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2 DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT  
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5 Attorney for the Labor Commissioner  
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7

8 BEFORE THE LABOR COMMISSIONER  
9 OF THE STATE OF CALIFORNIA  
10

11 BEVERLY JOHNSON, an individual,

12 Petitioner,

13 vs.

14 LAURETTE HEALEY, an individual;  
15 ENTERTAINMENT MARKETING  
ASSOCIATES, a California sole  
16 proprietorship; and, CREATIVE LICENSE,  
LLC a cancelled California Limited Liability  
17 Company.

18 Respondents.  
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**CASE NO. TAC 16243**

**DETERMINATION OF CONTROVERSY**

20 **I. INTRODUCTION**

21 The above-captioned matter, a Petition to Determine Controversy pursuant to Labor Code  
22 section 1700.4, was filed on December 23, 2009, by BEVERLY JOHNSON, an individual  
23 (hereinafter "Petitioner"), alleging that LAURETTE HEALEY, an individual;  
24 ENTERTAINMENT MARKETING ASSOCIATES, a sole proprietorship; and, CREATIVE  
25 LICENSE, LLC, a cancelled California Limited Liability Company (hereinafter collectively  
26 "Respondents"), were conducting unlawful activities by acting as unlicensed talent agents in  
27 violation of Labor Code section 1700.5<sup>1</sup>. Petitioner seeks a determination voiding *ab initio* the

28 <sup>1</sup> All statutory citations will refer to the California Labor Code unless otherwise specified.

1 portion of the 1996 "Endorsement Contract" agreement between Petitioner, Respondents and  
2 Amekor Industries, Inc. which calls for commissions to be paid to Respondents.

3 Respondents filed their answer with this agency on January 25, 2010. A hearing was held  
4 before attorney Michael Jackman, specially designated by the Labor Commissioner to hear this  
5 matter. Respondent was represented by J. Larson Jaenicke of RINTALA, FRASER &  
6 JAENICKE, LLP; Petitioner was represented by her attorney Joeseph E. Porter, III of LAW  
7 OFFICES OF JOSEPH E. PORTER, III. A hearing was held over two days, May 10, 2010 and  
8 July 20, 2010. The matter was later reassigned to the undersigned attorney to complete the  
9 Determination herein from the record previously compiled. Due consideration having been given  
10 to the testimony of all parties, documentary evidence and both oral and written arguments  
11 presented, the Labor Commissioner adopts the following determination of controversy.

## 12 II. BACKGROUND FACTS

13 1. Petitioner, Ms. Beverly Johnson, has been a world-renowned model since at least  
14 August 1974 when she was the first African American on the cover of Vogue Magazine.

15 2. Respondent Healey has not been licensed as a talent agency by the State Labor  
16 Commissioner at any time.

17 3. In or around the year 1995, Petitioner was approached by Respondent Healey with a  
18 proposal that Healey would help Ms. Johnson procure endorsement deals. Petitioner agreed to  
19 allow Healey and her various companies (Creative License, LLC ("CL") and Entertainment  
20 Marketing Associates ("EMA")) procure endorsement deals in which Petitioner's name, voice,  
21 likeness, moving image and artist's services would be used to promote products for a third party  
22 company.

23 4. On March 26, 1996, B. J. Company, Inc., Petitioner's corporation, and EMA,  
24 Respondent's sole proprietorship, both the alter-ego and agent of Healey, entered into an "Option  
25 Agreement" calling for the Artistic Services of Petitioner, including the use of her image and  
26 likeness, to promote and sell wigs, hair extensions and wig accessory products, and thus  
27 "offering, promising, or attempting to procure engagements" for Petitioner with third party wig  
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1 companies (the "Option Agreement" even contemplates a national television appearance).

2 5. In August 1996, Healey attempted to procure, and did procure, a wig manufacturing  
3 company named Amekor Industries, Inc. (hereafter "Amekor") which wanted to enter into an  
4 endorsement deal with Petitioner. The endorsement deal contemplated Petitioner to attach her  
5 name and likeness to Amekor's wigs and other products while also providing modeling and  
6 acting services to promote the "Beverly Johnson" line of Amekor-manufactured wigs, hair  
7 extensions and wig accessory products. Healey then travelled with Petitioner to Pennsylvania to  
8 introduce Petitioner to her contacts at Amekor. On that trip, Healey procured an "Endorsement  
9 Contract" for Petitioner with Amekor, which was finalized on August 1, 1996. The "Endorsement  
10 Contract" called for Petitioner to engage in modeling and acting for Amekor promotional  
11 materials, commercials and advertisements.

