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STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
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7
8 BEFORE THE LABOR COMMISSIONER
9 OF THE STATE OF CALIFORNIA
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11 ANDREA MARTINA ISENSCHMID, an
individual,
12
13 Petitioner,
14 vs.
15 BODY PARTS MODELS, INC., a California
Corporation,
16
17 Respondent.
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CASE NO. TAC 52680
DETERMINATION OF CONTROVERSY

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20 **I. INTRODUCTION**

21 This Petition to Determine Controversy pursuant to Labor Code section 1700.4, was filed
22 on October 30, 2018, by ANDREA MARTINA ISENSCHMID, an individual (hereinafter
23 “Petitioner”), alleging that BODY PARTS MODELS, INC., a California Corporation (hereinafter
24 collectively “Respondent”), violated the plain meaning of Paragraph 7 of the Labor
25 Commissioner approved Talent Agency Contract drafted by Respondent and presented to
26 Petitioner for signature. Paragraph 7 of the Contract requires reimbursement of fees of expenses
27 for obtaining employment, and Petitioner thus seeks reimbursement of \$300.00 plus an additional
28 \$300.00 as a liquidated damage pursuant to the Contract terms.

1 On April 24, 2019, a hearing was held by the undersigned attorney specially designated by
2 the Labor Commissioner to hear this matter. Both Parties appeared in *pro per*. Due consideration
3 having been given to the testimony of all parties, documentary evidence and both oral and written
4 arguments presented, the Labor Commissioner adopts the following determination of controversy.

5 **II. BACKGROUND FACTS**

6 1. Petitioner is a hands and feet model.

7 2. Respondent is a licensed talent agency registered with the State Labor
8 Commissioner and remained a licensed talent agent throughout the relevant period.

9 3. In or about early June of 2018, Petitioner made contact with Respondent seeking
10 representation.

11 4. On June 4, 2018 agent for Respondent, Bret Vernier responded to Petitioner's
12 inquiry, inviting her out to a photoshoot in Williamsburg, NY.

13 5. On June 15, 2018 Petitioner entered into a form contract entitled "BODY PARTS
14 MODELS, INC. TALENT AGENCY AGREEMENT (Fashion, Commercials, T.V., Film-New)
15 DEVELOPMENT PARTS MODELS" (hereafter "Contract"), presented to her by Linda
16 Teglovic, the principal agent of Respondent. The Contract, previously approved by the Labor
17 Commissioner, was drafted wholly by Respondent and presented to Petitioner for her signature.

18 The Contract includes at Paragraph 7:

19 In the event you shall collect from me a fee of expenses for obtaining
20 employment for me, and shall fail to procure such employment, or shall fail
21 to be paid for such employment, you shall, upon demand thereof, repay to
22 me the fee and expenses so collected. Unless repayment thereof is made
23 within forty-eight (48) hours after demand therefore, you shall pay to me
24 an additional sum equal to the amount of the fee as provided in Section
25 1700.40 of the California Labor Code.

26 6. Petitioner credibly testified at Hearing that she paid \$300.00 to Respondent to have
27 pictures of her hands and feet taken as part of the photoshoot Respondent invited her to. Petitioner
28 also credibly testified that Respondent conditioned Petitioner's participation at the photoshoot on
Petitioner signing of the Contract and paying the fee of \$300.00. Respondent's principal, Linda
Teglovic, disputes that the \$300.00 was paid to her, claiming it was paid to a production

1 company, but Petitioner credibly testified that she “PayPaled Linda Teglovic the \$300.00” the day
2 of the photoshoot.

3 7. After signing the Contract and paying the \$300.00 fee, Respondent allowed
4 Petitioner to participate in the photoshoot. Respondent, who had invited Petitioner to the shoot,
5 did not mention the requirement of the \$300.00 fee or the signing of the Contract to Petitioner
6 before she showed up that day for the photoshoot.

7 8. The Parties agree that Petitioner terminated the Contract on October 23, 2018 after
8 Respondent failed to procure Petitioner any work within four months.

9 9. Petitioner now seeks reimbursement of the \$300.00 fee, as well as an amount equat
10 to that as a liquidated damage, per the terms of the Contract at Paragraph 7 (quoted above).

