

## DEPARTMENT OF INDUSTRIAL RELATIONS

## DIVISION OF LABOR STANDARDS ENFORCEMENT

## LEGAL SECTION

45 Fremont Street, Suite 3220  
San Francisco, CA 94105  
(415) 975-2060



H. THOMAS CADELL, JR., *Chief Counsel*

July 15, 1997

Rebecca Rhine  
Executive Director  
Screen Actors Guild  
235 Pine Street, 11th Floor  
San Francisco, CA 94104

Re: **Claims Waiting Time Penalties**

Dear Ms. Rhine:

Your April 1, 1997, letter to John Duncan has been referred to this office for response.

In your letter you set out the following facts:

Your members performed on-camera work in a local production of a television commercial for Bailey's Irish Cream. When the performers completed their work, the producer did not immediately (or within 24 hours) pay the performers their wages. Instead, after considerable delay, payments were made to your members in mid- and late-March.

Under the terms of the SAG union contract applicable to this work, the producer is obligated to make payment of earned wages within 12 working days, and, upon failure to do so, is liable for late payment penalties up to a maximum amount of \$75.00 per performer. SAG's claim for late-payment penalties against the producer of the Bailey's Irish Cream commercial is currently pending.

From the above information I will assume that the work was "completed" more than 12 days before the payment was received. However, that is not clear from the information you have submitted since the facts do not disclose when the work was completed.

Also, it is not clear that the *completion of the work* and the

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date of termination are the same. It is, of course, possible for a worker to remain an employee of an employer after completion of a particular project if there is no termination either express or implied. However, for purposes of this letter, we will assume that the workers were terminated by the producers of the commercial.

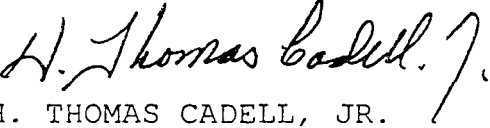
Given the facts set out in your letter and the assumptions made for purposes of this response, the answer to your first question regarding whether your members have a potential claim under Labor Code § 201, is yes. The payment of wages at termination in California must be made pursuant to the provisions of Labor Code §§ 201 and/or 202. There is no provision in the California statutes dealing with pay at termination which would allow the parties to a collective bargaining agreement to "opt-out" of the state law minimum requirements in this regard. Therefore, the very limited penalty you cite to in your CBA would not suffice to meet the strict requirements of the California law:

In answer to your second question regarding whether SAG may file a claim on behalf of your members, the answer, again, is yes. (See Labor Code § 96.3) An individual claim must be filed by the union on behalf of each claimant outlining the nature of the claim, the wage rate, etc., and describing the events (including dates and names of parties involved) which led up to each of the claims.

In your letter you ask for a copy of DLSE Interpretive Bulletins 88-1 and 94-4. Please be informed that the California Supreme Court in the case of *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, held that DLSE Interpretive Bulletins are underground regulations and may not be relied upon. However, you may find DLSE Interpretive Bulletin 94-4 published as part of the consent decree (see 865 F.Supp. 642) entered into by DLSE as a result of the ruling by the U.S. Supreme Court in the case of *Livadas v. Bradshaw* \_\_\_ U.S. \_\_\_, 114 S.Ct. 2068 (1994).

I hope this adequately addresses the issues you raised in your letter of April 1, 1997.

Yours truly,

  
H. THOMAS CADELL, JR.  
Chief Counsel