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

10
11 SOFIA GONZALEZ,

12 Petitioner,

13 vs.
14

15 JMTA TALENT AGENCY,

16 Respondent.
17

CASE NO. TAC 52660

**DETERMINATION OF
CONTROVERSY**

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 Los Angeles, California before the undersigned attorney
21 for the Labor Commissioner assigned to hear this case. The hearing (hereinafter, referred to as the
22 “TAC Hearing”) commenced and was completed on November 19, 2019. Petitioner SOFIA
23 GONZALEZ (hereinafter, referred to as “Petitioner” or “GONZALEZ”) appeared, *in propria*
24 *persona*. Maria C. Morales appeared as a witness on GONZALEZ’S behalf.

25 Respondent JMTA TALENT AGENCY (hereinafter, referred to as “Respondent” or
26 “JMTA”) failed to appear.

27 Due consideration having been given to the testimony, documentary evidence and
28 arguments presented, the Labor Commissioner hereby adopts the following determination

1 (hereinafter, referred to as the “Determination”).

2 **II. FINDINGS OF FACT**

3 1. On or around July 20, 2009, GONZALEZ and JMTA entered into a contract entitled,
4 “Exclusive General Service Agreement Between Artist and Jordan McKirahan Talent Agency,”
5 (hereinafter, referred to as the “Agreement”). As part of its services, JMTA agreed to represent
6 GONZALEZ in commercials and in print contracts with companies that were in advertising.

7 2. GONZALEZ is an artist who acts in commercials and provides services in the area
8 of print contracts with companies that engage in advertising campaigns.

9 3. At the time GONZALEZ filed her *Petition to Determine Controversy*, JMTA was a
10 licensed talent agent.

11 4. JMTA did not provide GONZALEZ with a copy of the Agreement which was
12 executed by both parties.

13 5. Pursuant to the Agreement, JMTA agreed to receive 10 percent commission as
14 general compensation on all jobs procured for GONZALEZ. JMTA was not entitled to an additional
15 or higher commission rate. JMTA confirmed this arrangement with GONZALEZ in an email dated,
16 July 20, 2009, where Jordan McKirahan, CEO and Talent Agent for JMTA stated the commission
17 rate would be “Ten percent (10%) General Compensation on all jobs.”

18 6. On or around August 8, 2017, GONZALEZ was hired to serve as the spokesperson
19 in an advertising campaign for the product, ABBVIE/ELAGOLIX, a hormonal drug which is used
20 to treat the condition, endometriosis (hereinafter, referred to as “The Campaign”). As part of this
21 engagement, GONZALEZ was hired to act in a commercial where she played the role of a patient
22 with two different responses to addressing endometriosis. GONZALEZ took on the role of a scared
23 patient who did not know how to address her endometriosis. In her second, overlapping role,
24 GONZALEZ was the same patient who empowered and spoke to the scared version of herself
25 regarding how to treat their endometriosis. In addition to the commercial, there was a print
26 campaign, which consisted of taking stills from the commercial and advertising the product in
27 various outlets like magazines, and social media such as Facebook and Instagram.

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1 7. GONZALEZ never authorized JMTA to sign any contract for engagements on her
2 behalf. However, JMTA signed the contract for The Campaign without GONZALEZ’s knowledge
3 or permission.

4 8. On September 20, 2017, JMTA received a check for GONZALEZ in the gross
5 amount of \$46,000.00 for her work on The Campaign.

6 9. On September 20, 2017, JMTA received a separate check in the amount of
7 \$10,115.00 for work GONZALEZ performed in The Campaign.

8 10. On or around November 6, 2017, after GONZALEZ contacted JMTA several times
9 regarding the status of her compensation for The Campaign, GONZALEZ received a payment in
10 the amount of \$36,800.00. GONZALEZ learned for the first time here that JMTA had taken a 20
11 percent commission for her work on The Campaign.

12 11. On May 30, 2018, GONZALEZ filed a *Petition to Determine Controversy*
13 (hereinafter, referred to as the “Petition”). In her Petition, GONZALEZ claims JMTA paid itself a
14 20 percent commission for GONZALEZ’s work on The Campaign instead of the agreed-upon 10
15 percent commission. GONZALEZ also claims JMTA illegally paid itself an additional 20 percent
16 for GONZALEZ’s work on The Campaign.

17 12. As part of her Petition, GONZALEZ submitted an unsigned copy and version of the
18 Agreement which began her contractual relationship with JMTA. However, JMTA never provided
19 GONZALEZ with a copy of the version of the Agreement she actually signed. The version of the
20 Agreement attached to GONZALEZ’s Petition states the Labor Commissioner approved this form
21 contract. No date was included to indicate when it was approved or how the Labor Commissioner
22 endorsed this version of the Agreement.

