

1 DIVISION OF LABOR STANDARDS ENFORCEMENT  
2 Department of Industrial Relations  
3 State of California

4 BY: BARTON L. JACKA, SBN 154116  
5 2031 Howe Avenue, Suite 100  
6 Sacramento, CA 95825  
7 Telephone: (916) 263-2918  
8 Fax: (916) 263-2920  
9 E-mail: bjacka@dir.ca.gov

10 Attorney for the Labor Commissioner

11 **BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT**

12 **DEPARTMENT OF INDUSTRIAL RELATIONS**

13 **STATE OF CALIFORNIA**

14 ANNELIESE ZELINA, an individual,

15 Petitioner,

16 v.

17 THE PINKERTON MODEL AND TALENT  
18 COMPANY, LLC, a California limited liability  
19 company,

20 Respondent,

Case No.: TAC 30114

**DETERMINATION OF  
CONTROVERSY (LABOR CODE §  
1700.44(a))**

1 **DETERMINATION**

2 **I.**

3 **INTRODUCTION**

4 Anneliese Zelina's January 23, 2013 petition (the "Petition") against The Pinkerton  
5 Model and Talent Company, LLC<sup>1</sup> ("Pinkerton"), a California limited liability company (Ms.  
6 Zelina and Pinkerton collectively the "Parties") to determine controversy pursuant to Section  
7 1700.44 of the Labor Code was heard on April 11, 2014 in the Los Angeles office of the Labor  
8 Commissioner (the "Labor Commissioner"), Division of Labor Standards Enforcement,  
9 Department of Industrial Relations, State of California. Barton L. Jacka, an attorney for the  
10 Labor Commissioner from the Sacramento office, heard the matter on assignment by the Labor  
11 Commissioner.

12 Ms. Zelina appeared, in pro per and was her only witness. No employee, attorney or  
13 other person appeared for Pinkerton and no witness appeared offering to proffer testimony for  
14 Pinkerton.

15 Ms. Zelina did not provide a proper proof of service of the Petition on Pinkerton but  
16 nevertheless, Pinkerton responded to the Petition; it also was served by mail, both at its  
17 headquarters and through its agent for service of process with the February 27, 2014 notice of  
18 hearing.

19 After the hearing, Lynn Venturella, on behalf of Pinkerton, contacted the Hearing  
20 Officer by e-mail and asked for a "new hearing" because she thought that the hearing was on a  
21 different date than it was; that request, based on the Hearing Officer's review of the notice of  
22 hearing and proof of service of same, was not granted.

23  
24  
25 \_\_\_\_\_  
26 <sup>1</sup> The Petition names as respondent, "Pinkerton Model and Talent Management" but both the attachments to the  
27 Petition and Pinkerton's April 5, 2013 response to the Petition (which also includes a copy of Pinkerton's talent  
28 agency license issued by the Labor Commissioner) make it clear that "Pinkerton Model and Talent Agency, LLC"  
was the proper respondent, responded to the Petition and was given notice of the hearing.

1 II.

2 PLEADINGS AND HEARING

3 **A. Allegations of the Petition.**

4 The Petition is somewhat confusing because it never alleges that Ms. Zelina is an  
5 “artist” who is seeking to recover from a “talent agency”, as both are defined in Section 1700.4  
6 of the Labor Code; instead, Pinkerton is alleged both to be the “artist” and to be the “talent  
7 agency” in the controversy. In all other respects, however, the Petition outlines the dispute:  
8 namely, that the Parties entered into a contract entitling Pinkerton to a 20% commission on  
9 certain sums and that Ms. Zelina did not receive her 80% on two modeling jobs for “Forever  
10 21”. Each of these jobs paid \$720.00, from which Pinkerton was entitled to retain a 20%  
11 commission and with respect to which Pinkerton was required but failed to tender \$576.00 –  
12 for a total of \$1,152.00.

