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

OF THE STATE OF CALIFORNIA

TOMMY LEE JONES, an individual, JAVELINA FILM COMPANY, a Texas Corporation,

Petitioner,

vs.

WILLIAM MORRIS AGENCY AND WILLIAM MORRIS ENDEAVOR ENTERTAINMENT, LLC

Respondents.

WILLIAM MORRIS AGENCY and WILLIAM MORRIS ENDEAVOR ENTERTAINMENT, LLC.

Cross-Petitioners,

vs.

TOMMY LEE JONES, an Individual, JAVELINA FILM COMPANY, a Texas corporation.

Cross-Respondents.

CASE NO. TAC 16396

DETERMINATION OF CONTROVERSY (WITH AMENDED ORDER)

I. INTRODUCTION

The above-captioned matter, a Petition to Determine Controversy under Labor Code §1700.44, came on regularly for hearing in Los Angeles, California, before the undersigned attorney for the Labor Commissioner assigned to hear this case. Petitioner TOMMY LEE JONES, (hereinafter, referred to as "JONES") appeared and was represented by Martin D. Singer, Esq. of LAVELY & SINGER, A Professional Corporation. Respondents/Cross-Petitioner WILLIAM MORRIS AGENCY and WILLIAM MORRIS ENDEAVOR ENTERTAINMENT (hereinafter, referred to as "WME") appeared through Kerry Garvis Wright, Esq., of GLASER, WEIL, FINK, JACOBS, HOWARD, AVCHEN & SHAPIRO, LLP.

The Petitioner alleges Respondents breached the fiduciary duty of loyalty owed to Petitioner by virtue of their agency relationship and seeks a Determination denying Respondents any further commissions or monies owed in connection with the film *No Country For Old Men* (*NCFOM*) and an order requiring Respondents to disgorge to Petitioners all commissions previously received. Respondents filed a cross-petition denying a breach of fiduciary duty and seeking unpaid commissions of not less than $1.5 million plus future commissions owed for *NCFOM* and interest. The matter was taken under submission.

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

II. FINDINGS OF FACT

1. Tommy Lee Jones is a professional actor in the entertainment industry. Jones has been acting and directing for decades and throughout his successful career was represented by his long-time talent agent Michael Black. In or around late 2004, Jones and Black parted ways requiring Jones to retain a new talent agent.

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2. In or about January 2005, Jones communicated with Jim Wiatt ("Wiatt"), then Chairman and Chief Executive Officer of the William Morris Agency,[1] to become a client of WME. Wiatt, a friend of Jones, indicated that he would personally serve as his talent agent and that he would build a team to serve Jones's needs. One member of that team, another WME agent Michael Cooper ("Cooper"), worked closely with Jones.

3. Jones trusted Wiatt as they had known each other for years since Wiatt, like Jones, had also been performing at the highest levels of the entertainment industry as CEO of International Creative Management (ICM) and then Chairman and CEO of the William Morris Agency. Based on Wiatt's assertions to Jones that he would personally handle Jones's agency needs, Jones entered into an oral agreement with WME to become Jones's talent agent. It was clear from the testimony of Jones that WME would be entitled, per industry standard, to 10% commissions on Jones's earnings on engagements procured by WME.

4. Jones's entertainment team not only included his talent agents, i.e., Mr. Black and now Mr. Wiatt, but also included a valued and instrumental member, Jones's long-time transactional attorney, Bill Jacobson ("Jacobson"). Jacobson held a very valuable role for Jones in that Jacobson would carefully monitor the written contracts and engineer the contracts so that they clearly and specifically reflected the intent of the parties. In light of the many years that Jacobson worked as Jones's transactional attorney he became keenly aware of Jones's deals and was able to confidently advise Jones along with his agents whether the deal was right for Jones. More importantly, it was Jacobson who would assure Jones that the intent of the parties' negotiations was accurately reflected in whatever written contract or instrument was in issue at the time of the deal. Jones and Jacobson were friends, looked after each other and at the end of the day were extremely successful both professionally and personally.

