DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relation, State of California
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BEFORE THE LABOR COMISSIONER

OF THE STATE OF CALIFORNIA

SCOTT MONTOYA; PAYASO ENTERTAINMENT INC., Petitioners, vs. DAVID SHAPIRA & ASSOCIATES, Respondent,	Case No. TAC 17129 **DETERMINATION OF CONTROVERSY [Labor Code § 1700.44(a)]**

The above-captioned matter, a Petition for Determination of Controversy under Labor Code §1700.44, came on regularly for hearing on September 14, 2010 in Los Angeles, California, before Robert N. Villalovos, Attorney for the Labor Commissioner, assigned to hear this matter.

Petitioners SCOTT MONTOYA and PAYASO ENTERTAINMENT, INC., appeared and were represented by John G. Burgee, Esq., of Burge & Abramoff, P.C. Respondent DAVID SHAPIRA & ASSOCIATES appeared and was represented by S. Michael Kernan, Esq. and Jessica Wood, Esq., of the Law Offices of Stephen M. Kernan.

INTRODUCTION

Petitioners allege that the parties entered into a written agreement on or about October 10, 2002 with DSA, a licensed talent agency, to represent Petitioners in connection with a finished production of a feature length motion picture entitled *The Original Latin Kings of Comedy* which had been acquired and distributed by Paramount Pictures. The written agreement provided that DSA's clients, Payaso Entertainment Inc. and/or Scott Montoya, rendered creative services in connection with the picture. Petitioners maintain that the contract was not approved by the Labor Commissioner as required for talent agency contracts and fails to contain contract provisions mandated by the TAA, and is thus invalid and unenforceable. Petitioners assert that Respondents are not entitled to any commissions under the agreement except as compensation for Petitioners' artistic services.

Following filing and service of the Petition to Determine Controversy, Respondent filed responsive papers in the form of a Motion to Dismiss Labor Commissioner Action on the grounds that Petitioners 1) were not "artists", 2) failed to state how the TAA was violated, and 3) there was no procurement of employment within the meaning of the TAA. Respondent seeks dismissal of the petition on grounds that the purpose and effect of the agreement constituted representation of Petitioners in selling a finished film to Paramount Pictures and did not involve procurement of employment for Petitioners. Respondent maintains that Petitioners were not "artists" within the meaning of the TAA since the context of the Respondent's representation under the agreement addressed the sale of a completed film and was not for any creative services. For these reasons, Respondent seeks dismissal of the petition on grounds that the Labor Commissioner lacks jurisdiction over the dispute under the TAA.

RESPONDENT'S MOTION TO DISMISS

1. On August 4, 2010, the parties were notified the matter was set for hearing on September 14, 2010. Respondent sought clarification of whether the hearing was on its pending motion to dismiss or on the merits. On August 13, 2010, the undersigned hearing officer provided clarification in writing that a ruling on the pending motion to dismiss is reserved for determination at or following the hearing on the merits. The petition and responsive papers indicated that a

sufficient dispute existed and that the motion to dismiss based on a *proposed* set of undisputed facts which was unsuited for summary disposition in an administrative proceedings to determine a dispute under Labor Code § 1700.44. At the hearing, the parties were provided full opportunity to address the pending motion to dismiss and the merits of the petition.

2. For purposes of the ruling on the motion to dismiss, Respondent maintains in its motion papers that the Labor Commissioner lacks jurisdiction because the activities performed under the agreement did not involve procurement of employment for Petitioners and that Petitioners were not "artists" within the meaning of the TAA and thus not covered by its provisions. It is clear that the petition filed in this matter alleges existence of an agreement which purports to invoke a talent agency relationship between the Petitioners and Respondent, a licensed talent agency, which Petitioners seek to void for failure to comply with the statutory requirements under the TAA.

3. As there is a dispute over the purposes and interpretations of the agreement which is the subject of dispute as well as the activities performed by the parties pursuant to such agreement which must be heard and determined to determine coverage under the TAA, summary dismissal of the petition is inappropriate and Respondent's motion to dismiss due to lack of jurisdiction on the grounds stated therein is denied. Summary motions to dismiss a petition pre-hearing are only appropriate for jurisdictional challenges on undisputed facts.

Accordingly, based on the entire record, including evidence presented at the hearing and on all papers on file in this matter, the disputed controversy is determined as follows.