12 6. On October 29, 1996, Amekor, EMA and Petitioner entered into a "Letter of  
13 Clarification" which modified the "Endorsement Contract" and included a term calling for  
14 Amekor to make an accounting to Respondent of all sales of products and all royalties earned to  
15 date under the "Endorsement Contract" at the end of each calendar quarter.

16 7. On May 1, 1997, Healey negotiated a second amendment to the "Endorsement  
17 Contract," entitled "Amendment Number 2," on Petitioner's behalf, which directed Amekor to  
18 pay twenty-five to thirty percent of all monies payable to Petitioner directly to Respondent EMA.  
19 The "Endorsement Contract" identifies Ms. Healey's company, EMA, as the "Agent."

### 20 III. LEGAL ANALYSIS

#### 21 A. The issues here are:

22 A. Whether Beverly Johnson acted as an "artist" in carrying out the terms of the  
23 "Endorsement Contract"?

24 B. Whether Respondents acted as unlicensed talent agents when procuring the  
25 "Endorsement Contract" for Petitioner?

26 C. Whether Respondents should disgorge commissions received from the "Endorsement  
27 Contract" it allegedly procured for Petitioner as an unlicensed talent agent?  
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1           **B. Conclusions:**

2           1. The Labor Commissioner has exclusive jurisdiction to determine her jurisdiction over  
3 issues colorably arising under the Talent Agencies Act; thus, she alone is empowered to decide, in  
4 the first instance, whether the facts bring the case within the Act. *Styne v. Stevens* (2001) 26  
5 Cal.4<sup>th</sup> 42, 56. Respondents argue that a choice of law provision included in the “Endorsement  
6 Contract” at issue here deprives the Labor Commissioner of jurisdiction. Respondents’ contention  
7 is incorrect as the choice of law paragraph (Paragraph 15) of the “Endorsement Contract” states  
8 as follows:

9                     Choice of Law. This Contract shall be deemed to be entered into within the  
10                     Commonwealth of Pennsylvania and shall be interpreted and construed under its  
11                     law, *except to the extent any agreement between Agent and Endorser requires*  
12                     *interpretation under California law, which shall then prevail.* (emphasis added)

13           Respondent failed to cite to the second part of the clause reserving jurisdiction over the Agent  
14 (named in the “Endorsement Contract” as “ENTERTAINMENT MARKETING ASSOCIATES”  
15 one of the Respondents and alter-ego of Ms. Healey) / “Endorser” (here Petitioner) relationship  
16 for interpretation under California law. **Further, even had said reservation been omitted, it is**  
17 **the nature of the artist/unlicensed agent relationship underlying the “Endorsement**  
18 **Contract” that is being regulated here, not the “Endorsement Contract” specifically.**

19           2. Labor Code section 1700.4(b) includes “model” and “actress” in the definition of  
20 “artist” and Petitioner is therefore an “artist” within the meaning of section 1700.4(b). Further,  
21 Petitioner performed modeling services for Amekor pursuant to the “Endorsement Contract” all  
22 of which was procured by Respondents without a license. The “Endorsement Contract” explicitly  
23 discusses the “Agent” (Respondent EMA) causing the “Endorser” (Petitioner) to do modeling  
24 work according to the Endorsement Contract’s express terms. The Endorsement Contract  
25 discusses the parties negotiating more deals involving live acting work. Further, other agreements  
26 between Petitioner (or her company B. J. Company, Inc.) and Healey (or one of her alter-egos)  
27 call for specific artist services, including modeling. Thus Petitioner is an “artist” within the  
28 meaning of section 1700.4(b).

          3. Respondents Laurette Healey, Creative License, LLC and Entertainment Marketing

1 Associates at all times herein mentioned, acted as agents of each other and within the course and  
2 scope of such agency in all matters discussed herein. Respondents were the alter-egos of each  
3 other and there existed a unity of interest and ownership among them throughout the relevant time  
4 period here.

5 4. "Talent Agent" is defined at section 1700.4(b) and states, "[t]alent agency" means a  
6 person or corporation who engages in the occupation of procuring, offering, promising, or  
7 attempting to procure employment or engagements for an artist ...."

8 5. Labor Code section 1700.5 provides that "no person shall engage in or carry on the  
9 occupation of a talent agency without first procuring a license therefore from the Labor  
10 Commissioner." Respondents did not possess a talent agency license during any relevant period  
11 herein, nor do they possess one today. Based on the evidence presented, Respondents, collectively  
12 and individually, operated as a "talent agency" within the meaning of section 1700.4(b) in  
13 procuring the "Endorsement Contract" for Petitioner with Amekor Industries, Inc. despite not  
14 being licensed by the State of California as a talent agency, as required by law.