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[1] On or around May 2009 William Morris Agency and The Endeavor Agency, LLC, merged to form William Morris Endeavor Entertainment, LLC. The new agency will be referred throughout this Determination as WME.

A. *NO COUNTRY FOR OLD MEN*

5. In approximately January 2006, Jones was advised, through WME and Wiatt, that Paramount Pictures Corporation ("Paramount") was interested in engaging Jones to portray a central character in the motion picture entitled *No Country for Old Men* ("*NCFOM*"). *NCFOM* would be produced by Scott Rudin and directed by Joel and Ethan Coen, all considered top talents within the entertainment industry in their respective fields. It was clear that Wiatt, along with Michael Cooper and another WME agent Michael Simpson had several conversations with Rudin, and Coen about casting Jones as "The Sheriff" in *NCFOM*. There were several meetings and e-mails between all of the parties, including Wiatt, Cooper, Coen and Rudin confirming Jones's interest in the part. With all of the talented and major players committing to the project, it was soon thereafter that Paramount agreed to make the film and conveyed that intent to WME and their desire to cast Jones as "The Sheriff".

6. Notwithstanding all of the talent as referenced above agreeing to participate in the film, Paramount anticipated the picture would not be a commercial success. As a result, Paramount intended that the negotiations for Jones and the other major talent would not be based on up-front payouts, but instead would largely be based on the "back-end[2]". In other words, the better the picture did in the theaters, the more the artists would earn. In fact, Paramount specifically requested from Jones, as they did with the other major talent, that he accept a substantial reduction in the up-front fixed fee that he would typically receive for his acting services in other films negotiated with Paramount.

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[2] The "Back-End" entitled the talent to benefit financially based not on fees paid up front but would be based and paid on the success of the picture domestically and internationally. In short, the better the picture did at the box office, the more money the talent would receive based on those box office numbers. There are various "back-end" deal structures and one of those deals would become central to the litigation between Jones and Paramount and ultimately the central issue in this talent agency controversy.

B. THE NEGOTIATIONS

7. As a result of the film's allocated budget by Paramount, Jones was advised he would not earn his standard rate on the front-end applied against 12.5% of the first dollar gross back-end. Notably, Jacobson was intrinsically involved in the early negotiations between Petitioner and Paramount. Jones enjoyed and befriended the author of the book which served as the basis for the script for *NCFOM,* Cormack McCarthy, which increased his desire to participate in the film. Consequently, and in exchange for accepting the substantially reduced up-front fixed fee, Jacobson requested on Jones's behalf, that Wiatt seek Jones's standard first-dollar gross back-end compensation[3] that was consistent with his prior films with Paramount. Ultimately, Paramount rejected this demand. Paramount's counsel, Jeff Freedman, indicated that Paramount was paying small amounts up front and that all of the major talent would be paid the same amount, somewhere in the neighborhood of a $500,000 up front fee, far below his usual up-front fee.

8. After Paramount rejected Petitioner's demand for Jones's first-dollar gross precedence, Jacobson requested Wiatt seek favorable alternative contingent compensation, namely in the form of substantial box office bonuses. Through e-mails it was determined that Wiatt continued to seek favorable terms for Jones, including first dollar gross. Wiatt also leaned on Cooper to assist in pushing the negotiations forward. Sometime in February 2006, Paramount through their counsel confirmed that Jones would receive the largest box office bonuses and a substantial up-front cash fee. One e-mail in particular indicated that Paramount was willing to provide Jones with up to a million dollar up-front fee, but for reasons unknown, Wiatt did not convey this information to Jacobson or Jones and agreed to a $750,000 up front fee. Consequently, based on an up-front fee of $750,000, the back-end portion of the deal quickly became the most significant aspect of Jones's deal with Paramount.

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[3] "First dollar gross back-end" entitled Jones to the best back-end deal of all of the players, including Rudin and the Coen Brothers and was consistent with his usual deal with a Paramount picture.

