DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
State of California
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BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT

DEPARTMENT OF INDUSTRIAL RELATIONS

STATE OF CALIFORNIA

RIAN JOHNSON, Petitioner, v. BRIAN DREYFUSS; and FEATURED ARTISTS AGENCY, a California corporation, Respondents.	Case No.: TAC 43105 **DETERMINATION OF CONTROVERSY**

DETERMINATION

I.

INTRODUCTION

Rian Johnson has filed with the Labor Commissioner, pursuant to Labor Code Section 1700.44, a petition (the "Petition") to determine controversy against Brian Dreyfuss and Featured Artists Agency, Inc. ("FAA"), a California corporation (Mr. Dreyfuss and FAA collectively "Respondents"; Mr. Johnson and Respondents collectively the "Parties").

The Petition came on regularly for hearing over two days before the above-named hearing officer at the Office of the Labor Commissioner in Los Angeles, California; the Parties were represented by counsel: Aaron J. Moss and Daniel G. Stone, of Greenberg Glusker Fields Claman & Machtinger LLP, for Mr. Johnson; and Randy R. Merritt, of Law Office of Randy R. Merritt, for Respondents. The following witnesses testified: Mr. Johnson, George Bryan Unger, Ram Bergman, and Mr. Dreyfuss; 80 exhibits were admitted into evidence and the hearing was followed by extensive briefing by the Parties.

II.

ALLEGATIONS OF THE PETITION

A. The Parties.

i. Mr. Johnson is a director and screenwriter residing in Los Angeles County, California and is an "artist" as defined in Labor Code Section 1700.44.

ii. FAA, a licensed talent agency (License Number 31824), is headquartered in Los Angeles County.

iii. Mr. Dreyfuss has conducted business in Los Angeles County and is not, personally, a licensed talent agent; he is, however, FAA's president and chief executive officer.

B. Background of the dispute.

Mr. Johnson was Mr. Dreyfuss' client for approximately ten years, including during a three-year period during which Mr. Johnson primarily was represented by Creative Artists Agency ("CAA") and during which period Mr. Johnson paid commissions to both CAA and to

FAA. Mr. Johnson, with Mr. Dreyfuss' acknowledgment, terminated FAA in 2014. Mr. Johnson, however, continued to pay commissions to FAA for pre-termination projects.

On March 18, 2016, Mr. Dreyfuss filed suit (the "Lawsuit") against Mr. Johnson and Mr. Johnson's producing partner, Ram Bergman, in Los Angeles County Superior Court (Case No.: BC 614146), seeking to recover commissions from Mr. Johnson's work writing and directing "Star Wars: Episode VIII" ("Star Wars"). According to the Petition, however, Mr. Johnson had never paid commissions personally to Mr. Dreyfuss; he had terminated FAA well before receiving an offer to write and direct "Star Wars"; and Respondents had played no role in procuring or negotiating Mr. Johnson's employment on "Star Wars".

According to the Petition, the Lawsuit has "exposed years of improper conduct" by Respondents against Mr. Johnson, which misconduct, in addition to the Lawsuit's attempt to recover commissions allegedly due Mr. Dreyfuss personally, requires disgorgement by Respondents of commissions already paid them by Mr. Johnson and a declaration that Mr. Dreyfuss is not owed commissions for "Star Wars" or for other projects obtained after the relationship between Mr. Johnson and Respondents was terminated.

C. **Commencement of the relationship between Mr. Johnson and Mr. Dreyfuss.**

From 2002-2005, Mr. Johnson was represented by the The Paul Kohner Agency ("Kohner") – a licensed talent agency - and Mr. Dreyfuss was his primary agent. While represented by Kohner, Mr. Johnson became – and remains – a member of the Directors Guild of America (the "DGA") and the Writers Guild of America (the "WGA"). Both the DGA and WGA require their members to be represented only by talent agents they each franchise. Accordingly, Kohner was a member of the Association of Talent Agents ("ATA"), which is franchised by both the DGA and the WGA. Both the DGA and WGA have rules governing the relationship between their members and talent agents they franchise.

