

1 MAX D. NORRIS, ESQ. (SBN 284974)
STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
3 300 OCEANGATE, SUITE 850
Long Beach, California 90802
4 Telephone: (562) 590-5461
Facsimile: (562) 499-6438
5 Attorney for the Labor Commissioner
6
7

8 BEFORE THE LABOR COMMISSIONER
9 OF THE STATE OF CALIFORNIA
10

11 MICHAEL JOHN LANE, an individual,
12 Petitioner,
13 vs.
14 FACÉ, an individual dba ATM Anchor Talent
Management,
15 Respondent.
16

CASE NO. TAC 52516

DETERMINATION OF CONTROVERSY

17 **I. INTRODUCTION**

18 This Petition to Determine Controversy pursuant to Labor Code section 1700.44, was filed
19 on May 22, 2018, by MICHAEL JOHN LANE, an individual (hereinafter "Petitioner"), alleging
20 that FACÉ, an individual dba ATM ANCHOR TALENT MANAGEMENT (hereinafter
21 "Respondent"), acted as an unlicensed talent agent. Petitioner seeks disgorgement of commissions
22 withheld by Respondent and to void the contract between the parties *ab initio*. Respondent failed
23 to file an Answer in response to the Petition to Determine Controversy.

24 On August 8, 2019, a hearing was held by the undersigned attorney specially designated
25 by the Labor Commissioner to hear this matter. Petitioner and Respondent both appeared in *pro*
26 *per* and gave sworn testimony. Both parties provided documents, and all documents were taken
27 under submission as evidence herein. Due consideration having been given to the testimony of all
28

1 parties present, documentary evidence and oral argument presented, the Labor Commissioner
2 adopts the following determination of controversy.

3 **II. BACKGROUND FACTS**

4 1. Petitioner is an actor and model in commercials.

5 2. Respondent is not, and never has been, a licensed talent agent registered with the
6 State Labor Commissioner. Respondent is an individual with a registered “DBA” in Los Angeles
7 County: “ATM Anchor Talent Management” registered in 2015.

8 3. On October 21, 2016, Petitioner reached out to Respondent via email, seeking
9 more information and a meeting about representation.

10 4. Around the end of October 2016, Petitioner met with Debbie Britt, an
11 “independent contractor” of Respondents who carried the title of “Talent Manager, ATM
12 ANCHOR TALENT MGMT” at the same address that Respondent still uses for his business.
13 Ms. Britt was an agent of Respondent, but she was not a licensed talent agent registered with the
14 California Labor Commissioner.

15 5. In November 2016, Respondent asked Petitioner to sign a Management Agreement
16 calling for 15% commissions on gross wages earned by Petitioner and a Client Information Sheet,
17 which he did, returning them to Respondent.

18 6. On January 6, 2017, Respondent, through his employee Britt, booked Petitioner an
19 audition for a commercial with Carl’s Junior/Hardee’s. The audition involved two callbacks, and
20 Petitioner was booked for the commercial on January 31, 2017.

21 7. On January 31, 2017, Petitioner signed a check authorization form and returned it
22 to Respondent by email.

23 8. After completing the commercial shoot, Respondent paid Petitioner in four
24 business checks, withholding a total of \$1,555.36 in commissions. The following chart lays out
25 the checks issued and paid to Petitioner and the commissions kept by Respondent.

26 ///

27 ///

Check No.	Check Date	Amt Paid Resp to Pet	Comm Kept by Resp
1001	3/15/17	\$1,328.82	\$399.87
1003	5/15/17	\$2,986.37	\$724.64
1004	5/30/17	\$411.69	\$100.75
1020	5/11/18	\$1,266.29	\$330.10
			Total = \$1,555.36

9. The final payroll check received by Respondent for the Carl's Junior/Hardee's commercial was issued on July 27, 2017.

III. LEGAL ANALYSIS

1. Labor Code section 1700.44(a) provides the Labor Commissioner with the power and jurisdiction to hear and determine matters falling under the Talent Agencies Act (LC §1700.00 et seq.), therefore the Labor Commissioner has jurisdiction to hear and determine this matter.

2. Labor Code section 1700.4, subsection (b), includes "actors" in the definition of "artist" and Petitioner is therefore an "artist" thereunder.

3. At all times relevant, Respondent was NOT a licensed talent agent, nor did he work closely with any licensed talent agent or agency.

4. Labor Code section 1700.40(a) defines "talent agency" as, "a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists."

5. Labor Code section 1700.5 provides that "no person shall engage in or carry on the occupation of a talent agency without first procuring a license therefor from the Labor Commissioner."