C. THE BACK-END

9. Jones argues Wiatt did nothing to assist on the back-end portion of the *NCFOM* contract and that he essentially dropped out of the negotiations for the back-end leaving that responsibility to Jacobson and Cooper. Jones convincingly argued and the evidence established that it was Jacobson's tenacity that enabled Jones to receive the best back-end deal and confirmed that Jones's deal should include 2 times worldwide box office bonuses. On February 11, 2006, Freedman confirmed that Jones would receive the best box office bonuses of anyone on the film.

10. Ultimately, Jones entered into a written and fully executed agreement ("The Agreement") with Paramount's subsidiary, N.M. Classics, Inc. ("Classics"), to render acting services on the picture which included domestic and 2 times worldwide box office bonuses. Notably, it was Mr. Jacobson and not Wiatt, Cooper nor anyone else at WME who demanded on behalf of Jones that the 2 times worldwide box office bonuses be included in the contract.

11. The negotiations were not yet entirely complete as of April 6, 2006, when Jacobson received the first draft of the *NCFOM* contract. Although the back-end was not fully complete, Michael Cooper on behalf of WME, sent an e-mail to Paramount on April 4, 2006 ("Cooper 1st e-mail"), claiming Jones's deal for the Picture was done and asking when WME would receive written documentation from Paramount. However, as previously mentioned, the negotiations of the Agreement were not complete as of the date of the 1st Cooper e-mail as the box office bonuses were still being negotiated between Jacobson and Paramount's counsel as of late May 2006. This 1st Cooper e-mail was a clear mistake by Mr. Cooper, as the deal was not officially finalized and Mr. Cooper failed to confirm negotiations were fully completed with Jacobson before sending the April 4th e-mail. It was a careless mistake and fortunately the e-mail did not harm Mr. Jones in his arbitration where the back-end and the effective date of the contract became the focus of the litigation.

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12. It was clear Mr. Jacobson demanded Jones have the best back-end deal of any major player in the picture and Paramount would not confirm this to be true. Finally, on May 18, 2006, Paramount confirmed that Jones had the best back-end deal. Once it was confirmed that Jones would receive the best back-end deal, Jones accepted the offer. Again, it was evident that Jacobson's efforts spearheaded the back-end portion of the deal and not WME.

13. Wiatt and Cooper were copied on communications between Jacobson and Paramount regarding the Agreement but it was unclear to what extent that WME had been involved in the substantive negotiations of the box office bonus provisions contained in the Agreement. But, as is custom in the industry, it was Jacobson, the transactional attorney who oversaw the drafting of the agreement and the inclusion of the back-end.

D. JONES COMMENCES ARBITRATION PROCEEDINGS AGAINST PARAMOUNT

14. The film was released and it was a huge success both domestically and internationally. In fact, *NCFOM* won the Academy Award for Best Picture of the Year in 2008. In or around January 2008, after Jones had completed all of his services on the Picture, Paramount requested that Jones amend the written Agreement for the Picture. Paramount argued that the 2 times worldwide box office bonus provision in the contract was a mistake. The effect of Jones signing an amendment to the contract would be to significantly reduce Jones's back-end compensation in an amount to exceed $13,000,000. During this period, Jones continued to pay WME 10% of his earnings from *NCFOM* for all of the domestic box office bonuses, but he was not going to give up the commissions on his 2 times worldwide bonuses without a fight against Paramount.

15. Jones declined to sign any amendment to the contract and Paramount refused to pay Jones his back-end deal of 2 times the worldwide box office bonus. As a result, Jones, in or around March 2008, hired representation and commenced arbitration proceedings against Paramount (the "Arbitration").

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16. In the Arbitration, Paramount contended that Jones was not entitled to the box office bonuses that were negotiated by Jacobson and that were ultimately incorporated into the written Agreement. One of Paramount's arguments relied on the 1st Cooper e-mail as one reason that Petitioners should not receive the box office bonuses which were negotiated after the date of the April 4, 2006 Cooper e-mail. Paramount argued Cooper's e-mail established when the contracts were finalized and therefore Paramount should not be liable for payments on negotiations conducted after April 4, 2006. In reality, Jacobson had substantially negotiated the box office bonuses for Jones after April 4, 2006, the date of the Cooper e-mail, and that is what the arbitrators determined. In short, the Cooper e-mail was not determinative in the outcome of the arbitration.

