PATRICIA SALAZAR, State Bar No. 249935
STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
320 W. 4th Street, Suite 600
Los Angeles, California 90013
Telephone: (213) 897-1511
Facsimile: (213) 897-2877

Attorney for the State Labor Commissioner

BEFORE THE LABOR COMMISSIONER

OF THE STATE OF CALIFORNIA

SOMMER RAY BEATY, an individual, *Petitioner*, *v.* ANTHONY AIELLO, an individual; ANTHONY'S WORLDWIDE PROMOTIONS, LLC, a Limited Liability Company, *Respondents*.	Case No. TAC-52756 **DETERMINATION OF CONTROVERSY**

I. INTRODUCTION

On February 23, 2022, a hearing (hereinafter, "TAC Hearing") was held via Zoom by the undersigned attorney specially designated by the Labor Commissioner to hear this case. Petitioner SOMMER RAY BEATY, an individual, appeared and was represented by Arnold Shokouhi of McCATHERN, LLP. Respondents ANTHONY AIELLO, an individual, and ANTHONY'S WORLDWIDE PROMOTIONS, LLC, a Limited Liability Company, appeared and were represented by Joseph S. Farzam and Michael P. Green of JOSEPH FARZAM LAW FIRM.

The parties submitted their post-hearing briefs by April 1, 2022. The matter was taken under submission. Due consideration having been given to the testimony, documentary evidence and arguments presented, the Labor Commissioner hereby adopts the following determination (hereinafter, "Determination").

II. FINDINGS OF FACT

1. Petitioner SOMER RAY BEATY (hereinafter, "Petitioner") is a model and social influencer who has worked on numerous projects, including, modeling for clothing companies, fitness-related products, and filming online commercials and a television show.

2. Respondent ANTHONY AIELLO (hereinafter, "AIELLO" or "Respondent") is the owner and member of ANTHONY'S WORLDWIDE PROMOTIONS, LLC (hereinafter, collectively referred to as "Respondents," with AIELLO).

3. Respondents are not licensed talent agents under Labor Code section 1700.5.

4. Before working with Respondent, Petitioner was involved with bodybuilding and fitness modeling. During this time, she had a personal Instagram account where she grew a following after posting items like her workouts and competitions. At some point, Petitioner no longer wished to participate in bodybuilding competitions and pursued Instagram more extensively with a view toward generating income from the platform.

5. In 2013, Respondent created a "baddie" themed Instagram page, which consisted of postings of women in scant clothing. Respondent would post this content with the women's consent, tag the woman on the caption and identify who she was, and then direct viewers to the person's

specific page. The number of followers grew on Respondent's account. In approximately 2014, Respondent began charging for posts after obtaining about one million followers.

6. Between approximately 2013 to early 2016, Respondent changed the content on his baddie-themed account to focus primarily on one specific woman. Respondent reasoned he could increase the number of followers by changing the focus of the account and generate more revenue from companies who would pay to have the specific person feature and post content for their products. Respondent worked with two women in this capacity before meeting Petitioner. "Brittania" was the name of the second woman with whom he worked.

7. In approximately late 2015 or early 2016, Petitioner and Respondent met during a photo shoot while Respondent still worked with Brittania. Respondent asked Petitioner if she had an Instagram account and whether she had any management who was helping her grow. Respondent began working with Petitioner shortly after that.

8. Respondent simultaneously worked with Brittania and Petitioner for a short period. During this overlap, Brittania remained the subject of Respondent's first or primary account (hereinafter, "Main Account"), while Respondent used a second Instagram account (hereinafter, "Backup Account") to promote Petitioner and grow her following. Also, during this overlap, Respondent testified Brittania disabled Respondent's Main Account after a disagreement.