FINDINGS OF FACT

1. Scott Montoya and Paul Rodriguez developed and co-produced the motion picture *The Original Latin Kings of Comedy*. The motion picture was collaboration between Scott Montoya and Paul Rodriguez which was shot in 2000. Payaso Entertainment, Inc. is a California corporation and a loan out company for the services of Scott Montoya and the production company for the picture.

2. DSA is a sole proprietorship of David Shapira and is a licensed talent agency under the provisions of the TAA. Douglas Warner is employed as a talent manager with DSA. After filming of the picture was completed, Warner viewed parts of the film after which DSA and Montoya verbally agreed that DSA would sell the film to a distributor. Warner testified that that DSA rendered services, made introductions, set meetings, and arranged viewings of the film for the purpose of selling it to a distributor and he personally made efforts to sell the film rights following an oral agreement that DSA would undertake to sell the film.

3. Paramount Pictures was shown parts of the film and an oral agreement for Paramount to distribute the film was made. On January 11, 2002, Paramount Pictures and Payaso Entertainment executed a "License Agreement" which granted Paramount Pictures the exclusive right to "manufacture, reproduce, sell license, exhibit, broadcast, transmit, distribute, publicize, advertise, market, promote and otherwise exploit the picture."

4. On October 10, 2002, Petitioners and Respondent executed a Memorandum Agreement (Agreement) which provides that DSA represented Petitioners *as a talent agent* in connection with the production of the motion picture which was a "finished production" which "has been acquired by and is being distributed by Paramount ...." The Agreement also provides that "DSA is entitled to receive *commissions* equal to ten (10%) percent of (i) all monies (in excess of union scale payments) received by Client for services rendered in connection with the Picture including commissions heretofore paid or hereafter becoming due and (ii) 10% of all monies received by Client as its/his Participations from Paramount's distribution and exploitation of the Picture and any rights therein."

5. The parties do not dispute that the Agreement memorialized their earlier oral agreement but differ on the purpose, scope, and meaning of the Agreement.

6. Montoya's screen credit for the film is producer and executive producer. Montoya testified that his compensation for the picture was for a "producer's fee" of approximately $125,000 which was deferred due to constant budget issues and that he has not received any producer fees for the film. Montoya's testified without dispute that he worked on the design and did some camera work shooting dancers (but ultimately cut from the film). After the director left

the project, Montoya performed director activities putting the show together. Montoya testified he also provided creative input which included sound mixing, sound choices, tests at the theatre, clearing music, designed the cover, and did some artwork.

7. Montoya testified that he was shown the written Agreement by DSA when the film aired at Showtime but did not thoroughly review it and was not given a copy after he signed it. At the time, he understood that the agreement memorialized the prior oral understanding that provided 10% compensation to DSA from Montoya's "producer's fee." Montoya states that, after the oral agreement with DSA, he performed creative services which including writing scenarios and an opening for the film, sound mixing, sound choices, running theatre tests, clearing music, designing the DVD cover, and generally completing the project.

8. Regarding compensation to DSA, Montoya testified that he recalled telling Warner that a percentage of fees would be paid to DSA when Montoya got paid. Montoya stated that due to the financial burdens during the production of the film, his "producer's fee" was deferred and he has not received a "producer's fee" in connection with the film. Montoya testified that DSA had other agreements with others involved in the project which he understood provided DSA with 10% of their compensation, and he understood his agreement to be the same. According to Montoya, any agreement for DSA to receive payment on "gross" revenues would have been ludicrous and would have presented a major problem especially with so much debt on the project. Montoya understood his agreement with DSA was to compensate DSA's for its services, but he has not been paid for his services and never will.[1] Montoya stated that initial funding for production of the film was independently raised but continuing financing was an on-going problem and additional money was needed to finalize the picture for distribution. The needed money for finalization of the picture was subsequently provided by Paramount which was largely controlled and distributed directly by Paramount to vendors and creditors.

[1] According to Montoya, in February 2005 a suit was filed by Paul Rodriguez, a creative partner of the film project, against Payaso Entertainment and Montoya. The dispute resulted in a settlement and release of claims and counterclaims whereby Montoya and Payaso assigned all rights to Rodriguez. Montoya stated he received no monies prior to the settlement and has no expectation to receive any money from Paramount.

