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BEFORE THE LABOR COMMISSIONER

STATE OF CALIFORNIA

FREDDIE PRINZE JR., an individual, Petitioner, vs. RIC BEDDINGFIELD, an individual, and THE RIC BEDDINGFIELD COMPANY, INC., a California corporation, Respondent.	No. TAC 33-03 DETERMINATION OF CONTROVERSY

The above-captioned matter, a petition to determine controversy under Labor Code §1700.44, came on regularly for hearing on April 2, 2004, in San Francisco, California, before the undersigned attorney for the Labor Commissioner, assigned to hear the matter. Petitioner appeared and was represented by attorney Martin D. Singer, and Respondent appeared and was represented by attorney Michael Chodos. Based on the evidence presented at this hearing and on the other papers on file in this mater, the Labor Commissioner hereby adopts the following decision.

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FINDINGS OF FACT

1. FREDDIE PRINZE JR. (hereinafter "Prinze" or "Petitioner") is an actor, and has appeared in various motion pictures and television shows. Prinze has been a California resident since August 1994.

2. Respondent RIC BEDDINGFIELD, at all times relevant herein, has been a personal manager of various actors and actresses. Respondent THE BEDDINGFIELD COMPANY, INC., is a corporation that was established and is controlled by Ric Beddingfield, its chief executive officer, as the business entity through which he provides personal management services to actors and actresses. The Beddingfield Company was first incorporated in Nevada in 1993, but its corporate status was revoked in 2002. However, in 1999, prior to the Nevada revocation, The Beddingfield Company was incorporated in California. At all times relevant herein, Respondents have conducted their business in the County of Los Angeles, State of California. Neither Respondent was licensed by the State Labor Commissioner as a talent agency at any time prior to August 2003.

3. At the encouragement of Molli Benson, Prinze's acting coach, Prinze telephoned Ric Beddingfield before moving from New Mexico to California in August 1994. During this telephone conversation, Beddingfield said would try to get acting work for Prinze, and that he would set up meetings with casting directors for that purpose. Upon Prinze's arrival in Los Angeles, he met with Beddingfield, and on August 26, 1994, Prinze and Ric Beddingfield, as president of The Beddingfield Company, Inc., executed a written agreement under which Beddingfield and Molli

Benson were to act as Prinze's personal managers for a period of two years (with two additional one year terms, absent notice of termination as provided in the agreement), for which Prinze agreed to pay a sum equal to 15% of all gross compensation earned in the entertainment industry during the term of the agreement, and subsequent to expiration of the agreement as to any engagements that were entered into or substantially negotiated during the term of the agreement. Paragraph 12 of this agreement provided that "the service of Molli Benson are [sic] essential to this agreement and ... she shall personally supervise my career as provided herein during the term of the agreement.... In the event that any ... occurrence materially frustrates this intent, I may elect to terminate the term of the agreement...." Paragraph 5 of the agreement asserted; "You have advised me that you are not a 'talent agency,' but rather are active solely as a personal manager, that you are not licensed as a 'talent agency' under the Labor Code of the State of California. You have at all times advised me that you so not agree to do so, and you have made no representations to me, either oral or written, to the contrary."

4. Around the time of signing this agreement, Prinze had a discussion with Beddingfield about whether he needed a talent agent. Beddingfield told Prinze he didn't need a talent agent at this stage of his career, and Prinze did not obtain the services of a licensed talent agency until June 1995. Instead, Beddingfield himself took the necessary steps to try to find auditions for Prinze. In September 1994, Prinze auditioned for a role in the motion picture "Clueless." That audition was

obtained through the efforts of Beddingfield.[1]

5. Shortly thereafter, certain unacceptable behavior on the part of Molli Benson caused Prinze to decide to terminate the parties' written agreement, and on November 1, 1994, Prinze sent a letter to Beddingfield terminating the August 26, 1994 agreement.

