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STATE OF CALIFORNIA
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8 BEFORE THE LABOR COMMISSIONER
9 OF THE STATE OF CALIFORNIA
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11 NAOMI ROCHON BEAUDOIN,

12 Petitioner,

13 vs.
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15 GUILLERMO MACALPIN, an individual;
MALCALPIN MANAGEMENT LLC, a
16 California Limited Liability Company,

17 Respondents
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CASE NO. TAC 48086

DETERMINATION OF CONTROVERSY

19 **I. INTRODUCTION**
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21 The above-captioned matter, a Petition to Determine Controversy under Labor Code
22 section 1700.44, came on regularly for hearing in Los Angeles, California, before the undersigned
23 attorney for the Labor Commissioner. Petitioner NAOMI ROCHON BEAUDOIN, an individual,
24 (hereinafter, "BEAUDOIN") appeared and was represented by Anthony Giles, Esq.
25 GUILLERMO MACALPIN, an individual and MALCALPIN MANAGEMENT LLC, a
26 California Limited Liability Company, (hereinafter referred collectively as "MALCALPIN")
27 represented himself and his company.
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1 7. In 2015, MACALPIN renegotiated BEAUDOIN's IGN annual salary. In addition,
2 MACALPIN obtained several employment opportunities for BEAUDOIN, including a Playboy
3 photoshoot shoot, an appearance in a feature film, a three-day trade show hosting engagement in
4 the gaming industry, and a variety of endorsement deals for companies including Pizza Hut, Dell,
5 Sony, Shock Top and many other gaming related companies that compensated BEAUDOIN for
6 using their products online. MACALPIN negotiated all of these deals on BEAUDOIN'S behalf.

7 8. MACALPIN credibly pointed out the management efforts he made on
8 BEAUDOIN's behalf, including loaning her money, allowing her to live with his family, and
9 assisting BEAUDOIN in a variety of personal matters. MACALPIN also testified that he both
10 attempted to and procured all of the entertainment engagements referenced above throughout the
11 parties' relationship.

12 9. In or around 2016, the relationship between the parties began to unravel.
13 BEAUDOIN terminated the management agreement and according to MACALPIN, BEAUDOIN
14 ceased paying commissions on the IGN contract re-negotiated by MACALPIN. MACALPIN
15 also alleges BEAUDOIN breached the partnership agreement. In response to the termination and
16 MACALPIN's perceived breach of the partnership agreement, MACALPIN filed two civil
17 lawsuits against BEAUDOIN. The first lawsuit filed on October 16, 2017, was a small claims
18 action for BEAUDOIN's failure to pay commissions on income earned in connection with the
19 IGN deal. The second lawsuit filed by MALCALPIN on January 8, 2018, was a \$100,000.00
20 breach of the partnership agreement filed in Los Angeles Superior Court.

21 10. As part of MACALPIN's legal strategy, MACALPIN admittedly withheld
22 approximately \$60,000.00 of BEAUDOIN's earnings as a set-off to the failed partnership
23 agreement. MACALPIN received these earnings while acting as BEAUDOIN's manager under
24 the management agreement. Notably, MACALPIN filed the small claims action and named
25 himself as the individual plaintiff, failing to name the management company, MACALPIN
26 MANAGEMENT LLC, as a party. In addition, MACALPIN admitted to co-mingling funds
27 between his personal accounts and the management company's accounts.

28 11. In defense of the MACALPIN lawsuits, BEAUDOIN filed the instant petition to

1 determine controversy on June 23, 2017, alleging the MACALPIN violated the Talent Agencies
2 Act (hereinafter “the Act”).

3 12. In her Petition, BEAUDOIN seeks a determination that: (1) MACALPIN violated
4 the Act; (2) MACALPIN’S alleged agreement with BEAUDOIN is illegal, unenforceable and
5 void *ab initio*; (3) an order that BEAUDOIN is entitled to recover all sums held by MALCALPIN
6 as a set off and received by MALCALPIN within one-year of the filing of the Petition; (4)
7 interest, and (5) an award of costs and attorney fees incurred.

8 13. Specifically, BEAUDOIN alleges that MACALPIN violated the Act by repeatedly
9 procuring, offering, negotiating, promising and attempting to procure engagements or
10 employment for BEAUDOIN without a California talent agency license.

11 III. LEGAL DISCUSSION

12 Issues

13 1. Has MACALPIN acted as an unlicensed talent agent and therefore violated the
14 Talent Agencies Act?

15 2. Is MACALPIN individually liable for violations of the Act?

16 Analysis

17 The first issue is whether MACALPIN operated as a “talent agency” within the meaning
18 of Labor Code section 1700.4(a). Labor Code section 1700.4(a) defines “talent agency” as “a
19 person or corporation who engages in the occupation of procuring, offering, promising, or
20 attempting to procure employment or engagements for an artist or artists.”