13 The Petition, in addition to seeking this \$1,152.00, also seeks “waiting time penalties  
14 for \$576.00 a day working 8 hours and interest.” In connection with this latter set of claims,  
15 the Petition attaches an Initial Report or Claim (the “Claim”) that Ms. Zelina filed with the  
16 Labor Commissioner on November 19, 2012 pursuant to Section 98 of the Labor Code. The  
17 Claim alleges that Ms. Zelina was an employee of Pinkerton from April 5, 2011 to September  
18 13, 2013, when she quit with 72-hours’ notice, that she was paid by commission, that from the  
19 period from August 13, 2012 to October 8, 2012 she earned \$3,456.00 in commissions, was  
20 paid \$576.00 and is owed \$2,880.00, plus waiting time penalties under Labor Code Section  
21 203. A January 23, 2013 note from the Labor Commissioner’s office, apparently in connection  
22 with the Claim, states that the matter (State Case No.: 06-107733-RR) originally was treated as  
23 a wage claim and then, at conference, was discovered to be a talent agency controversy.

24 **B. Pinkerton’s response to the Petition.**

25 On April 12, 2013, Pinkerton filed its response (the “Response”) to the Petition; the  
26 response was signed by Ms. Venturella, identified in the Response as Pinkerton’s chief  
27 executive officer and director.  
28

1 In the Response, Pinkerton states that its legal name and the name under which it is  
2 licensed by the Labor Commissioner is "The Pinkerton Model and Talent Company, LLC" (not  
3 the name "Pinkerton Model and Talent Management" used in the Petition) and challenges  
4 service on several grounds. Pinkerton then, however, proceeds to address the merits of the  
5 Petition, admitting that it owes money to Ms. Zelina but that it is "open to addressing the actual  
6 dues found to be owed to" her. Pinkerton then admits that it owes \$716.00 to Ms. Zelina under  
7 its agreement to act as her talent agent and states that it "resolves to pay Anneliese [Zelina] the  
8 amount owed of \$716.00 ... and \$50 ... to cover interest." It attaches as exhibits copies of two  
9 April 4, 2013 checks (Nos. 2587 and 2588) made out to Ms. Zelina in these respective sums,  
10 but does not indicate that it actually has tendered or tried to tender the checks to her.  
11 Moreover, a statement of account that Pinkerton attaches to the Response, apparently showing  
12 sums received by Pinkerton on behalf of Ms. Zelina, retained by Pinkerton in commissions and  
13 tendered to Ms. Zelina, references neither of the two checks and shows a "GRAND TOTAL  
14 DUE" of \$716.00.

15 **C. Ms. Zelina's testimony.**

16 Ms. Zelina testified that at the time of hearing, in connection with the Response, she  
17 had not received Check No. 2587 or 2588.

18 She then testified that she had a contract with Pinkerton to help her obtain modeling  
19 jobs and that pursuant to that agreement, she was to receive 80% of sums paid to Pinkerton for  
20 her work. On several occasions from July to October 2012, Ms. Zelina modeled for Forever 21  
21 at a rate of \$80 per hour, for 9 hours per day, or \$720 per day. Forever 21, which itself paid a  
22 commission<sup>2</sup> to Pinkerton, sent Pinkerton a check for \$864 on each of those occasions and that  
23

---

24 <sup>2</sup> Ms. Zelina described the commission that Forever 21 paid to Pinkerton as being 20% but also, as discussed  
25 below, testified that of the \$864 paid by Forever 21 to Pinkerton, she only "earned" (again to be subject to a 20%  
26 commission to Pinkerton) \$720; it appears that the actual commission paid by Forever 21 to Pinkerton was 16.7%  
27 (i.e.,  $(1 - (\$720/\$864))$ ). This testimony is consistent with the account statements provided by Ms. Zelina that, she  
28 testified, had been provided to her by Forever 21.

1 Pinkerton was required by its agreement with Ms. Zelina to send her a check for \$576 (i.e.,  
2 80% of the \$720 that she earned each day) within 30 days.

3 The \$144 difference between the \$864 that Forever 21 paid Pinkerton and the \$720.00  
4 that Ms. Zelina earned was paid to Pinkerton by Forever 21 as a separate commission. Ms.  
5 Zelina acknowledged that, on occasion, Pinkerton was entitled to retain more than its 20% if it  
6 had paid sums on her behalf (e.g., photographs). Because Ms. Zelina was an independent  
7 contractor, Pinkerton did not deduct taxes from the checks that it sent to her.

8 Pinkerton, however, did not pay Ms. Zelina for two days' work, as reflected in the  
9 following invoices from Pinkerton to Forever 21: Invoice J890, dated August 15, 2012 and  
10 paid by Forever 21 on September 4, 2012 in the form of a check for \$864; and Invoice J933,  
11 dated September 17, 2012 and paid by Forever 21 on October 8, 2012 in the form of a check  
12 for \$864.

