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2 DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
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5 Attorneys for the Labor Commissioner
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8 **BEFORE THE LABOR COMMISSIONER**
9 **OF THE STATE OF CALIFORNIA**
10

11 NICOLE RUNKLE, an Individual,
12

13 Petitioner,
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15 vs.
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17 PINKERTON MODEL & TALENT CO.;
LYNN VENTURELLA PINKERTON, an
Individual,
18

19 Respondents.
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CASE NO. TAC 49575

**DETERMINATION OF
CONTROVERSY**

21 The above-captioned matter, a Petition to Determine Controversy under Labor
Code section 1700.44, came on regularly for hearing before the undersigned attorney for
22 the Labor Commissioner assigned to hear this case. Petitioner NICOLE RUNKLE, an
23 Individual, (“Petitioner”), appeared and was represented by Attorney Annette Kazmerski.
24 Respondents PINKERTON MODEL & TALENT, CO., and LYNN VENTURELLA
25 PINKERTON, an Individual, (collectively referred to as “Respondents”), failed to appear.

26 Based on the evidence presented at this hearing and on the other papers on file in
27 this matter, the Labor Commissioner hereby adopts the following decision.
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FINDINGS OF FACT

1
2 1. Petitioner is an actor for television commercials.

3 2. In or about April 2014, Petitioner entered into an agreement with Respondents
4 whereby Respondents agreed to procure work for Petitioner for a twenty percent fee.

5 3. In or about April 2014, Respondents procured a museum docent role for
6 Petitioner in a television commercial for Yellow Pages. Petitioner earned twenty dollars
7 per hour for hours spent fitting for and filming the commercial, and \$750.00 as a “buyout”
8 amount because Petitioner made the final cut of the commercial.

9 4. On or about June 9, 2014, the production company for the Yellow Pages
10 commercial issued Respondents payment for Petitioner’s work on the commercial.
11 Respondents received a check for \$155.29 for hours Petitioner worked on the project.
12 Respondents received another check for \$591.76, representing the buyout amount after
13 deductions.

14 5. On or about July 10, 2014, after deducting their twenty percent fee,
15 Respondents issued Petitioner a check for \$121.29, in payment for the hours Petitioner
16 worked on the project. Respondents did not disburse to Petitioner the buyout payment
17 they received from the production company.

18 6. On or about July 10, 2014, Petitioner emailed Respondents memorializing
19 Respondents’ refusal to pay her the buyout amount and informing Respondents she would
20 file a small claims lawsuit against them.

21 7. In or about February 2017, Petitioner filed a wage claim against Respondents
22 in the Los Angeles Office of the Labor Commissioner. Petitioner did not keep a copy of
23 the claim and so she refiled it on March 29, 2017. Petitioner subsequently learned she
24 instead needed to file a petition to determine controversy under the Talent Agencies Act
25 and thus her wage claim was dismissed.

26 8. Petitioner filed the instant Petition to Determine Controversy (“Petition”) on
27 October 16, 2017. With this filing, Petitioner seeks to recover her share of the buyout
28

1 amount issued to Respondents by the production company for Petitioner’s work on the
2 commercial. Petitioner also seeks waiting time penalties and interest.¹

3 **LEGAL ANALYSIS**

4 **A. Petitioner is an “artist” under the Talent Agencies Act.**

5 Labor Code section 1700.4(b) defines “artists” as:

6 Actors and actresses rendering services on the legitimate stage
7 and in the production of motion pictures, radio artists, musical
8 artists, musical organizations, directors of legitimate stage,
9 motion picture and radio productions, musical directors,
10 writers, cinematographers, composers, lyricists, arrangers,
11 models, and other artists and persons rendering professional
12 services in motion picture, theatrical, radio, television and other
13 entertainment enterprises.