According to the Petition, the agreement between the ATA and the DGA (the "ATA-DGA Agreement") contains provisions barring directors from paying a commission in excess of 10% "to all agents with respect to any engagement unless prior agreement of DGA is obtained"; and allowing an agent which is "terminated by a Director having a right to do so" to

collect commissions "on deals entered into or substantially negotiated prior to such termination", provided the "Agent ... serve the Director and perform obligations with respect to any employment contract and to extension or renewals of said employment contract or to any employment requiring the services of the Director on which such compensation is based." Further, the foregoing language is required by the ATA-DGA Agreement to be "attached to, and made a part of, any contract between a talent agency and a DGA member" in a form called "Rider 'D'" ("Rider D").

The Petition further alleges that a talent agency franchised by the WGA must abide by the "WGA Artists' Manager Basic Agreement" (the "WGA Agreement"), which regulates the relationships between such agencies and WGA members. The WGA Agreement contains provisions stating, "[Agents'] fee, commission or compensation based on or related to the representation of a Writers' services of materials shall in no case exceed ten percent (10%) of the Writer's compensation for said services"; and "Commissions after expiration or termination [] of a representation agreement: [Agent has a] right to commission on compensation received under any employment agreement of Writer which was in effect and subject to commissions at the time of termination of the representation agreement" (brackets and language within brackets are from the Petition). This language, according to the Petition, is required to be attached to, and made a part of, any contract between a talent agency and a WGA member in a form called "Rider 'R'" ("Rider R").

D. <u>Mr. Dreyfuss' incorporation of FAA and Respondents' continued representation of Mr. Johnson.</u>

According to the Petition, Mr. Dreyfuss left Kohner in 2005 and started FAA as a licensed talent agency through which he operated thereafter. Shortly after FAA was created, Mr. Johnson terminated Kohner and retained FAA. He never signed a written agreement with either Respondent, but "believed and understood" that FAA also would be franchised by the DGA and the WGA and would comply with each guild's rules. According to the Petition, the Parties understood that Mr. Johnson would pay a commission to FAA for projects on which FAA procured employment for Mr. Johnson and neither discussed the idea nor agreed that Mr.

Johnson would owe commissions to Respondents for projects negotiated after Mr. Johnson terminated FAA.

Notwithstanding Mr. Johnson's "underst[anding] and belie[f]" that FAA was franchised by the DGA and that it had agreed to be bound by the ATA-DGA Agreement (including the requirement that Rider D be appended to and included in any agreement between Mr. Johnson and FAA), FAA "deliberately failed to become franchised by the DGA, in order to attempt to avoid the obligations required of the ATA-DGA Agreement" and Respondents "concealed this fact" from Mr. Johnson.

Because the Lawsuit, however, alleges Mr. Dreyfuss' representation of Mr. Johnson "is governed by the terms of the agreement between Johnson and Kohner" and because Kohner was a signatory to the ATA-DGA Agreement, Mr. Dreyfuss, according to the Petition, has conceded his representation of Mr. Johnson is also governed by the ATA-DGA Agreement.

Although FAA was not franchised by the DGA, it was, according to the Petition, franchised by the WGA and had agreed to be bound by the WGA Agreement. Accordingly, the relationship between Mr. Johnson and FAA is governed by the WGA Agreement.

From 2005-2010, Mr. Johnson and FAA had a "productive" relationship.

E. Mr. Johnson retains CAA.

In July 2011, Mr. Johnson hired CAA as a talent agency in order to increase the opportunities available to him. He continued, however, due to his "loyalty" to Mr. Dreyfuss, to retain FAA as a talent agency. Then, represented by both agencies, he paid commissions to both, even though, according to the Petition, "virtually every single piece of new business during this time was procured and negotiated without [FAA's] involvement." Respondents knew Mr. Johnson was represented by two agents, but "continued to seek a full 10% commission for work procured and commissioned by CAA" and did so "knowing that such commissions were in violation of both the ATA-DGA Agreement and the WGA Agreement."

F. Mr. Johnson terminates FAA.

In March 2014, Mr. Johnson met with Mr. Dreyfuss and terminated FAA; Mr. Dreyfuss confirmed the termination in writing on March 23, 2014. Following the termination, Mr.

Dreyfuss wrote to Mr. Johnson's attorney asserting that Mr. Johnson still owed commissions for the projects "Brick", "The Brothers Bloom", and "Looper" and that he would owe commissions on two projects on which Mr. Johnson was working but had not yet sold: "Untitled WWII Project" and "Untitled Murakami Project". Mr. Johnson has continued to pay FAA commissions for "Brick", "The Brothers Bloom", and "Looper" but denies that he owes FAA any commissions for "Untitled WWII Project", "Untitled Murakami Project" or any other prospective projects that had not been sold at the time he terminated FAA.

