

1 **STATE OF CALIFORNIA**
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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**

10
11 HESTER W. RALPH,

CASE NO. TAC 39248

**DETERMINATION OF
CONTROVERSY**

12
13 Petitioner,

14 vs.

15
16 TRIO TALENT AGENCY,

17 Respondent.
18

19 The above-captioned matter, a Petition to Determine Controversy under Labor
20 Code Section 1700.44, came on regularly for hearing on January 5, 2016, in Long Beach,
21 California, before the undersigned attorney for the Labor Commissioner assigned to hear
22 this case. Petitioner HESTER W. RALPH appeared in pro per. Respondent TRIO
23 TALENT AGENCY, who was properly served with the Petition and Notice of Hearing,
24 failed to appear. Wei Ralph, Petitioner HESTER W. RALPH'S mother, appeared as a
25 witness.

26 Based on the evidence presented at this hearing and on the other papers on file in
27 this matter, the Labor Commissioner hereby adopts the following decision:
28

1 **FINDINGS OF FACT**

2 1. Petitioner HESTER W. RALPH, (hereinafter, "RALPH"), is a
3 professional actress.

4 2. During the relevant time period, Respondent TRIO TALENT
5 AGENCY, (hereinafter, "TRIO"), was licensed as a talent agency in the state of California
6 under license no. TA-3781 and served as RALPH'S talent agency pursuant to a *General*
7 *Service Agreement Between Artist and Trio Talent Agency* contract.

8 3. On March 27, 2014, TRIO booked a Vitamin Water "*Making it Big*"
9 (hereinafter, "Vitamin Water") commercial for RALPH.

10 4. On March 29, 2014, RALPH performed as an actress on the Vitamin
11 Water commercial.

12 5. On April 21, 2014, RALPH emailed TRIO she was moving to
13 Northern California and would no longer be able to audition for any commercials or other
14 entertainment engagements. RALPH also informed TRIO owner, Rodney Chestnut, they
15 could talk some more about her move when she picked up her check for the Vitamin
16 Water commercial. In response, Mr. Chestnut wrote back informing her he had not
17 received the payment for this commercial.

18 6. On May 12, 2014, RALPH emailed TRIO her new address and
19 received a response from TRIO Agent, Kevin Issa, stating they would notify her when the
20 Vitamin Water check was ready to be sent to her new address.

21 7. On June 26, 2014, after still not having received her check for the
22 Vitamin Water commercial, RALPH again emailed TRIO. In response, Mr. Chestnut
23 informed her he had just mailed her check. RALPH wrote back informing him she had not
24 received the check.

25 8. On July 3, 2014, RALPH wrote again requesting the check. On July
26 6, 2014, Mr. Chestnut responded that he would look into it with accounting the following
27

1 morning. Soon after this email, RALPH received check #277691 in the sum of \$1,618.38.
2 At this point, RALPH believed she had been paid all monies due her for her performance
3 on the Vitamin Water commercial.

4 9. In early 2015, when RALPH began preparation for filing her taxes,
5 through her mother, she requested and received a W-2 from Extreme Reach Talent, the
6 payroll company responsible for issuing checks on the Vitamin Water commercial.
7 RALPH'S W-2 listed \$21,972.98 in total earnings for this commercial. As a result,
8 RALPH eventually requested and received a breakdown of all residual checks issued by
9 Extreme Reach Talent to TRIO, including dates the checks were negotiated by TRIO.

10 10. During the period of February to April 2015, RALPH contacted
11 TRIO numerous times requesting payment of all checks issued to her and negotiated by
12 TRIO on the Vitamin Water commercial.

13 11. On April 23, 2015, RALPH filed the instant *Petition to Determine*
14 *Controversy* ("petition").

15 12. After RALPH filed the instant petition, TRIO made payment on some
16 but not all outstanding checks.

17 13. As of the date of the hearing in this matter, nine checks remained
18 unpaid totaling \$11,949.24 in gross earnings.¹ At this hearing, RALPH sought this amount
19 plus 10% interest under Labor Code 1700.25 Section (e) (2).

20 LEGAL ANALYSIS

21
22 1. RALPH, a professional actress, is an "artist" within the meaning of
23 Labor Code Section 1700.4(b).

24 2. TRIO is a licensed talent agency. Labor Code Section 1700.25(a)
25 provides:

26 ///

27 ///

28 ¹ The nine checks are check numbers: 288662, 291623, 290163, 292793, 292788, 294348,
300839, 301445 and 303496. 3

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

10 (1) To the extent necessary to offset an
11 obligation of the artist to the talent agency that is
12 then due and owing.

13 (2) When the funds are the subject of a
14 controversy pending before the Labor
15 Commissioner under Section 1700.44
16 concerning a fee alleged to be owed by the artist
17 to the licensee.