6. Despite this written notice of termination, Beddingfield, without any further involvement of Benson, continued to provide management services to Prinze, under the terms of the "terminated" agreement. Beddingfield also continued to seek employment opportunities for Prinze, and through Beddingfield's efforts, Prinze obtained an audition for a role on "Family Matters," a series on the Warner Brothers television network. As a result of this audition, Prinze obtianed the role, as reflected by an agreement with Warner Brothers dated November 14, 1994. Also, through Beddingfield's efforts, Prinze obtained an audition for a role on "The Watcher," a television series on UPN produced by Paramount Pictures. As a result of this audition, Prinze obtained the role, as reflected by an agreement with Paramount dated January 30, 1995.[2]

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[1] Beddingfield's testimony that he did not set up this audition is not credible. The records of the film's casting director, Marcia Ross, list Beddingfield as Prinze's agent. Prinze credibly testified that Beddingfiled told him about this audition, and until auditioning, he had never met or spoke to Marcia Ross.

[2] Here too, we discredit Beddingfield's testimony that he did not do anything to obtain these auditions, and that he merely acted as a conduit to Prinze for casting directors who were calling him requesting Prinze's services. At this very early stage in Prinze's acting career, it is simply impossible to believe that unsolicited offers were coming to him. These were not leading actor roles, but limited term supporting actor roles

7. On September 1, 1995, Respondents and Prinze entered into a new written personal management services contract for a period of two years, with automatic extensions of two additional one year periods unless either party provided a written notice of termination during a specified window period. The contractual terms were exactly the same as those of the initial agreement, except that under this new agreement, there was no mention of Molli Benson.

8. On October 2, 1995, Prinze executed various written agreements with The Gersh Agency (hereinafter "Gersh"), a licensed talent agency, under which Gersh, through its talent agent, Peter Young, agreed to serve as Prinze's sole and exclusive talent agent for the theatrical, motion picture, and television and radio broadcasting industries, for which Prinze agreed to pay commissions to Gersh on his earnings resulting from work in those industries. Gersh had been providing talent agency representation to Prinze for a three to four months prior to the execution of this written agreement. Gersh's involvement with Prinze was sparked by Beddingfield's efforts to obtain talent agency representation for Prinze, as Beddingfield had apparently concluded that Prinze had reached the stage in his career where

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- not the type of roles that would have a casting director initiate contacts with a personal manager to obtain the services of a particular actor. Beddingfield's claim that a TV Guide article about Prinze sparked this sort of interest in him on the part of casting directors may well be true, but the fact that the article was published in December 1994 means that the article could not have had anything to do with the audition for "Family Matters," which took place a month earlier. Instead, we credit Prinze's testimony that Beddingfield received "breakdowns" or "sides" of scripts for various roles which were up for audition, and that Beddingfield then contacted the casting directors to set up auditions for Prinze.

such representation would be desirable, and on June 1, 1995, Beddingfield sent a letter to Young to schedule an appointment at Gersh. After meeting with Prinze, Young agreed to begin providing talent agency services for a trial period, and this led to the written agreement a few months later.

9. Much of the testimony at this hearing concerned three jobs which were obtained in 1996, during the period of time that Prinze was represented by both Gersh and Beddingfield. First there is Prinze's role on the ABC afterschool special, "Too Soon For Jeff," for which he auditioned in March 1996, with production about a month later. Next, his successful audition for a role in the motion picture, "The House of Yes," in June 1996. Finally, there is his successful audition, and subsequent role in a motion picture, "Sparkler," with filming in October 1996. Prinze testified that he learned of the auditions for each of these roles from Beddingfield, not Young; that for each, Beddingfield sent him the script to prepare for the audition and told him when and where to appear for the audition. Prinze did not have other knowledge as to how these auditions had been obtained and did not claim that Beddingfield had anything to do with negotiating the terms of his employment following the auditions. Beddingfield testified that all three of these auditions were obtained by Young/Gersh, and that "it would have been totally inappropriate for me to submit Prinze for jobs instead of the more powerful Gersh Agency." Young could not recall anything about "Sparkler," but testified that he procured the auditions for Prinze for "Too Soon for Jeff" and "the House of Yes." Young also testified that whenever he obtained an audition for Prinze, he would then call

and/or fax Beddingfield and relay information about the audition to him, and that it was Beddingfield's role to contact Prinze with necessary information about the audition. There is nothing inconsistent about any of this testimony, and considering all of it together, we find that all three of these auditions were obtained through the efforts of Young/Gersh, not Beddingfield, and that Beddingfield played no role in negotiating the terms of these jobs.