9. On June 13, 2016, after several months of working together, Petitioner and Respondent entered into a written contract entitled, "Contract of Ownership & Management" (hereinafter, "Contract A"). The subject of Contract A was the Backup Account. Contract A stated the purpose of the agreement was to "establish the agreed ownership of the Instagram account," or the Backup Account, including Respondent's right to 50 percent ownership rights to use Petitioner's "name 'SommerRay' in all Social Media platforms & All Media in a generalized form." Per Contract A, Respondent was also entitled to 50 percent of "any and all earning[s]" stemming from marketing platforms he provided for Petitioner in "[b]randing, TV, print work, endorsement deals, appearances [and] anything in relation to her social media platform [and] name." Petitioner was

entitled to the remaining 50 percent of any revenue generated.[1] A dispute exists between Petitioner and Respondent regarding the purpose of Contract A. Petitioner testified Contract A also meant Respondent was her talent agent, but later testified the parties entered into an additional verbal agreement where Respondent acted as her talent agent. Respondent disputes that he is Petitioner's talent agent.

10. After regaining access to the Main Account, Petitioner and Respondent signed a second agreement entitled, "Contract of Ownership" (hereinafter, "Contract B"), on June 27, 2016.[2]

11. Respondent and Petitioner began working more on the Main Account after access was restored. Respondent provided Petitioner with access to the Main Account and Backup Account in approximately 2017.

12. Respondent negotiated for Petitioner, in part, by seeking sponsorship deals for Petitioner. This consisted of Respondent communicating with companies about their interest in advertising their products for the Instagram followers on the Main Account or Backup Account. Respondent could also receive such inquiries directly from a company. Respondent used one of several methods, including, direct messenger on Instagram, electronic mail, or a separate platform called Kick Messenger. If a sponsorship deal was reached, Petitioner promoted the product on either Instagram account, which usually materialized as an advertisement through a post, *e.g.*, a picture or video.

13. Respondent would send an interested company a price sheet containing the rates Respondent and Petitioner charged. The price sheet indicated Petitioner's rates varied from postings on Instagram at $150 for every 100,000 followers for a "permanent post," which meant the posting would remain on Instagram indefinitely, to $15,000 to appear at or host an event for two hours. Respondent would communicate the opportunity to Petitioner, followed by her rejection or acceptance. If Petitioner accepted to promote and advertise the product, she proceeded to feature the product, *e.g.,* wearing clothes during a photo shoot or promoting a fitness-related product during a

[1] The evidence presented during the TAC Hearing focused on work the parties performed while using the Main Account and Backup Account on Instagram only.
[2] There was insufficient evidence regarding Contract B during the TAC Hearing. Accordingly, this Determination focuses solely on Contract A.

video shoot, followed by payment to Respondent.

14. A company would pay Respondent via PayPal or bank wire to an account under the name of ANTHONY'S WORLDWIDE PROMOTIONS, LLC. Respondent kept his portion of the compensation and would send the remaining portion to Petitioner.

Petitioner's Work as a Model

15. During the time Respondent represented Petitioner, he negotiated, organized, and coordinated to have Petitioner appear on a television show for Worldstar, a company with a large social media presence. Respondent and Petitioner went to the show's location where Petitioner did the filming. Petitioner filmed two episodes, but the television show never aired nor were Respondent or Petitioner paid for Petitioner's role on the show.

16. Respondent negotiated and finalized the terms of a sponsorship deal with a company called Sweet Sweat, also referred to as "Sports Research," a supplemental company with a focus on weight loss products. Petitioner appeared on location at the beach to film an online commercial where she featured a Sweet Sweat product. On September 22, 2016, an online video featuring Petitioner advertising the Sweet Sweat product was posted on the Instagram account.

17. Respondent negotiated and finalized the terms of a sponsorship deal on behalf of Petitioner with Yandy, a lingerie company. Petitioner participated in a photo shoot where she posed for Yandy, wearing multiple items of clothing from this company's brand. In November 2016, the photographs of Petitioner featuring Yandy's clothing were posted on the Instagram account.

18. Respondent negotiated terms with a clothing company called Pretty Little Things (hereinafter, "PLT") on behalf of Petitioner. Petitioner posed in a photo shoot where she featured clothes from this company. On January 18, 2017, a picture from that photo shoot was posted on the Instagram account.