18 The evidence presented establishes TRIO collected and negotiated \$21,972.98 in
19 gross earning on behalf of RALPH for her performance in a Vitamin Water "*Making it*
20 *Big*" commercial TRIO booked for her in March, 2014. This amount includes residual
21 checks issued to TRIO for RALPH. TRIO took months to pay RALPH these checks and
22 only did so after RALPH received a copy of her W-2 from the payroll company and
23 demanded payment from TRIO. TRIO has failed to pay RALPH \$11,949.24 in gross
24 earnings from the total amount collected on her behalf. Labor Code Section 1700.25(e)
25 provides:

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

(1) Award reasonable attorney's fees to the
prevailing artist.

(2) Award interest to the prevailing artist on the
funds wrongfully₄ withheld at the rate of 10

1 percent per annum during the period of the
2 violation.

3 TRIO'S failure to pay RALPH the outstanding monies owed constitutes a willful
4 violation under Labor Code Section 1700.25(e). Accordingly, we award interest on the
5 unpaid earnings as follows:

| 6 Check No. | 7 Amount (Gross 8 Earnings) | 9 Issued by Payroll Co to TRIO | 10 Check due to RALPH (per Labor Code 1700.25 | 11 Interest Due |
|--------------|-----------------------------------|--------------------------------------|--|-----------------|
| 12 288662 | \$2,869.81 | 6-25-14 | 7-25-14 | \$492.19 |
| 291623 | \$2,575.80 | 7-9-14 | 8-8-14 | \$431.89 |
| 10 290163 | \$109.50 | 7-14-14 | 8-13-14 | \$18.21 |
| 11 290162 | \$1,529.95 | 7-14-14 | 8-13-14 | \$254.43 |
| 12 292793 | \$273.75 | 7-21-14 | 8-20-14 | \$45.00 |
| 13 292788 | \$438.00 | 7-21-14 | 8-20-14 | \$72.00 |
| 14 294348 | \$273.75 | 7-28-14 | 8-27-14 | \$44.48 |
| 15 300839 | \$438.00 | 9-8-14 | 10-8-14 | \$66.12 |
| 16 301445 | \$2,668.88 | 9-8-14 | 10-8-14 | \$402.89 |
| 17 303496 | \$771.70 | 9-26-14 | 10-26-14 | \$112.69 |
| TOTAL | \$11,949.24 | | | \$1,939.90 |

18 **ORDER**

19 For the foregoing reasons, Petitioner HESTER W. RALPH is entitled to collect
20 \$11,949.24 in unpaid gross earnings plus \$1,939.90 in interest (calculated at 10% interest
21 on amounts due from the date such monies were due, to the date of this determination) for
a total amount of **\$13,889.14** due from Respondents TRIO TALENT AGENCY.

22 DATED: April 11, 2016

Respectfully submitted,

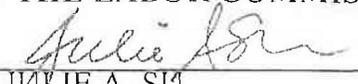
23 By: 

EDNA GARCIA EARLEY

Attorney for the Labor Commissioner

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25
26 **ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER**

27 Dated: 4-11-16

By: 

JULIE A. SU

5 State Labor Commissioner

1 **PROOF OF SERVICE**

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

4 I, Tina Provencio, declare and state as follows:

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

7 On April 13, 2016, I served the foregoing document described as: **DETERMINATION**
8 **OF CONTROVERSY**, on all interested parties in this action by placing a true copy thereof
enclosed in a sealed envelope addressed as follows:

9 Hester W. Ralph
10 1221 E. Main Street
Grass Valley, CA 95445

TRIO TALENT AGENCY
c/o Rodney Chester
1502 N. Gardner Street
Los Angeles, CA 90046

11
12 **(BY MAIL)** I am readily familiar with the business practice for collection and processing
13 of correspondence for mailing with the United States Postal Service. This
14 correspondence shall be deposited with the United States Postal Service this same day in
15 the ordinary course of business at our office address in Long Beach, California. Service
made pursuant to this paragraph, upon motion of a party served, shall be presumed
invalid if the postal cancellation date of postage meter date on the envelope is more than
one day after the date of deposit for mailing contained in this affidavit.

16 **(BY E-MAIL SERVICE)** I caused such document(s) to be delivered electronically via e-
17 mail to the e-mail address of the addressee(s) set forth in the attached service list.

18 **(BY OVERNIGHT DELIVERY)** I served the foregoing document(s) by FedEx, an
19 express service carrier which provides overnight delivery, as follows: I placed true copies
20 of the foregoing document in sealed envelopes or packages designated by the express
21 service carrier, addressed to each interested party as set forth above, with fees for
22 overnight delivery paid or provided for.

23 **(BY FACSIMILE)** I caused the above-referenced document to be transmitted to the
24 interested parties via facsimile transmission to the fax number(s) as stated on the attached
25 service list.

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

28 Executed this 13th day of April, 2016, at Long Beach, California.


Tina Provencio
Declarant