21 BEAUDOIN, a popular online personality and aspiring television and motion picture
22 actor, is an “artist” within the meaning of Labor Code section 1700.4(b). Labor Code section
23 1700.5 provides that “[n]o person shall engage in or carry on the occupation of a talent agency
24 without first procuring a license....from the Labor Commissioner.” It was stipulated that
25 MACALPIN did not possess a talent agency license during the relevant period.

26 An agreement that violates the licensing requirements of the Act is illegal and
27 unenforceable. “Since the clear object of the Act it to prevent improper persons from becoming
28

1 [talent agents] and to regulate such activity for the protection of the public, a contract between an
2 unlicensed [agent] and an artist is void.” *Buchwald v. Superior Court* (1967) 245 Cal.App.2d
3 347, 351.

4 **A. Promises, Offers, Attempts and Procurement**

5 As demonstrated by the evidence contained in the record, MACALPIN not
6 only promised to procure employment, but he offered, attempted and actually procured
7 employment or engagements for BEAUDOIN throughout MACALPIN’s representation of
8 BEAUDOIN. Promises, offers and attempts to procure employment without a talent agency
9 license are violations of the Act. MACALPIN obtained several employment opportunities for
10 BEAUDOIN, including a Playboy photoshoot shoot, an appearance in a feature film, a three-day
11 trade show hosting engagement in the gaming industry, and a variety of endorsement deals for
12 companies including Pizza Hut, Dell, Sony, Shock Top and many other gaming related
13 companies that compensated BEAUDOIN for using their products online. MACALPIN
14 negotiated all of these deals on BEAUDOIN’S behalf.

15 In *Waisbren v. Peppercorn Production, Inc.* (1995) 41 Cal.App.4th 246, the court held
16 that any single act of procuring employment subjects the agent to the Talent Agencies Act’s
17 licensing requirement, thereby upholding the Labor Commissioner’s long standing interpretation
18 that a license is required for any procurement activities, no matter how incidental such activities
19 are to the agent’s business as a whole. Applying *Waisbren*, it is clear MACALPIN acted in the
20 capacity of a talent agency within the meaning of Labor Code section 1700.4(a) and it is clear that
21 MACALPIN procured employment without a license in violation of Labor Code section 1700.5 in
22 his efforts to represent BEAUDOIN.

23 **B. Is MACALPIN individually liable for violations of the Act?**

24 In determining whether MACALPIN should be held individually liable, we must look to
25 whether he completely disregarded corporate formalities and obligations and should therefore be
26 held liable as the corporation’s alter ego. “There is not a litmus test to determine when the
27 corporate veil will be pierced; rather the result will depend on the circumstances of each
28 particular case. There are, nevertheless two general requirements: ‘(1) that there be such unity of

1 interest and ownership that the separate personalities of the corporation and the individual no
2 longer exist and (2) that, if the acts are treated as those of the corporation alone, an inequitable
3 result will follow." *Greensan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 511.

4 Here, MACALPIN disregarded all corporate formalities. MACALPIN admittedly used a
5 self-help remedy to satisfy a perceived debt by withholding more than \$60,000.00¹ of
6 BEAUDOIN's earnings while representing BEAUDOIN as her manager, for an entirely different
7 lawsuit unrelated to this action. The law simply does not allow this. MACALPIN also admitted
8 he commingled his personal funds with his corporate funds. Moreover, MACALPIN filed a small
9 claims lawsuit against BEAUDOIN for failing to pay his earned commissions related to services
10 provided by MACALPIN MANAGEMENT LLC. In that lawsuit, MACALPIN named only
11 himself as an individual and not MACALPIN MANAGEMENT LLC as the plaintiff. In short,
12 MACALPIN, the individual, failed to distinguish between his personal and corporate finances
13 and failed to distinguish any separation between himself and his limited liability company. It was
14 clear that MACALPIN MANAGEMENT LLC and MACALPIN, the individual, were one in the
15 same.

16 Finally, even if MACALPIN did not commingle personal and corporate funds and
17 withhold BEAUDOIN's earnings for legitimate corporate reasons, which he did not, he is still
18 personally liable. As state in *Granoff v. Yackle* (1961) 196 Cal.App.2d 253, 257, "it is well
19 settled by the great weight of authority in this country that the officers of a corporation are
20 personally liable to one whose money or property has been misappropriated or converted by them
21 to the uses of the corporation, although they derived no personal benefit therefrom and acted
22 merely as agents of the corporation." The underlying reason for this rule is that an officer should
23 not be permitted to escape the consequences of his individual wrongdoing by saying that he acted
24 on behalf of a corporation in which he was interested." *Id.* Here, MACALAPIN did more than
25 that; he used BEAUDOIN's earnings received by the LLC and converted them for his personal
26 benefit. Consequently, GUILLERMO MACALPIN is individually liable along with

27 ¹ MACALPIN admitted to withholding more than \$60,000 of BEAUDOIN'S earnings. Including disgorging
28 commission amounts received within the one year preceding the petition pursuant to labor Code section 1700.44(c),
the amount awarded is \$83,553.84.