10. In 1997, Prinze terminated Gersh as his talent agency, and entered into an agreement with Creative Artists Agency ("CAA") to serve as his talent agency. In 2002, Prinze terminated CAA and signed with another talent agency.

11. On January 16, 1998, Prinze and Beddingfield entered into another written personal management services agreement, despite the fact that their prior agreement of September 1, 1995 was then still in effect, as the first of the two automatic one year renewals would have taken effect on September 1, 1997, as neither party had sent any notice to the other party terminating the agreement. The new agreement of January 16, 1998 was similar in all respects to the prior agreement, except instead of an initial two year term followed by two one year extensions, the 1998 agreement provided for an initial three year term followed by two automatic one year extensions subject to notification of termination to prevent either automatic extension.

12. On February 16, 2000, Prinze and Beddingfield entered into another written personal management services agreement, despite the fact that their prior agreement of January 16, 1998 was then still in effect. The new agreement of February 16, 2000

was similar in all respects to the prior agreement, except for an indication below Prinze's signature line that Prinze was the president of Hunga Rican, Inc. Nothing else in the agreement made any reference to Hunga Rican, which had been set up in 1997 as Prinze's loan-out company.[3]

13. In December 2000, Prinze obtained a lead acting role on the motion picture "Scooby-Doo." In August 2001, following the filming of Scooby-Doo, Prinze terminated Respondents' services. By a letter dated March 22, 2003, Beddingfield noted that Prinze was about to perform in the shooting of the motion picture "Scooby-Doo 2," and asserted that "your original contract for Scooby Doo included the option picture you are about to film. As CAA is commissionable on this agreement, so am I." Beddingfield testified he personally delivered this letter to Prinze's mother, and Prinze testified that he never received this letter. In any event, on April 24, 2003, Respondents sent an invoice to Prinze's accountant, for $675,000 purportedly due to Respondents as their 15% commission on Prinze's $4,500,000 earnings for his role in the film "Scooby Doo 2," pursuant to the terms of the parties' February 16, 2000 personal management agreement. Sometime thereafter, Respondents initiated an arbitration against Prinze seeking payment of these commissions.

14. On August 25, 2003, Prinze filed the instant petition to determine controversy, seeking a determination that Respondents violated the Talent Agencies Act (Labor Code §1700 *et seq.*) by

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[3] Loan out companies are set up primarily for tax reasons to "loan out" the services of the artist to whatever production companies purchase the artist's services.

procuring employment without a talent agency license, that as a consequence the parties' February 16, 2000 personal management agreement is void *ab initio* and unenforceable, so that Respondents have no rights thereunder, and that Respondent is not entitled to any amounts from Prinze for the alleged value of services rendered by Respondents on behalf of Prinze. Further, Prinze seeks an order for an accounting from Respondents of all monies, or things of value, received by Respondents in connection with any services provided to Prinze, or in connection with the agreement between the parties, and an order requiring Respondent to reimburse Prinze for all such amounts, plus 10% interest thereon.

LEGAL ANALYSIS

1. Petitioner is an "artist" within the meaning of Labor Code §1700.4(b).

2. Labor Code §1700.4(a) defines "talent agency" as "a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists, except that the activities of procuring, offering or promising to procure recording contracts for an artist or artists shall not of itself subject a person or corporation to regulation and licensing under this chapter." The term "procure," as used in this statute, means "to get possession of: obtain, acquire, to cause to happen or be done: bring about." *Wachs v. Curry* (1993) 13 Cal.App.4th 616, 628. Thus, under Labor Code §1700.4(a), "procuring employment" is not limited to initiating discussions with production companies regarding employment; rather, "procurement" includes

any active participation in a communication with a potential purchaser of the artist's services aimed at obtaining employment for the artist, regardless of who initiated the communication. *Hall v. X Management* (TAC No. 19-90, pp. 29-31.) To be sure, a person does not engage in the procurement of employment for an artist by merely taking a phone call or receiving a fax from a casting director where the casting director provides information about an acting role, and then advising the artist of the information that was received from the casting director about the potential employment, leaving it to the artist (or the artist's licensed talent agent) to contact the casting director to set up an audition for the role. But calling and then speaking to a casting director to set up an audition for a role, or otherwise contacting a casting director for the purpose of obtaining a role for an artist, brings us into the realm of "procurement," as that term is used in Labor Code §1700.4(a).

