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STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
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8 BEFORE THE LABOR COMMISSIONER
9 OF THE STATE OF CALIFORNIA
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11 ADAM ABAUNZA,

12 Petitioner,

13 vs.

14 SYLVIA FERGUSON & ASSOCIATES,
15 TALENT & LITERARY AGENCY,

16 Respondent.

Case No.: TAC 21608

DETERMINATION OF CONTROVERSY

17 The above-captioned matter, a Petition to Determine Controversy under Labor Code

18 §1700.44, came on regularly for hearing on October 20, 2011 in Los Angeles, California, before
19 the undersigned attorney for the Labor Commissioner assigned to hear this case. Petitioner
20 Adam Abaunza, is a minor and appeared through his parent and guardian, George Abaunza.
21 Respondent Sylvia Ferguson & Associates, Talent & Literary Agency failed to appear.

22 Based on the evidence presented at this hearing and on the other papers on file in this
23 matter, the Labor Commissioner hereby adopts the following decision.

24 FINDINGS OF FACT

- 25 1. Adam Abaunza is an actor and artist under the definition of that term in Labor
Code §1700(a).
- 26 2. Adam Abaunza, through his parent George Abaunza, entered into a general
27 service agreement with Respondent Sylvia Ferguson & Associates, Talent &
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1 Literary Agency on July 21, 2009. At the time the contract was entered into,
2 Respondent was a licensed talent agency.

3 3. The general service agreement provided that Sylvia Ferguson & Associates,
4 Talent & Literary Agency would be entitled to twenty (20%) of gross
5 compensation earned or received by Adam Abaunza in connection with any
6 contracts procured by Respondent, for or engagement of Adam Abaunza as an
7 actor or performer in the entertainment field.

8 4. In early 2010, within one year of filing of the petition, Adam Abaunza was
9 engaged for a performance which paid \$1,000.00. On January 13, 2011,
10 Respondent paid Adam Abaunza \$760.00, \$40.00 less than the agreed upon
11 amount after 20% commission. Respondent offered no explanation to Mr.
12 Abaunza for the discrepancy.

13 5. In early 2010, Adam Abaunza was hired by Talent Partners for a Toyota Motor
14 commercial. The commercial was to pay \$600.00 per day for two days plus
15 residuals from the airing of the commercial.

16 6. Mr. Abaunza testified that on or about April 7, 2010, he received, on behalf of his
17 son, a check payable to Adam Abaunza in the amount of \$1,374.13, drawn on the
18 client trust account of Sylvia Ferguson & Associates Talent Agency.

19 7. Mr. Abaunza testified that on or about May 3, 2010, he received, on behalf of his
20 son, a check payable to Adam Abaunza in the amount of \$1, 202.95 drawn on the
21 client trust account of Sylvia Ferguson & Associates Talent Agency.

22 8. Mr. Abuanza testified that sometime between May and July 2010, he noticed that
23 the bank statements for Adam Abaunza's Coogan Law Trust Account reflected
24 deposits. Mr. Abuanza understood the deposits were being made by Talent
25 Partners for Adam Abuanza's earnings from the Toyota Motors commercial. Mr.
26 Abaunza questioned Sylvia Ferguson about the deposits, asking when Sylvia
27 Ferguson & Associates Talent Agency would disburse Adam Abaunza's earnings
28 received by Sylvia Ferguson & Associates Talent Agency on behalf of Adam
Abaunza.

- 1 9. Mr. Abaunza testified that 15% of Adam Abuanza's earnings from Talent
2 Partners for the Toyota Motor commercial were directly deposited by Talent
3 Partners into Adam Abaunza's Coogan Law Trust Account.
- 4 10. In early 2011, Mr. Abuanza received on behalf of Adam Abaunza, a W-2 form
5 from Talent Partners reflecting Adam Abaunza's 2010 reported earnings and
6 deductions. The W-2 form reported \$14,168.95 is gross earnings for 2010.
- 7 11. In February 2011, Mr. Abuanza received from Talent Partners, a Year-to Date
8 earnings statement for Adam Abaunza for the period January 1, 2010 through
9 December 31, 2010. The earning statement reflected that Adam Abauna earned
10 \$14,168.95 in 2010 for his performance in the Toyota Motors commercial. The
11 earning statement indicated that 13 checks had been issued to Sylvia Ferguson &
12 Associates Talent Agency on behalf of Adam Abraunza.
- 13 12. The Year-to Date earnings statement for Adam Abaunza for the period January 1,
14 2010 through December 31, 2010 indicates that Adam Abaunza earned
15 \$14,168.95 in 2010 for his performance in the Toyota Motors commercial; that
16 \$1,758.91 had been deposited into Adam Abaunza's Coogan Law Trust Account;
17 that \$1,083.92 had been deducted from Adam Abaunza's earnings for FICA; and
18 that \$155.86 had been deducted from Adam Abaunza's earnings for state
19 disability taxes.
- 20 13. Sylvia Ferguson & Associates Talent Agency was entitled to 20% of Adam
21 Abaunza's gross earning from the Toyota Motors commercial for 2010, in the
22 amount of \$2,833.79. After deductions, trust account payments and retained
23 commissions, Sylvia Ferguson & Associates Talent Agency was required to
24 disburse \$8,336.47 in earnings to Adam Abaunza. Sylvia Ferguson & Associates
25 Talent Agency disbursed \$2,577.08 to Adam Abaunza in 2010.
- 26 14. In June 2011, Mr. Abuanza received from Talent Partners, a Year-to Date
27 earnings statement for Adam Abaunza for the period January 1, 2011 through
28 June 2011. The earning statement reflected that as of June 6, 2011, Adam
Abauna earned \$2,912.58 in 2011 for his performance in the Toyota Motors
commercial. The earning statement indicated that 3 checks had been issued to
Sylvia Ferguson & Associates Talent Agency on behalf of Adam Abraunza.