Mr. Dreyfuss, in writing to Mr. Johnson's attorney and in listing projects on which he believed Mr. Johnson owed commissions, did not list "Star Wars"; the Lawsuit, however, contends that Mr. Dreyfuss is owed commissions for "Star Wars"; Mr. Johnson denies Respondents are owed any commissions for "Star Wars": that offer was not presented to Mr. Johnson until after he terminated FAA and Respondents played no role in procuring or negotiating Mr. Johnson's employment on "Star Wars".

G. Causes of action in the Petition.

1. Violation of California Labor Code §§ 1700, et seq. against Mr. Dreyfuss.

The Lawsuit alleges that Mr. Dreyfuss, individually, procured employment for Mr. Johnson and is entitled to commissions on various projects; Mr. Dreyfuss, however, was not a licensed talent agent and therefore, if he did solicit, procure, offer to procure or attempted to procure employment for Mr. Johnson, he acted in violation of Labor Code Sections 1700, et seq. Further, Mr. Johnson believed that FAA – and not Mr. Dreyfuss – was his talent agent. If Mr. Dreyfuss, instead, was acting as Mr. Johnson's agent, Mr. Dreyfuss is "required to disgorge[] all commissions paid by Johnson to Dreyfuss in connection with Johnson's employment" and Mr. Johnson is entitled to a determination that Mr. Dreyfuss is not entitled to any future commissions from Mr. Johnson in connection with any project.

2. Declaratory relief against Respondents.

Mr. Johnson's relationship with Respondents was governed by California law governing talent agencies, including but not limited to: Title 8, California Code of Regulations

Section 12002; "all agreements governing the employment of DGA members"; and "all agreements governing the employment of WGA members".

8 CCR Section 12202 authorizes an agent to recover a fee under an oral contract "as long as the particular employment for which such fee, commission or compensation is sought to be charged shall have been procured directly through the efforts and services of such talent agency and shall have been confirmed in writing within 72 hours." "Further, all purported terms of an agent's contract must be disclosed to the artist so that the artist is aware of his duties and responsibilities and the duties and responsibilities of his agent." Rider D bars an agent from claiming any "commission on engagements that were not entered into or substantially negotiated prior to termination." Finally, Rider W bars an agent from "claiming commissions for any agreements which were no in effect or subject to commissions at the time of the termination of the agent's representation."

Application of these provision, according to the Petition, bars Respondents from recovering any commissions for "Star Wars", "Untitled WWII Project" or "Untitled Murakami Project". None was directly procured by Respondents and no deal for any of these projects was entered into or substantially negotiated prior to Mr. Johnson's termination of FAA. Further, Respondents did not offer to render post-termination services to Mr. Johnson in connection with any project. Accordingly, Mr. Johnson is entitled to a determination that: (a) he owes no commissions or other payments to Respondents in connection with "Star Wars", "Untitled WWII Project" or "Untitled Murakami Project"; and (b) because he is not required to "pay more than a 10% total commission to any agent with respect to any project... Respondents are obligated to disgorge and refund to Johnson any commissions to which they are not entitled."

3. **Breach of agency agreement against Respondents.**

Both the ATA-DGA Agreement and the WGA Agreement "provide that no member may be required to pay, nor any agency collect, total commissions in excess of 10% to all agents with respect to any engagement." Respondents willfully and deliberately violated these provisions by "demand[ing] and receiv[ing] a 10% commission on Mr. Johnson's projects, including but not limited to "Pacific Rim" and "Godzilla" – on which Mr. Johnson "had paid a

full 10% commission to CAA" – thereby causing Mr. Johnson to pay a 20% total commission on those projects. Respondents, in the Lawsuit, are seeking a 10% commission on "Star Wars" even though Mr. Johnson owes CAA a 10% commission on that project. Accordingly, Mr. Johnson seeks a determination that Respondents must disgorge their 10% commission for any projects "on which Johnson has paid more than a 10% commission" and "he need not pay any future commission in an amount in excess of 10% to all agents with respect to any engagement."

