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6  
7

8 BEFORE THE LABOR COMMISSIONER  
9 OF THE STATE OF CALIFORNIA

10  
11 JANE DOES 1-5, INCLUSIVE,  
12 Individuals,

13 Petitioners,

14 vs.  
15

16 DEREK HAY, an Individual; and DIRECT  
17 MODELS, INC. dba LA DIRECT  
18 MODELS, a California corporation,

19 Respondents.  
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CASE NO. TAC 52663

(Consolidated with Case No. TAC 52670)

**DETERMINATION OF  
CONTROVERSY**

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1 **I. INTRODUCTION**

2 The above-captioned matter, a Petition to Determine Controversy under Labor Code  
3 section 1700.44, came on regularly for hearing in Los Angeles, California before the  
4 undersigned attorney for the Labor Commissioner assigned to hear this case. The hearing  
5 (hereinafter, “TAC Hearing”) commenced on September 23, 2019 to September 27, 2019,  
6 resumed on November 4, 2019 to November 8, 2019, and was completed on November 21,  
7 2019. Petitioners JANE DOES 1 THROUGH 5, Individuals, (hereinafter, collectively  
8 referred to as “Petitioners”) appeared and were represented by Allan B. Gelbard of The Law  
9 Offices of Allan B. Gelbard. Respondents DEREK HAY, an Individual; and DIRECT  
10 MODELS, INC. dba LA DIRECT MODELS, a California corporation (hereinafter, referred  
11 to as “HAY,” or “DIRECT MODELS,” or collectively as “Respondents”) appeared and  
12 were represented by Richard Freeman of The Law Offices of Richard Freeman.

13 The parties submitted their post-hearing briefs on January 10, 2020. The matter was  
14 taken under submission. Due consideration having been given to the testimony,  
15 documentary evidence and arguments presented, the Labor Commissioner hereby adopts  
16 the following determination (hereinafter, “Determination”).

17 **II. FINDINGS OF FACT**

18 1. Petitioner JANE DOE 1<sup>1</sup>, or Charlotte Cross (hereinafter, “CROSS”) is an  
19 artist in the adult entertainment industry pursuant to Labor Code section 1700.4(b).

20 2. Petitioner JANE DOE 2, or Sofi Ryan (hereinafter, “RYAN”) is an artist in  
21 the adult entertainment industry pursuant to Labor Code section 1700.4(b).

22 3. Petitioner JANE DOE 3, or Andi Rye (hereinafter, “RYE”) is an artist in the  
23 adult entertainment industry pursuant to Labor Code section 1700.4(b).

24 4. Petitioner JANE DOE 4, or Hadley Viscara (hereinafter, “VISCARA”) is an  
25 artist in the adult entertainment industry pursuant to Labor Code section 1700.4(b).

26 5. Petitioner JANE DOE 5, or Shay Evans (hereinafter, “EVANS”) is an artist

27 \_\_\_\_\_  
28 <sup>1</sup> According to the parties’ *Stipulated Protective Order*, Petitioners Jane Does 1-5 will be identified either by their Doe designations or their screen names as referenced here.

1 in the adult entertainment industry pursuant to Labor Code section 1700.4(b).

2 6. HAY is the owner of DIRECT MODELS and started the business around  
3 2000. He is also the Chief Executive Officer of DIRECT MODELS. (See *Szarko v. Direct*  
4 *Models, Inc., a California Corporation, dba L.A. Direct Models*, TAC 50639)(“Szarko”).

5 7. DIRECT MODELS is a talent agency that represents artists in the adult  
6 entertainment industry. HAY obtained a license for DIRECT MODELS in 2003.

7 8. Petitioners sought DIRECT MODELS to serve as their talent agency as artists  
8 in the adult entertainment industry. When retaining DIRECT MODELS, Petitioners signed  
9 a (1) “DIRECT MODELS, INC. dba LA DIRECT MODELS EXCLUSIVE CONTRACT  
10 BETWEEN ARTIST AND TALENT AGENCY” (hereinafter, “Agency Contract”), and (2)  
11 “DIRECT MODELS, INC. dba LA DIRECT MODELS – Schedule of Fees” (hereinafter,  
12 “Schedule of Fees”).

13 **The Agency Contract and Schedule of Fees**

14 9. The Agency Contract, a single contract, was stamped as approved by the  
15 Labor Commissioner, including the Schedule of Fees, which was stamped as approved by  
16 the Labor Commissioner on October 22, 2015.<sup>2</sup>

17 10. Petitioners’ Agency Contracts, at Section 3, state DIRECT MODELS was  
18 entitled to a sum equal to 15%, “not to exceed maximum rate shown on fee schedule of all  
19 monies or things of value” as compensation for professional services it rendered. DIRECT  
20 MODELS’s practice was to charge all models 15% in the first 30 days of representation  
21 because of the higher workload to get the model established and to procure employment for  
22 her. After those 30 days, a model would be charged 10% commission if they chose their  
23 own mode of transportation to get to the employment or 15% commission if they used  
24 DIRECT MODELS’ drivers for transportation.

25 11. The Schedule of Fees states the maximum rate DIRECT MODELS could  
26 charge Petitioners for services rendered to be 15% of the total earnings “paid to the artist.”

27 12. The Schedule of Fees was not posted in DIRECT MODELS’s office.

28 <sup>2</sup> EVANS’s Schedule of Fees was stamped as approved by the Labor Commissioner on February 7, 2005.

1 **The Best Practices Form**

2 13. Except for VISCARA, Petitioners were also provided the following “Direct  
3 Models, Inc. (d/b/a L.A. Direct Models) Best Practices and Rules of Conduct Required –  
4 Guidelines” (hereinafter, the “Best Practices Form”).

5 14. HAY conferred with an attorney to assist DIRECT MODELS with the  
6 development of the Best Practices Form.<sup>3 4</sup>

7 15. The Best Practices Form applies to the relationship between the artist and  
8 DIRECT MODELS. It sets out policies unique to the adult entertainment industry, and  
9 includes provisions such as maintaining a professional and personal appearance, prohibition  
10 against drugs and alcohol on the set, and the assessment of fees on artists or models for last  
11 minute cancellations, among other items.

12 **The Kill Fees (per the Best Practices Form)**

13 16. As a new talent agent, HAY observed that producers hired more actors than  
14 needed often sending the excess number of actors home without pay. HAY helped create a  
15 standard and uniform practice in the industry where a studio received a “kill fee.”<sup>5</sup> A kill  
16 fee is designed to limit the exposure of a model/performer (the artist) who cancels a shoot  
17 “on shortened notice,” and the liability of a production company or studio that cancels last  
18 minute. DIRECT MODELS incorporated this policy into its Best Practices Form.

19 17. Paragraph 11 of the Best Practices Form refers to “short notice job  
20 cancellations,” which define “short notice” as “any time 6:00pm Pacific Standard Time, or  
21 later, on the day preceding the employment,- or any time on the day of the employment.”  
22 Per Paragraph 11, an artist agreed to pay a “fixed and limited” compensation of \$300, of  
23 which, \$200 would be paid to the producer or studio and \$100 would be paid to DIRECT  
24

25 <sup>3</sup> Respondents’ Exhibit GGG.