17. On November 18, 2009, the Arbitration Panel issued a Final Arbitration Award ordering Paramount to perform its obligations to Jones pursuant to the written Agreement and required Paramount to pay Jones the 2 times worldwide box office bonuses provided in the Agreement in the amount of $15,000,000.

E. WME PARTICIPATION IN PARAMOUNT ARBITRATION

18. Jones argues WME utterly failed to cooperate with Jones's litigation team in the Paramount arbitration. Jones maintains Jacobson was alone in defending Jones when Paramount requested Jones sign an amendment to the contract. Jones argues Wiatt did not use his influence as Jones's agent to assist Jones in avoiding litigation, and moreover, failed to assist him in collecting the monies owed to Jones. Jones specifically alleged that Wiatt failed to use his influence with his friend, the Chairman of Paramount, Brad Grey, to honor the *NCFOM* contract. Jones argues WME essentially hid from the conflict as e-mails directed to Wiatt were ordered blind copied and in short, WME sought to avoid entering the fray with a major studio. That argument is somewhat belied by the evidence. Wiatt communicated with Brad Grey on several occasions, as well as with the president of Paramount, John Lesher, about the dispute. Wiatt instructed the heads of Paramount that Jones would not sign the amendment and he argued that Paramount should pay Jones,

pursuant to the signed contract. Moreover, Wiatt communicated to Jones that he should not sign the amendment. In addition, WME ultimately created the financial analyses that were used in the arbitration to support the $15,000,000 demand.

19. Jones further argues Cooper and other WME employees were unwilling to testify in the arbitration, and specifically Cooper would have made an unreliable and possible adverse witness for Jones. The testimony of Cooper did not show this to be true. While Mr. Cooper, was nervous, maybe even terrified of being placed in the center of a major financial dispute between a superstar actor and a major studio, in which his e-mail could potentially cost his client millions of dollars, he was not unwilling to participate. He was simply scared, and based on witness testimony it would have been incredibly unlikely that Mr. Cooper ever could have turned adverse against Jones. The documentary evidence and the testimony of Mr. Cooper conversely established that Cooper cared deeply about Jones' career, worked hard at progressing Jones's career, but made mistakes. Some of those mistakes were rather conspicuous and arguably negligent, but were mistakes nonetheless. Finally, it was Jones's legal team, who for tactical reasons alone, decided not to use Cooper as a witness in the arbitration.

F. "SCREW TOMMY LEE" E-MAIL

20. On or about September 2009, in connection with discovery in the Arbitration, Jones's legal team received a copy of an e-mail from Michael Cooper (2nd Cooper e-mail) to Scott Rudin, the producer of Rudin's next movie a remake of "*True Grit.*" *True Grit* again involved Rudin and the Coen brothers and was predicted to do well following the success of *NCFOM.* Apparently, Jones was being considered for the lead role of "Rooster Cogburn", eventually portrayed by Jeff Bridges, who was nominated for an academy award for his role. The 2nd Cooper e-mail to Rudin stated, "So screw Tommy Lee for 'T. Grit Spoke to Ethan about Kurt Russell (who's the right age and is a real shitkicker). Love this idea."

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21. Jones argues this e-mail is yet another example of WME breaching its fiduciary duty to Jones, since one of Jones's primary agents and an employee of WME was essentially sabotaging their former client, Jones, by seeking to cast another WME artist for the role of Cogburn.

22. Finally, Jones argues WME failed to provide financial projections to assist in the arbitration. The evidence suggested there was a transfer of employees and the one accountant who prepared the original calculations went on leave, and the newly supplemented employee was unfamiliar with the previously provided financial projections for the film. From Jones's perspective, it was again WME's failure to cooperate and assist Jones in his arbitration against Paramount. The evidence suggested it was simply a new employee, who was still unacquainted and unfamiliar with the former employee's work product. This was not a breach of duty, but rather, a new employee becoming familiar in a new working environment. And ultimately the projections were furnished and used by Jones in his arbitration that became the heart of the award.