23 13. GONZALEZ served JMTA with a copy of the Petition on August 20, 2018.

24 14. On or around February 28, 2019, JMTA filed a response to GONZALEZ’s Petition
25 where, in part, it claims GONZALEZ and JMTA verbally discussed in 2009 the 20 percent
26 commission payment structure. As part of its response to GONZALEZ’s Petition, JMTA provided
27 a copy of the “approved” contract submitted to the Labor Commissioner’s Office. JMTA’s version
28 of the Agreement is different from the version proffered by GONZALEZ. Specifically, this version

1 of the Agreement states JMTA will charge a 10 percent commission for “Screen Actor Guild (SAG)
2 affiliated jobs” and 20 percent for “all income of monies on all Non-Union and Still-Advertised
3 affiliated jobs.” The version of the Agreement indicates in preprinted language that the Labor
4 Commissioner approved this form contract on April 15, 2009 but fails to show how the Labor
5 Commissioner endorsed the contract.

6 III. LEGAL ANALYSIS

7 Issues

8 **A. Should GONZALEZ’s *Petition* be prosecuted where JMTA failed to appear at**
9 **the TAC Hearing?**

10 **B. If GONZALEZ’s *Petition* can be prosecuted, is JMTA entitled to the commission**
11 **and compensation for GONZALEZ’s work on The Campaign?**

12 Labor Code section 1700.4(a) defines “talent agency” as:

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

19 Labor Code section 1700.4(b) defines “artist” as:

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

27 GONZALEZ is an “artist” within the meaning of Labor Code section 1700.4(b).

28 Moreover, Labor Code section 1700.5 provides that “[n]o person shall engage in or carry
on the occupation of a talent agency without first procuring a license therefor from the Labor
Commissioner.”

It is undisputed JMTA was a talent agency during the relevant time period in question and

1 at the time GONZALEZ filed her Petition with the Labor Commissioner’s Office.

2 **A. Should GONZALEZ’s *Petition* be prosecuted where JMTA failed to appear at**
3 **the TAC Hearing?**

4 A petition can be prosecuted where respondent has made a general appearance within one
5 year of the petition to determine controversy being served. (See Cal. Code Regs. tit. 8, § 12024.1).

6 Here, GONZALEZ’s Petition can be prosecuted for two reasons. First, GONZALEZ served
7 JMTA with a copy of her Petition on August 20, 2018. JMTA filed a response to GONZALEZ’s
8 Petition six months later on February 28, 2019. Therefore, JMTA generally appeared in this
9 proceeding within one year of GONZALEZ serving it with her Petition when JMTA filed its
10 response to GONZALEZ’s Petition. (See *Id.*).

11 Second, the Amended Notice of Hearing indicating the TAC Hearing would be held on
12 November 19, 2019 was sent to JMTA’s last known address on file with the Labor Commissioner’s
13 Office. Because JMTA was notified of the date for the TAC Hearing, its failure to appear should
14 not preclude the Labor Commissioner’s ability to prosecute GONZALEZ’s Petition.

15 **B. If GONZALEZ’s *Petition* can be prosecuted, is JMTA entitled to the commission**
16 **and compensation for GONZALEZ’s work on The Campaign?**

17 A talent agent is required to submit to the Labor Commissioner a form or forms of contract
18 “to be utilized by such talent agency in entering into written contracts with artists. . . and secure the
19 approval of the Labor Commissioner thereof.” (Labor Code § 1700.23). The Labor Commissioner’s
20 approval of the form contract will be “indicated by an endorsement . . . by the Labor Commissioner
21 which must be retained by the talent agency, or by a letter from the Labor Commissioner that the
22 contract adopted by the talent agency has been endorsed by the Labor Commissioner.” (Cal. Code
23 Regs. tit. 8, § 12003). A talent agent is further required to provide the artist with a copy of the
24 contract which has been executed by both parties. (Cal. Code Regs. tit. 8, § 12001.1).

25 The evidence overwhelmingly demonstrates GONZALEZ signed a contract with JMTA
26 that was not approved by the Labor Commissioner. There was no evidence to show the Labor
27 Commissioner secured her approval by either endorsing the Agreement or providing JMTA with a
28

1 letter that the Agreement had been endorsed. This is true both for the version provided by
2 GONZALEZ and JMTA. Also, the evidence demonstrates the Agreement proffered by JMTA is a
3 different version than the one GONZALEZ credibly testified she was required to sign. JMTA
4 claims its version of the Agreement makes clear JMTA was entitled to a 10 percent commission
5 for “Screen Actor Guild (SAG) affiliated jobs” and 20 percent for “all income of monies on all
6 Non-Union and Still-Advertised affiliated jobs.” However, no such essential terms were contained
7 in the version GONZALEZ signed on July 20, 2009. In addition, JMTA did not provide a copy of
8 the Agreement signed by GONZALEZ to demonstrate she agreed to the essential terms of the
9 varying ten and twenty percent commission rates, and which JMTA alleges it was entitled to
10 receive.