26 <sup>4</sup> During the TAC Hearing, Petitioners objected to Respondents’ Exhibits YY, AAA, FFF, GGG, HHH, and  
27 to the testimony of Respondents’ witness, Karen Michmichian, also known as “Adonia.” The Hearing  
28 Officer took Petitioners’ objections under submission and hereby overrules them. Respondents’ Exhibits  
YY, AAA, FFF, GGG, HHH and the testimony of Adonia are admitted. (See Title 8, C.C.R. section 12031).

<sup>5</sup> HAY testified to the different terms used interchangeably when referring to a “kill fee.” This Determination  
will refer to the fee as such.

1 MODELS. HAY testified the \$100 represented a “flat limited liability” equating to “lost  
2 commission.” HAY further testified the rationale behind this structure was because the  
3 talent agency had done all the work necessary to get the artist to the point of employment.  
4 This could include negotiating the terms of the employment, accepting all information  
5 necessary from the employer (e.g., the production company), providing that information to  
6 the artist, and arranging all transportation logistics for the artist.

7 18. Conversely, if the production company canceled the shoot, but the artist had  
8 done everything to prepare for it, the production company would pay the artist \$200 and  
9 DIRECT MODELS \$50.

10 19. The assessment of kill fees was not included in the Schedule of Fees.

11 **The Agency Photographs (in the Best Practices Form)**

12 20. Paragraph 9, of the Best Practices Form, states DIRECT MODELS would  
13 schedule a photo shoot to provide a portfolio of images of the artist “necessary to display  
14 on Agent’s website for potential employers to view in determining whom they may select  
15 for acting or modeling assignments.” The cost of the photo shoot was \$300. The artist had  
16 the option of: (1) paying 50% of the cost of the photographs, allowing them full shared  
17 rights to any usage of the photographs; (2) not pay for the photographs, resulting in DIRECT  
18 MODELS’s sole ownership of the photographs; or (3) pay no fee but share in the use of the  
19 photographs provided the artist agreed to let DIRECT MODELS’s photographer shoot a  
20 15-minute solo video of the artist, in addition to the full set of photographs.

21 21. HAY testified he posts the model’s photographs on the agency website and  
22 may send those images to a producer or director of an employer “in hopes of gaining  
23 employment for the artist.”

24 22. The cost of these photographs was not included in the Schedule of Fees.

25 **Additional Documents signed or completed by Petitioners**

26 23. Petitioners were also provided a document called the “Model Profile.” The  
27 Model Profile included a “Scene Availability” section where Petitioners identified what  
28 types of scenes they were willing to perform.

1           24.     Except for VISCARA, Petitioners also signed the following documents when  
2 they agreed to be represented by DIRECT MODELS: the (1) “Records Keeping  
3 Compliance Form Pursuant To 18 U.S.C. § 2257;” (2) “Still Photograph Model Release and  
4 Assignment” form; and (3) “Authorization For Release Of Health Information.”

5     **Petitioners signed separate, individual documents**

6           25.     The documents Petitioners signed when they agreed to have DIRECT  
7 MODELS serve as their talent agency were not handed to them as a single packet. The  
8 credible testimony of Veronica Madjarian (hereinafter, “MADJARIAN”), a former  
9 employee of DIRECT MODELS for 16 years, and Chris Fleming (hereinafter,  
10 “FLEMING”), an employee of DIRECT MODELS for seven years, show DIRECT  
11 MODELS presented each document Petitioners signed in a separate and individual manner.  
12 While their individual presentation styles varied, MADJARIAN and FLEMING printed the  
13 documents, separated and identified each document, and reviewed each document  
14 individually with Petitioners. MADJARIAN and FLEMING identified the “representation  
15 agreement” submitted with the Labor Commissioner as a two-page contract consisting of  
16 the Agency Contract and Schedule of Fees.

17           26.     FLEMING explained the Best Practices Form, encouraged models to read it,  
18 and answered questions they had. He would specifically review Paragraph 11 of the Best  
19 Practices Form regarding short notice job cancellations. MADJARIAN would tell the model  
20 to focus on Paragraph 11 of the Best Practices form, which she thought was important and  
21 which explained kill fees in more detail.

22           27.     Several Petitioners corroborated MADJARIAN’s and FLEMING’s  
23 testimony. MADJARIAN told CROSS she needed to understand that DIRECT MODELS  
24 could charge kill fees as stated in the Best Practices Form. CROSS read Paragraph 11 of  
25 the Best Practices Form regarding short-notice cancellations. CROSS testified  
26 MADJARIAN told her it was the most important part of the contract.

27           28.     MADJARIAN answered questions RYE had about the Model Profile. She  
28 also briefed RYE on what each page was. RYE recalled MADJARIAN saying she wanted

1 RYE to read and review the Best Practices Form.

2 29. MADJARIAN handed EVANS the documents. EVANS filled them out, and  
3 then met with HAY who reviewed the documents section by section. EVANS spent most  
4 of her time speaking with HAY about the Best Practices Form, including a conversation  
5 regarding Paragraph 11. EVANS and HAY also discussed the Agency Contract.

6 **The Booking (or Agency) Fees**

7 30. Booking fees are fees paid to a talent agency by studios, producers and  
8 directors as part of the services provided by a talent agency.

9 31. DIRECT MODELS collected booking fees within the course and scope of  
10 running a talent agency business. DIRECT MODELS's booking fee is \$110 for female  
11 models.

12 32. MADJARIAN testified booking fees is money provided to a talent agency  
13 because of its functioning as such. She also testified DIRECT MODELS would receive a  
14 booking fee, which is related to the booking of a particular performer.

15 33. MADJARIAN further testified that benefits like having a talent agency  
16 schedule and speak directly to a production company, or having the talent agency provide  
17 shoot information directly to the artist, is part of a talent agency's job.

18 34. Mark Schechter (hereinafter, "SCHECHTER") is a licensed talent agent in  
19 California who has a talent agency named Adult Talent Managers or "AMTLA." Before  
20 owning AMTLA, he was a partner in a small production company. SCHECHTER testified  
21 that booking fees are a custom and practice in the industry.

22 35. Jonathan Blitt (hereinafter, "BLITT") of Mile High DVD, stated he has  
23 known HAY since approximately 2006, and has "negotiated services from" DIRECT  
24 MODELS since then.<sup>6</sup> He stated that the payment of bookings fees by directors, producers  
25 and other entities to talent agencies "has long been a customary practice in the adult  
26 entertainment industry."

27 36. The assessment of booking fees was not included in the Schedule of Fees.

28 <sup>6</sup> Respondents' Exhibit HHH.

1 **DIRECT MODELS Staff and Office Locations**

2 37. HAY worked out of Los Angeles with MADJARIAN and Fran Amador  
3 (hereinafter, “AMADOR”), with FLEMING joining DIRECT MODELS also in Los  
4 Angeles in October 2012.