G. JONES TERMINATES WME

23. Mr. Wiatt resigned as CEO of William Morris Agency on or around May of 2009, from WME and ceased performing talent agent services to Jones. Jones terminated WME and Wiatt on June 5, 2009, and engaged Creative Artists Agency as Jones's new talent agent.

24. WME now demands a ten percent (10%) commission on all net sums recovered by Petitioners pursuant to the Arbitration Award, approximately $1,500,000 plus interest. Jones refused to pay the commission from the arbitration award and argues that WME breached its fiduciary duty and failed to perform the obligations that are expected of a talent agency and consequently are not entitled to those commissions.

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III. LEGAL FINDINGS

1. Labor Code §1700.4(b) includes "actors" in the definition of "artist" and Petitioner is therefore an "artist" within the meaning of Labor Code §1700.4(b).

2. It was stipulated the William Morris Endeavor Entertainment, LLC is a California licensed talent agency.

3. Labor Code §1700.23 provides that the Labor Commissioner is vested with jurisdiction over "any controversy between the artist and the talent agency relating to the terms of the contract," and the Labor Commissioner's jurisdiction has been held to include the resolution of contract claims brought by artists or agents seeking damages for breach of a talent agency contract. (*Garson v. Div. Of Labor Law Enforcement (1949) 33 Cal.2d 861, Robinson v. Superior Court* (1950) 35 Cal.2d 379.) Therefore, the Labor Commissioner has jurisdiction to determine this matter.

4. The sole issue is whether the alleged acts and omissions by WME and argued by Jones, constitute a material breach of the implied covenant of good faith and fair dealing in an agency relationship thereby rendering any commissions owed to WME null and void. An alternative although similar way to describe the issue is whether WME engaged in acts rendering a failure of performance of the agent thereby rendering the contract void and thus excusing the performance of Jones to pay commission on *NCFOM*. Whether the analysis is based on a breach of fiduciary duty by an agent or a material breach of contract by a party rendering the contract void for failure to perform a party's obligation under the contract, we arrive at the same conclusion. The actions of WME do not constitute a material breach.

5. In general, the *wrongful* act, the unjustified or unexcused, failure to perform on a contract, is the *breach*. (*See* Rest.2d Contracts §235(2).) Ordinarily, a breach is the result of an intentional act, but negligent performance may also constitute a breach, giving rise to alternative contract and tort actions. (*See* Witkin 10th Ed. Contracts §847 citing Cal.Proc.4th, Actions §§ 158, 159). Any breach, total or partial, that causes a measurable

injury, gives the injured party a right to damages as compensation thereof. (*See Borgonovo v. Henderson* (1960) 182 C.A.2d 220, 231, quoting Rest.2d Contracts §236; Corbin §948). The important question, however is whether a particular breach will also give the injured party the right to refuse further performance on his or her own part, i.e., to terminate the contract. The test is whether the breach is material; and a total or complete breach is, of course, material and grounds for termination by the injured party. (*See* Witkin 10th ed. Contracts § 852.)

6. When analyzing the facts in this case, and determining whether a breach is material we must look closely at the facts as presented. Here, utilizing this standard it is clear WME provided considerable performance which did not breach or affect the root of the contract and thus does not justify termination. The law is well settled in this state that a person is not entitled to rescind or abandon a contract for an alleged breach of that contract when the breach does not go to the root of the consideration (*See Karz v. Department of Professional Vocational Standards* (1936) 11 C.A.2d 554,557, quoting *Walker v. Harbor Business Blocks Co.*, 181 Cal. 773, 186 P. 356; 13 C.J. 614, § 664.)