9. DSA's witness, Douglas Warner, testified that Montoya was an executive producer and Payaso Entertainment, Inc. was the production company for the film. Warner testified that DSA and Petitioners had a previous oral agreement that Respondent would sell the film to a distributor which was entered into after footage for the film was completed. Warner testified that the Agreement memorialized the previous relationship between the parties; and further, that although the Agreement indicates that "creative services" were performed, DSA did not represent Montoya for any creative services and did not procure *any* employment for him. Warner indicated that the Agreement was to memorialize the previous activities and services prior October 10, 2002, all of which were to sell the film to a distributor. He stated that he did not draft the Agreement, but is aware that the form of the Agreement is not a typical agreement between DSA and artists for talent agency representation. Warner testified that there was no prior agreement to represent Montoya for creative services and DSA did not represent Montoya for his creative services on the film project. According to Warner, DSA was to receive for its services in selling the film 10% of the gross revenues generated by the film.

10. The language in the Agreement supports a finding that the events described in the Agreement's recitals, including DSA's services in selling the film occurred prior to October 10, 2002. While Montoya and DSA offered varying explanations regarding the nature of both the prior oral agreement and the subsequent written Agreement which both parties maintain was to memorialize their previous agreement, the written agreement executed by the parties controls the agency relationship between the signatory parties.

11. The Agreement addresses two distinct subjects and purposes. First, the recitals acknowledge that a *completed film was sold* to Paramount Pictures and is supported by the License Agreement executed on January 11, 2002, by Payaso Entertainment and Paramount Pictures. Secondly, the Agreement also acknowledges that the "Client" (described as the corporate entity and/or individual, i.e., Montoya and/or Payaso Entertainment) *rendered creative services in connection with the production* of the motion picture. (Agreement, ¶ B)

12. These two distinct objects of the Agreement are further reflected in the language regarding compensation and revenue payments which will be received by both clients in

connection with the film for *services rendered* and additional payments of *participations* from Paramount. (Agreement ¶ C) Also, the provision for compensation to DSA for its services to both clients similarly correspond to these two subjects in that DSA is to receive commissions of 10% "of (i) all monies (in excess of union scale payments) received by Client for *services rendered* in connection with the Picture ... and (ii) 10% of all monies received by Client as its/his *Participations from Paramount's distribution and exploitation of the Picture* and any rights therein." (Agreement, ¶ 1)

13. Montoya admitted that DSA did not make any deal between Montoya and Payaso Entertainment regarding his services; DSA did not make any deal between Montoya and investors on the project regarding his services; Paramount did not hire Montoya for production related services; and there was no employment of Montoya by Paramount regarding the film.

14. DSA filed suit against Montoya and Payaso Entertainment currently pending in Los Angeles County Superior Court (Case No. BC435824) for breach of contract, accounting, unjust enrichment, misrepresentation, concealment, and seeks monies allegedly due DSA under the subject Agreement. The judicial action is currently pending and awaiting determination by the Labor Commissioner of the controversy under the instant petition.

CONCLUSIONS OF LAW

Jurisdiction

1. The Labor Commissioner has jurisdiction to determine this controversy pursuant to Labor Code § 1700.44. The instant controversy consists of a dispute regarding an agreement which purports to include a licensed talent agency's representation of an alleged artist (Montoya) who performed creative services on a film and raises issues regarding rights and activities of Montoya, Payaso Entertainment, and DSA under the TAA. It is not disputed that DSA is a talent agency licensed by the Labor Commissioner pursuant to the licensing requirement under Act.[2]

[2] The term "talent agency" is defined as "a person or corporation who engages in the occupation of procuring employment or engagements for an artist or artists ...." (Labor Code § 1700.04(a)) No person shall engage in or carry on the occupation of a talent agency without first procuring a license from the Labor Commissioner. (Labor Code § 1700.5)

2. Contrary to the allegations in the petition and language in the Agreement, DSA maintains that, as preliminary matters affecting coverage of the TAA (and jurisdiction of the Labor Commissioner), it did not represent Montoya for creative services in connection with the production of the picture but provided services regarding the sale of the license to Paramount on behalf of Montoya and Payaso Entertainment. DSA further argues that Montoya was not an "artist" within the meaning of the TAA and that DSA did not procure any employment for Montoya which is a required activity for coverage under the Act.

3. DSA's proffered position disregards provisions in the Agreement which contain express recital to the contrary that acknowledge both that DSA "is a talent agency and that, as such, represented Montoya and Payaso as his/its agent in connection with the production of the motion picture." While there is credible evidence from both parties that DSA *in fact* performed services of "selling" a completed film to Paramount and did *not* procure employment for Montoya in connection with the picture, the Agreement is quite clear in its intent that DSA represent Montoya as a talent agent in connection with the production of the film.