14 Petitioner is an actor and is therefore an “artist” under the Talent Agencies Act
15 (hereinafter “Act”).

16 **B. The Petition is barred by the Act’s one-year statute of limitations.**

17 Labor Code section 1700.44(c) provides: “No action or proceeding shall be brought
18 pursuant to this chapter with respect to any violation which is alleged to have occurred
19 more than one year prior to commencement of the action or proceeding.” In this case,
20 Petitioner emailed Respondents on July 10, 2014, memorializing Respondents’ refusal to
21 issue her the buyout earnings and notifying Respondents that she would be filing a small
22 claims lawsuit against them. Based on the evidence, Petitioner’s claim against
23 Respondents for disbursement of the buyout funds occurred by July 10, 2014. Petitioner
24 needed to file the instant Petition within one year of July 10, 2014. Petitioner did not file
25 it until October 16, 2017—more than three years after her email to Respondents. Thus, the
26 Petition is barred by the Act’s one-year statute of limitations. This result is the same even
27 if Petitioner’s wage claim filed in February 2017 were considered the operative filing.

28 ¹ Under Labor Code section 203, if an employer fails to pay an employee his or her final wages
when they are due, the employee may be entitled to his or her daily wages for up to thirty days as
waiting time penalties. Labor Code section 203 waiting time penalties are not an appropriate
remedy under the Talent Agencies Act because there is not an employment relationship between
the artist and his or her agent.

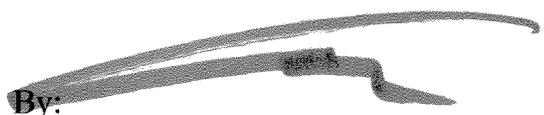
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ORDER

The relief Petitioner seeks is barred by the Act's one-year statute of limitations. Accordingly, the Petition is dismissed.

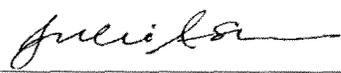
Respectfully submitted,

Dated: 11/19/18

By: 
ABDEL NASSAR
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: 11/19/18

By: 
JULIE A. SU
State Labor Commissioner

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
4 not a party to this action. My business address is Division of Labor Standards Enforcement, Department
of Industrial Relations, 320 W. 4th Street, Room 600, Los Angeles, California 90013.

5 On November 26, 2018, I served the following documents described as:

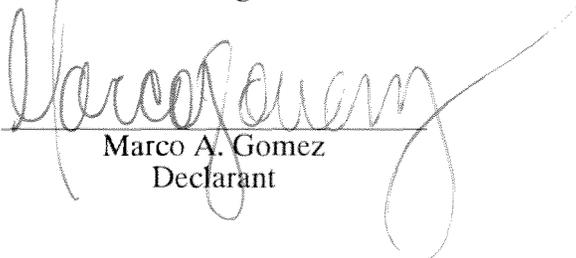
6 **DETERMINATION OF CONTROVERSY**

7 on the persons below as follows:

8 NICOLE RUNKLE 9 [REDACTED]	PINKERTON MODEL & TALENT CO. LYNN VENTURELLA PINKERTON 555 W. 5TH STREET, 35TH FLOOR LOS ANGELES, CA 90068
10 ANNETTE KAZMERSKI, ESQ. 11 1000 N. SAN VICENTE BLVD. #10 12 WEST HOLLYWOOD, CA 90069 tgwfte@aol.com	LYNN VENTURELLA, Agent 26819 LAS MANANITAS DR SANTA CLARITA CA 91354
13	PINKERTON MODEL & TALENT CO. 9001 LAUREL CANYON BLVD STE 202 SUN VALLEY CA 91352
14	PINKERTON MODEL & TALENT CO. 8500 WILSHIRE BLVD., STE. 527 BEVERLY HILLS, CA 90211
15	lynnspinkerton@hotmail.com

- 16
- 17 **(BY MAIL)** I am readily familiar with the business practice for collection and processing of
18 correspondence for mailing with the United States Postal Service. This correspondence shall be
19 deposited with the United States Postal Service this same day in the ordinary course of business
20 at our office address in Los Angeles, California. Service made pursuant to this paragraph, upon
21 motion of a party served, shall be presumed invalid if the postal cancellation date of postage
22 meter date on the envelope is more than one day after the date of deposit for mailing contained in
23 this affidavit.
- 24 **(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.
- 25 **(STATE)** I declare under penalty of perjury, under the laws of the State of
California that the above is true and correct.

26 Executed on November 26, 2018, at Los Angeles, California.

27 
28 **Marco A. Gomez**
Declarant