5 38. HAY moved to Las Vegas in September 2013, and set up an office in his Las  
6 Vegas home. Around 2013 or 2014, FLEMING transitioned from the DIRECT MODELS  
7 office in Los Angeles to its office in Las Vegas.

8 39. MADJARIAN was employed by DIRECT MODELS for 16 years and worked  
9 out of its Los Angeles area office.

10 40. Jessica Avras (hereinafter, “AVRAS”) took over the accounting and  
11 invoicing after HAY moved to Las Vegas. Before hiring AVRAS, AMADOR had been  
12 responsible for DIRECT MODELS’s day-to-day accounting. When HAY hired AVRAS,  
13 AVRAS became the senior accountant and instructed AMADOR on accounting matters.

14 **DIRECT MODELS Policies and Practices**

15 41. Petitioners all received a “Statement” from DIRECT MODELS. The  
16 statement included any amounts due and owing to the artist either from DIRECT MODELS  
17 or vice versa. The statement includes “Activity,” which described what a scene or job  
18 entailed, the date of the scene, and the producer. It also included references to “INV #,”  
19 which reflected any amounts charged to Petitioners.

20 42. AMADOR was responsible for the data entry of the Statements regarding the  
21 artists in Los Angeles. AMADOR and AVRAS were the only people involved in the  
22 preparation of the Statements. AVRAS may review a Statement to make sure it was  
23 accurate.

24 43. HAY testified that an additional \$25 is collected from the models for airline  
25 transportation in the course and scope of running a talent agency. During the TAC Hearing,  
26 the parties stipulated to this \$25 amount, which reflects a fee charged by DIRECT  
27 MODELS to Petitioners, above the price of each airline ticket purchased.<sup>7</sup>

28 <sup>7</sup> See Respondents’ Exhibit III.

1           44.     The \$25 fee was not included in the Schedule of Fees.

2     **Other Businesses and Assets Belonging to HAY**

3           45.     HAY owns a separate company in Las Vegas called Direct Models LV, which  
4 is a licensed talent agency in Nevada.

5           46.     HAY owns The Lee Network (hereinafter, “Lee Network”). The Lee Network  
6 is a separately licensed talent agency in Nevada that specializes in the provision of adult  
7 star feature entertainers to clubs. Through the Lee Network, HAY scheduled all adult star  
8 feature entertainers for the Sapphire Clubs, including the one in Las Vegas. Most, if not all  
9 Petitioners, signed contracts with the Lee Network to do feature dancing.

10          47.     HAY also owns Direct Models East Coast (or “EC”) in Florida. He had a  
11 partner named Bella (last name unknown) who worked with DIRECT MODELS as an agent  
12 in Florida.

13          48.     HAY owns a five-bedroom home in the Los Angeles area (hereinafter,  
14 “Ostego Home”). Aside from a designated bedroom when HAY is in town, tenants occupy  
15 the remaining rooms. HAY has an employee named Alex (last name unknown) who was  
16 both a driver for DIRECT MODELS and a general manager/caretaker of the Ostego Home.

17     **Standards in the Adult Entertainment Industry**

18          49.     An artist can perform a shoot by what is known in the adult entertainment  
19 industry as a “point of view” shoot (hereinafter, “POV”). This occurs when a camera is  
20 pointed, for example, on the female artist. The intention behind such POV shoots is to  
21 simulate as if it is just one person in the scene so the viewer believes they are in the scene  
22 too. POV shoots that include only one man with a camera and the model, but no one else,  
23 are not considered legitimate or safe in the adult entertainment industry.

24          50.     Performers in the adult entertainment industry have what are referred to as a  
25 “No List” and “Yes List.” A No List refers to a list of people with whom the performer does  
26 not want to work, while a “Yes List” identifies a list of people with whom the performer  
27 agrees to work. A performer can also identify what kinds of scenes they are comfortable  
28 with doing and not doing. These types of scenes are reflected in the Model Profile artists

1 for DIRECT MODELS filled out when they contracted with the agency.

2 51. Performers cannot be forced to work with people they do not want to work  
3 with, or to do scenes they are uncomfortable performing.

4 **The Luxury Companion**

5 52. The Luxury Companion (hereinafter, “TLC”) had one principal, Karen  
6 Michmichian (“Karen” or “Adonia”). HAY is friends with Karen and her life partner,  
7 Dwight Cunningham (“Dave”).<sup>8</sup> TLC runs an escorting service.

8 **Events in the Adult Entertainment Industry**

9 53. Exxxotica is a convention held in different cities several times throughout the  
10 year where fans in the adult entertainment industry can attend and meet artists. Several of  
11 the Petitioners attended different Exxxotica conventions to promote their brand and  
12 DIRECT MODELS. To prepare for the conventions, DIRECT MODELS would coordinate  
13 with Petitioners to have 8-by-10s<sup>9</sup> and banners of themselves to take to Exxxotica.  
14 Petitioners who attended the Exxxotica conventions were charged for the 8-by-10s and  
15 banners.

16 54. AVN, or the Adult Video Network, has the largest awards ceremony in the  
17 adult entertainment industry. It is preceded by a four-day expo that takes place before the  
18 awards show. Models are required to attend and work shifts at DIRECT MODELS’s booth.

19 55. FLEMING and Archie Alcantara (hereinafter, “ALCANTARA”), who assists  
20 DIRECT MODELS and the Lee Network at various functions like Exxxotica, attended  
21 Exxxotica Denver. FLEMING and ALCANTARA testified they spoke to Petitioner RYAN  
22 or observed her arguing with her then boyfriend, Justin Hunt (hereinafter, “HUNT”), by  
23 phone during the convention.<sup>10</sup> Both testified RYAN told them she was having problems  
24 with HUNT, and that HUNT threatened to kill her cat while she was attending Exxxotica  
25 Denver. FLEMING further testified RYAN told him that HUNT had been physically

26 \_\_\_\_\_  
27 <sup>8</sup> Throughout the TAC Hearing, both parties referred to Karen Michmichian and Dwight Cunningham by  
28 their aliases, “Karen” and “Dave.” This Determination will also refer to them by their aliases.

<sup>9</sup> 8 by 10s are 8x10 photos.

<sup>10</sup> HUNT is also an artist in the adult entertainment industry.

1 abusive toward her, and that RYAN showed him pictures of bruises of her body from the  
2 physical abuse.

3 **The Szarko Case**

4 56. The Labor Commissioner takes administrative notice of *Szarko v. DIRECT*  
5 *MODELS, INC., a California Corporation, dba L.A. DIRECT MODELS*, TAC Case No.  
6 50639)(“*Szarko*”). In *Szarko*, the Labor Commissioner held DIRECT MODELS violated  
7 Labor Code section 1700.33 by failing to protect petitioner Szarko’s health, safety and  
8 welfare, when the talent agency sent her to a poker party (hereinafter, “Poker Party”).  
9 During the Poker Party, petitioner Szarko was offered illegal drugs, was groped  
10 aggressively by several men, and was asked to give men “favors (presumably sexual)” in  
11 exchange for cash tips. Petitioner Szarko also observed men at the Poker Party attempting  
12 to engage in nonconsensual sexual acts with two other women from DIRECT MODELS.