4. The Agreement contains an integration clause which states that the written memorandum is the entire understanding of the parties with respect to the picture and the agreement can only be modified by a subsequent writing signed by all parties. In spite of the integration clause, DSA argues that because its understanding of its services was only to sell the finished film, the reference to performing services as a talent agent for Montoya's creative services was inaccurate or a mistake in the written Agreement. DSA thus attempts to modify the Agreement to only pertain to its right to compensation for selling the film in disregard of language acknowledging performance of creative services and DSA intent to represent Montoya as a talent agent.

5. Since the petition seeks review of the Agreement and a determination of its validity under the TAA, DSA cannot avoid jurisdiction of the Labor Commissioner regarding the dispute under the Agreement through evidence that, *in fact*, no talent agency representation

occurred, or that Montoya was not an artist under the TAA. To allow otherwise would effectively prevent or impede the Labor Commissioner from its charged duty to enforce talent agency requirements and determine disputes between artists and agents under the Act.

6. Accordingly, the Labor Commissioner has jurisdiction to determine the dispute stated in the petition under Labor Code § 1700.44(a).[3]

Violations of the TAA

7. The term "artist" is defined to include "persons rendering professional services in motion picture, theatrical, radio, television and other enterprises." (Labor Code § 1700.04(b)) The term "professional services" as used in Labor Code § 1700.04(b), has been interpreted by the Labor Commissioner as limited to services that are of a creative or artistic nature. (*William Morris Agency, LLC v. O'Shannon et al,* TAC 06-05, p.10)

8. It is undisputed that Montoya was a producer and that Payaso Entertainment was the production company for the film. DSA maintains that Montoya's role as a producer and executive producer of the film shows that he was not an "artist" under the TAA. DSA cites Labor Commissioner TAA determinations which purportedly indicate that a "producer" is not an "artist." An examination of the proposition, however, reveals that while, ordinarily, a "producer" is not expressly included in the definition of "artist," the inquiry is whether the person who purportedly is a producer renders covered services. "In order to qualify as an 'artist,' there must be some showing that producer's services are artistic or creative in nature, as opposed to services of an exclusively business or managerial nature." (*William Morris Agency, LLC v. O'Shannon,* TAC 06-05, quoting *American First Run, etc. v. OMNI Entertainment Group,* TAC 32-95; see also, *Marathon Entertainment Inc. v. Blasi* (2008) 42 Cal.4th 974, 986 [the Act establishes its scope through a functional definition; it regulates conduct, not labels])

9. When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone; however, a contract may be explained by reference to the

[3] The one year statute of limitations in Labor Code § 1700.44(c) does not apply to affirmative defenses (*Nathaniel Stroman v NW Entertainment, Inc. et al,* TAC 3805; see *Styne v, Stevens* (2001) 26 Cal.4th 42). Here, Petitioner does not seek affirmative relief but raises the TAA act as a defense to DSA's claims under the Agreement.

circumstances under which it was made and the matter to which it relates. (Civil Code §§ 1639, 1647; see, Code of Civil Procedure § 1860) It is also appropriate to look through provisions of a contract with the aid of parole evidence to determine whether the contract is actually illegal or part of an illegal transaction. (Witkin, *Summary of California Law*, 10th Ed., Vol.1, Contracts, §435)

10. Evidence supports that some creative services were performed by Montoya in connection with the production of the film and the creative services were performed both prior to and following sale of the film in January 2002 to Paramount. In addition to the representation in the Agreement that Montoya performed creative services for the motion picture, Montoya testified that he worked on design aspects of the film and did some camera work shooting dancers (but ultimately cut from the film). After the director left the production project, Montoya stated he performed director activities putting the show together.[4] After the film was shot and in finalizing the picture for Paramount, Montoya testified he also provided creative services which included sound mixing, making sound choices, running tests at the theatre, designing, and artwork..

11. Additionally, there is sufficient undisputed evidence to conclude that DSA only performed services to sell a finished production of the film to Paramount. This is consistent with the acknowledgement in the instrument that refers to the acquisition by Paramount of a finished production of the motion picture "...as specified in agreements between such parties [Clients] and Paramount." (Agreement ¶ C) The Agreement does not refer to any other creative services or selling of other projects or productions beyond the specified film.