11 III. LEGAL ANALYSIS

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

14 2. At all times relevant, Respondent 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**
17 **terms of the contract,”** and the Labor Commissioner’s jurisdiction has been held to include the
18 resolution of contract claims brought by artists or agents seeking damages for breach of a talent
19 agency contract. *Garson v. Div. Of Labor Law Enforcement (1949) 33 Cal.2d 861; Robinson v.*
20 *Superior Court (1950) 35 Cal.2d 379.* Therefore, the Labor Commissioner has jurisdiction to
21 determine this matter, which stems from a violation of the express terms of the Contract.

22 4. While Paragraph 7 of the Contract, quoted above, mirrors some language from and
23 incorporates by reference Labor Code section 1700.40, this matter does not involve an illegal
24 “registration fee” as defined at Labor Code section 1700.2(b).

25 5. Instead, the drafter of the contract, Respondent, omitted the leading sentence of
26 section 1700.40 which states: “No talent agency shall collect a registration fee.” The omission of
27 this part of section 1700.40 makes clear that the drafter intended the meaning of “fee of
28 expenses” in Paragraph 7 be construed more broadly according to its plain English language

1 meaning than “Registration Fee” as defined by Labor Code section 1700.2. At the same time, the
2 drafter included an express reference to the “additional sum equal to the amount of the fee as
3 provided in Section 1700.40 of the California Labor Code” at the end of Paragraph 7. Thus
4 incorporating the liquidated damage at Labor Code section 1700.40 into the Contract.

5 6. Here, Respondent induced Petitioner to the photoshoot and then conditioned her
6 participation in the photo shoot upon Petitioner signing the Contract and paying the \$300.00 fee.
7 As a matter of law, the terms of the Contract must be construed against the drafter, here
8 Respondent. Civil Code §1654; *see also Badie v. Bank of America* (1998) 67 Cal.App.4th
9 779.801 [The rule announced in Civil Code §1654 is “applied with particular force in the case of
10 adhesion contracts.”].

11 7. When faced with the decision of signing the contract and incurring the \$300.00
12 expense, Petitioner was reasonable in her understanding of Paragraph 7 that she would be paid
13 back for the \$300.00 if work was not procured for her. The plain English language meaning of: “a
14 fee of expenses for obtaining employment for me” would clearly include the \$300.00 fee
15 Petitioner was induced to pay in order for Respondent to procure work for her as a model.

16 8. This ruling is made upon the specific and express terms of this Contract, and the
17 facts at hand here.

18 9. While we do not decide whether the expense violated Labor Codes section
19 170040(a), the remedy incorporated by reference in the Contract at the end of Paragraph 7 is
20 identical. Petitioner made a demand that Respondent reimburse Petitioner the \$300.00,
21 Respondent did not comply within 48 hours of the demand, and thus, Respondent must reimburse
22 Petitioner for the expenses collected for the photoshoot (\$300.00) and must pay to Petitioner an
23 additional liquidated damage pursuant to Paragraph 7 of the Contract (\$300.00).
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ORDER

For the reasons set forth above, **IT IS HEREBY ORDERED** that Respondent BODY PARTS MODELS, INC., a California Corporation, pay Petitioner ANDREA MARTINA ISENSCHMID \$300.00 for reimbursable expenses under the Contract, \$26.22 in interest thereupon, and \$300.00 in penalties pursuant to the Contract.

IT IS SO ORDERED.

Dated: June 14, 2019

Respectfully Submitted,

By: 
MAX D. NORRIS
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: June 11, 2019

By: **Carlos Torres** Digitally signed by Carlos Torres
Date: 2019.06.11 21:05:50 -07'00'
Carlos Torres, Assistant Chief and
Acting CA State Labor Commissioner

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 June 14, 2019, 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 Andrea Martina Isenschmid Body Parts Models, Inc.
11 [Redacted] 5225 Wilshire Blvd. #436
Los Angeles, CA 90036
12 linda@bodypartsmodels.com

13 (BY CERTIFIED MAIL) I am readily familiar with the business practice for collection
14 and processing of correspondence for mailing with the United States Postal Service. This
15 correspondence shall be deposited with fully prepaid postage thereon for certified mail
16 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.

17 (BY E-MAIL SERVICE) I caused such document(s) to be delivered electronically via
18 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 14th day of June 2019, at Long Beach, California.

22 
23 _____
Lindsey Lara
24 Declarant
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