H. Prayer for relief.

The Petition seeks the following determination:

- Mr. Dreyfuss operated as an unlicensed talent agent in violation of Labor Code Sections 1700, et seq.;
- Mr. Dreyfuss must disgorge commissions paid to him by Mr. Johnson;
- Mr. Johnson owes no future commissions to Mr. Dreyfuss;
- Mr. Johnson has no liability to Respondents under any agreement between him and Mr. Dreyfuss and Mr. Dreyfuss has no rights or privileges under any such agreement; and
- To the extent Respondents acted lawfully as talent agents for Mr. Johnson: (a) Mr. Johnson is not obligated to pay any post-termination commissions to Respondents; (b) Mr. Johnson is not obligated to pay any commissions to any "Star Wars" project to Respondents; (c) Mr. Johnson is not obligated to pay to Respondents any commissions on the "Untitled WWII Project", "Untitled Murakami Project", or any other projects for which no employment agreement was entered-into prior to termination of the relationship between Mr. Johnson and Respondents;
- Mr. Johnson "need not pay any future commission in excess of 10% to all agents with respect to any engagement";
- Respondents (the Petition says "Johnson and Featured" but this appears to be a typographical error) must disgorge and refund to Mr. Johnson any commissions or other consideration to which they are not entitled, plus interest.

III.

FINDINGS OF FACT

A. Preliminary issue pertaining to the allegation that Mr. Dreyfuss acted illegally as an unlicensed talent agent.

Insofar as the Petition alleges that Mr. Dreyfuss acted as an unlicensed talent agent and seeks disgorgement of commissions paid to him by Mr. Johnson, it is evidenced by the March 18, 2016 complaint (the "Complaint") commencing the Lawsuit. The Complaint alleges in several places that from 2006-14, after Mr. Dreyfuss left Kohner and formed FAA, he, individually, was Mr. Johnson's agent and procured and negotiated employment for Mr. Johnson. Because Mr. Dreyfuss admittedly was not a licensed talent agent during this period, the Petition seeks recovery of commissions paid by Mr. Johnson to Mr. Dreyfuss. Resolving this issue ordinarily would require determining, for example, whether Mr. Johnson had ever paid commissions to Mr. Dreyfuss, individually, rather than to FAA, the licensed talent agency employing Mr. Dreyfuss. Nevertheless, the issue appears to have been obviated by the May 2, 2016 filing in the Lawsuit of a first amended complaint (the "FAC").

The FAC brings FAA in as co-plaintiff with Mr. Dreyfuss and alleges that FAA, with Mr. Dreyfuss as its employee, was Mr. Johnson's agent during the relevant period, negotiated and procured employment for him, etc. Counsel for Respondents stated at the commencement of the hearing that his treatment of Mr. Dreyfuss in the March 18, 2016 complaint as the actual "agent" was a mistake – corrected in the FAC. The testimony of the Parties and the post-hearing briefing supports the conclusion that the issue of whether Mr. Dreyfuss, individually, acted as an unlicensed talent agent has been mooted by the filing of the FAC.

B. The Parties.

1. Mr. Johnson, during all times relevant to the Petition – roughly 2002-16 – was a producer and director of various film and television projects.

2. Mr. Dreyfuss was not, during any period relevant to the Petition, a licensed talent agent.

3. FAA was incorporated by Mr. Dreyfuss around 2006 and from 2006 to March 2014, was a licensed talent agent for Mr. Johnson, with Mr. Dreyfuss, for purposes of its relationship with Mr. Johnson, its primary officer and employee.

C. **Mr. Johnson's relationship with Kohner.**

1. From 2002-06, Kohner was Mr. Johnson's licensed talent agent and Mr. Dreyfuss was the employee primarily responsible for providing agent services to Mr. Johnson.

2. Kohner had a general practice of requiring its clients to sign a written "general services agreement" containing a provision incorporating the "regulations of any guild or union regarding management contracts, which you [the artist] have agreed to or which you shall agree to" and which afforded Kohner a ten percent commission on consideration paid to the artist on "any employment or contract now in existence or entered into or negotiated for during the term."

3. In 2003, Mr. Johnson became a member of the WGA; he was not, while represented by Kohner, a member of the DGA.

4. During the time Kohner represented Mr. Johnson, Kohner was a member of the ATA and ATA was a signatory to the ATA-DGA Agreement; Kohner also was a signatory to the WGA Agreement.

5. The ATA-DGA Agreement requires that agreements between the DGA's franchised agencies and directors represented by them contain Rider D; the WGA Agreement requires that agreements between the WGA's franchised agencies and writers directed by them contain Rider W. Rider D and Rider W each contain provisions governing limits on commissions and the conditions under which commissions are owed.

