

STATE OF CALIFORNIA
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DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
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Attorney for the Labor Commissioner

**BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA**

HESTER W. RALPH,

CASE NO. TAC 39248

Petitioner,

DETERMINATION OF CONTROVERSY

VS.

TRIO TALENT AGENCY,

Respondent.

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

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

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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

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

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

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

11. On April 23, 2015, RALPH filed the instant *Petition to Determine Controversy* (“petition”).

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

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

LEGAL ANALYSIS

1. RALPH, a professional actress, is an “artist” within the meaning of Labor Code Section 1700.4(b).

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

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

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

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

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

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

If the Labor Commissioner finds, in proceedings under Section 1700.44, that the licensee's failure to disburse 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 wrongfully withheld at the rate of 10

percent per annum during the period of the violation.

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

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

ORDER

For the foregoing reasons, Petitioner HESTER W. RALPH is entitled to collect \$11,949.24 in unpaid gross earnings plus \$1,939.90 in interest (calculated at 10% interest 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.

DATED: April 11, 2016

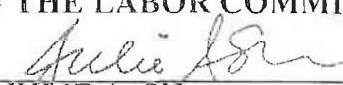
Respectfully submitted,

By: 
EDNA GARCIA EARLEY

Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: 4-11-16

By: 
JULIE A. SU
State Labor Commissioner

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) S.S.

I, Tina Provencio, declare and state as follows:

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

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

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

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

- (BY MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in 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.

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

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

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

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

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

Tina Provencio
Tina Provencio
Declarant