19. Between approximately July to August 2017, Respondent negotiated a second deal with PLT regarding multiple ways Petitioner would wear outfits for PLT's clothing line. Respondent negotiated an agreement with PLT as demonstrated by a contract entitled, "Agreement for Services," with an effective date of July 21, 2017, and a term of August 1 through August 31, 2017. Per the

terms, which identified Petitioner as an "Artist," Petitioner would wear PLT clothing to be posted on the Instagram account. PLT also reserved its right to use Petitioner's image on their website and other social media outlets. Petitioner was paid $15,000 per the terms of the agreement.

20. Between August to September 2017, Respondent communicated with PLT via electronic mail regarding the location and dates of the photo and video shoots, number of Instagram posts, and the timing and dates of the postings, among other items. During August 2017, Respondent posted at least two pictures of Petitioner wearing outfits for PLT's clothing line on the Instagram account.

The Live Events

21. Respondent also arranged, scheduled, and coordinated logistics for events that Petitioner attended. Petitioner was paid for her appearances, which consisted of appearing at the event and announcing her appearance on Instagram.

22. Respondent negotiated Petitioner's appearance at a booth hosted by Bang Energy, an energy drink company, during a fitness exposition in Las Vegas, Nevada. As part of her appearance, Petitioner took photographs with fans and interacted with people while at the event. Petitioner's appearance at this event was posted on Instagram.

23. In September 2016, Respondent negotiated Petitioner's appearance at a pool party in Miami, Florida. As part of her appearance, Petitioner danced with her friends, interacted with people, and took photographs. Petitioner's appearance at this event was posted on Instagram.

24. In approximately January or February 2017, Respondent negotiated Petitioner's appearance at a nightclub called "LIFE," in Houston, Texas during the Super Bowl weekend. Petitioner was paid to take pictures, spend time at the nightclub, and interact with people. Petitioner's appearance at this event was posted on Instagram.

25. In approximately October 2018, Petitioner and Respondent stopped working together.

26. In December 2018, Respondents filed suit to enforce Contracts A and B in the civil action, *Anthony Aiello, et al. v. Sommer Ray Beaty, et al.*, Case No. 18STCV08570 pending in the Los Angeles County Superior Court (hereinafter, the "Civil Case"). As part of her defense to the

Civil Case, Petitioner filed a Petition to Determine Controversy with the Labor Commissioner's Office on January 28, 2020.

III. ISSUES

1. Is Petitioner's *Petition to Determine Controversy* barred by the statute of limitations pursuant to Labor Code section 1700.44(c) and *Styne v. Stevens* (2001) 26 Cal.4th 42?
2. Is Petitioner an artist as defined pursuant to Labor Code section 1700.4(b)?
3. Did Respondents procure employment in violation of the Talent Agencies Act?
4. Is Petitioner entitled to her requested relief of disgorgement and repayment of all monies?
5. Is Petitioner entitled to attorneys' fees?

IV. LEGAL ANALYSIS

A. The One-Year Statute of Limitations under the Talent Agencies Act

As a threshold matter, the Labor Commissioner must first decide whether Petitioner's Petition to Determine Controversy (hereinafter, "Petition") was timely.

Labor Code section 1700.44(c) states:

> No action or proceeding shall be brought pursuant to this chapter with respect to any violation which is alleged to have occurred more than one year prior to commencement of the action or proceeding.

The one-year statute of limitations under Labor Code section 1700.44(c) was addressed in *Styne v. Stevens* (2001) 26 Cal.4th 42 ("*Styne*"). The *Styne* court held:

> Under well-established authority, a defense may be raised at any time, even if the matter alleged would be barred by a statute of limitations if asserted as the basis for affirmative relief. The rule applies in particular to contract actions. One sued on a contract may urge defenses that render the contract unenforceable, even if the same matters, alleged as grounds for restitution after rescission, would be untimely . . .

(*Id.* at 51-52.)

The one-year statute of limitations under Labor Code section 1700.44(c) does not bar an artist from asserting as a defense that a contract is illegal where a manager, for example, acted as an unlicensed talent agent. (See *Id*. at 53-54.)