6. There is insufficient evidence to conclude Kohner and Mr. Johnson had a written agreement for talent agency services; the agreement on which they appeared to operate was one that afforded Kohner a 10% commission on Mr. Johnson's compensation for projects procured or negotiated by Kohner.

7. There is insufficient evidence to conclude that Kohner and Mr. Johnson agreed to, or did, conduct their relationship under the terms of Rider D or Rider W.

D. Mr. Dreyfuss' creation of FAA and commencement of FAA's relationship with Mr. Johnson.

1. In late January to early February 2006, Mr. Dreyfuss left Kohner and founded FAA, a licensed talent agency.

2. Approximately at the beginning of February 20016, Mr. Johnson left Kohner and began to be represented by FAA, with Mr. Dreyfuss as his primary agent.

3. Mr. Johnson did not sign a written agreement with either Respondent.

4. Mr. Johnson did not discuss with Respondents the terms under which FAA would represent him; Mr. Dreyfuss believed the terms would be the same as existed between Kohner and Mr. Johnson but did not communicate that belief to Mr. Johnson.

5. FAA submitted a talent agency agreement for approval by the Labor Commissioner; it was approved on March 21, 2006, but there is insufficient evidence to conclude that the terms of that agreement ever were assented-to by Mr. Johnson, either orally or in writing.

6. In or about April 2007, FAA assented to the WGA Agreement.

7. The WGA Agreement contains provisions governing the circumstances under which Rider W would be incorporated into prior existing contracts between a writer and a franchised agency; neither Mr. Johnson nor Respondents effectuated these provisions or otherwise agreed to conduct their relationship according to the provisions of Rider W.

8. Mr. Johnson became a member of the DGA in 2009.

9. Mr. Johnson and Respondents did not discuss FAA becoming a franchised agent of the DGA or including the terms of Rider D in their agreement; nor is there sufficient evidence to conclude Respondents concealed from Mr. Johnson that FAA was not a member of the DGA and that it did not join the DGA after Mr. Johnson did.

10. From 2006-10, Mr. Johnson paid FAA a 10% commission on projects for which he was hired; the evidence of the level of FAA's involvement in Mr. Johnson being hired for a project is insufficient to determine the extent the Parties believed warranted the payment of a commission.

E. Mr. Johnson retains CAA and maintains his relationship with FAA.

1. During the Summer of 2011, Mr. Johnson hired CAA as an additional talent agent. He did so because he believed that CAA would afford him job opportunities not available through FAA.

2. Mr. Johnson maintained FAA as a talent agency after hiring CAA because he felt loyalty to Mr. Dreyfuss and because he wanted to take advantage of the "strengths" of both agencies.

3. Mr. Johnson and Respondent did not discuss, or agree to, any changes in their relationship after Mr. Johnson hired CAA. Mr. Johnson continued to pay FAA a 10% commission.

4. Mr. Johnson believed, once he hired CAA as an additional agent, that CAA and FAA sometimes worked together, and sometimes separately, but did receive complaints from Mr. Dreyfuss that CAA was not including Respondents in the work it was doing.

5. With respect to commissions paid by Mr. Johnson to CAA and to FAA during the period in which each was Mr. Johnson's agent, there is insufficient evidence to draw a conclusion about the sums paid to each or about the work done by each agency for employment procured and negotiated for Mr. Johnson.

6. In February 2014, FAA obtained for Mr. Johnson the opportunity to adapt for the screen a book by Haruki Murakimi (the "Murakami Project") entitled "Colorless Tsukuru Tazaki and His Years of Pilgrimage: A Novel." The evidence does not show that this work has been completed or been sold.

F. Mr. Johnson's firing of FAA and hiring for "Star Wars."

1. On June 18, 2012, Mr. Johnson met with Kathleen Kennedy of Lucasfilm; this meeting was arranged by CAA; it was not arranged by Respondents. The meeting did not involve any particular project and was a way for Ms. Kennedy to meet Mr. Johnson.

2. Mr. Johnson did not discuss "Star Wars" at the June 18, 2012 meeting; and Lucasfilm hired J.J. Abrams to direct the next "Star Wars" film produced after 2012. There

were efforts in late 2012, made through CAA, to arrange a second meeting but the evidence is ambiguous on whether such a meeting took place.

