

1 STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
3 DIVISION OF LABOR STANDARDS ENFORCEMENT
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9 Special Hearing Officer for the Labor Commissioner

10 BEFORE THE LABOR COMMISSIONER

11 STATE OF CALIFORNIA

12 JOHN STEVEN dba MATRIX MODELS,

13 **CASE NO.: TAC-52546**

14 Petitioner,

15 **DETERMINATION OF CONTROVERSY**

16 vs.

17 ALEXANDRA CAVEDO aka ALEX
18 GREY,

19 Respondent.

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I. INTRODUCTION

The above-captioned petition was filed on May 23, 2018, by JOHN STEVEN, dba MATRIX MODELS, (hereinafter "Petitioner" or "Steven"), alleging that ALEXANDRA CAVEDO, aka ALEX GREY, an individual (hereinafter "Respondent" or "Cavedo"), failed to pay commissions to Steven for work allegedly negotiated by Steven on Cavedo's behalf. Petitioner seeks \$18,777 in unpaid commissions and interest. Respondent did not file an answer.

A hearing was scheduled before the undersigned attorney, specially designated by the Labor Commissioner to hear this matter. The hearing was continued once at the request of the Petitioner. The hearing occurred on July 30, 2019, in Los Angeles, California. Petitioner was represented by James Felton of G&B Law, LLP. Although properly served, Respondent was not present at the hearing. Petitioner and Respondent were also provided the opportunity to present supplemental briefing on whether the statute of limitations affected the claim, and Petitioner

1 submitted this briefing.

2 Based on the evidence presented at the hearing and the supplemental briefing, the Labor
3 Commissioner hereby adopts the following decision.

4 II. FINDINGS OF FACT

5 1. Cavedo is an artist in the adult entertainment industry within the meaning of
6 Labor Code Section 1700.4(b).

7 2. Steven is a licensed talent agent within the meaning of Labor Code Section
8 1700.4(a).

9 3. Labor Code Section 1700.23 provides that the Labor Commissioner is vested with
10 jurisdiction over “any controversy between the artist and the talent agency relating to the terms of
11 the contract,” and the Labor Commissioner’s jurisdiction has been held to include the resolution
12 of contract claims brought by artists or agents seeking damages for breach of a talent agency
13 contract. *Garson v. Div. Of Labor Law Enforcement*, 33 Cal.2d 861 (1949); *Robinson v.*
14 *Superior Court*, 35 Cal.2d 379 (1950). Therefore, the Labor Commissioner has jurisdiction to
15 determine this matter.

16 4. On April 27, 2015, Steven and Cavedo signed a contract for Steven to be the
17 exclusive talent agent representing Cavedo as a model for five years.

18 5. The written contract between the parties required Cavedo to pay Steven twenty
19 percent of any earnings she received through Steven’s representation. The California Labor
20 Commissioner’s Office had approved this language, as required under California law. Steven
21 testified, however, that the parties agreed to a fifteen percent rate rather than twenty percent
22 because Steven did not have to contribute to Cavedo’s transportation costs.

23 6. From April 2015 until April 2019, Steven arranged approximately 140 separate
24 jobs for Cavedo that paid, on average, between \$1,000 and \$2,000 per day.

26 7. In general, Cavedo would receive compensation directly from her employer.
26 Cavedo agreed that she would provide fifteen percent of this compensation as commission to
27 Steven, as per their agreement. With two employers—Porn Pros and New Sensations—the
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1 employer would provide a small portion of the payment upfront to Cavedo and then mail the
2 remaining payment to Steven. Because Cavedo had not paid Steven what he was owed when
3 Cavedo worked for these employers, Steven kept any overpayments above his due fifteen percent
4 from these jobs and applied them to the total amount Cavedo owed in commissions.¹

5 8. To determine the total amount Cavedo earned from jobs obtained through Steven,
6 Steven testified that he reviewed all his past emails from the modeling employers that hired
7 Cavedo. Specifically, the employers would send an email with the total compensation for a job
8 after the job was booked. Using those emails, Steven determined that Cavedo earned a total of
9 \$207,050. The Labor Commissioner finds this testimony credible particularly given the
10 spreadsheet provided by Steven, detailing the date of every job, the employer, and the amount
11 paid. With a fifteen percent commission, the total commission earned on \$207,050 is
12 \$31,057.50.