7. When we analyze the facts of each argued breach, at the end of the inquiry we are left with the fact that WME ultimately performed and fulfilled its primary responsibility under the terms of the oral contract and within the meaning of Labor Code §1700.4 which states a "talent agency" means a person or corporation who engages in the occupation of procuring . . . employment or engagements for an artist . . . ." WME clearly did not perform in the manner expected by Jones, nor did they perform to the level that Jones was accustomed to with his transactional attorney, Mr. Jacobson. Nor did WME perform with the same results Jones experienced with his litigation counsel in the Paramount arbitration. Jones has experienced such exceptional representation, going all the way back to Mr. Black, he was not accustomed to mistakes. But let us not forget the primary job of a talent agency is to obtain work, and this is what WME did. In fact, obtaining the role as the Sheriff in *NCFOM* is considered one of Jones's most highly acclaimed roles in Jones's career.

8. It is the role of the transactional attorney to verify that a contract's terms purport what they are supposed to say, and it is the role of litigation counsel to fight when a party does not abide by the contract. And that is what both William Jacobson and Lavely & Singer did in the Paramount arbitration. Everyone did their job here, including WME albeit with a few bumps along the way. And in the end, Jones received every dollar he was entitled to. We will briefly highlight the facts and evidence produced at the hearing that contradicts an alleged total breach of the contract as argued by Jones:

A. WIATT'S ARGUED FAILURE TO SECURE JONES'S FRONT-END COMPENSATION OF $1 MILLION, DESPITE AN INDICATION FROM PARAMOUNT THAT THE STUDIO WAS WILLING TO PAY $1 MILLION TO JONES TO GET THE DEAL DONE

9. Here, based on a review of the e-mails, it appears these were ongoing negotiations and discussions between Wiatt and Paramount President, John Lesher. The e-mail referenced by petitioners failed to incorporate the $1,000,000 front-end fee was contingent upon "Meeting Jones' back-end as well." The e-mail established $1,000,000 was a consideration Paramount was willing to pay, but it was part of an ongoing dialogue regarding ongoing negotiations. Instead of establishing bad faith on Wiatt's part, it established Wiatt was involved in the negotiations, including the back-end. As a result, Wiatt's failure to procure $1,000,000 front-end compensation was not a breach of his fiduciary duty towards Jones and the e-mail cannot be used out of context to prove as much. Could Wiatt have fought harder and obtained Jones the $1,000,000 up front? It is possible, but based on the evidence we cannot conclusively state Wiatt readily failed to obtain an extra $250,000 for Jones. These were negotiations and the e-mail was only a part of those negotiations.

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B. JONES ARGUES THAT WIATT'S LACK OF INVOLVEMENT IN THE NEGOTIATION OF JONES'S BACK-END DEAL FOR WORLDWIDE BOX OFFICE BONUSES ON *NCFOM* ESTABLISHED A DISREGARD FOR JONES'S BENEFIT.

10. Again, it ws well documented, including dozens of e-mails establishing Wiatt was involved in negotiating the back-end. Clearly, he was not as involved as Jacobson, but he was not "entirely out of the negotiations" as argued by Petitioners. Both Wiatt's testimony and the e-mails produced by Wiatt and WME may have established Wiatt was less than diligent or consistent, but the evidence did establish he often relied on Cooper to push the negotiations forward. Unfortunately for Wiatt and Jones it could be implied the ongoing merger between William Morris and Endeavor may have distracted Wiatt from total concentration for his friend and client, Jones. In short, WME may have failed to meet the standards expected of Jones, but the perceived lack of effort on the part of WME did not rise to the level of fraud or even bad faith regarding Wiatt's lack of involvement in the negotiations of Jones's back end.

C. JONES ARGUES THAT COOPER'S E-MAIL TO PARAMOUNT STATING THE DEAL HAD CLOSED AS OF LATE MARCH 2006, WHEN A DRAFT OF A WRITTEN CONTRACT HAD NOT BEEN SENT TO JONES'S REPRESENTATIVES YET AND THE WORLDWIDE BOX OFFICE BONUSES HAD NOT BEEN INTRODUCED AS A BACK-END MECHANISM WAS A MATERIAL BREACH

11. Michael Cooper demonstrated inexperience and eagerness to finalize the deal but importantly the testimony from Cooper along with the myriad of e-mails established that Cooper was working extremely hard for Jones. As a consequence of his inexperience and eagerness, he simply made mistakes. Mistakes that could have seriously hurt his client's chances in the arbitration and mistakes that could and should have been avoided. But, at the end of the day, Cooper simply made mistakes that did not injure his client. There was not a shred of evidence he ever wanted to harm Jones by sending the March 2006 e-mail, nor that the sending of the e-mail harmed Jones in any manner. There was no nexus established between the e-mail and the outcome of the Paramount

arbitration. In fact, Jones was not harmed and instead received large bonuses and payments as a result of WME bringing the *NCFOM* opportunity to Jones in the first place. This should not be forgotten, and Michael Cooper played a role in that process.

