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STATE OF CALIFORNIA
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
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11 ISABELLA CAPPUCCI, an individual,

12 Petitioner,

13 vs.

14 LOVESTONE TALENT AGENCY, LLC., a
15 California Limited Liability Company;
BRITTANY STONE, ESQ., an individual;
16 and, JAIME LOVE, an individual.

17 Respondents.
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CASE NO. TAC 50502

DETERMINATION OF CONTROVERSY

19 **I. INTRODUCTION**

20 The above-captioned matter, a Petition to Determine Controversy pursuant to Labor Code
21 section 1700.4, was filed on December 15, 2017, by ISABELLA CAPPUCCI, an individual
22 (hereinafter "Petitioner"), alleging that LOVESTONE TALENT AGENCY, LLC., a California
23 Limited Liability Company; BRITTANY STONE, ESQ., an individual; and, JAIME LOVE, an
24 individual (hereinafter collectively "Respondents"), were conducting unlawful activities by acting
25 as unlicensed talent agents in violation of Labor Code section 1700.5¹. Petitioner seeks a
26 determination voiding *ab initio* the "Exclusive Contract Between Artist/Talent and Lovestone
27 Agency" (hereinafter "Agency Contract") between Petitioner and Respondents.

28 ¹ All statutory citations will refer to the California Labor Code unless otherwise specified.

1 Respondents filed a motion to dismiss alleging lack of jurisdiction, which was denied. So
2 on March 2, 2018, a hearing was held by the undersigned attorney specially designated by the
3 Labor Commissioner to hear this matter. Both Parties appeared in *pro per* and each respectively
4 filed both pre-hearing and post-hearing briefs in support of their positions. Due consideration
5 having been given to the testimony of all parties, documentary evidence and both oral and written
6 arguments presented, the Labor Commissioner adopts the following determination of controversy.

7 II. BACKGROUND FACTS

8 1. Petitioner, Isabella Cappucci is an Actress and Model in Commercials and Print
9 Media. On October 13, 2017, Petitioner entered into the "LOVESTONE EXCLUSIVE
10 BETWEEN ARTIST/TALENT AND LOVESTONE TALENT AGENCY" (hereinafter "Agency
11 Contract").

12 2. Respondent LOVESTONE TALENT AGENCY, LLC is a licensed talent agency
13 registered with the State Labor Commissioner and remained a licensed talent agent throughout the
14 relevant time period. Respondents BRITTANY STONE, ESQ. and, JAIME LOVE are both
15 managers/members of the California Limited Liability Company, LOVESTONE TALENT
16 AGENCY, LLC. On March 18, 2015, the Labor Commissioner approved as to form the
17 "LovesStone "LS" TALENT AGENCY EXCLUSIVE CONTRACT BETWEEN
18 ARTIST/TALENT AND LoveStone "LS" TALENT AGENCY" (hereinafter "Approved
19 Contract").

20 3. The Approved Contract and the Agency Contract are substantively the same, as
21 only the title was changed and a signature block added to the Agency Contract. Both contracts
22 include an identical Paragraph 4 showing the parties' intent to allow Respondent LOVESTONE
23 TALENT AGENCY, LLC to collect "agency fees" (often referred to as a "plus percentage")
24 separately from the production companies. Paragraph 4 of each contract states identically:

25 Please note, if an advert states (payment +20%), that is an agency fee from the
26 client to LoveStone Talent Agency, LLC. This does not preclude the talent from
27 the 20% agency fee negotiated in this contract for the actual money paid to the
28 agency for booking. For purposes of clarity, *all bookings* are subject to an agency
fee (percentage determined by job description and guild association, ranging from
10-20%) regardless of an additional agency fee from client listed in the
description.

1 See Petitioner's Exhibit 11 and Respondents' Exhibit A, ¶4 [emphasis in original]. Paragraph 4
2 of the contracts makes clear that the "agency fees" are separate and apart from the amount
3 contemplated to be paid to Petitioner, from which Respondent LOVESTONE TALENT
4 AGENCY, LLC (hereinafter "LSA") is to take a commissions out of per said contracts.

5 4. Petitioner contends that she was orally promised by Respondents that no more than
6 a twenty percent commission would be taken from her pay for their services in procuring talent
7 engagements, but the written contract she signed controls here and makes clear a different
8 intention by the parties. Petitioner confuses "agency fees" to be a part of the compensation
9 promised to her as the talent, rather than a separate fee negotiated by and between Respondents
10 and the production companies.

11 III. LEGAL ANALYSIS

12 1. Labor Code section 1700.4, subsection (b), includes "actors" and "models" in the
13 definition of "artist" and CAPPUCCI is therefore an "artist" thereunder.

14 2. At all times relevant, Respondent LSA was a licensed talent agency.

15 3. Labor Code section 1700.23 provides that the Labor Commissioner is vested with
16 jurisdiction over "any controversy between the artist and the talent agency relating to the terms of
17 the contract," and the Labor Commissioner's jurisdiction has been held to include the resolution
18 of contract claims brought by artists or agents seeking damages for breach of a talent agency
19 contract. *Garson v. Div. Of Labor Law Enforcement (1949) 33 Cal.2d 861; Robinson v. Superior*
20 *Court (1950) 35 Cal.2d 379*. Therefore, the Labor Commissioner has jurisdiction to determine
21 this matter.