Here, Respondents filed the Civil Case in December 2018 to enforce Contracts A and B. In

response, Petitioner filed her Petition with the Labor Commissioner as part of her defense to the Civil Case. Applying *Styne*, Petitioner is not barred by the one-year statute of limitations under Labor Code section 1700.44(c) because she filed this Petition as her defense to Respondents' Civil Case.

B. The Definition of "Artist" Pursuant to Labor Code section 1700.4(b)

The California Talent Agencies Act (hereinafter, the "Act" or "TAA") provides the Labor Commissioner with original exclusive jurisdiction over controversies between "artists" and "talent agents." (Labor Code §1700.44(a).)

Labor Code section 1700.4(b) defines "artist" as:

> [A]ctors and actresses rendering services on the legitimate stage and in the production of motion pictures, radio artists, musical artists, musical organizations, directors of legitimate stage, motion picture and radio productions, musical directors, writers, cinematographers, composers, lyricists, arrangers, models, and other artists and persons rendering professional services in motion picture, theatrical, radio, television and other entertainment enterprises.

i. Petitioner's Filming for Worldstar

The evidence demonstrates Petitioner filmed two television episodes for Worldstar, a company with a large social media presence. Respondent and Petitioner went to the show's location where Petitioner did the filming. Petitioner filmed two episodes, but the television show never aired nor were Respondent or Petitioner paid for Petitioner's role in the show.

Labor Code section 1700.4(b) expressly includes an actor within the definition of "artists." Here, Petitioner was an actor in her role with Worldstar because she rendered services for the television show by filming two episodes.

ii. Petitioner as an Artist on Social Media

The next question is whether Petitioner is "artist" due to her work on social media. If Petitioner does not fall within the definition of "artist," Respondents could not have acted as a talent agency, which divests the Labor Commissioner of her jurisdiction to hear this case. (See *Bluestein v. Production Arts Management*, TAC Case No. 24-98, at 4)("*Bluestein*".)

We have previously discussed the Legislative intent of the term, "artist."

> [W]e believe the Legislature intended to limit the term 'artists' to those individuals who perform creative services in connection with an entertainment enterprise. Without such a limitation, virtually every 'person rendering professional services' connected with an entertainment project . . . would fall within the definition of 'artists.' We do not believe the Legislature intended such a radically far reaching result. [Emphasis in original.]

(American First Run Studios v. Omni Entertainment Group, TAC Case No. 32-95, at 5)("*American First Run Studios*"); see also *Bluestein*, *supra*, TAC Case No. 24-98, at 5.)

We further recognized, however, that the Legislature made a "very significant change" when it expanded the occupation of "models" to the definition of "artists" under Labor Code section 1700.4(b). (*Bluestein* at 8.) In 1982, the California Entertainment Commission (hereinafter, "Commission"), established by Assembly Bill 997, was tasked to study the laws regulating the licensing of agents and representatives of artists in the entertainment industry. (*Id.* at 7.) As part of its review of the TAA, the Commission added "models" to the definition of "artists" under Labor Code section 1700.4(b). (*Id.* at 8.) "'The Commission reasoned that, 'as persons who function as an integral and significant part of the entertainment industry, models should be included within the definition of artist.'" (*Id*.) Similarly, we have held that models are "artists" as defined by Labor Code section 1700.4(b). (See *Redden v. Candy Ford Group*, TAC Case No. 13-06, at 2, 4("*Redden*"); *Sweeney v. Lippincott*, TAC Case No. 40-05, at 6("*Sweeney*".)

Here, Labor Code section 1700.4(b) expressly includes "model" as an occupation covered by the definition of "artist." Like the petitioners in *Redden* and *Sweeney*, Petitioner was a model who participated in different types of shoots. Petitioner displayed clothes for companies, filmed an online commercial on location for a supplemental company, and filmed two episodes for a television show. Whether the clothing or featured product is shown on television, a movie theater, or an online posting on social media is immaterial as the TAA makes no distinction between the forum or multiple outlets where the model's work is eventually displayed. What is material or relevant here is that the evidence establishes Petitioner is a model, and thus, an artist, as defined by Labor Code section 1700.4(b).