D. WME AND WIATT'S PERCEIVED FAILURE TO FIGHT AGAINST PARAMOUNT FOR THE WORLDWIDE BOX OFFICE BONUSES REFLECTED BY WIATT INSISTING THAT HE NOT BE COPIED ON CORRESPONDENCE TO PARAMOUNT

12. Cooper, Wiatt and Munoz's, (Mr. Munoz was a WME accountant involved with financial projections) failure to assist Jones in the arbitration against Paramount did not amount to a total failure to fight or engage against Paramount. Cooper, Wiatt and Munoz were all willing to testify in the arbitration. It was determined that it was Petitioners who failed to call them to testify for strategic reasons, but any refusal to testify was uncorroborated at the hearing. Cooper had reason to be nervous, taking into consideration the mistakes he had made during and after the project, but he was credible when he testified that he would have and was prepared to testify at the arbitration. Wiatt also was willing and able to testify but had limited knowledge about the back-end compensation, as it was Jacobson who negotiated that portion of the deal with little assistance from Wiatt. Munoz simply had no meaningful testimony to add, as he did not create the initial projections and for strategic reasons, he was also not called. In the end, WME was ready to assist Jones in his arbitration matter against Paramount. It did appear that Wiatt's request to be blind copied showed an intent to shield himself from potentially harmful documentation that would be used against Paramount, but that act alone does not give rise to a breach of fiduciary duty and clearly nowhere near a total breach of his duties as Jones agent which would excuse performance from Jones.

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E. THE MICHAEL COOPER "SCREW TOMMY LEE" EMAIL TO RUDIN POSSIBLY SABOTAGING JONES'S EFFORTS TO SECURE THE ROLE OF ROOSTER COGBURN IN THE REMAKE OF *TRUE GRIT*.

13. This e-mail was troubling as its express message was contrary to Jones's professional well-being and appeared to be written in a manner that not only disregarded his prior client as a candidate for *True Grit*, but was written with malice toward Jones. Taken alone, this e-mail provides a damaging piece of evidence presented by Jones in his effort to establish a breach of fiduciary duty. As an agency relationship is a fiduciary one, obliging the agent to act with diligence, care and loyalty to the principal. (*Civil Code §2322(c); Rest. 2d Agency §13; Mendoza v. Rast Produce Co., Inc.,* 140 Cal.App.4th 1395, 1405-1406 (5th Dist., 2006).) Where such a relationship arises, the agent assumes "a fiduciary duty to act loyally for the principal's benefit in all matters connected with the agency relationship." (*Rest.3d, Agency, § 8.01; Van De Kamp v. Bank of America,* 204 Cal.App.3d 810, 861 (2nd Distr., 1988) (Agent must disclose to principal whether, in a given agency-related transaction, the agent is acting on its own account or adversely to principal).) As a matter of law, the relationship of principal and agent binds the agent to the utmost good faith in his or her dealings with the principal. (*Estate of Baldwin,* 34 Cal.App.3d 596, 605 (4th Dist., 1973).)