3. Based on the evidence herein, we conclude that Respondents acted as a talent agency within the meaning of Labor Code §1700.4(a) by procuring the auditions and/or employment for Prinze for acting roles on "Clueless," "Family Matters," and "The Watcher," during the period of September 1994 to January 1995. The evidence does not support petitioner's contention that Respondents acted as talent agents on any occasion after January 1995.

4. Labor Code §1700.5 provides that "[n]o person shall engage in or carry on the occupation of a talent agency without first procuring a license . . . from the Labor Commissioner." The Talent Agencies Act is a remedial statute that must be

liberally construed to promote its general object, the protection of artists seeking professional employment. *Buchwald v. Superior Court* (1967) 254 Cal.App.2d 347, 354. For that reason, the overwhelming weight of judicial authority supports the Labor Commissioner's historic enforcement policy, and holds that "even the incidental or occasional provision of such [procurement] services requires licensure." *Styne v. Stevens* (2001) 26 Cal.4th 42, 51. "The [Talent Agencies] Act imposes a *total* prohibition on the procurement efforts of unlicensed persons," and thus, "the Act requires a license to engage in *any* procurement activities." *Waisbren v. Peppercorn Productions, Inc.* (1995) 41 Cal.App.4th 246, 258-259; see also *Park v. Deftones* (1999) 71 Cal.App.4th 1465 [license required even though procurement activites constituted a negligible portion of personal manager's efforts on behalf of artist, and manager was not compensated for these procurement activities].

5. An agreement that violates the licensing requirement of the Talent Agencies Act is illegal and unenforceable. "Since the clear object of the Act is to prevent improper persons from becoming [talent agents] and to regulate such activity for the protection of the public, a contract between an unlicensed [agent] and an artist is void." *Buchwald v. Superior Court, supra,* 254 Cal.App.2d at 351. Having determined that a person or business entity procured, promised or attempted to procure employment for an artist without the requisite talent agency license, "the [Labor] Commissioner may declare the contract [between the unlicensed agent and the artist] void and unenforceable as involving the services of an unlicensed person

in violation of the Act." *Styne v. Stevens, supra,* 26 Cal.4th at 55. "[A]n agreement that violates the licensing requirement is illegal and unenforceable . . . ." *Waisbren v. Peppercorn Productions, Inc., supra,* 41 Cal.App.4th at 262. Moreover, the artist that is party to such an agreement may seek disgorgement of amounts paid pursuant to the agreement, and "may . . . [be] entitle[d] . . . to restitution of all fees paid the agent." *Wachs v. Curry* (1993) 13 Cal.App.4th 616, 626. Restitution, as a species of affirmative relief, is subject to the one year limitations period set out at Labor Code §1700.44(c), so that the artist is only entitled to restitution of amounts paid within the one year period prior to the filing of the petition to determine controversy. *Greenfield v. Superior Court* (2003) 106 Cal.App.4th 743.

6. On the other hand, this statute of limitations does not apply to the defense of contract illegality and unenforceability, even where this defense is raised by the petitioner in a proceeding under the Talent Agencies Act. "If the result the [artist] seeks is [is a determination] that he or she owes no obligations under an agreement alleged by [the respondent] ... the statute of limitations does not apply." *Styne v. Stevens, supra,* 26 Cal.4th at 53. The Labor Commissioner has exclusive primary jurisdiction to determine all controversies arising under the Talent Agencies Act. "When the Talent Agencies Act is invoked in the course of a contract dispute, the Commissioner has exclusive jurisdiction to determine his (or her) jurisdiction in the matter, including whether the the contract involved the services of a talent agency." *Ibid.* at 54. This means that the

Labor Commissioner has "the exclusive right to decide in the first instance *all the legal and factual issues on which an Act-based defense depends*." *Ibid.*, at fn. 6, italics in original. In doing so, the Labor Commissioner will "search out illegality lying behind the form in which a transaction has been cast for the purpose of concealing such illegality," and "will look through provisions, valid on their face, and with the aid of parol evidence, determine [whether] the contract is actually illegal or part of an illegal transaction." *Buchwald v. Superior Court, supra,* 254 Cal.App.2d at 351.