11 Any remaining doubts regarding which version of the Agreement is the correct one and,
12 thus, binding on the parties can be resolved by the evidence GONZALEZ presented at the TAC
13 Hearing. GONZALEZ demonstrated JMTA memorialized their mutual understanding of the
14 commission it was entitled to when Jordan McKirahan, CEO and Talent Agent for JMTA, stated
15 the commission rate would be “Ten percent (10%) General Compensation on **all** jobs.” JMTA
16 confirmed this mutual understanding in an email to GONZALEZ, which was dated July 20, 2019.

17 The evidence demonstrates JMTA signed a contract for GONZALEZ to perform services
18 for The Campaign without her knowledge or permission. The evidence shows JMTA received a
19 check for GONZALEZ in the gross amount of \$46,000.00 for her work on The Campaign but that
20 JMTA only paid her \$36,800.00. This payment to GONZALEZ represents a 20 percent commission
21 instead of the 10 percent commission JMTA was entitled to receive per the Agreement. The
22 evidence further shows JMTA issued itself an additional, unsubstantiated payment of \$10,115.00
23 for work GONZALEZ performed in The Campaign. This additional amount was not subject to
24 terms of the Agreement between JMTA and GONZALEZ.

25 Based on the foregoing, the Labor Commissioner finds JMTA unlawfully deducted a 20
26 percent commission for services GONZALEZ performed on The Campaign in direct contravention
27 of the 10 percent commission rate per the parties’ Agreement. The Labor Commissioner further
28 concludes JMTA unlawfully paid itself an additional amount of \$10,115.00 for work GONZALEZ

1 performed in The Campaign.

2 **IV. ORDER**

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

4 1. JMTA shall pay GONZALEZ \$4,600.00, which represents the additional 10 percent
5 JMTA unlawfully deducted from GONZALEZ for her work on The Campaign. In addition, JMTA
6 shall pay GONZALEZ \$1,138.03 in interest calculated at 10 percent per annum from August 8,
7 2017 through the date of this Determination for an award of **\$5738.03**.

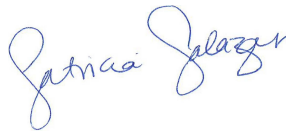
8 2. JMTA shall pay GONZALEZ the amount of \$10,115.00, which represents the
9 additional and separate payment JMTA issued to itself in violation of the Agreement. JMTA shall
10 also pay \$2,502.42 in interest calculated at 10 percent per annum from August 8, 2017 through the
11 date of this Determination for an award of **\$12,617.42, in addition to the \$5738.03** described
12 immediately above. Accordingly, JMTA shall pay GONZALEZ a total amount of **\$18,335.45**.

13 3. JMTA shall remit these amounts within 30 days of this Order.

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15 **IT IS ORDERED.**

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18 Dated: January 27, 2020


Respectfully submitted,

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21 PATRICIA SALAZAR
22 Attorney for the Labor Commissioner

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24 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

25 Dated: January 27, 2020

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28 LILIA GARCIA-BROWER
State Labor Commissioner

1 **PROOF OF SERVICE**

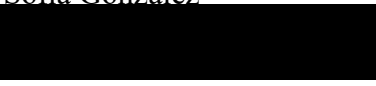
2 (Code of Civil Procedure § 1013A(3))

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 January 29, 2020, I served the foregoing document described as: **DETERMINATION**
9 **OF CONTROVERSY**, on all interested parties in this action by placing a true copy thereof
enclosed in a sealed envelope addressed as follows:


<p>10 Sofia Gonzalez 11 </p> <p>12 Petitioner</p>	<p>Jordan McKirahan dba Jordan McKirahan Talent Agency 6303 Owensmouth Ave., Ste. 1032 Woodland Hills, CA 91367</p> <p>13 Respondent</p>
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14 (BY CERTIFIED MAIL) I am readily familiar with the business practice for collection
15 and processing of correspondence for mailing with the United States Postal Service. This
16 correspondence shall be deposited with fully prepaid postage thereon for certified mail with
17 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.

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

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

21 Executed this 29th day of January 2020, at Long Beach, California.

22 
23 _____
24 Lindsey Lara
25 Declarant