix Paregien, a minor, by and through his guardian ad litem,
5 Gina Paregien, filed with the Labor Commissioner (the "Labor Commissioner"), Division of
6 Labor Standards Enforcement, Department of Industrial Relations, State of California a petition
7 (the "Petition"¹) to determine controversy pursuant to Labor Code Section 1700.44. The
8 Petition was brought against Eleven Talent Agency, Inc. ("ETA"), a California corporation.

9 The Petition was heard on July 20, 2018 in the Los Angeles office of the Labor
10 Commissioner. Barton L. Jacka, an attorney for the Labor Commissioner from the Sacramento
11 office, heard the matter on assignment by the Labor Commissioner. Mr. and Ms. Paregien each
12 appeared for Ms. Paregien; Noreen Savides appeared for ETA.

13 **II.**

14 **PLEADINGS AND HEARING**

15 **A. Allegations of the Petition.**

16 The Petition alleges in pertinent part that ETA failed to pay Mr. Paregien "for a photo
17 shoot set up by Noreen Savides from Eleven Talent Agency", that Mr. Paregien² resides in
18 Bakersfield, California and is an "artist" as defined in Section 1700.4 of the Labor Code; and
19
20

21
22 ¹ The Petition originally was styled as having been brought by "Phoenix Paregien". On February 12, 2018, after
23 discovering that Mr. Paregien was a minor, and without objection from respondent, Eleven Talent Agency, Inc.,
24 the Hearing Officer determined that the proper petitioner was "Phoenix Paregien, a minor by and through his
25 guardian ad litem, Gina Paregien" and ordered this matter re-styled accordingly.

26 ² The Petition conflates the roles of Mr. Paregien as the "artist", and ETA as the "talent agency" but in light of the
27 evidence adduced at the hearing and the lack of any objection by ETA, the Petition is being read so that the parties
28 are in their proper roles; the error appears simply to be one of inadvertence and does not affect the substantive
allegations.

1 that ETA is a “talent agency”; according to the Labor Commissioner’s database, ETA was a
2 licensed talent agency at all times pertinent to the Petition.

3 The Petition further alleges:

4 1. Mr. Paregien (and/or Ms. Paregien on his behalf) entered into a written
5 agreement with ETA

6 2. Mr. Paregien worked for 8 hours at a job apparently procured by ETA, at the
7 rate of \$75.00 per hour, but was not paid any of the money owed to him (i.e., \$600) by the
8 studio.

9 3. For a few months, there existed a dispute between Ms. Paregien and ETA as to
10 whether Mr. Paregien’s hourly rate was \$75 (as Ms. Paregien asserted) or \$50 (as Ms. Savides
11 claimed). During the period of this dispute, no sum was paid by ETA to Mr. Paregien.

12 Attached to the Petition are what appear to be “screenshots” of cellphone texts between
13 Ms. Paregien and a “Jon Hudson” reflecting his confirmation to her of a \$75.00 hourly rate on
14 the job.

15 **B. Hearing opening statements.**

16 Ms. Paregien argued that Mr. Paregien never received from ETA the money owed to
17 him as a result of a job obtained on November 21, 2016. Ms. Savides acknowledged that ETA
18 had not paid some sum to Mr. Paregien and apologized but asserted there were “extenuating
19 circumstances.”

20 **C. Ms. Paregien’s testimony.**

21 On or about November 21, 2016, Mr. Paregien, through a job procured by ETA, worked
22 as a model for a photo shoot, helping to market a toy called “Antsy Pants”. The job originally
23 was to take 4 hours but Mr. Paregien, at the request of the producer, agreed to work for 8. Mr.
24 Paregien was to be paid \$75.00 per hour. According to Ms. Paregien, Ms. Savides, on
25 December 5, 2016, told her ETA would “immediately” invoice the production company,
26 receive the money (which might take up to 30 days) and then, within 10 days of receipt, pay
27 Mr. Paregien his money, minus ETA’s 20% commission.
28

1 In March 2017, Ms. Paregien confirmed with Jon Hudson (the producer) that the hourly
2 rate had been \$75 and that the money had been paid directly from the producer to ETA; she
3 also confirmed her address with Ms. Savides in response to Ms. Savides' request for an address
4 to send the check. Screenshots of text messages between Ms. Savides and Ms. Paregien and
5 between Ms. Paregien and the production company were admitted into evidence without
6 objection as to their authenticity. The text messages support Ms. Paregien's testimony: (a) the
7 job was to be paid at an hourly rate of \$75.00; (b) the job originally was to take four hours; (c)
8 the production company might take 30 days to pay ETA; (d) ETA was to pay Mr. Paregien his
9 money within 10 days; (e) the producer had paid the money (the total sum not stated) directly
10 to ETA; and (f) at Ms. Savides' request, Ms. Paregien had provided the address to send the
11 check.

12 There was a dispute in March 2017 between ETA and Ms. Paregien about the hourly
13 rate: initially, Ms. Savides asserted the hourly rate was \$50. She later recanted, however,
14 apologized and acknowledged the \$75 rate; Ms. Savides also stated, in March 2017: "The
15 check came in over the holiday break." This testimony was supported by additional
16 screenshots of text messages between Ms. Savides and Ms. Paregien.