7. The issue presented here is a difficult one: where a manager and artist have entered into successive renewals of their contract during the course of a continuous relationship that spanned the course of seven years, do the manager's unlawful attempts to procure employment for the artist in the first year of that relationship render all subsequent renewals of the parties' contract void and unenforceable, so as to deprive the manager of his rights under the final renewal, which was executed five years after the last instance of unlawful procurement? Does the "original sin" of long ago unlawful procurement taint the parties' contractual relationship forever into the future, where the original contract under which the procurement occurred has long ago expired and/or been terminated, and replaced with multiple renewed (albeit virtually identical) versions of this first contract? There is one published decision that provides some guidance - *Raden v. Laurie* (1953) 120 Cal.App.2d 778, a case arising under an earlier version of the Talent Agencies Act, which nonetheless is worthy of consideration because like the

Talent Agencies Act, this predecessor statute prohibited employment procurement without a license from the Labor Commissioner, and like the present-day Act, this statute was interpreted to make a contract void *ab initio* where procurement took place without the requisite license. In *Raden,* a manager entered into a management contract with the actress Piper Laurie in January 1948. He promised in that contract to procure her employment and he attempted to do so. However, he did not possess the required license to engage in procurement activities. Six months later, in July 1948, the manager entered into a new contract with Laurie which expressly stated he was not licensed to procure employment and that he would not do so. *Id.* at 780. The manager sued for commissions earned under the latter agreement and Laurie defended on the ground that the July 1948 agreement was rendered void by the unlicensed procurement activity which the manager promised to do, and had done, under the parties' prior agreement. Laurie further alleged that the July agreement was a sham designed to mask the manager's continuing unlicensed procurement activities. The court acknowledged that exculpatory language in a management contract cannot prevent the court from finding that the contract was for an illegal purpose or that illegal procurement activities occurred during the term of the contract, if in fact there is evidence of such intent or illegal conduct. However, the court upheld the denial of Lurie's motion for summary judgment as it was based on nothing more than evidence of illegal intent and unlawful procurement activity under the January 1948 agreement, holding that it was not evidence of illegal purpose or illegal

activity under the July 1948 agreement. *Id.* at 782. *Raden* thus supports the proposition that a subsequently executed agreement stands or falls on an analysis of whether there was unlawful intent in the formation of that subsequent agreement, or unlawful activity during the term of the subsequent agreement, and that the unlawful intent and/or activity associated with the earlier agreement does not automatically "infect" the later agreement.

8. Arguably, however, a difference between the facts here and in *Raden* is that on the record before the court in *Raden,* there was no evidence that the manager ever acted inconsistently with the provisions of his written agreement with the artist, in that the initial agreement there admitted that the manager would seek to procure employment, an activity unlawful without a license. Nothing before the court in *Raden* would have allowed the court to conclude that either the initial or the subsequent agreement was a subterfuge. Here, in contrast, the initial agreement (like every renewal since) purported that Respondents would not act as talent agents, so that here, we must conclude that at least this initial contract was a subterfuge intended to mask unlawful conduct. While this raises some concern that subsequent contracts were also intended as a subterfuge, that concern is not enough to overcome the evidence that there was no unlawful activity (so presumably, no unlawful intent) with respect to the various subsequent renewals.

9. There are two cases in which the Labor Commissioner confronted a similar issue, albeit with different results. Most recently, in *Gittelman v. Karolat* (TAC No. 24-02), we held that a single instance of unlawful procurement which took place within