13 57. The Labor Commissioner also found that DIRECT MODELS’s Statement for  
14 petitioner Szarko showed deductions from her earnings for outstanding rent payments she  
15 owed HAY. The Labor Commissioner concluded, “HAY as CEO of [DIRECT MODELS]  
16 abused his position to direct [DIRECT MODELS] to withhold payments from SZARKO  
17 which it owed her for work it had been paid for on her behalf.” (*Id.*, pp. 6, 16)

18 58. Administrative notice is also taken of the testimony from HAY in that same  
19 matter in which he testified to calling petitioner Szarko on December 5, 2017, five to six  
20 days after the Poker Party, to offer her employment on a “similar” event. During this  
21 conversation, petitioner communicated to HAY what transpired at the Poker Party. HAY  
22 further testified that DIRECT MODELS does not permit producers who do POV shoots to  
23 be alone with a model.

24 **JANE DOE 1 – CHARLOTTE CROSS**

25 59. CROSS is an adult performer.

26 60. CROSS was doing escorting jobs through Dave and Karen from TLC.  
27 CROSS testified that TLC is a “prostitution ring.”

28 61. Around October 2016, CROSS asked Karen via text exchange about

1 establishing contact with HAY. The Lee Network represented CROSS shortly thereafter.  
2 CROSS testified she did not converse with HAY about TLC during their 40-minute meeting  
3 regarding CROSS's signing with the Lee Network.

4 62. In 2017, Karen told CROSS she should sign with DIRECT MODELS after  
5 CROSS inquired about getting more work. CROSS signed with DIRECT MODELS on May  
6 16, 2017.

7 63. On June 13, 2017, DIRECT MODELS booked CROSS to do a casting with  
8 Pierre Woodman (hereinafter, "WOODMAN") as her first job. WOODMAN is a producer  
9 in the adult entertainment industry and a friend of HAY's. On June 19, 2017, DIRECT  
10 MODELS cast CROSS to do a graphic sexual scene (also filmed by WOODMAN).

11 64. CROSS had been out of the adult entertainment industry for some time before  
12 signing with DIRECT MODELS. She spoke to HAY about concerns regarding the booking  
13 with WOODMAN, including that she did not think she could shoot the sexual scene as it  
14 had been some time since she performed that type of scene. CROSS also raised concerns to  
15 HAY about WOODMAN's shoots. She likened WOODMAN's shoots to "walking into a  
16 hotel room shooting with a guy that has a camera."

17 65. CROSS wanted to ensure that her return to the industry would entail a scene  
18 she was comfortable with and ready to perform. HAY responded by saying he had already  
19 booked the shoot and that CROSS would have to pay a kill fee of about \$1000 if she  
20 canceled the scene. CROSS "sucked it up" and performed the scene.

21 66. CamSoda is a webcamming company. Webcamming consists of interacting  
22 with members on a site, and having viewers tip the model for performing acts. HAY  
23 contacted CROSS on Friday, July 7, 2017, about doing a webcamming shoot for CamSoda  
24 on Saturday, July 8, 2017. CROSS declined due to what she believed was a scheduling  
25 conflict with another event not booked by DIRECT MODELS.

26 67. CROSS introduced two conflicting Statements.<sup>11</sup> The first Statement did not  
27 include a kill fee for the CamSoda booking, while the second one identified a kill fee of

28 <sup>11</sup> Petitioners' Exhibits CC-8 and CC-9.

1 \$300. CROSS told HAY she would not pay for the kill fee. HAY informed CROSS he  
2 would not provide her with any more work until she paid the kill fee.

3 68. AVRAS testified to an invoice, dated July 14, 2017, billed to Secure Live  
4 Media, or CamSoda, with Invoice # 101253 for various line item amounts, including one  
5 for a kill fee for \$200.<sup>12</sup> AVRAS testified this invoice demonstrated that a kill fee was  
6 assessed for the CamSoda shoot.

7 69. On June 26, 2017, DIRECT MODELS invoiced CROSS \$150.00 for photos.

8 70. On June 30, 2017, CROSS worked the last employment procured by DIRECT  
9 MODELS.<sup>13</sup>

10 **JANE DOE 2 – SOFI RYAN**

11 71. RYAN is an adult film actor and model. In February 2017, RYAN contacted  
12 DIRECT MODELS through their website, followed by an email from FLEMING regarding  
13 documents RYAN needed to sign to be represented by DIRECT MODELS.

14 72. On March 9, 2017, RYAN met with HAY and FLEMING at HAY's home  
15 and office in Las Vegas. RYAN signed all the documents on that same day.

16 73. RYAN went to Los Angeles after she signed the documents. A couple of  
17 weeks later, she had dinner with HAY and his friends, Dave and Karen, from TLC. Dave  
18 and Karen told RYAN to contact them if she needed work or additional money.

19 74. RYAN and HAY commenced a sexual relationship after the first dinner.

20 75. RYAN testified that Karen and Dave took her out to a separate dinner and  
21 explained the escorting profession to her. RYAN was staying at HAY's Ostego Home at  
22 the time of her first job with TLC. Dave and Karen picked her up from HAY's Ostego  
23 Home and dropped her off at that same location. RYAN further testified that HAY provided  
24 pictures of RYAN to TLC for its website.

25 76. RYAN was sent to perform two POV shoots with no security on March 22,  
26 2017 and April 2, 2017.

27 \_\_\_\_\_  
28 <sup>12</sup> Respondents' Exhibit FFF.

<sup>13</sup> Petitioners' Exhibit CC-9.

1           77. RYAN’s casual sexual relationship with HAY continued for several months  
2 until July 2017 when she met HUNT.

3           78. In August 2017, RYAN was in Las Vegas to attend events for HAY’s  
4 birthday. DIRECT MODELS booked a hotel room for RYAN and other models, but she  
5 instead stayed with HUNT while in Las Vegas. RYAN did not attend some of HAY’s  
6 birthday festivities because she was sick. RYAN testified HAY called her and threatened  
7 to ruin her career. On August 14, 2017, DIRECT MODELS charged RYAN \$525 for the  
8 flight and hotel expenses for attending HAY’s birthday party festivities.

9           79. The evidence establishes RYAN experienced a reduction of over 50% in work  
10 after HAY learned about her relationship with HUNT and after HAY’s birthday festivities  
11 in August 2017. From March 2017 to August 2017, DIRECT MODELS charged RYAN  
12 commission for approximately 47 shoots.<sup>14</sup> From September 2017 to February 2018, which  
13 reflects the same five-month timeframe, DIRECT MODELS charged RYAN commission  
14 for approximately 21 shoots.<sup>15</sup>

15           80. On August 23, 2017, RYAN was made to perform a scene with another  
16 DIRECT MODELS artist named Danny Mountain (hereinafter, “MOUNTAIN”). RYAN  
17 informed HAY that MOUNTAIN was on her No List. HAY told RYAN she had to do the  
18 scene or he would otherwise charge her kill fee. During the job, MOUNTAIN performed  
19 sexual acts that were part of RYAN’s No List, recorded her on his phone during the scene  
20 without her consent, and referred to her in a denigrating manner.