17 Finally, Ms. Paregien acknowledged the existence of a written agreement between ETA
18 and Mr. Paregien (or Ms. Paregien on his behalf) and that ETA's commission on sums paid to
19 Mr. Paregien was 20%.

20 **D. Ms. Savides' testimony and Ms. Paregien's rebuttal.**

21 Prior to starting ETA, Ms. Savides, ETA's principal, had been a manager and had
22 worked with Mr. Hudson in that capacity. Mr. Paregien was one of ETA's first clients. The job
23 for which Mr. Paregien was hired involved a total of 12 children working as models for Mr.
24 Hudson.

25 Ms. Savides acknowledged that the hourly rate for Mr. Paregien's work was \$75. She
26 explained the initial dispute over the hourly rate by testifying that she had been hospitalized in
27 serious condition, and was under medication, during much of the time when the job was
28 invoiced (in December 2016) and when it was paid (in mid-January 2017) and that she simply,

1 initially, misunderstood and disputed with Ms. Paregien the amount of time that Mr. Paregien
2 had worked and his hourly rate. She also acknowledged, however, that ETA owed Mr.
3 Paregien \$480 – based on a payment of \$600, minus ETA’s 20% commission.

4 ETA did not receive a check specifically for Mr. Paregien’s work. Instead, ETA
5 received one large check for the work done by all 12 children working as models for Mr.
6 Hudson. After ETA received the single check, all children except for Mr. Paregien were paid
7 within 10 days.

8 Ms. Savides acknowledged that ETA owed Mr. Paregien \$480 but asserted that Ms.
9 Paregien kept demanding \$600 for her son; one of the screenshots submitted by Ms. Paregien
10 does show, in March 2017, a demand for \$600. Further, two days before the July 20, 2018
11 hearing, Blaine Paregien (Ms. Paregien’s husband) sent Ms. Savides an e-mail demanding
12 \$5,000. Further, Ms. Savides testified that Ms. Paregien had continually asked her questions
13 about taxes on the sum and about where and how the money would be deposited. She said,
14 however, that she had no explanation for not paying Mr. Paregien at least the \$480 she
15 acknowledged ETA owed.

16 At some point, she “stopped thinking about it” until she learned there would be a
17 hearing on the Petition. Then, on January 3, 2018, she wrote a check for \$480 to “Blaine
18 Paregien” and “e-mailed” him the check (which, she testified, could be “cut out” from a printed
19 copy of the e-mail, and negotiated); the check, however, never was negotiated. An exhibit
20 ETA submitted in support of Ms. Savides’ testimony that the check was e-mailed on January 3,
21 2018 shows nothing being sent to Blaine Paregien on that date; it does show a February 11,
22 2018 e-mail being sent to Blaine Paregien but, according to Ms. Savides, that e-mail was not
23 the \$480 check.

24 Ms. Paregien testified, in rebuttal, that she never received the e-mail with the \$480
25 check and never received from Ms. Savides any communication stating that the \$480 check had
26 been sent in that fashion.

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III.

FINDINGS OF FACT

1. During the relevant period, ETA was licensed as a talent agent; its principal was Ms. Savides.

2. During the relevant period, Mr. Paregien was an artist and, through his mother Ms. Paregien, retained ETA as his talent agency at a commission of 20%; under his and his mother's agreement with ETA, ETA was obligated to pay Mr. Paregien any sums owed to him within 10 days of receipt of payment from the employer on a particular job.

3. In November 2017, ETA procured for Mr. Paregien a job working as a model at the rate of \$75.00 per hour. He worked for 8 hours on that date.

4. In January 2018, ETA received, along with compensation for other models, the \$600 compensation owed to Mr. Paregien for the job.

5. ETA's commission on this sum was \$120 and therefore \$480 was owed to Mr. Paregien.

6. There existed, for several months, a dispute between ETA and Ms. Paregien over the amount owed; in March 2018, however, ETA knew it owed \$480 to Mr. Paregien.

7. ETA never paid this \$480 to Mr. Paregien, either directly or through Ms. Paregien or her husband, Blaine Paregien.

IV.

CONCLUSIONS OF LAW

Labor Code Section 1700.44(a) states: "In cases of controversy arising under this chapter [4, of Part 6 of Division 2 of the Labor Code], the parties involved shall refer the matters in dispute to the Labor Commissioner, who shall hear and determine the same, subject to an appeal within 10 days after determination, to the superior court where the same shall be heard de novo. To stay any award of money, the party aggrieved shall execute a bond approved by the superior court in a sum not exceeding twice the amount of the judgment. In all other cases the bond shall be in a sum of not less than one thousand dollars (\$1,000) and approved by the superior court."

1 Pursuant to Section 1700.25:

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

8 (2) When the funds are the subject of a controversy pending before the
9 Labor Commissioner concerning a fee alleged to be owed by the artist to the licensee.

10 ...