This is not to say, however, that an influencer or person with a social media presence will

always be considered an "artist" under the TAA. The TAA "'must be given a reasonable and common sense construction in accordance with the apparent purpose and intention of the lawmakers – one that is practical rather than technical, and that will lead to wise policy rather than to mischief or absurdity.'" (*Buchwald v. Superior Court* (1967) 254 Cal.App.2d 347, 354-355)(citing 45 Cal.Jur.2d, Statutes, § 116, pp. 625-626); see also *Grecco v. Blur Photo, LLC*, TAC Case No. 23297, at 14)("*Grecco*"). We caution that the decision reached here was based on the evidence at the TAC Hearing. Any matter involving an influencer or person with a social media presence who purports to be an "artist" under Labor Code section 1700.4(b) will be evaluated on a case-by-case basis.

Because we hold Petitioner is an actor and model as covered by Labor Code section 1700.4(b), we now discuss whether Respondents procured employment in violation of the TAA.

C. Respondents' Procurement of Employment for Petitioner

Labor Code section 1700.5 provides that "[n]o person shall engage in or carry on the occupation of a talent agency without first procuring a license therefor from the Labor Commissioner." A talent agent is a corporation or person who procures, offers, promises, or attempts to procure employment or engagements for an artist or artists. (Labor Code § 1700.4(a).) Thus, an unlicensed talent agent who performs such activities is in violation of the TAA.

The Labor Commissioner has ruled that procurement occurs if the evidence shows the solicitation, negotiation, or acceptance of a negotiated instrument for any of the engagements at issue. (See *McDonald v. Torres*, TAC Case No. 27-04, at 8)("*McDonald*".) Additionally, procurement "includes an 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." (*ICM Partners v. Bates,* TAC Case No. 24469, at 5) ("*Bates*")(citing *Hall v. X Management*, TAC Case No. 19-90.) "The Labor Commissioner has long held that 'procurement' includes the process of negotiating an agreement for an artist's services." (*Bates*, at 5)(citing *Pryor v. Franklin*, TAC Case No. 17 MP-114.)

The fact a manager receives no commission from an event they procured does not mean the event is exempted from the Act. (See *Park v. Deftones* (1999) 71 Cal.App.4th 1465, 1466-1467,

1471) ("*Park*".) Furthermore, the TAA extends to "individual incidents of procurement." (*Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974, 988)("*Marathon*".)

i. Contract A

We briefly note the conflicting evidence regarding the parties' understanding of their obligations under Contract A. Petitioner claims Contract A established that Respondent was Petitioner's talent agent, a contention which Respondent disputes. Meanwhile, Respondent contends the purpose of Contract A concerned the agreed ownership of the Backup Account, and a 50/50 split between the parties for use of Petitioner's name and for earnings generated from the different platforms. The Labor Commissioner takes no position on the question of ownership of the Main Account and Backup Account.

However, based on the evidence and the reasons explained below, we believe we maintain jurisdiction to determine whether engagements under Contract A were illegally procured in violation of the TAA. These engagements include, (1) Petitioner's work as a model, and (2) live events at which Petitioner appeared.

ii. Petitioner's Work as a Model

Respondents are not talent agents as defined by Labor Code section 1700.4(a). Contract A, entitled "Contract of Ownership & Management," specifically states Respondents would be entitled to 50 percent of all earnings generated from marketing platforms, *e.g.*, Instagram, SnapChat, they "provided" for Petitioner, including endorsement deals and television. We refrain from addressing the question of who owns the Main Account or the Backup Account. However, this does not negate the evidence at the TAC Hearing, which demonstrates Respondents illegally procured employment in violation of the TAA.

Regarding Petitioner's filming for Worldstar, the evidence shows Respondent negotiated, organized, and coordinated to have Petitioner appear on two episodes for a television show. That Respondent or Petitioner were not paid for this engagement does not exempt Respondent from the Act. (*Park*, *supra*, 71 Cal.App.4th at 1466-1467, 1471.)