the first few months of what turned into a seven-year relationship between an a personal manager and an artist, was sufficient to void the parties' initial 1994 contract which was in effect at the time of the unlawful procurement, but did not make three subsequent renewals or amendments (executed in 1997, 2000 and 2001) void or unenforceable to the extent that the manager was only seeking to enforce a right to commissions for employment that was entered into subsequent to the execution of the first renewal, where there was no evidence of unlawful procurement activity during the terms of the renewals, and no evidence on unlawful intent behind the renewals or amendments. We explained: "To conclude otherwise, so as to void every subsequent agreement between the parties because of the one isolated violation would do nothing to further the remedial purposes of the Act, and would transform the Act into a vehicle for injustice." *Id.* at 15. In contrast, in *Nipote v. Lapides* (TAC No. 13-99), the Labor Commissioner determined that a single act of unlawful procurement in December 1994, during the period of the parties' 1993 written management agreement, was sufficient to make a subsequent oral agreement that had been entered into in early 1995 void *ab initio* and unenforceable, with the manager not entitled to payment of commissions or any other amounts thereunder. There is, of course, a stark difference between *Gittelman* and *Nipote* - in the former, the unlawful procurement activity took place over six years before the execution of the final renewal or amendment of the parties' agreement, whereas in the latter, the unlawful procurement activity took place just a few months prior to execution of the oral agreement at issue

therein. The proximity in time between the unlawful procurement and the execution of the subsequent agreement could allow one to infer that the subsequent agreement was motivated by an intent to conceal illegal activity; an inference that cannot be made when six years and multiple renewals separate the unlawful activity under the initial agreement from the parties' execution of their final agreement. The instant case presents facts almost identical to those of *Gittelman*, and we believe it provides the analysis that should now be followed.

10. We pause to address two arguments advanced by petitioner in support of his contention that the unlawful procurement activities of September 1994 to January 1995 compel the determination that all of the subsequent contract renewals are void from their inception. First, petitioner is incorrect in his assertion that this is how the court of appeal interpreted the Talent Agencies Act in *Park v. Deftones* (1999) 71 Cal.App.4th 1465. That decision contains absolutely no discussion of this issue, as the only issues presented in this appeal related to the statute of limitations and the applicability of the Talent Agencies Act to procurement which is not commissioned. To be sure, in that case the parties had entered into successive written personal management agreements in February 1992, February 1993, and February 1994; and prior to and throughout that time, from September 1991 to September 1994, there were 84 instances of unlawful procurement. The court noted that the Labor Commissioner's determination, which was upheld by the trial court on summary judgment (where the evidence consisted of a transcript of the hearing before the Labor Commissioner) concluded that all

three of these agreements were void *ab initio* as a consequence of these unlawful procurement activities. Petitioner's assertion that there would be no need to consider procurement prior to January 1994 if such procurement was irrelevant to the validity of the parties' final contract simply ignores the fact that the pre-January 1994 procurement was considered in deciding the validity of the earlier contracts.

11. We have given a great deal of consideration to petitioner's concern that unless subsequent contracts with an artist are found void as a result of a personal manager's prior unlawful procurement activities on behalf of that artist, a personal manager "could flagrantly procure employment without a talent agency license simply in order to increase his commissions and then avoid the remedial purpose of the Act by simply having the artist sign a new [contract]." This concern is adequately addressed, however, by holding that any purported right to commissions or other payments pursuant to contract(s) entered into subsequent to the unlawful procurement activity are not enforceable to the extent that any such commissions or payments are based on artistic employment that commenced, or deals that were substantially negotiated, or services provided by the personal manager, during the term of the prior contract(s) during which unlawful procurement activities occurred. This will ensure that an unlicensed talent agent cannot use the device of executing a new contract with the artist as a subterfuge to profit from prior unlawful procurement activities. Finally, we do not hold that there can never be a case in which a personal management contract executed subsequent to unlawful procurement

activities would be held void in its entirety as a result of the of the prior unlawful procurement. Factors including the frequency of the unlawful procurement activities, and the nearness in time between the last instance of procurement and the execution of a subsequent contract, may be considered in determining the appropriate remedy under the Act. Here, however, we conclude that three instances of unlawful procurement, the last of which took place in January 1995, do not make a contract renewal executed five years later void.

ORDER

For the reasons set forth above, IT IS HEREBY ORDERED that the parties' personal management contract of February 16, 2000 is not void *ab initio* or unenforceable under the Talent Agencies Act, to the extent that Respondents are not seeking commissions or payments for any artistic employment that commenced, or deals that were substantially negotiated, or services provided by Respondents prior to September 1, 1995.

Dated: 10/20/05

MILES E. LOCKER
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated: 11/16/05

DONNA M. DELL
State Labor Commissioner