21           81. Between September 3, 2017 to September 6, 2017, RYAN performed a shoot  
22 for “AFP/Johnny Castle” in Las Vegas. On September 7, 2017, RYAN did a shoot in Los  
23 Angeles for “Screwbox/Jakodema.”

24           82. While the parties presented conflicting evidence regarding HAY’s and  
25 RYAN’s whereabouts between September 7, 2017 to September 9, 2017, what is  
26 undisputed is that RYAN was in Las Vegas on September 6, 2017 and in Los Angeles on

27 \_\_\_\_\_  
28 <sup>14</sup> Petitioners’ Exhibit SR-3.

<sup>15</sup> *Id.*

1 September 7, 2017 for the “Screwbox/Jakodema” shoot. RYAN traveled from Las Vegas  
2 to Los Angeles sometime between the afternoon or evening of September 6, 2017.

3 83. The weight of the evidence establishes that HAY and RYAN drove from Las  
4 Vegas to Los Angeles on the afternoon or evening of September 6, 2017. During the drive  
5 to Los Angeles, HAY pulled to the side of the road and instructed RYAN to perform a  
6 sexual act on him, which she reluctantly performed.

7 84. DIRECT MODELS charged RYAN three kill fees on November 2, 2017,  
8 March 6, 2018, and April 3, 2018 for \$900.<sup>16</sup>

9 85. On November 9, 2017, RYAN paid \$342 for the cost of 8-by-10s and a banner  
10 for attending Exxxotica New Jersey. On April 9, 2018, she was also charged \$200 for  
11 “Lost/wasted advertisement” while attending Exxxotica Denver.<sup>17</sup>

12 86. On September 11, 2018, RYAN worked the last employment procured by  
13 DIRECT MODELS.<sup>18</sup>

14 **JANE DOE 3 – ANDI RYE**

15 87. RYE was first introduced to Bella of DIRECT MODELS East Coast. Bella  
16 provided RYE with DIRECT MODELS’s contact information in Los Angeles.

17 88. RYE was told to go to the DIRECT MODELS Los Angeles office where she  
18 signed the documents on April 20, 2017.

19 89. On or about April 26, 2017, DIRECT MODELS sent RYE to a photo shoot  
20 at the house of Dave and Karen from TLC. Alex, the driver for DIRECT MODELS, took  
21 RYE to Dave’s and Karen’s house for the photo shoot.

22 90. On June 16, 2017, RYE was scheduled to do a two-part scene with  
23 WOODMAN. For the first part of the scene, RYE performed a scene with male performers.  
24 For the second part of the scene, RYE consented to doing a staged, graphic sexual scene on

25 \_\_\_\_\_  
26 <sup>16</sup> *Id.*

27 <sup>17</sup> *Id.*

28 <sup>18</sup> Exhibit SR-3, which is the Statement produced by Respondents for Petitioners, references a job dated, March 22, 2019. However, RYAN’s testimony is that DIRECT MODELS stopped procuring employment for her around October 2018. This timing is more consistent with the employment dated September 11, 2018 as reflected in Exhibit SR-3.

1 the cameraman, *i.e.*, WOODMAN.

2 91. After completing the first scene, the male performers and an assistant left and  
3 RYE was left alone with WOODMAN in what ultimately became a POV shoot.

4 92. RYE's testimony, coupled with the weight of the evidence, regarding the  
5 events following the completion of the second, staged sexual act is credible. After  
6 completing the second sexual act, WOODMAN stated to RYE, "You think it's finished?  
7 You think so?" WOODMAN then proceeded to have RYE engage in a series of graphic  
8 sexual acts that were nonconsensual. RYE left the scene as quickly as she could after  
9 completing the graphic sexual acts.

10 93. Around August 2017, RYE spoke to Karen and Dave from TLC to see if she  
11 could work with them. RYE also spoke to CROSS and other models about going to work  
12 at TLC. While working at TLC, RYE met a "handful" of artists within DIRECT MODELS  
13 also working for TLC.

14 94. In October 2017, DIRECT MODELS sent RYE to its Florida operation. RYE  
15 was booked to do two scenes, but the second scene was canceled. RYE testified she believes  
16 it was canceled due to a skin rash, which she later discovered was ringworm. Direct Models  
17 EC booked RYE a third scene. Around this time, RYE discovered that the airfare to Florida,  
18 which DIRECT MODELS charged her for, had been marked up by \$25. RYE confronted  
19 HAY about this who responded by saying that RYE was ungrateful and that the \$25 was a  
20 convenience fee. After this conversation, HAY ordered the third scene canceled and that  
21 RYE return to Los Angeles.

22 95. In January 2018, RYE attended the AVN convention. DIRECT MODELS  
23 ordered banners with pictures of RYE, but RYE paid an estimated \$200 to \$300 for them.  
24 She also paid an estimated \$10 (100 copies, \$0.10 per copy) for 8-by-10s. RYE was required  
25 to be at the AVN Convention and worked shifts at the DIRECT MODELS booth.

26 96. On September 5, 2018, RYE worked the last employment procured by  
27 DIRECT MODELS.<sup>19</sup>

28 <sup>19</sup> Petitioners' Exhibit AR-2.

1 **JANE DOE 4 – HADLEY VISCARA**

2 97. VISCARA was a cam model and performer in the adult entertainment  
3 industry. VISCARA attended an adult expo in Phoenix and met someone who provided her  
4 with a list of agents including DIRECT MODELS.

5 98. VISCARA completed a model application on DIRECT MODELS’s website.  
6 FLEMING contacted VISCARA, set up a call with HAY, and emailed VISCARA certain  
7 documents after the call. VISCARA signed the documents on May 22, 2017.

8 99. On May 26, 2017, VISCARA flew to Las Vegas to meet with DIRECT  
9 MODELS. HAY picked her up at the airport and took her to a photo shoot for DIRECT  
10 MODELS’s website.

11 100. VISCARA had little money when she first signed her contract with DIRECT  
12 MODELS. VISCARA shared this with another person who recommended she ask HAY  
13 about Karen from TLC.

14 101. On June 2, 2017, VISCARA texted HAY via WhatsApp, indicating to him  
15 she was interested in doing “privates.”<sup>20</sup> HAY responded by saying he could arrange an  
16 introduction with a friend who “runs a very successful service.” HAY told VISCARA that  
17 his friend’s name was Karen and provided her with Karen’s number. HAY informed  
18 VISCARA that Karen would come to the Ostego Home and take VISCARA to her house  
19 so they could talk. Karen picked VISCARA up from the Ostego Home, and took VISCARA  
20 back to her house where she explained how escorting for TLC worked.