13 Ms. Zelina testified to several attempts to obtain the money from Pinkerton, up to and  
14 after she terminated her relationship with the agency; she also provided copies of  
15 correspondence between her and Ms. Venturella. This correspondence (which includes  
16 discussions about a separate-but-resolved dispute over two other Forever 21 jobs) seems to  
17 confirm that in March and April 2013, Pinkerton acknowledged owing Ms. Zelina at least the  
18 \$716 referenced in the Response (one e-mail states that Pinkerton owes \$916). Although there  
19 are discussions about Pinkerton paying a larger sum to Ms. Zelina in order to settle the matter,  
20 no explanation is given, other than Pinkerton's error, for Pinkerton's failure timely to pay at  
21 least the undisputed \$716 and the attachments to the Response do not make it clear when this  
22 undisputed sum first was owed or to which Forever 21 invoices it pertains.

### 23 III.

#### 24 FINDINGS OF FACT

25 1. Under the agreement between Ms. Zelina and Pinkerton – the latter a licensed  
26 talent agent – Pinkerton was entitled to 20% (i.e., \$144) of the \$720 that constituted one days'  
27 pay for Ms. Zelina for her Forever 21 modeling jobs; the \$144 difference between \$720 and the  
28

1 \$864 that Pinkerton received from Forever 21 on each day that Ms. Zelina modeled for Forever  
2 21 constituted a separate commission from Forever 21 to Pinkerton.

3 2. Under the agreement between Ms. Zelina and Pinkerton, Pinkerton was  
4 therefore obligated, within 30 days of its receipt of a check from Forever 21, to pay Ms. Zelina  
5 80% of her \$720 pay – i.e., \$576.

6 3. On two occasions, reflected in: Invoice J890, dated August 15, 2012 and paid to  
7 Pinkerton on September 4, 2012; and Invoice J933, dated September 17, 2012 and paid to  
8 Pinkerton on October 8, 2012, Pinkerton failed timely (i.e., by September 19, 2012 and by  
9 October 17, 2012, respectively)<sup>3</sup> to tender \$576 to Ms. Zelina - for a total of \$1,152.

10 4. Pinkerton has never tendered any portion of these two \$576 payments to Ms.  
11 Zelina and has not tendered to her even the \$716 that, in its Response, it admits it owes.

#### 12 IV.

#### 13 CONCLUSIONS OF LAW

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

22 Pursuant to Section 1700.25:  
23  
24

25 \_\_\_\_\_  
26 <sup>3</sup> The date of the check is not necessarily the date of receipt and so, out of a desire to be fair to Pinkerton, 5 days  
27 (for mailing, based on the assumption that each check was mailed on its issue date) have been added to the 30 days  
28 following the date of the check to determine the date on which Pinkerton should have tendered Ms. Zelina her  
80%.

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

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

9 ...

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

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

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

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

24 ...

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

27 As a preliminary matter, while the March 25, 2013 proof of service of the Petition  
28 appears to be defective, Pinkerton responded substantively to the Petition in the Response and

1 was properly served with the February 27, 2014 notice of hearing. Moreover on April 14,  
2 2014, Ms. Venturella e-mailed the Hearing Officer: "Dear Mr Barton, I realized that I made a  
3 mistake. I thought my hearing was today but it was actually on Friday. I am so sorry what can  
4 I do to fix it. Can I get another hearing? Best regards, Lynn." Accordingly, Pinkerton's  
5 objection to service is waived. See C.C.P. § 410.50(a); Fireman's Fund Ins. Co. v. Sparks  
6 Const. Co., 114 Cal. App. 4<sup>th</sup> 1135, 1145 (2004) (general appearance forfeits objection to  
7 defective service).

8 The evidence is undisputed that Pinkerton, on two occasions, failed to tender \$576  
9 owed to Ms. Zelina as constituting the 80% she was owed, post-commission, on the \$720 she  
10 earned from 9-hours' work modeling for Forever 21. The sums have been due and owing since  
11 at least October 17, 2012. See § 1700.25(a).

12 Pinkerton acknowledges owing Ms. Zelina \$716 but has failed and refused to tender  
13 even that amount. While this failure might have had a different consequence if Ms. Zelina –  
14 perhaps fearful of compromising her Petition by accepting the undisputed sum even while  
15 stating that she would pursue her claim to the remainder – had refused to accept tender of the  
16 \$716, Pinkerton never even attempted tender.