6. In *Waisbren v. Peppercorn Production, Inc* (1995) 41 Cal.App.4th 246, the court held that any single act of procuring employment subjects the agent to the Talent Agencies Act's licensing requirements, thereby upholding the Labor Commissioner's long standing interpretation that a license is required for any procurement activities, no matter how incidental such activities

1 are to the agent's business as a whole. Applying *Waisbren*, it is clear that Respondent procured
2 Petitioner a commercial shoot, acting as a talent agency within the meaning of section 1700.4(a),
3 without a license to do so.

4 7. Labor Code section 1700.44(d) provides that "[i]t is not unlawful for a person or
5 corporation which is not licensed pursuant to this chapter to act in conjunction with, and at the
6 request of, a licensed talent agency in the negotiation of an employment contract." However,
7 Respondent openly admitted at hearing that no licensed talent agent or agency was involved in the
8 Carl's Junior / Hardee's commercial at issue, thus Petitioner's actions on behalf of the respondent
9 do not fall within the activities protected by the exemption at Labor Code section 1700.44(d).

10 8. Labor Code section 1700.25 provides in pertinent part:

11 (a) A licensee who receives any payment of funds on behalf of an artist **shall**
12 **immediately deposit that amount in a trust fund account** maintained by him or
13 her in a bank or other recognized depository. The funds, less the licensee's
14 commission, **shall be disbursed to the artist within 30 days after receipt.**
However, notwithstanding the preceding sentence, the licensee may retain the
funds beyond 30 days of receipt in either of the following circumstances:

15 (1) To the extent necessary to offset an obligation of the artist to the talent
agency that is then due and owing.

16 (2) When the funds are the subject of a controversy pending before the
17 Labor Commissioner under Section 1700.44 concerning a fee alleged to be
owed by the artist to the licensee.

18 (b) A separate record shall be maintained of all funds received on behalf of an
19 artist and the record shall further indicate the disposition of the funds.

20 ...

21 (e) If the Labor Commissioner finds, in proceedings under Section 1700.44, that
22 the **licensee's failure to disburse funds to an artist within the time required by**
subdivision (a) was a willful violation, the Labor Commissioner may, in
addition to other relief under Section 1700.44 , order the following:

23 (1) Award reasonable attorney's fees to the prevailing artist.

24 (2) Award interest to the prevailing artist on the funds wrongfully withheld
25 at the rate of 10 percent per annum during the period of the violation.

26 ...

27 Labor Code §1700.25.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

For the reasons set forth above, **IT IS HEREBY ORDERED** that the Managerial Agreement contract entered into by Petitioner and Respondent around November 2016 is hereby declared unlawful and *void ab initio* due to Respondent acting as an unlicensed talent agent while procuring Petitioner employment. Respondent has no enforceable rights under that contract.

IT IS FURTHER ORDERED that, Respondent FACÉ, an individual dba ATM Anchor Talent Management, be disgorged of all commissions withheld from Petitioner MICHAEL JOHN LANE in the amount of \$1,555.36, plus interest at 10% per annum from 30 days after the final payroll check was cut, or August 26, 2017 through the date of the hearing, August 8, 2019, in the amount of \$303.40, for a total due and owing of **\$1,858.76**.

IT IS SO ORDERED.

Dated: August 28, 2019

Respectfully Submitted,

By: 
MAX D. NORRIS
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: August __, 2019

By: 
Lilia-Garcia Brower,
California Labor Commissioner

1 **PROOF OF SERVICE**

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

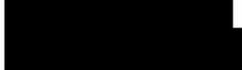
3 STATE OF CALIFORNIA)
4 COUNTY OF LOS ANGELES) S.S.

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 September 24, 2019, I served the foregoing document described as:
9 **DETERMINATION OF CONTROVERSY** on all interested parties in this action by placing a
true copy thereof enclosed in a sealed envelope addressed as follows:

10 Michael John Lane



Max Casot
Face & Anchor Talent Management
13547 Ventura Blvd. #144
Sherman Oaks, CA 91423

12 **(BY CERTIFIED MAIL)** I am readily familiar with the business practice for collection
13 and processing of correspondence for mailing with the United States Postal Service. This
14 correspondence shall be deposited with fully prepaid postage thereon for certified mail
15 with the United States Postal Service this same day in the ordinary course of business at
16 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
California that the above is true and correct.

20 Executed this 24th day of September 2019, at Long Beach, California.

21

22 _____
23 Lindsey Lara
24 Declarant