21 102. In a subsequent WhatsApp text exchange, HAY told VISCARA that Karen  
22 would have her busy the following week. HAY informed VISCARA he showed Karen  
23 pictures of her, which she suggested VISCARA use because they “were very good.”

24 103. In a third, subsequent WhatsApp text exchange, HAY inquired to VISCARA  
25 about whether she had done her first job for Karen and how it had gone. VISCARA  
26 responded to HAY that she had not done her first job, and asked HAY if he had sent Karen  
27 pictures of VISCARA for the website. HAY sent VISCARA’s pictures to Karen and told

28 <sup>20</sup> VISCARA testified that privates are one-on-one meetings with clients or, *i.e.*, prostitution.

1 VISCARA that Dave would have the pictures up that same night.

2 104. On July 6, 2017, VISCARA signed a “Rental Agreement” with HAY for her  
3 tenancy at the Ostego Home. Per the terms of the Rental Agreement, VISCARA agreed to  
4 pay \$1000 per month, and an additional \$1000 as a security deposit. The Rental Agreement  
5 also stated that VISCARA’s representation by DIRECT MODELS had no relevance to the  
6 tenancy agreement between HAY and her.

7 105. VISCARA testified to various inconsistencies between two versions of her  
8 Statements, Petitioners’ Exhibit HV-2 (or “Exh. HV-2”) and Exhibit HV-7 (or “Exh. HV-  
9 7”). From June 13, 2017 to July 31, 2017, a total of \$4,330 was deducted from VISCARA’s  
10 earnings to pay for personal debts owed to HAY for the rent and/or rental deposit of his  
11 homes in Los Angeles and Las Vegas.<sup>21</sup> Exh. HV-2 indicates VISCARA’s earnings were  
12 deducted for “rental deposit” or “funds going to Ostego” for several jobs she performed.  
13 However, for most of those same entries, Exh. HV-7 states that VISCARA was “paid  
14 directly” and makes no mention of deductions against VISCARA’s earnings for rent or  
15 deposit owed to HAY.

16 106. From early June 2017 to mid-July 2017, AVRAS was on medical leave. Upon  
17 her return to DIRECT MODELS, AVRAS reviewed some of AMADOR’s work and felt  
18 that certain corrections needed to be made, including corrections to Exh. HV-2. The  
19 modified Statement, or Exh. HV-7, included a change concerning the rent for the Ostego  
20 Home that was “never supposed to appear on a statement.” AVRAS testified HAY told her  
21 this when she began working for him. AVRAS further testified the corrections to Exh. HV-  
22 7 were to maintain proper accounting practices, and to remove “verbiage” that was not  
23 supposed to be there.

24 107. On July 20, 2017, VISCARA was charged for a cat tree for \$86.99, which  
25 HAY had characterized as a gift.

26 108. On July 31, 2017, VISCARA was charged \$30.00 for a train ticket for a shoot  
27 that did not occur. VISCARA canceled the shoot because she was uncomfortable with the

28 <sup>21</sup> See Petitioners’ Exhibits HV-2 and HV-9.

1 scene.

2 109. On August 23, 2017, VISCARA claimed that HAY forced her to perform a  
3 sexual act on him at his home in Las Vegas. HAY claims their encounter was consensual.

4 110. In March or April 2018, VISCARA did an interview with Dan Pryzgod from  
5 an NBC news affiliate regarding her experience with DIRECT MODELS (hereinafter,  
6 “NBC Interview”). During the NBC Interview, VISCARA gave conflicting statements  
7 regarding the August 23, 2017 incident than what she testified to during the TAC Hearing.  
8 Based on these conflicting statements, the events surrounding this encounter between  
9 VISCARA and HAY are inconclusive.

10 111. During the TAC Hearing, VISCARA testified about a second encounter with  
11 HAY that occurred on or around August 27, 2017. She also provided a similar account of  
12 what occurred on August 27, 2017 during the NBC Interview. The evidence shows  
13 VISCARA was credible in her testimony that HAY sexually assaulted her at his home in  
14 Las Vegas after returning from watching the Mayweather/McGregor boxing fight at the  
15 Sapphire.

16 112. In October 2017, VISCARA was charged a kill fee of \$300. In March 2018,  
17 VISCARA was charged \$200 for new photos taken for the DIRECT MODELS website.

18 113. On April 3, 2018, VISCARA performed the last employment procured by  
19 DIRECT MODELS.<sup>22</sup>

20 **JANE DOE 5 – SHAY EVANS**

21 114. EVANS is a performer and model.

22 115. EVANS’s former partner completed an application on DIRECT MODELS’s  
23 website so EVANS could work in adult entertainment. EVANS signed with DIRECT  
24 MODELS on November 6, 2015.

25 116. EVAN’s former partner also applied on EVANS’s behalf to have her work  
26 with TLC as an escort a couple of months after she met with HAY. EVANS met with Karen  
27 and Dave from TLC regarding escorting work. The initial application with TLC did not

28 <sup>22</sup> Petitioners’ Exhibit HV-2.

1 come about because of anything HAY said or communicated to EVANS.

2 117. EVANS became homeless about four to five months after initially meeting  
3 with Dave and Karen. Before becoming homeless, EVANS had done a few jobs for TLC.  
4 However, when she became homeless, EVANS called HAY who suggested to EVANS she  
5 move to Las Vegas. EVANS could not move to Las Vegas so HAY told EVANS to get  
6 back in touch with Dave and Karen from TLC.

7 118. During her time with DIRECT MODELS, EVANS testified to attending  
8 social events where Dave, Karen and HAY were all present. At some point, EVANS  
9 compared DIRECT MODELS's and TLC's websites and observed that the pictures on the  
10 TLC website were the same as the pictures on DIRECT MODELS's website but without  
11 the talent agency's logo.

12 119. In June 2016, EVANS was traveling to Las Vegas every weekend for work  
13 and staying at HAY's house.

14 120. Around June 2016, during one of her trips to Las Vegas, EVANS was  
15 scheduled to dance at the Sapphire. While on her way to the Sapphire, she exchanged  
16 messages with HAY via WhatsApp about logistics about her work at the Sapphire that  
17 evening. Between those text exchanges, HAY texted EVANS he wanted her to perform a  
18 sexual act on him when she got home. In the exchange, EVANS replied "LOL ok thanks,"  
19 though it is unclear whether she was responding to HAY's texts regarding the Sapphire or  
20 the text regarding the sexual act.

21 121. HAY testified the message he sent EVANS via WhatsApp regarding the  
22 sexual act was a joke between two people who had been intimate and were spending the  
23 night together.

24 122. The parties presented mixed testimony regarding whether the sexual  
25 relationship between HAY and EVANS began in June 2016. Both parties testified, however,  
26 that EVANS and HAY had a sexual encounter in November 2016 during the New  
27 York/New Jersey Exxxotica Convention.