13 9. The spreadsheet provided shows that, of the \$207,050, \$54,000 of this total was
14 earned on or after May 23, 2017. Using the parties' agreed upon commission structure of fifteen
15 percent, the total commissions earned on \$54,000 is \$8,100.

16 10. The spreadsheet also captured the amounts Steven received in commission
17 payments. In total, Steven recorded \$6,600 in payments received for Cavedo's work. He also
18 testified that he received a payment of \$1,755 that was not included in the spreadsheet, for a total
19 of \$8,355 in commission payments.

20 11. On May 23, 2018, Steven filed a Petition to Determine Controversy against
21 Cavedo, claiming unpaid commissions. Cavedo received personal service of the Petition to
22 Determine Controversy and the Notice to Answer on January 18, 2019.

23 12. Throughout 2019, Steven repeatedly asked Cavedo to pay his commissions. On at
24 least four occasions from February 2019 to May 2019, Steven asked Cavedo to pay. Cavedo
26 responded that either she did not have the money to pay the commissions or promised to pay the

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27 ¹ The Labor Commissioner does not reach the issue of whether Steven properly withheld
28 these payments under Labor Code Section 1700.25 because it was not an issue in this
controversy.

1 commissions. For example, in May 2019, Steven stated that he “need[s] to know exactly when
2 you will be paying me,” after which Cavedo promised to pay \$10,000 of commissions by June
3 2019. Cavedo still has not paid the commissions promised.

4 III. ANALYSIS

5 A. *Amount of Commissions Steven Earned*

6 1. It is undisputed that Cavedo contracted with Steven to be her exclusive licensed
7 talent agent. Both the written contract as well as the text messages between the two demonstrate
8 that Steven obtained work for Cavedo.

9 2. Steven credibly testified that he obtained \$207,050 worth of services for Cavedo
10 within the course of the contract.

11 3. California Labor Code Section 1700.44(c), however, provides that “[n]o action or
12 proceeding shall be brought pursuant to this chapter with respect to any violation which is
13 alleged to have occurred more than one year prior to commencement of the action or
14 proceeding.” As Petitioner concedes, this requirement limits his claims to unpaid commissions
15 on work obtained on and after May 23, 2017—the date one year prior to the filing of his petition
16 with the Labor Commissioner’s Office.

17 4. As mentioned, Petitioner’s spreadsheet detailing the work obtained for Cavedo
18 shows a total of \$54,000 in earnings obtained on or after May 23, 2017. Consequently, Stevens
19 is owed \$8,100 in unpaid commissions for the applicable statutory period.

20 5. Although Petitioner acknowledges that his evidence showed only \$8,100 owed
21 after May 23, 2017, he contends that the Labor Commissioner should award additional
22 commissions from this period for two reasons. First, Steven argues that, while not reflected on
23 his spreadsheet, Cavedo earned an average of \$5,400 a month and likely earned the same from
24 May 2019 to August 2019. As Steven admits, however, he “does not have any information about
26 Respondent’s earnings from May, 2019 through August, 2019.” The Labor Commissioner
26 cannot assume that Cavedo obtained any work during that period. Indeed, Cavedo did not appear
27 to have regular and recurring jobs from which the Labor Commissioner could extrapolate work
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1 performed from May to August 2019. Steven thus did not meet his burden to show additional
2 commissions due from earnings between May and August 2019.

3 6. Steven next argues Cavedo's June 2019 text promising payment of \$10,000 to
4 Steven establishes Cavedo believed she owed at least that amount in commissions. That is true
5 as far as it goes; nevertheless, Cavedo's belief on how much she owed does not override
6 California Labor Code Section 1700.44(c). The Labor Commissioner cannot ignore the one-year
7 jurisdictional requirement based on vague agreements or communications between the parties.
8 Additionally, the texts do not establish Cavedo obtained additional work in May or June 2019, as
9 the \$10,000 promise could have referred to commissions owed prior to that time period.