1 15. The Year-to Date earnings statement for Adam Abaunza for the period January 1,
2 2011 through June 2011 indicates that Adam Abaunza earned \$2,912.58 in 2011
3 for his performance in the Toyota Motors commercial; that \$436.89 had been
4 deposited into Adam Abaunza's Coogan Law Trust Account; that \$164.56 had
5 been deducted from Adam Abaunza's earnings for FICA; and that \$34.95 had
6 been deducted from Adam Abaunza's earnings for state disability taxes.

7 16. Sylvia Ferguson & Associates Talent Agency was entitled to 20% of Adam
8 Abaunza's gross earnings from the Toyota Motors commercial for 2011, in the
9 amount of \$582.52. After deductions, trust account payments and retained
10 commissions, Sylvia Ferguson & Associates Talent Agency was required to
11 disburse \$1,693.67 in earnings to Adam Abaunza. Sylvia Ferguson & Associates
12 Talent Agency failed to disburse any money to Adam Abaunza in 2011.

13 17. Mr. Abaunza testified that he made repeated demand to Sylvia Ferguson of Sylvia
14 Ferguson & Associates Talent Agency for wages due to Adam Abaunza. Mr.
15 Abaunza testified that Ms. Ferguson initially claimed that the commissions, taxes
16 and Coogan Trust Account deposits accounted for all the wages. When Mr.
17 Abaunza disputed Ms. Ferguson's assertions, Ms. Ferguson promised to pay any
18 money owed after she completed her taxes. Ms. Ferguson failed and refused to
19 disburse wages received by Sylvia Ferguson & Associates Talent Agency on
20 behalf of Adam Abaunza.

21 LEGAL ANALYSIS

22 Labor Code §1700.25 provides that any licensee who receives any payment of funds on
23 behalf of an artist shall immediately deposit that amount in a trust fund account and shall
24 disburse the funds, less the licensee's commissions, to the artist within 30 days after receipt.

25 George Abaunza presented credible evidence that Sylvia Ferguson & Associates Talent
26 Agency received payment of funds on behalf of Adam Abaunza and failed to disburse those
27 funds as required by Labor Code §1700.25. No evidence was presented by Sylvia Ferguson &
28 Associates Talent Agency to establish that Sylvia Ferguson & Associates Talent Agency retained
the funds due to Adam Abaunza beyond 30 days to offset an obligation owed by Adam Abaunza

1 to Sylvia Ferguson & Associates Talent Agency or that the failure to disburse the funds were the
2 subject of a pending controversy.

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4 The evidence presented established that Sylvia Ferguson & Associates Talent Agency
5 retained \$40.00 of Adam Abaunza's earnings for a performance in early 2010 for which he was
6 paid \$1,000.00. The evidence established that in 2010 and 2011, Adam Abaunza earned
7 \$17,081.53 for his performance in a Toyota Motor commercial. The evidence established that
8 Sylvia Ferguson & Associates Talent Agency was entitled to receive \$3,416.31 in commissions
9 for Adam Abaunza's 2010 Toyota Motor commercial performance and that Adam Abuanza'
10 employer, Talent Partners, contributed \$2,195.79 of Adam Abaunza's earnings into his Coogan
11 Trust Account and withheld \$1,439.29 in employment related taxes. The evidence further
12 established that Sylvia Ferguson & Associates Talent Agency received from Talent Partners
13 \$13,446.45 on behalf of Adam Abaunza and after deducting earned commissions, should have
14 disbursed \$10,030.14 to Adam Abauza. The evidence presented established that Sylvia
15 Ferguson & Associates Talent Agency disbursed \$2,577.08 to Adam Araunza and retained
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17 \$7,453.06 of Adam Abaunza's earnings.
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19 ORDER

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

- 21 1. Sylvia Ferguson & Associates Talent Agency disburse to George Abaunza, as parent
22 and guardian of Adam Abaunza, seven thousand four hundred ninety-three dollars
23 and six cents (\$7,493.06) which represents Adam Abaunza's earnings, less gross
24 commissions, Coogan Trust Account deposits and applicable tax deductions, which
25 were received by Sylvia Ferguson & Associates Talent Agency on behalf of Adam
26 Abaunza.
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1 2. Sylvia Ferguson & Associates Talent Agency pay interest on the wrongfully withheld
2 funds at the rate of 10 percent per annum during the period of violation, in the amount
3 of \$799.81.

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5 DATED: February 8, 2012

Respectfully submitted,

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7 BY: Deborah D. Graves
8 Deborah D. Graves
9 Attorney for the Labor Commissioner

10 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER
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12 DATED: 2-8-12
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14 BY: Julie A. Su
15 JULIE A. SU
16 State Labor Commissioner
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