22 4. The primary issue in this case is whether the 20% "agency fee" collected by LSA
23 is a separate fee negotiated by LSA and the production companies having nothing to do with
24 CAPPUCCI's earnings; or, was actually intended to be part of the artist's compensation and
25 hence belongs to CAPPUCCI as part of her earnings.

26 5. This issue regarding Agency Fees was originally discussed by the Labor
27 Commissioner in *Shazi Ali aka Shazda Deen v. Nouveau Model and Talent Management, Inc.*,
28 *(Ali) TAC 14198*. The Labor Commissioner concluded in *Ali*:

1 “[s]o long as said fees are not “registration fees” or fees charged for services
2 expressly listed in Labor Code §1700.40(b) (or similar services), **and are not**
3 **intended to be part of an artist’s compensation** (even though they may be based
4 on a percentage of the artist’s total earnings), we find that the Agency Fees are
5 between the talent agency and the third party companies and the Labor
6 Commissioner has no jurisdiction over such fee arrangements. *We note that the*
7 *evidence, however, must clearly establish that the Agency Fee is separate and*
8 *apart from the fees the production company pays to the artist. There must be no*
9 *question that the fees are intended for the agency and are not meant for the artist.*

6 *Shazi Ali aka Shazda Deen v. Nouveau Model and Talent Management, Inc., TAC 14198* at pg. 4
7 [emphasis added]. In *Ali* it was announced that as long as the “agency fee” was intended for the
8 agent by the production company and was not intended to be part of the artist’s compensation, the
9 artist had no right to it. *Id.*

10 7. In *Cargle v. Howard, TAC 36595* (hereinafter “*Cargle*”), the Labor Commissioner
11 announced that where an “Agency Fee” was actually intended for the artist it was illegal for an
12 agent to collect it as their own. The Labor Commissioner concluded in *Cargle* that:

13 Here, unlike *Ali*, ample evidence that the “agency fees” were intended for *Cargle*
14 and not [the Agent] comes from the testimony of Mathew Coates, executive
15 producer for Kovel/Fuller Advertising Agency [the production company]. Coates
16 credibly testified that [the production company] was not aware the additional fees
17 were for the direct benefit of [the Agent]. Coates further testified that he believed
18 [the Agent] was only receiving 20% of the contract fee negotiated by [the Agent]
19 and not the 40% that [the Agent] was actually collecting. As such, the “agency
20 fee” was unlawfully collected by [the Agent] in excess of the 20% commission
21 rate approved by the Labor Commissioner pursuant to Labor Code §1700.24
22 which requires the Labor Commissioner to approve the maximum amount of fees
23 charged and collected by a talent agent.

20 8. Here, Petitioner failed to prove that the “agency fee” was intended to be part of her
21 compensation from the production companies for her modeling and acting work, like in *Cargle*.
22 In fact, the Agency Contract entered into by the Parties in 2017 and previously approved by the
23 Labor Commissioner in 2015, expressly explains what the “agency fee” is, even identifying it in
24 the industry standard manner of a “plus percentage” or “payment +20%” (see above).

25 Petitioner failed to carry her burden, by failing to show that the intent of the production
26 company was to pay the entire amount to her, rather than the “agency fee” being a separate
27 arrangement between Respondents and the production companies. The conclusions expressed
28 herein are not intended to legalize the practice of collecting a second fee of 20% and are limited

1 to the specific set of facts as presented herein.

2 **ORDER**

3 For the reasons set forth above, **IT IS HEREBY ORDERED** that the Petition to
4 Determine Controversy is **DENIED**.

5 **IT IS SO ORDERED.**

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8 Dated: July 6th, 2018

Respectfully Submitted,

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By: 

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MAX D. NORRIS
Attorney for the Labor Commissioner

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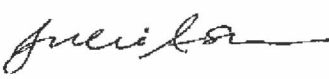
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ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

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16 Dated: July 5, 2018

By: 

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JULIE A. SU
California State Labor Commissioner

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1 **PROOF OF SERVICE**

2 (Code of Civil Procedure § 1013A(3))

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

5 I, Lindsey Lara, declare and state as follows:

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

8 On July 6, 2018, I served the foregoing document described as: **DETERMINATION**
9 **OF CONTROVERSY**, on all interested parties in this action by placing a true copy thereof
enclosed in a sealed envelope addressed as follows:

10 Isabella Cappucci

Brittany Stone Rademacher

Jaime Love


LoveStone Talent Agency, LLC

11 [Redacted]
12 [Redacted]
13 [Redacted]
14 **(BY CERTIFIED MAIL)** This correspondence shall be deposited certified mail, return
15 receipt requested, with the United States Postal Service this same day in the ordinary
16 course of business at our office address in Long Beach, California. I am readily familiar
with the business practice for collection and processing of correspondence for mailing
with the United States Postal Service.

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

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

21 Executed this 6 day of July 2018, at Long Beach, California.

22 
23 _____
Lindsey Lara
24 Declarant
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