1 MACALPIN MANAGEMENT, LLC for any violations of the Talent Agencies Act committed
2 against BEAUDOIN.

3 **C. Appropriate Remedy for Violations of the Act**

4 In accord with *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974, 991, the
5 Supreme Court enables the Labor Commissioner to apply the doctrine of severability if she finds
6 MACALPIN violated the Act in any of the identified engagements at issue herein. In *Marathon*,
7 the court recognized the Labor Commissioner may invalidate an entire contract when the Act is
8 violated. The court left it to the discretion of the Labor Commissioner to apply the doctrine of
9 severability to preserve and enforce the lawful portions of the parties' contract where the facts so
10 warrant. As the Supreme Court explained in *Marathon*:

11 Courts are to look to the various purposes of the contract. If the
12 central purpose of the contract is tainted with illegality, then the
13 contract as a whole cannot be enforced. If the illegality is collateral
14 to the main purpose of the contract, and the illegal provision can be
extirpated from the contract by means of severance or restriction,
then such severance and restriction are appropriate." [Citations
omitted]. *Marathon*, at p.996.

15 In this case, we find that the interests of justice would not be furthered by severance.
16 Specifically, we find MACALPIN regularly offered, promised, attempted, and procured
17 employment and entertainment engagements. MACALPIN controlled every aspect of
18 BEAUDOIN'S career during the period he represented BEAUDOIN as her manager, including all
19 negotiations with third parties.

20 MACALPIN did engage in many management duties while representing BEAUDOIN, but
21 we conclude MACALPIN violated the Act on many occasions and did so throughout the parties'
22 relationship. We therefore conclude the totality of the illegal acts is not collateral to the main
23 purpose of the parties' management relationship. The illegal acts are so intermingled during
24 MACALPIN's representation that they cannot be disentangled from the lawful acts. Accordingly,
25 we refuse to apply the doctrine of severability. The management agreement is void *ab initio* due
26 to pervasive illegality.

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IV. ORDER

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

1. The management agreement between Petitioner, NAOMI ROCHON BEAUDOIN and Respondent, GUILLERMO MACALPIN, an individual and MACALPIN MANAGEMENT LLC, a California Limited Liability Company is invalid and unenforceable under the Talent Agencies Act.
2. Respondent, GUILLERMO MACALPIN collected and willfully withheld \$83,553.84 of Petitioner, NAOMI ROCHON BEAUDOIN's earnings within the one-year statute of limitations prescribed by Labor Code section 1700.44(c) and is therefore required to disgorge this amount to NAOMI ROCHON BEAUDOIN. In addition, GUILLERMO MACALPIN shall pay \$16,710.76 in interest calculated at 10% per annum for an award of \$100,264.60.
3. GUILLERMO MACALPIN shall pay \$5,000.00 in reasonable attorney's fees.
4. GUILLERMO MACALPIN shall remit these amounts within 30 days of this Order.

IT IS ORDERED.

DATED: December 1, 2018

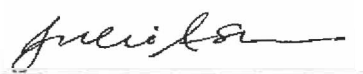
Respectfully submitted,



DAVID L. GURLEY
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

DATED: December 11, 2018



JULIE A. SU
State Labor Commissioner

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PROOF OF SERVICE

(Code of Civil Procedure § 1013A(3))

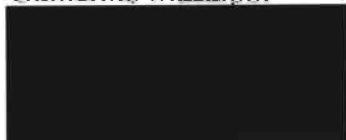
STATE OF CALIFORNIA)
) **S.S.**
COUNTY OF LOS ANGELES)

I, Lindsey Lara, declare and state as follows:

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

On December 13, 2018, I served the foregoing document described as: **DETERMINATION OF CONTROVERSY**, on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Anthony D. Giles, Esq.
LAW OFFICE OF ANTHONY GILES
155 Sansome Street, Suite 500
San Francisco, CA 94104
Phone: (415) 839-2099
anthony@anthonygiles.com

Guillermo Macalpin


Attorney for Petitioner

Respondent in pro per

(BY CERTIFIED MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with fully prepaid postage thereon for certified mail with the United States Postal Service this same day in the ordinary course of business at our office address in Long Beach, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

(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) set forth above.

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

Executed this 13th day of December 2018, at Long Beach, California.



Lindsey Lara
Declarant