12. In view of the evidence discussed above, the undersigned concludes that there are two distinct and separate purposes for the underlying Agreement. The Agreement identifies two objects of compensation *receivable by Montoya and Payaso Entertainment from Paramount.* First, compensation for services rendered in connection with the production of the picture; and secondly, additional payments ("participations") from Paramount if and when Paramount has recouped its advances, distribution fees and costs of prints and advertising and the like, all specified in agreements between such parties and Paramount." (Agreement ¶ C)

[4] The statutory definition of "artists" also expressly includes "... *directors of* legitimate stage, *motion pictures* and radio productions, ..." (Labor Code § 1700.4(b) italics added)

13. Similarly, the Agreement further provides two respective aspects of compensation *due to DSA* for its services: (i) 10% *commissions* for all monies (in excess of union scale payments) received by Client for services rendered including commissions heretofore paid or hereafter becoming due, *and* (ii) 10% of all monies received by Client as its/his "participations" from Paramount's distribution and exploitation of the Picture and any rights therein. (Agreement ¶ 1)

14. These two distinct purposes and compensation provisions reveal that the parties sought to provide DSA a stated percentage of Montoya's compensation for personal services, and a stated percentage of "participations" received by Payaso Entertainment under the licensing agreement between *it and Paramount* following the sale of the licensing rights to Paramount.

15. Regarding the TAA, the legislation has a fundamental objective of protecting artists. (*Marathon Entertainment, Inc., supra,* 42 Cal.4th at 984) In addition to requiring anyone who solicits or procures artistic employment or engagements for artists to obtain a license, the TAA establishes detailed requirements for how licensed talent agencies conduct their business, including a code of conduct, submission of contracts and fee schedules to the state, maintenance of client trust account, posting a bond, and prohibitions against discrimination, kickbacks and certain conflicts of interest. (*Id.,* at 985). Unlike cases were a petition was filed under Labor Code §1700.44(a) but denied due to the failure to establish that an unregulated "personal manager" procured or attempted to procure employment for an artist (e.g., *American First Run dba American First Run Studios, et al v. Omni Entertainment Group, et al,* TAC 32-95), here the talent agent specifically purported to perform talent agency services in the written agreement despite the testimony that the agent did not in fact perform talent agency services for Petitioners.

16. Notwithstanding a showing, *de facto,* of no procurement or attempts to procure employment of Montoya, the dispute requires review of the Agreement under the TAA as the agreement purports to establish a talent agency relationship between Montoya and DSA. The Act includes content requirements for contracts entered into between a talent agency and an artist wherein the talent agency agrees to act or function as such for, or on behalf of, the artist. Such agreements must: be consistent with a form of agreement approved by the Labor Commissioner

(Labor Code § 1700.23; 8 CCR § 12001); indicate that the talent agent is licensed by the California Labor Commissioner (Labor Code § 1700.23); provide for referral of disputes to the Labor Commissioner unless arbitration of disputes is provided subject to specified conditions. (Labor Code § 1700.23); and, a talent agency must provide a copy of an executed contract to the artist (8 CCR § 12001.1).

17. The Agreement, as the instrument giving rise to the relationship between an artist and talent agency and compensation for services in connection therewith, must comply with the statutory and regulatory requirements as specified in the TAA with respect to a talent agency's procurement of employment on behalf of an artist. The evidence establishes that the above-cited TAA requirements were not satisfied with respect to the Agreement between Montoya and DSA in connection with DSA's talent agency relationship with Montoya. Therefore, to the extent that the contract provisions purport to establish a talent agency relationship and corresponding compensation to DSA, the Agreement violates the TAA.

Remedy for Violations

18. A contract is illegal where it is contrary to an express provision of law or contrary to the policy of express law. (Civil Code § 1667) Where illegality occurred in the formation of the contract, it (or its unlawful severed provision) is void and unenforceable. (*Buchwald v. Superior Court* (1967) 254 Cal.App.2d 347, 351 [contracts between unlicensed talent agents and artists and *otherwise in violation of the Act* are void]) In determining disputes under the TAA, the courts have more recently interpreted the Act to allow severance of contract provisions found to be in violation of the act. (*Marathon, supra,* 42 Cal.4th at 991, citing Civil Code § 1599). The overarching inquiry is whether the interests of justice would be furthered by severance based upon the various purposes of the contract. (*Marathon, supra,* 42 Cal.4th at 996)