28 123. On June 12 and 16, 2017, EVANS was scheduled to perform two shoots with

1 WOODMAN. One shoot with WOODMAN consisted of EVANS performing a sexually  
2 graphic scene. EVANS called HAY shortly before the scene and told him she was not ready  
3 to perform such a scene. HAY told her she could not cancel. The sexually graphic scene  
4 EVANS was scheduled for was not checked off her Model Profile meaning this was a scene  
5 she was unwilling to perform.

6 124. On November 3, 2017, EVANS performed a scene referred to as, “X RAY  
7 HIP,” which consisted of one man with a camera.

8 125. On December 7, 2017, EVANS was sent to a karaoke party (hereinafter,  
9 “Karaoke Party”) that was planned by people introduced to HAY by Mike Hagermeister,  
10 the host of the Poker Party.

11 126. The Karaoke Party took place in downtown Los Angeles and was a ‘topping-  
12 off’ party, which meant it was a party on the top floor of luxury apartments that had been  
13 completed. EVANS felt uncomfortable at the event because the men in attendance were  
14 drunk. She was groped at the party, was propositioned multiple times, and witnessed other  
15 models being groped too. In addition, several men attempted to get EVANS to engage in  
16 sexual acts with other artists from DIRECT MODELS who attended the Karaoke Party.  
17 EVANS spoke to HAY within a couple of days by phone about how she did not like these  
18 parties. The conversation was “belittling” because HAY made her feel like a child and did  
19 not respect her concerns regarding the party. DIRECT MODELS did not inquire about what  
20 arrangements would be made for personnel nor did it provide any security for the Karaoke  
21 Party.

22 127. On August 1, 2017, EVANS was charged \$200 for a DIRECT MODELS  
23 photo shoot. DIRECT MODELS wanted new photos for the agency’s website.

24 128. DIRECT MODELS charged EVANS three kill fees on November 16, 2017,  
25 February 20, 2018, and March 28, 2018 for a total amount of \$1100.

26 129. On June 13, 2018, EVANS performed the last employment procured by  
27 DIRECT MODELS.<sup>23</sup>

28 <sup>23</sup> Petitioners’ Exhibit SE-3.

1 **Procedural History**

2 130. On June 19, 2018, Petitioners filed a Petition to Determine Controversy  
3 (hereinafter, “Petition”) with the Labor Commissioner as *JANE DOE 1-4, INCLUSIVE,*  
4 *Individuals v. DEREK HAY, an Individual; and, DIRECT MODELS, INC. dba LA DIRECT*  
5 *MODELS, a California corporation,* TAC Case No. 52663.

6 131. On October 1, 2018, Petitioners filed a *First Amended Petition.* Petitioners  
7 also filed a *Motion for Leave to File Amended Petition.*

8 132. On October 10, 2018, Respondents filed an *Opposition to Motion to File*  
9 *Amended Petition.* On October 25, 2018, Respondents also filed a *Motion To Dismiss Or*  
10 *Strike Claims.*

11 133. On August 7, 2019, the Hearing Officer granted Petitioners’ *Motion for Leave*  
12 *to File Amended Petition.* The Hearing Officer ruled that the operative petition to determine  
13 controversy going forward would be Petitioners’ First Amended Petition with an original  
14 filing date of June 19, 2018.

15 134. On August 7, 2019, the Hearing Officer granted Respondents’ *Motion to*  
16 *Dismiss/Strike,* in part.

17 135. In their First Amended Petition, and based on the Hearing Officer’s Order  
18 regarding Respondents’ *Motion to Dismiss/Strike,* the Hearing Officer considers the  
19 following Causes of Action:

- 20 • First Cause of Action – Violation of California Labor Code §1700.23;
- 21 • Second Cause of Action – Fraud;
- 22 • Third Cause of Action – Violation of California Labor Code § 1700.31;
- 23 • Fourth Cause of Action – Violation of California Labor Code § 1700.33;
- 24 • Fifth Cause of Action – Violation of California Labor Code § 1700.24;
- 25 • Sixth Cause of Action – Breach of Fiduciary Duty – Count 1;
- 26 • Seventh Cause of Action – Breach of Fiduciary Duty – Count 2;
- 27 • Eighth Cause of Action – Breach of Fiduciary Duty – Count 3;
- 28 • Ninth Cause of Action – Violation of California Labor Code § 1700.40; and



1 Petitioners their rightful share of the Agency Fee and/or by failing to take all  
2 “reasonable efforts to procure employment?”

3 10. Can Derek Hay be held legally responsible in his individual capacity as owner of  
4 DIRECT MODELS for any violations committed by DIRECT MODELS as the  
talent agency?

5 **IV. LEGAL ANALYSIS**

6 Labor Code section 1700.4(a) defines “talent agency,” in part, as:

7 [A] person or corporation who engages in the occupation of  
8 procuring, offering, promising, or attempting to procure  
employment or engagements for an artist or artists . . .

9 Labor Code section 1700.4(b) defines “artist” as:

10 [A]ctors and actresses rendering services on the legitimate stage  
11 and in the production of motion pictures, radio artists, musical  
12 artists, musical organizations, directors of legitimate stage, motion  
13 picture and radio productions, musical directors, writers,  
14 cinematographers, composers, lyricists, arrangers, models, and  
other artists and persons rendering professional services in motion  
picture, theatrical, radio, television and other entertainment  
enterprises.

15 Petitioners are artists within the meaning of Labor Code section 1700.4(b). DIRECT  
16 MODELS is a licensed talent agency within the meaning of Labor Code section 1700.4(a).

17 All cases of controversy arising under the Talent Agency Act (hereinafter, “TAA”  
18 or the “Act”) must be referred by the parties to the Labor Commissioner for resolution,  
19 subject to de novo appeal to the superior court. (Labor Code § 1700.44(a)). “No action or  
20 proceeding shall be brought pursuant to [the Act] with respect to any violation which is  
21 alleged to have occurred more than one year prior to the commencement of the action or  
22 proceeding.” (Labor Code § 1700.44(c)). However, actions that occurred before the  
23 commencement of the one-year statute of limitations may be admissible to serve as  
24 “relevant background evidence in a proceeding in which the status of a current practice is  
25 at issue.” (See *United Air Lines, Inc. v. Evans*, 431 U.S. 553, 558 (1977)).

26 “The Act is a remedial statute. Statutes such as the Act are designed to correct abuses  
27 that have long been recognized and which have been the subject of both legislative action  
28 and judicial decisions. . . Such statutes are enacted for the protection of those seeking

1 employment [*ie.*, the artists]. (*Buchwald v. Superior Court* (1967) 254 Cal.App.2d 347, 350;  
2 *Waisbren v. Peppercorn Productions, Inc.* (1995) 41 Cal.App.4th 246, 254 (“*Waisbren*”)).  
3 “Consequently, the Act should be liberally construed to promote the general object sought  
4 to be accomplished . . . To ensure the personal, professional, and financial welfare of the  
5 artists, the Act strictly regulates a talent agent's conduct.” (*Waisbren* at 254). Furthermore,  
6 the Act's express purpose “is to protect artists seeking professional employment from the  
7 abuses of talent agencies.” (*Styne v. Stevens* (2001) 26 Cal.4th 42, 50 (“*Styne*”).