3. On January 21, 2014, Kiri Hart of Lucasfilm contacted Mr. Dreyfuss, referencing her prior contacts with CAA, and asked to get Mr. Johnson "back for a brief meeting to discuss future projects." She stated in the e-mail "we have a stronger sense of our content plan I'd love to have a more substantive discussion than we were able to when we met before."

4. Mr. Dreyfuss did not attempt to arrange the meeting offered by Ms. Hart and did not notify Mr. Johnson that the offer had been made.

5. In early March 2014, CAA arranged a second meeting between Mr. Johnson and Ms. Kennedy. This meeting took place on March 20, 2014.

6. At the March 20, 2014, Ms. Kennedy asked if Mr. Johnson would be interested in writing and directing "Star Wars"; she also said she had no authority to offer him the job because only The Walt Disney Studios, Lucasfilm's owner, had that power. Mr. Johnson responded by asking her if he could "think about it."

7. On March 21, 2014, Mr. Johnson decided to terminate FAA as his talent agent, and did so in a meeting with Mr. Dreyfuss on March 23, 2014.

8. Following the March 23, 2014 meeting, Mr. Dreyfuss sent two e-mails to Mr. Johnson's attorney listing the projects on which he contended Mr. Johnson owed post-termination commissions. "Star Wars" was not included in these lists.

9. Mr. Johnson had additional meetings – with representatives of Disney - about "Star Wars" during March and April 2014 and received his first offer on "Star Wars" on May 6, 2014. Negotiations, involving CAA, took place during May 2014 and an agreement in principle was reached in June 2014. A final agreement was reached in September 2015.

10. Following Mr. Johnson's termination of FAA and in and after June 2014, Mr. Dreyfuss received press inquiries about Mr. Johnson being hired for "Star Wars" and referred those inquiries to CAA, as Mr. Johnson's agent.

11. Neither Mr. Dreyfuss nor FAA participated in or facilitated any of the discussions or negotiations between Mr. Johnson and representatives of Lucasfilm or Disney about Mr. Johnson being hired to write or direct "Star Wars".

12. Following FAA's termination, FAA intended to assist Mr. Johnson in negotiating a deal for a "World War II Project" (i.e., the "Untitled World War II Project"). There is no evidence that this project has been completed or sold.

IV.

CONCLUSIONS OF LAW

A. Introduction

Labor Code Section 1700.44(a) states: "In cases of controversy arising under this chapter [4, of Part 6 of Division 2 of the Labor Code], the parties involved shall refer the matters in dispute to the Labor Commissioner, who shall hear and determine the same, subject to an appeal within 10 days after determination, to the superior court where the same shall be heard de novo. To stay any award of money, the party aggrieved shall execute a bond approved by the superior court in a sum not exceeding twice the amount of the judgment. In all other cases the bond shall be in a sum of not less than one thousand dollars ($1,000) and approved by the superior court."

B. The terms of the agreement governing the relationship between Mr. Johnson and FAA.

According to Title 8, California Code of Regulations, Section 12002:

> A talent agency shall be entitled to recover a fee, commission or compensation under an oral contract between a talent agency and an artist as long as the particular employment for which such fee, commission or compensation is sought to be charged shall have been procured directly through the efforts or services of such talent agency and shall have been confirmed in writing within 72 hours thereafter. Said confirmation may be denied within a reasonable time by the other party. However, the fact that no written confirmation was ever sent shall not be, in and of itself, sufficient to invalidate the oral contract.

As a requirement for licensure, a talent agency must "submit to the Labor Commissioner a form or forms of contract to be utilized by such talent agency in entering into written contracts with artist for the employment of the services of such talent agency by such artist, and secure the approval of the Labor Commissioner thereof." Labor Code, § 1700.23. Further: "Every talent agency shall file with the Labor Commissioner a schedule of fees to be charged and collected in the conduct of that occupation...." Id., § 1700.24.

An agreement, even if not in writing, may be implied by the conduct of the parties. See, e.g., Pollack v. Lytle, 120 Cal. App. 3d 931, 940 (1981): "It is well settled that a contract of agency may be implied from the conduct of the parties." An implied-in-fact agreement also may contain terms incorporating a written agreement. See Kashmiri v. Regents of the University of California, 156 Cal. App. 4th 809, 834 (2007). In proving the terms of this contract, however, the actual conduct showing the terms of the agreement must be shown. Id. (listing actions plaintiff and defendant each performed that demonstrate conformity with the alleged terms).