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

13 (c) If disputed by the artist and the dispute is referred to the Labor
14 Commissioner, the failure of a licensee to disburse funds to an artist within 30 days of
15 receipt shall constitute a "controversy" within the meaning of Section 1700.44.

16 (d) Any funds specified in subdivision (a) that are the subject of a controversy
17 pending before the Labor Commissioner under Section 1700.44 shall be retained in the
18 trust fund account specified in subdivision (a) and shall not be used by the licensee for
19 any purpose until the controversy is determined by the Labor Commissioner or settled
20 by the parties.

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

25 ...

26 (2) Award interest to the prevailing artist on the funds wrongfully
27 withheld at the rate of 10 percent per annum during the period of the violation.
28

1 “[I]t is the general rule that an allegation of nonpayment, though necessary to the
2 sufficiency of the complaint, need not be proved, since it is a negative allegation. The plaintiff
3 need only prove the existence of the obligation. The burden of proving payment then rests on
4 the defendant, even though he has denied the allegation of nonpayment.” Giesler v. Berman, 6
5 Cal. App. 3d 919, 930 (1970).

6 By the middle of January 2018, ETA had received all sums owed by the producer for
7 Mr. Paregien’s work on November 21, 2017; by March 6, 2018, it knew it owed \$480 to him,
8 after taking its 20% commission. Nothing in Ms. Savides’ testimony explains why ETA did
9 not timely pay Mr. Paregien at least \$160 (i.e., 80% of the \$200 it initially erroneously believed
10 Mr. Paregien was owed, for 4 hours’ work at \$50 per hour) or why, immediately after March 6,
11 2018, it did not pay the \$480 it knew that it acknowledged owing to him. That Ms. Paregien
12 was demanding more than \$480 does not explain why ETA did not pay at least the \$480.

13 It is possible that, in January 2018, ETA attempted to tender the \$480 to Blaine
14 Paregien by e-mailing him a check; the evidence of attempted payment, however – based on
15 ETA’s own exhibits - is equivocal and I do not conclude that the attempted payment took
16 place.

17 At least from March 6, 2018, when ETA indisputably knew the amount owed to Mr.
18 Paregien, I find the failure to pay him the \$480 was willful and, in accordance with Labor
19 Code, Section 1700.25(e), was wrongfully withheld warrants an award of interest.

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V.

ORDER

The relief sought in the Petition is granted as follows:

Phoenix Paregien, a minor by and through his guardian ad litem, Gina Paregien, shall recover from Eleven Talent Agency, Inc., a California corporation, the sum of: **\$480.00, plus \$46.03 in interest (calculated from March 6, 2018 to the date of this determination, February 19, 2019, 350 days at the annual rate of 10%, \$0.13 daily interest) for a total of \$526.03.**

Respectfully submitted:

Dated: February 19, 2019

DIVISION OF LABOR STANDARDS
ENFORCEMENT, Department of Industrial Relations,
State of California

By: *Barton L. Jacka*
BARTON L. JACKA
Attorney for the Labor Commissioner

Adopted as the determination of the Labor Commissioner:

Dated: 2/19/19

Patricia Huber
PATTI HUBER, Assistant Chief
CALIFORNIA LABOR COMMISSIONER

PROOF OF SERVICE
(C.C.P. 1013)

CASE NAME: *Phoenix Paregien, a minor by and through his guardian ad litem, Gina Paregien v. Eleven Talent Agency Inc.*
CASE NO: TAC - 49576

I, David Spicer, hereby certify that I am employed in the County of Sacramento, over 18 years of age, not a party to the within action, and that I am employed at and my business address is: DIVISION OF LABOR STANDARDS ENFORCEMENT, Legal Unit, 2031 Howe Avenue, Suite 100, Sacramento, California 95825.

On February 20, 2019 I served the following document:

Determination of Controversy

A. **First Class Mail** - I caused each such envelope, with first-class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S. mail in Sacramento, California, for collection and mailing to the office of the addressee on the date shown below following ordinary business practices.

B. **By Facsimile Service** - I caused a true copy thereof to be transmitted on the date shown below from telecopier (916) 263-2920 to the telecopier number published for the addressee.

C. **By Overnight Delivery** - I caused each document identified herein to be picked up and delivered by Federal Express (FedEx), for collection and delivery to the addressee on the date shown below following ordinary business practices.

D. **By Personal Service** - I caused, by personally delivering, or causing to be delivered, a true copy thereof to the person(s) and at the address(es) set forth below.

E. **By Certified Mail** - I caused each such envelope, with fully prepaid postage thereon for certified mail, to be deposited in a recognized place of deposit of the U.S. mail in Sacramento, California, for collection and mailing to the office of the addressee on the date shown below following ordinary business practices.

Type of Service

Addressee

A

Phoenix Paregien
c/o Gina Paregien



Noreen Denise Savides
Agent for Eleven Talent Agency, Inc.



Noreen Denise Savides
Eleven Talent Agency Inc.



I declare under penalty of perjury that the foregoing is true and correct. Executed on February 20, 2019 at Sacramento, California.

A handwritten signature in blue ink, appearing to read 'David Spicer', written over a horizontal line.

David Spicer
Assistant to Barton Jacka