14. It should be noted Jones had already terminated the relationship between the parties prior to the e-mail. This fact coupled with Cooper's credible explanation at the hearing highlighted the circumstances and the intent behind the e-mail. Cooper was very upset at losing such a valuable client as Jones. Cooper credibly testified he was expressing his utter disappointment at losing Jones while at the same time pushing another WME client (Kurt Russell) for the role. Cooper clearly wished and expressed he had used better judgment before sending out the e-mail and has undoubtedly learned a valuable lesson, but he did not send the e-mail with malice nor with the intent to harm Jones but instead sent it out of disappointment in losing what Cooper felt was an invaluable asset to WME. The injury WME will suffer here is that they lost this client, but they did not

breach their obligations going to the root of the relationship to the extent argued by Jones. Moreover, the e-mail had no effect on whether Jones was selected for the role as evidenced by the declaration of Scott Rudin who indicated that Cooper's e-mail played no role in the selection of Jeff Bridges as "Rooster Cogburn" in *True Grit*.

15. Jones cites many cases, some referenced above quoting the applicable standards of care required by an agent. The cases are all distinguishable. First, none of the cases cited involve talent agents or the Talent Agencies Act (Labor Code §1700 et seq.). But far more important, all of the cases cited by Petitioner involve fraud, conversion, self dealing or a combination and are thus not persuasive. There simply is no causal connection or relationship between the acts of WME and any perceived injury to Jones. In fact, there was no injury to Jones and as such we do not find a material breach of the oral contract or a material breach of the agent's fiduciary duty to Jones. The question whether Cooper's e-mail rises to the level of intent to damage his former client, and/or establishes self dealing thus breaching his fiduciary duty is also answered in the negative.

16. Case law agrees in that [n]egligence by an . . . agent in the performance of his duties does not deprive him of all right to compensation in the absence of disloyalty, fraud or bad faith on his part. (*Tacker v. Croonquist*, 244 Cal.App.2d 572, 577 (4th Dist., 1966).) In conclusion, Cooper, Wiatt nor WME acted with disloyalty or bad faith; and consequently, Petitioner's request is denied. The Respondent/Cross Petitioner is entitled to their commissions earned for Jones's performance in *NCFOM* and interest.

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AMENDED ORDER

For the above-stated reasons, IT IS HEREBY ORDERED Respondent/Cross-Petitioner WILLIAM MORRIS AGENCY and WILLIAM MORRIS ENDEAVOR ENTERTAINMENT, LLC is entitled to 10% commission for earnings connected with the film *No Country For Old Men* including commission on the award issued in the Paramount arbitration and interest calculated at 10% per annum through the date of satisfaction of the award. The Petitioner/Cross Respondent TOMMY LEE JONES, an individual, JAVELINA FILM COMPANY, a Texas Corporation shall provide an accounting to the Respondent/Cross Petitioner of all earnings through June 5, 2009, also including the Paramount arbitration in connection with *No Country For Old Men* within 30 days of receipt of this Determination and are required to remit 10% commission plus interest within 30 days of the accounting for all unpaid commissions consistent with this Order. Petitioner's request to bar the recovery of commissions and to disgorge previously paid commissions is denied.

Dated: October 10, 2012

Respectfully submitted,

By: _____
DAVID L. GURLEY
Attorney for the California State
Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: October ____, 2012

By: _____
JULIE A. SU
California State Labor Commissioner

AMENDED ORDER

For the above-stated reasons, IT IS HEREBY ORDERED Respondent/Cross-Petitioner WILLIAM MORRIS AGENCY and WILLIAM MORRIS ENDEAVOR ENTERTAINMENT, LLC is entitled to 10% commission for earnings connected with the film *No Country For Old Men* including commission on the award issued in the Paramount arbitration and interest calculated at 10% per annum through the date of satisfaction of the award. The Petitioner/Cross Respondent TOMMY LEE JONES, an individual, JAVELINA FILM COMPANY, a Texas Corporation shall provide an accounting to the Respondent/Cross Petitioner of all earnings through June 5, 2009, also including the Paramount arbitration in connection with *No Country For Old Men* within 30 days of receipt of this Determination and are required to remit 10% commission plus interest within 30 days of the accounting for all unpaid commissions consistent with this Order. Petitioner's request to bar the recovery of commissions and to disgorge previously paid commissions is denied.

Dated: October 10, 2012

Respectfully submitted,

By: _____
DAVID L. GURLEY
Attorney for the California State
Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: October 10, 2012

By: _____
JULIE A. SU
California State Labor Commissioner