The hearing of the Petition, and much of the briefing, was devoted to efforts by the Parties to demonstrate the applicability of provisions of Rider D, Rider W, or both that inured to their respective benefit. What the Parties did not do, however – in the face of there being no written agreement to abide by either Rider – is show any conduct that might help demonstrate that either Rider, or any actual contractual terms other than "10% commission", applied to their relationship or show what level of involvement in Mr. Johnson's employment was required before FAA could earn a commission. Further, neither Party showed Rider D or Rider W to be part of any contract or fee schedule filed with the Labor Commissioner (see Labor Code, §§ 1700.23-.24) and – assuming, arguendo, it was material - Mr. Johnson did not show that Respondents concealed from him that FAA was not a franchised agent of the DGA. Accordingly, whatever impact Rider D or Rider W might have had on either Party's obligations

to the DGA or WGA, respectively, neither Rider bears on either Party's obligations to one another for purpose of the Petition.[1]

Although there was apparently a practice by Kohner to require its clients to sign an agreement, there is no evidence that Mr. Johnson did so. Even if he had, he signed no agreement with FAA, no agreement was discussed, no "let's continue as with Kohner" oral agreement was made and no action took place that demonstrates the Parties' cognizance of any contract term other than the payment of a 10% commission to FAA.

Accordingly, the only provision governing the relationship between Mr. Johnson and Respondents is Section 12002: they had an oral agency agreement for a 10% commission – a commission to which FAA was entitled: "as long as the particular employment for which such fee, commission or compensation is sought to be charged shall have been procured directly through the efforts or services of such talent agency and shall have been confirmed in writing within 72 hours thereafter. Said confirmation may be denied within a reasonable time by the other party. However, the fact that no written confirmation was ever sent shall not be, in and of itself, sufficient to invalidate the oral contract." Id.

C. **Payments made by Mr. Johnson to FAA during the term of their relationship.**

The Petition seeks disgorgement of fees paid to FAA on two theories: (1) Mr. Dreyfuss, per the allegations in the Complaint, was acting illegally as an unlicensed talent agent; and (2) FAA was not entitled to recover a 10% commission on projects pertaining to which Mr. Johnson had paid CAA a 10% commission. The former claim has been obviated – and Mr. Johnson pointedly refrained from arguing to the contrary – by the FAC, which properly asserts that FAA was Mr. Johnson's agent and seeks remedies from him in that capacity.

[1] The Labor Commissioner, in adjudicating talent agency controversies under Labor Code, Section 1700.44, enforces pertinent provisions of the Labor Code, regulations promulgated thereunder and agreements that comport with those provisions; the Labor Commissioner does not enforce ATA, DGA or WTA rules.

The latter claim is unsupported by the evidence provided by Mr. Johnson. That evidence shows that Mr. Johnson continued to retain FAA after hiring CAA because of his personal "loyalty" to and shared history with Mr. Dreyfuss and by his belief that he was getting the best of both agencies. The record is devoid of evidence that he was duped or coerced into paying each of his agents a 10% commission or that FAA failed to provide consideration for the commissions it received.

Even if, arguendo, two talent agencies could legally be barred from collecting a 10% commission on the same project, the record does not allow a determination of any way to determine the circumstances under which FAA should forfeit its fee because, e.g., CAA did all or most of the work procuring or negotiating a job and yet both CAA and FAA received a 10% commission. The assertion is made broadly, but not with any specificity that would allow a determination of any instance in which the rule – even if it applied – should be enforced.

D. Post-termination payments for "Star Wars" and other projects.

In defending against the Petition's request for a determination that FAA is not owed commissions for "Star Wars" Respondents rely in part on the argument that Mr. Johnson concealed his "Star Wars" negotiations from Respondents and terminated FAA in order to avoid having to pay FAA commissions on the project. See, e.g., Love v. Fire Ins. Exchange, 221 Cal. App. 3d 1136, 1153 (1990) (the covenant of good faith and fair dealing exists 'to prevent a contracting party from engaging in conduct which (while not technically transgressing the express covenants) frustrates the other party's rights to the benefits of the contract").