10 7. In sum, after May 23, 2017, Steven earned \$8,100 in commissions during the
11 applicable one-year statute of limitations prescribed at Labor Code section 1700.44(c).

12 **B. Amount of Commissions Cavedo Paid**

13 8. The next issue is how much of the \$8,100 earned commissions did Cavedo pay?

14 9. Although the evidence presented by Steven shows he received \$6,600 during the
15 course of his contract with Cavedo for all of her work performed, all of this payment occurred
16 before May 23, 2017. The payments therefore do not apply to the work performed during the
17 applicable limitations period.

18 10. Steven also testified that he received an additional \$1,755 payment not included
19 on his spreadsheet. It was unclear from the testimony when he received this payment. The
20 evidence did not show Cavedo asked for Steven to apply the \$1,755 to any particular debt.

21 11. California Civil Code Section 1479 governs how to apply payments, like the
22 \$1,755 at issue, by a debtor to a creditor to whom the debtor owes multiple obligations. Under
23 Section 1479, courts must first examine the intentions of the debtor and the creditor. Here, there
24 is no evidence that either Cavedo or Steven intended the \$1,755 be applied to any particular
25 obligation. Cal. Civil Code § 1479 (steps one and two). Absent these intentions, the payment—
26 in the context of a loan—must cover interest due and then principle due at the time of
27 performance. *Id.* (step 3). Outside the context of a loan, the payment must go to “the obligation
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1 earliest in date of maturity.” *Id.*; see also *Gen. Elec. Co. v. Cent. Sur. & Ins. Corp.*, 232 Cal. App.
2 2d 590, 600 (Ct. App. 1965) (“That the payment to the particular account should be credited to
3 the earliest items in the account cannot be questioned.”); *Jessup Farms v. Baldwin*, 33 Cal. 3d
4 639, 655 (1983).

5 12. Here, the \$1,755 payment is credited to the earliest commissions owed. Before
6 May 23, 2017, Steven earned \$22,957.50 in commissions, but received only \$6,600 in payment
7 from Cavedo. The \$1,755 therefore applies to the remaining \$16,357.50 in commissions owed
8 for Cavedo’s work before May 23, 2017.

9 13. The one-year statute at Labor Code Section 1700.44(c) does not affect this
10 analysis. Although Steven cannot claim any commissions owed before May 23, 2017, the debt
11 from before that time still exists and the payments must be applied to the earliest obligations.
12 See Cal. Civil Code Section 1788.14(d)(1) (allowing a debt collector to inform a debtor of
13 time-barred outstanding debt as long as the collector includes required language).

14 14. Cavedo therefore owes the full \$8,100 in commissions to Steven for her work on
15 and after May 23, 2017.

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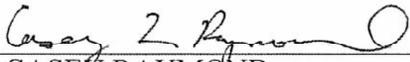
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ORDER

For the above-stated reasons, IT IS HEREBY ORDERED that Petitioner is entitled to 15% for all of Cavedo's earnings on or after May 23, 2017 in the amount of \$8,100 and \$1,262.33 in interest calculated at 10% per annum from the date the commission was due, for a total award of \$9,362.33.

Dated: September 25, 2019

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

By: 
CASEY RAYMOND,
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: September 27, 2019

By: 
LILIA GARCIA-BROWER
California 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 September 30, 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 James R. Felton, Esq.
11 GREENBERG & BASS LLP
1600 Ventura Blvd., Ste. 1000
12 Encino, CA 91436
Tel: (818) 382-6200 Fax: (818) 986-6534
jfelton@greenbass.com

Alexandra Cavedo


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
17 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.

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

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

22 Executed this 30th day of September 2019, at Long Beach, California.

23 

24 _____
Lindsey Lara
25 Declarant