Regarding the procurement of employment for other engagements, Respondent further

testified he negotiated and finalized the terms of sponsorship deals with Sweet Sweat, Yandy, and PLT. (See *Bates, supra*, at 5.) For the second sponsorship deal with PLT, Aiello negotiated the terms of an agreement and was extensively involved in multiple communications with PLT regarding the location and dates of the shoots, the number of Instagram posts, and the timing and dates of the posts. (*Id.*; see also *McDonald*, *supra*, at 8.) Where the TAA extends to individual incidents of procurement, here, the evidence demonstrates Respondents illegally procured employment for Petitioner on at least five occasions.[3] (*Marathon, supra,* 42 Cal.4th at 988.)

iii. The Live Events

We next address whether Respondent illegally procured employment in violation of the TAA for Petitioner's appearances at the Bang Energy booth at the fitness exposition in Las Vegas, the pool party in Miami, and the nightclub appearance in Houston (collectively, the "Live Appearances").

The proper burden of proof in actions before the Labor Commissioner is found at Evidence Code section 115, which states in part, "[e]xcept as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence." "[T]he party asserting the affirmative at an administrative hearing has the burden of proof, including both the initial burden of going forward and the burden of persuasion by preponderance of the evidence." (*McCoy v. Bd. of Ret.* (1986) 183 Cal.App.3d 1044, 1052, fn. 5). "'[P]reponderance of the evidence standard . . . simply requires the trier of fact' to believe that the existence of a fact is more probable than its nonexistence.'" (*In re Michael G*. (1998) 63 Cal.App.4th 700, 709, fn. 6).

The Labor Commissioner finds Petitioner failed to meet her burden to establish that Respondent illegally procured employment for Petitioner as a model for the Live Events. Unlike her employment with Worldstar, Yandy, PLT, or Sweet Sweat – where the evidence demonstrated Petitioner filmed two episodes for a television show, displayed clothes for clothing companies at photo shoots, or featured a product while filming an online commercial – Petitioner testified that her

[3] Petitioner's Exhibit 1, a deposition transcript from the Civil Case, includes Respondent's testimony regarding his role in other posts or engagements. While relevant, the use of depositions in these types of proceedings is limited. (See Cal. Code Regs. tit. 8, § 12028.) The Hearing Officer bases this Determination on the totality and weight of the evidence presented during the TAC Hearing.

work while appearing at the Live Events primarily consisted of attending the events, taking pictures with fans, and interacting with people. While her appearances at the Live Events were posted on Instagram, activities like interacting with people, spending time at an event, or taking pictures with fans do not alone establish Petitioner was a "model."

Since the Labor Commissioner finds Petitioner was not a model under Labor Code section 1700.4(b) for the Live Events, the next question is whether Petitioner may still be considered an artist under the Act. Separate from the express occupations included in Labor Code section 1700.4(b), a person may be an "artist" if they render "professional services in . . . other entertainment enterprises." Here, Petitioner presented no evidence whatsoever regarding whether she rendered "professional services" as contemplated under the Act while appearing at the Live Events, or that the Live Events were "other entertainment enterprises" under Labor Code section 1700.4(b). In failing to do so, Petitioner did not meet her burden in demonstrating she was an "artist" who rendered professional services for an entertainment enterprise.

Because Petitioner is not a model or artist under Labor Code section 1700.4(b) for the Live Events, Respondent did not illegally procure employment for Petitioner's appearances in violation of the TAA. The Labor Commissioner is without jurisdiction to consider this specific issue any further.

D. Petitioner's Requested Relief of Disgorgement and Repayment of all Monies

In her Petition, Petitioner requests disgorgement and repayment of all monies earned by Petitioner and received or held by Respondent.

Labor Code section 1700.44(c) states: "No action or proceeding shall be brought pursuant to this chapter with respect to any violation which is alleged to have occurred more than one year prior to commencement of the action or proceeding." Section 1700.44(c) "explicitly bars any claim for affirmative relief based on a violation which occurred more than one year prior to the filing of the petition." (*McDonald*, *supra*, TAC Case No. 27-04, at 6.)[Emphasis in original.] "Accordingly, if a violation of the Act is found, the one year statute of limitations limits disgorgement to commissions paid within one year of the filing of the [p]etition." (*Id.*)[Emphasis in original.]