The evidence supports the conclusion that Mr. Johnson terminated FAA on March 23, 2014 as a consequence of his March 20 meeting with Lucasfilm during which – even if he was not offered the job of writing or directing "Star Wars" – he at least knew he was being considered for a lucrative opportunity. Accordingly, it also supports the conclusion Mr. Johnson terminated FAA because he did not want to pay 10% of his compensation to FAA in addition to the 10% he would owe CAA.

If there was a written agreement – or even if the Parties' conduct showed that they operated under an unwritten agreement – affording FAA a 10% commission even when it played no role in Mr. Johnson's obtaining a job (and as discussed above, the evidence does not show that), the timing of FAA's firing would be valuable evidence of bad faith.

The difficulty for Respondents' case is that there is no evidence FAA would have been owed a commission even if, arguendo, Mr. Johnson had not fired FAA and had continued to work solely through CAA to obtain the job. Because, as discussed above, the record does not support a conclusion that the Parties were operating under any contractual term other than "10% commission", Section 12002 applies and requires FAA to have "directly" procured or negotiated the job. FAA not only did not do so, but chose not to participate in the process by not attempting to facilitate the meeting with Mr. Johnson that Lucasfilm requested in January 2014; nor did Respondents demonstrate any interest in "Star Wars" when it was contacted by the press, shortly after Mr. Johnson terminated it, asking for information about Mr. Johnson potentially being hired for the film.

Accordingly, the evidence does not support FAA's right to commissions from Mr. Johnson's employment on "Star Wars".

In contrast, the record does not support a finding that Mr. Johnson should not pay commissions to FAA for "Untitled WWII Project" and "Untitled Murakami Project". While the Petition is not by Respondents seeking a determination that FAA is owed commissions, and while, apparently neither project has actually been sold such that one can determine whether or if any commissions should be paid to anyone, the record does not support Mr. Johnson's request that a commission for either project be foreclosed.

V.

ORDER

The following relief sought in the Petition is GRANTED: Mr. Johnson does not owe commissions to Respondents for compensation he has or will receive in connection with his work on ""Star Wars: Episode VIII". All other relief sought in the Petition is DENIED.

Respectfully submitted:

Dated: February 12, 2020

DIVISION OF LABOR STANDARDS ENFORCEMENT, Department of Industrial Relations, State of California

By: Barton L. Jacka

BARTON L. JACKA
Attorney for the Labor Commissioner

Adopted as the determination of the Labor Commissioner:

Dated: February 12th, 2020

LILIA GRACIA-BROWER
CALIFORNIA LABOR COMMISSIONER

PROOF OF SERVICE
(C.C.P. 1013)

CASE NAME: ***Rian Johnson v. Brian Dreyfuss; and Featured Artists Agency, a California corporation***
CASE NO: **TAC - 43105**

I, David Spicer, hereby certify that I am employed in the County of Sacramento, over 18 years of age, not a party to the within action, and that I am employed at and my business address is: DIVISION OF LABOR STANDARDS ENFORCEMENT, Legal Unit, 2031 Howe Avenue, Suite 100, Sacramento, California 95825.

On February 13, 2020, I served the following document:

Determination of Controversy

A. **First Class Mail** - I caused each such envelope, with first-class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S. mail in Sacramento, California, for collection and mailing to the office of the addressee on the date shown below following ordinary business practices.

B. **By Facsimile Service** - I caused a true copy thereof to be transmitted on the date shown below from telecopier (916) 263-2920 to the telecopier number published for the addressee.

C. **By Overnight Delivery** - I caused each document identified herein to be picked up and delivered by Federal Express (FedEx), for collection and delivery to the addressee on the date shown below following ordinary business practices.

D. **By Personal Service** - I caused, by personally delivering, or causing to be delivered, a true copy thereof to the person(s) and at the address(es) set forth below.

E. **By Certified Mail** – I caused each such envelope, with fully prepaid postage thereon for certified mail, to be deposited in a recognized place of deposit of the U.S. mail in Sacramento, California, for collection and mailing to the office of the addressee on the date shown below following ordinary business practices.

Type of Service	**Addressee**
A	Aaron J. Moss Greenberg Glusker Fields Claman & Machtinger LLP 1900 Avenue of the Stars, 21st Floor Los Angeles, CA 90067-4590 Randy R. Merritt Law Office of Randy Merritt 9245 Laguna Springs Drive., Suite 200 Elk Grove, CA 95758

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 13, 2020, at Sacramento, California.

R. German

Ramina German
Assistant to Barton Jacka