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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  
10

11 KELLY LANGTIM, an individual,

**CASE NO. TAC 52725**

12  
13 Petitioner,

**DETERMINATION OF CONTROVERSY**

14  
15 vs.

16 JORDAN McKIRAHAN, an individual dba  
17 JORDAN McKIRAHAN TALENT  
18 AGENCY,

19  
20 Respondent.  
21

22 **I. INTRODUCTION**

23 This Petition to Determine Controversy pursuant to Labor Code section 1700.44, was filed  
24 on August 2, 2019, by KELLY LANGTIM, an individual (hereinafter "Petitioner"), alleging that  
25 JORDAN McKIRAHAN, an individual dba JORDAN McKIRAHAN TALENT AGENCY  
26 (hereinafter "Respondent"), failed to pay Petitioner her earned wages (less commission) and her  
27 "buy out" fee (less commission) on a print and video commercial shoot Respondent booked for  
28 Petitioner in January 2019.

1 On November 13, 2019, a hearing was held by the undersigned attorney specially  
2 designated by the Labor Commissioner to hear this matter. Petitioner appeared in *pro per* and  
3 gave sworn testimony. Respondent failed to appear and failed to file an Answer in response to  
4 LANGTIM's Petition to Determine Controversy. Due consideration having been given to the  
5 testimony of all parties present, documentary evidence and oral argument presented, the Labor  
6 Commissioner adopts the following determination of controversy.

7 **II. STATEMENT OF FACTS**

8 1. Petitioner is an actor and/or model in commercials.

9 2. Respondent was a licensed talent agency registered with the State Labor  
10 Commissioner and remained a licensed talent agent throughout the relevant period.

11 3. Petitioner started working with Respondent in January 2018. In January of 2019,  
12 Respondent booked Petitioner a commercial with a client named Stitch Fix. Petitioner completed  
13 the shoot and was not paid.

14 4. Petitioner found out that she had made it onto the commercial about six weeks  
15 after the commercial shoot when a friend of Petitioner pointed it out to her. Petitioner had not  
16 been paid at that point, so she emailed Respondent inquiring about payment for the Stitch Fix  
17 commercial.

18 5. After receiving no response from Respondent after sending him several emails,  
19 Petitioner found out through a Google search that many of Respondents other clients had not been  
20 paid for the work Respondent booked for them as well, prompting Petitioner to file her claim.

21 6. At the hearing, Petitioner submitted evidence she obtained from the Production  
22 Company who shot the Stitch Fix commercial showing that Respondent received and cashed the  
23 checks for \$4,200.00 for the "buy out" fee (gross with commissions included) and \$435.76 for her  
24 wages (post tax), respectively.

25 **III. LEGAL ANALYSIS**

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

28 2. At all times relevant, Respondent was a licensed talent agent.

1           3.       Labor Code section 1700.23 provides that the Labor Commissioner is vested with  
2 jurisdiction over **“any controversy between the artist and the talent agency relating to the**  
3 **terms of the contract,”** and the Labor Commissioner’s jurisdiction has been held to include the  
4 resolution of contract claims brought by artists or agents seeking damages for breach of a talent  
5 agency contract. *Garson v. Div. Of Labor Law Enforcement (1949) 33 Cal.2d 861; Robinson v.*  
6 *Superior Court (1950) 35 Cal.2d 379.* Therefore, the Labor Commissioner has jurisdiction to  
7 determine this matter, which stems from a violation of the express terms of the Contract.

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

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

14                   (1) To the extent necessary to offset an obligation of the artist to the talent  
15 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  
18 owed by the artist to the licensee.

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

21           ...

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

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

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

...  
Labor Code §1700.25.

5.       Here, Petitioner credibly testified and provided documentary evidence supporting  
that in January 2019 Respondent booked her a commercial shoot for Stitch Fix, which Petitioner  
completed. Petitioner provided evidence that Respondent was paid for Petitioner’s work and “buy  
out” fee by the production company, but Respondent never paid Petitioner for her work.

6. Thus, pursuant to Labor Code section 1700.25(e), Respondent willfully violated Labor Code section 1700.25(a), and pursuant to Labor Code section 1700.25(e)(2), Petitioner is awarded \$435.76 in wages withheld, \$3,360.00 for her portion of the “buy out” fee (gross \$4,200.00 less 20% commission)<sup>1</sup> withheld, **totaling \$3,795.76 plus interest thereupon at the rate of 10% per annum.**

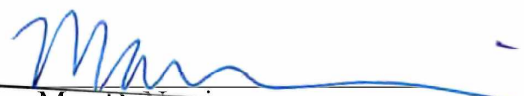
**IV. ORDER**

For the reasons set forth above, **IT IS HEREBY ORDERED** that Respondent JORDAN McKIRAHAN, an individual dba JORDAN McKIRAHAN TALENT AGENCY, pay Petitioner KELLY LANGTIM **\$3,795.76 plus interest thereupon at the rate of 10% per annum** from March 1, 2019 (30 days after admitted owed) through the date of the decision, or **\$267.26**, for a total due and owing by Respondent to Petitioner of **\$4,063.02**.

**IT IS SO ORDERED.**


Dated: November 14, 2019

Respectfully Submitted,

By:   
Max D. Norris  
Attorney for the Labor Commissioner

**ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER**

Dated: November 18, 2019

By:   
Lilia-Garcia Brower,  
California Labor Commissioner

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<sup>1</sup> It is understood that the “buy out” fee was advertised as “\$3,500 + 20%,” but such a plus percentage is not enforceable as it violates the basic fiduciary duty of agent to their client, thus 20% is deducted from total \$4,200.