19. In the instant matter, the evidence amply reveals that the services performed by DSA in selling the completed film to Paramount did not involve procurement or attempts to procure employment of Montoya. Rather than simply providing for compensation for an (unregulated) activity beyond the purview of the Act, the Agreement also provided for rights and obligations under a talent agency relationship between Petitioners and Respondent (a licensed

talent agency) which did not comply with TAA requirements. At the time of the written agreement, DSA was well aware of its activities and role in *selling* a completed film and not for procuring employment for an artist. It is apparent that under the Agreement, DSA sought to ensure compensation both as a talent agent and for selling the completed film to Paramount in order to ensure a source of compensation from either or both Montoya or Payaso for monies received from Paramount made under the two identified categories.

20. In order to prevent and avoid exploitation of the talent agency status of DSA under an Agreement which, by its terms, invoke a talent agency relationship and provide for compensation to the agent for services, it is appropriate to sever and void the agreement under the doctrine of severability based upon the failure to comply with requirements under the TAA. Voidance is applied to those contract provisions which relate to DSA's right under the Agreement to receive any compensation (including "commissions") for services rendered by Montoya in connection with the motion picture.

21. Furtherance of the protective purposes of the Act and fairness justify the appropriateness of partial voidance of the contract provisions pertaining to DSA's entitlement to any commissions or other compensation for Montoya's services, individually, in connection with the film. The remedy is justified based upon the Agreement's expression that DSA represented Montoya as a talent agent in connection with the film, Montoya in fact performed both creative services and non-creative services in connection which cannot be reasonably apportioned, and there was no indication from the parties to treat the respective services differently. DSA cannot be permitted to use its status of a talent agent to provide any basis for compensation from Montoya for services he rendered in connection with the film.[5]

[5] Where "the parties' performances can be apportioned into corresponding pairs of part performances so that the parts of each pair are properly regarded as agreed equivalents and one pair is not offensive to public policy, that portion of the agreement is enforceable by a party who did not engage in serious misconduct." (*Keene v. Harling* (1964) 61 Cal.2d 318, 324). Here, there are no separate and distinct objects of agreement regarding the *nature of services* Montoya would perform in the production of the film. Thus, further severance *within the compensation provision* regarding Montoya's services in connection with the film is improper.

ORDER

1. The relief sought in the petition for voidance of the written Agreement, dated October 10, 2002, is granted to the extent of its illegality under the TAA as to certain rights and obligations between DSA, a licensed talent agency, and Scott Montoya, individually, and the former's entitlement to compensation for services rendered by Montoya in connection with the motion picture *The Original Latin Kings of Comedy*.

2. Specifically, the portions of the Agreement which pertain to DSA's representation of Montoya as a talent agency (Agreement ¶ D) and DSA's entitlement to compensation for services rendered by Montoya in connection with the motion picture (Agreement ¶ 1, first 4½ lines up to "... and (ii)") are severed from the Agreement, declared void *ab initio,* and unenforceable based upon the failure of the Agreement to comply with TAA requirements. Montoya has no obligation under the Agreement to compensate DSA for commissions or other compensation for DSA's services in connection therewith.

3. As a result of the limited voidance of the Agreement made above, in so far as any claim for compensation is made against Payaso Entertainment, Inc. in its capacity as a *loan out company* for Montoya, DSA is not entitled to recovery of compensation from Payaso Entertainment under the Agreement for any monies it receives from Paramount for personal services rendered by Montoya.

4. This decision expresses no determination regarding any obligations between Payaso Entertainment, Inc. in its capacity as *the production company* of the motion picture, and DSA for activities in connection with the sale of the motion picture to Paramount, under the Agreement or otherwise. Such determination would extend beyond the scope of the TAA and the jurisdiction of the Labor Commissioner under Labor Code §1700.44(a) which is limited to activities regulated under the Act.

5. Disgorgement is inappropriate in this matter as the evidence establishes that DSA did not engage in procurement or attempts to procure employment for Montoya in connection with the motion picture, and further, DSA has not received any commissions or other compensation from Montoya for services pursuant to the Agreement.

Dated: 2/16/11

Robert N. Villalovos
ROBERT N. VILLALOVOS
Attorney for Labor Commissioner

Adopted as the determination of the Labor Commissioner.

Dated: 2/16/11

Denise Padres
DENISE PADRES
DEPUTY CHIEF LABOR COMMISSIONER