17 On the other hand, it is not clear why Pinkerton did not pay the \$436 that constitutes the  
18 difference between the \$1,152 that Ms. Zelina has shown she owes and the \$716 that Pinkerton  
19 acknowledges owing. The statement of account attached to the Response shows a variety of  
20 payments from clients (such as Forever 21) to Pinkerton and from Pinkerton to Ms. Zelina,  
21 along with other deductions (consistent with Ms. Zelina's testimony) that Pinkerton had made  
22 from sums it otherwise would have owed to Ms. Zelina. Accordingly, while Pinkerton's failure  
23 to pay the \$716 appears to be "willful"; the remaining \$436 may not be. Therefore, pursuant to  
24 Section 1700.25(e) and (e)(2), Ms. Zelina is awarded interest the rate of 10% per year on the  
25 \$716 since October 17, 2012 – a total in interest of \$166.35.<sup>4</sup>

26  
27  
28 <sup>4</sup> The Petition appears to seek "waiting time penalties" at the daily rate of \$576 under Section 203 of the Labor  
Code based on the theory that the \$1,152 constitutes "final wages" that Pinkerton failed to pay Ms. Zelina. Ms.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

V.  
ORDER

The relief sought in the Petition is granted as follows:

Pinkerton shall pay Mr. Zelina: \$1,152.00 for failure to pay her sums owed to her under their agreement; and \$166.35 in interest; for a total of: **\$1,318.35**.

**Respectfully submitted:**

Dated: February 12, 2015

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: \_\_\_\_\_

\_\_\_\_\_  
JULIE A. SU  
CALIFORNIA LABOR COMMISSIONER

Zelina did not pursue or discuss this claim during the hearing. The evidence supports the conclusion that she was an independent contractor who retained Pinkerton to help her get modeling jobs and that she was not an employee of Pinkerton who was owed wages by Pinkerton for her work.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

V.

ORDER

The relief sought in the Petition is granted as follows:

Pinkerton shall pay Mr. Zelina: \$1,152.00 for failure to pay her sums owed to her under their agreement; and \$166.35 in interest; for a total of: **\$1,318.35.**

**Respectfully submitted:**

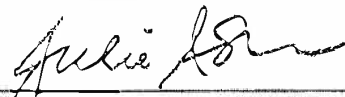
Dated: February 12, 2015

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

By:   
BARTON L. JACKA  
Attorney for the Labor Commissioner

**Adopted as the determination of the Labor Commissioner:**

Dated: 2-13-2015

  
JULIE A. SU  
CALIFORNIA LABOR COMMISSIONER

Zelina did not pursue or discuss this claim during the hearing. The evidence supports the conclusion that she was an independent contractor who retained Pinkerton to help her get modeling jobs and that she was not an employee of Pinkerton who was owed wages by Pinkerton for her work.

PROOF OF SERVICE

(C.C.P. 1013)

CASE NAME: *Anneliese Zelina v. Pinkerton Model and Talent Management*  
CASE NO: TAC - 30114

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 18, 2015 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

Anneliese Zelina  
7254 Hollywood Boulevard, #13  
Los Angeles, CA 90046

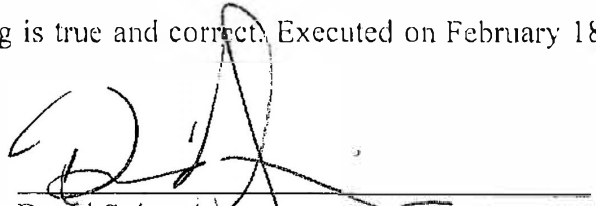
Lynn Venturella  
The Pinkerton Model and Talent Company, LLC  
9001 Laurel Canyon Boulevard, #202  
Sun Valley, CA 91352

Lynn Venturella  
The Pinkerton Model and Talent Company, LLC  
P.O. Box 69186  
West Hollywood, CA 90069

Lynn Venturella  
The Pinkerton Model and Talent Company, LLC  
8500 Wilshire Boulevard, #527  
Beverly Hills, CA 90211

Lynn Venturella  
The Pinkerton Model and Talent Company, LLC  
26819 Las Mananitas Drive  
Santa Clarita, CA 91354

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 18, 2015 at Sacramento, California.



---

David Spicer  
Assistant to Barton Jacka