Petitioner initiated this proceeding when she filed her Petition on January 28, 2020. While no

evidence was presented regarding the last time Respondent received commissions, the parties agreed that they stopped working together in approximately October 2018. Even if Respondents violated the Act in October 2018, which the evidence does not show, Petitioner would have needed to file her Petition by October 2019 to request disgorgement. Here, the Labor Commissioner denies Petitioner's request for disgorgement as untimely.

E. Attorney's Fees

In her Petition, Petitioner also seeks attorneys' fees. Attorneys' fees in these proceedings are available as indicated under Labor Code section 1700.25(e)(1), which states in pertinent part:

> (e) 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.

Labor Code section 1700.25(a) requires a licensee who receives any payment of funds on behalf of an artist to immediately deposit those funds in a trust fund maintained by the licensee in a bank or other "recognized depository." The funds, minus the licensee's commissions, must be provided to the artist within 30 days after receipt.

Respondent testified he did not maintain a trust account for Petitioner. However, Petitioner presented no evidence to demonstrate that Respondent's actions were a willful violation of Labor Code section 1700.25.

For the reasons stated above, Petitioner's request for attorneys' fees is denied.

V. CONCLUSION

Labor Code section 1700.5 requires a talent agent to procure a license from the Labor Commissioner. Since the clear object of the Act is to prevent improper persons from becoming talent agents and to regulate activity for the protection of the public, a contract between an unlicensed artist's manager and an artist is void. (*Buchwald, supra,* 254 Cal.App.2d at 351.) Consequently, Contract A between Petitioner and Respondent is void *ab initio* for all purposes.

//

ORDER

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

1. The Labor Commissioner takes no position regarding ownership of the Main Account and/or the Backup Account at issue in the instant matter.

2. Contract A between Petitioner SOMMER RAY BEATY and Respondents ANTHONY AIELLO and ANTHONY'S WORLDWIDE PROMOTIONS is void *ab initio* under the Talent Agencies Act.

3. Petitioner's request for disgorgement and repayment of any and all monies is denied as barred by the statute of limitations.

4. Petitioner's request for attorneys' fees is denied.

IT IS ORDERED.

Dated: January 9, 2023

Respectfully submitted,

PATRICIA SALAZAR
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER.

Dated: January 9, 2023

LILIA GARCIA-BROWER
State Labor Commissioner

PROOF OF SERVICE
Beaty v Aiello, et al.
TAC - 52756

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

I, Jhonna Lyn Estioko, declare and state as follows:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is Division of Labor Standards Enforcement, Department of Industrial Relations, 320 W. 4th Street, Suite 600, Los Angeles, California 90013. My e-mail address is: JEstioko@dir.ca.gov.

On January 09, 2023, I served the following documents described as: **DETERMINATION OF CONTROVERSY,** on the persons below as follows:

Attorneys for Petitioner	*Attorney for Respondent(s)*
Brett Chisum, Esq. (bchisum@mccathernlaw.com) Arnold Shokouhi, Esq. (arnolds@mccathernlaw.com) McCATHERN, LLP 523 West Sixth Street, Suite 830 Los Angeles, CA 90014 T: (213) 225-6150 F: (213) 225-6151	Joseph S. Farzam, Esq. (joseph@farzamlaw.com) Michael P. Green, Esq. (michael@farzamlaw.com) JOSEPH FARZAM LAW FIRM 11766 Wilshire Blvd., Suite 280 Los Angeles, CA 90025 T: (310) 266-6890 F: (310) 266-6891

☒ **(BY CERTIFIED FIRST CLASS MAIL)** By placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope, marked Certified, with postage fully prepaid.

☒ **(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) listed above.

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

Executed on January 09, 2023, at Los Angeles, California.

Jhonna Lyn Estioko
Declarant