15 In *Waisbren v. Peppercorn Production, Inc* (1995) 41 Cal.App.4th 246, the court held that  
16 any single act of procuring employment subjects the agent to the Talent Agencies Act's licensing  
17 requirements, thereby upholding the Labor Commissioner's long-standing interpretation that a  
18 license is required for any procurement activities, no matter how incidental such activities are to  
19 the agent's business as a whole. The term "procure," as used in this statute, means "to get  
20 possession of: obtain, acquire, to cause to happen or be done: bring about." *Wachs v. Curry*  
21 (1993) 13 Cal.App.4th 616, 628 (overruled on other grounds).

22 Here Respondents' actions went far beyond incidental or infrequent, and ultimately led to  
23 a long-term deal with Amekor that included the rendering of a significant amount of the artist's  
24 services. Respondents not only procured the Amekor deal for Petitioner, but continued to re-  
25 negotiate and extend the deal over the ensuing years. This is exactly what a licensed talent agent  
26 is permitted to do and exactly the behavior unlicensed persons are prohibited from engaging in.

27 Respondents argue that since the initial deal was structured as an Option Agreement,  
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1 Petitioner was their employee, and thus Respondents did not act as an unlicensed talent agent.  
2 Respondents failed to present evidence at hearing that Petitioner was their employee, an even  
3 more highly regulated relationship that, if true, should have been proven through documents  
4 including, but not limited to, payroll records or itemized wage statements. Instead Respondents  
5 attempt to mischaracterize what was an "artist" / "agent" relationship through argument alone.  
6 Respondents attempt to obfuscate what is plain to see: Petitioner was an "artist" within the  
7 meaning of the Act and Respondents procured her work as a model and actress in the form of an  
8 Endorsement Contract with Amekor. The status of Petitioner as an employee is an affirmative  
9 defense to the allegation that Respondents acted as unlicensed talent agents, for which  
10 Respondents carry the burden of proving; they failed to do so here.

11 Representation seems to be the chief characteristic of agency while control by the  
12 employer is the primary element of employment. Intent of the parties also plays an important role  
13 in establishing the true nature of the relationship. Utilizing those standards, it becomes abundantly  
14 clear that Respondents acted as Agents and not as respondent contends, as an employer.  
15 Respondents approached companies, used their independent judgment and discretion in seeking  
16 to advance the public persona of Petitioner and negotiated finances with third parties on  
17 Petitioner's behalf.

18 The evidence presented demonstrates that, at least on some occasions, Respondents  
19 procured modeling and contemplated live acting work for Petitioner with Amekor. Despite  
20 Respondents' efforts to structure its operations so as to avoid the requirements of the Talent  
21 Agencies Act, Respondents violated the Act by operating as "talent agents" without the requisite  
22 license.

23 6. Petitioner established that Respondents acted as her unlicensed talent agent in violation  
24 of the California Talent Agencies Act in both originally procuring the deal in 1996, as well as in  
25 each subsequent renegotiation of the "Endorsement Contract" between Petitioner and Amekor.  
26 Respondents' acts of procuring, negotiating, re-negotiating and extending the "Endorsement  
27 Contract" as an unlicensed talent agent violated the Act.  
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1 in this matter, December 23, 2008, to the present.

2 3. Respondents LAURETTE HEALEY, an individual; ENTERTAINMENT  
3 MARKETING ASSOCIATES, a sole proprietorship; and, CREATIVE LICENSE, LLC a  
4 cancelled California Limited Liability Company have no further enforceable rights under the  
5 "Endorsement Contract" and/or any other agreement stemming therefrom starting from the date  
6 the Petition was filed, December 23, 2009.


7 **IT IS SO ORDERED.**

8 Dated: October <sup>9<sup>m</sup></sup> 2018

Respectfully Submitted,

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By:   
Max D. Norris  
Attorney for the Labor Commissioner

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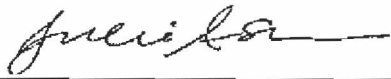
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**ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER**

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Dated: October 8, 2018

By:   
Julie A. Su  
California State Labor Commissioner

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1 PROOF OF SERVICE

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

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

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

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


9 Joseph E. Porter, III, Esq. J. Larson Jaenicke, Esq.  
10 LAW OFFICES OF JOSEPH E. PORTER, III AnnMarie De Vita, Esq.  
206 3<sup>rd</sup> Street RINTALA, FRASER & JAENICKE LLP  
11 Seal Beach, CA 90740 1801 Century Park East, Suite 1600  
Los Angeles, CA 90067

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  
with the United States Postal Service this same day in the ordinary course of business at  
15 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  
16 postage meter date on the envelope is more than one day after the date of deposit for  
mailing contained in this affidavit.

17  (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.

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

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

21   
22 \_\_\_\_\_  
Lindsey Lara  
23 Declarant