8 The proper burden of proof in actions before the Labor Commissioner is found at  
9 Evidence Code section 115, which states, “[e]xcept as otherwise provided by law, the  
10 burden of proof requires proof by a preponderance of the evidence.” “[T]he party asserting  
11 the affirmative at an administrative hearing has the burden of proof, including both the  
12 initial burden of going forward and the burden of persuasion by preponderance of the  
13 evidence.” (*McCoy v. Bd. of Ret.* (1986) 183 Cal.App.3d 1044, 1051, fn. 5).  
14 “[P]reponderance of the evidence standard . . . simply requires the trier of fact’ to believe  
15 that the existence of a fact is more probable than its nonexistence.” (*In re Michael G.* (1998)  
16 63 Cal.App.4th 700, 709, fn. 6).

17 **A. Labor Code section 1700.23 and DIRECT MODELS’s Agency Contract and**  
18 **Schedule of Fees**

19 Labor Code section 1700.23 states, in part, the following:

20 Every talent agency shall submit to the Labor Commissioner a  
21 form or forms of contract to be utilized by such talent agency in  
22 entering into written contracts with artists for the employment  
of the services of such talent agency by such artists, and secure  
the approval of the Labor Commissioner thereof.

23 As part of their First and Second Causes of Action, Petitioners contend DIRECT  
24 MODELS fraudulently misled them into believing that all the documents they signed  
25 comprised a single contract, which were submitted to and approved by the Labor  
26 Commissioner.

27 Petitioners rely on California Civil Code (“Civil Code”) section 1642 in support of  
28 their argument. Civil Code section 1642 states, “[s]everal contracts relating to the same

1 matters, between the same parties, and made as parts of substantially one transaction, are to  
2 be taken together.” Petitioners claim the entire document packet is a single agreement and  
3 the entirety of it should have been “filed” with the Labor Commissioner.

4 The application of the general rule outlined by Civil Code section 1642 is a question  
5 of fact. (See *Cadigan v. American Trust Co.* (1955) 131 Cal.App.2d 780, 784, 786). Civil  
6 Code section 1642 is one “of the rules referred to in Civil Code section 1637 for aiding in  
7 the interpretation of a contract when the intent of the parties is ““otherwise doubtful.””  
8 (*Hartford Accident & Indemnity Co. v. Sequoia Ins. Co.* (1989) 211 Cal.App.3d 1285,  
9 1300)(“*Hartford*”). Moreover, regardless of whether the interpretation of a contract is  
10 doubtful, Civil Code section 1642 “is simply a rule . . . [that] allows [for] the construction  
11 of two contracts in pursuit of that same purpose.” (*Id.*) While several contracts relating to  
12 the same matters can be construed together under this section, it does not follow that “for  
13 all purposes they constitute one contract.” (*Id.*)

14 Petitioners’ near identical testimony they were provided the documents as a single  
15 contract is outweighed by MADJARIAN’s, FLEMING’s, and their own testimony  
16 regarding the facts. MADJARIAN and FLEMING independently testified they presented  
17 each document in a separate and individual manner, and reviewed each document with  
18 Petitioners. MADJARIAN told CROSS she needed to understand that DIRECT MODELS  
19 could charge kill fees as stated in the Best Practices Form, which was the most important  
20 part of the contract. MADJARIAN briefed RYE on each page and told her to read and  
21 review the Best Practices Form. MADJARIAN handed EVANS the documents. EVANS  
22 filled them out completely, and then met with HAY separately who went through the  
23 documents section by section. EVANS and HAY spent most of their time on the Best  
24 Practices Form, but also spoke about the Agency Contract.

25 The documents presented to Petitioners were not delivered as a single contract, or  
26 communicated as such. While Petitioners may have interpreted these documents to be part  
27 of the same transaction, it does not mean they constituted one contract. (See *Hartford*,  
28 *supra*, 211 Cal.App.3d at 1300).

1           Petitioners also failed to show how DIRECT MODELS acted fraudulently and  
2 intended to mislead them into believing each document was part of an entire agreement.  
3 The evidence provided by DIRECT MODELS, coupled with the corroborating testimony  
4 of Petitioners, indicate DIRECT MODELS intended to explain each document separately  
5 and took the time to explain or inform Petitioners to read those documents that would affect  
6 them more, like the Best Practices Form. There was no intent to mislead or misrepresent to  
7 Petitioners that all documents they signed comprised a single contract, which was then  
8 submitted to and approved by the Labor Commissioner.

9           For the reasons stated above, Petitioners failed to meet their burden in proving their  
10 First and Second Causes of Action.

11           **B. DIRECT MODELS's Procurement of Employment and Labor Code**  
12           **section 1700.31**

13           Labor Code section 1700.31 states:

14                       No talent agency shall knowingly issue a contract for  
15                       employment containing any term or condition which, if  
16                       complied with, would be in violation of law, or attempt to fill  
17                       an order for help to be employed in violation of law.

18           Petitioners contend DIRECT MODELS is affiliated with and refers clients to an  
19 unlicensed and illegal escort business, TLC. Petitioners claim Dave and Karen from TLC,  
20 along with HAY, have a personal and/or business relationship providing for secret referral  
21 fees between these businesses, and that DIRECT MODELS's referral of Petitioners to TLC  
22 violates Labor Code section 1700.31.<sup>24</sup> The question here is whether DIRECT MODELS  
23 had a role in procuring employment or attempted to assist in procuring employment for  
24 Petitioners in a manner that violated the law.

25           A talent agency is a corporation or person who procures, offers, promises, or  
26 attempts to procure employment or engagements for an artist or artists. (See Labor Code §

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27           <sup>24</sup> Because the Labor Commissioner can determine her jurisdiction over a matter involving the TAA,  
28 Petitioners' claims regarding violations of Los Angeles Municipal Code section 103.107 *et seq.*, as pled in  
their First Amended Petition, are best addressed with the proper forum designated to consider those  
allegations. For purposes of these proceedings, the Labor Commissioner considers Petitioners' Third Cause  
of Action in accordance with Labor Code section 1700.31 only.

1 1700.4(a)). While not specifically defined by the TAA, the different definitions for  
2 employment require an act on behalf of the employed. (See *Malloy v. Board of Education*  
3 (1894) 102 Cal. 642, 646; Industrial Welfare Commission Wage Order No. 12-2001, section  
4 2(D)-(F)).

5 The Labor Commissioner has ruled, “[p]rocurement could include soliciting an  
6 engagement; negotiating an agreement for an engagement; or accepting a negotiated  
7 instrument for an engagement.” (*McDonald v. Torres*, TAC 27-04; *Gittelman v. Karolat*,  
8 TAC 24-02). And “[p]rocurement” includes any active participation in a communication  
9 with a potential purchaser of the artist’s services aimed at obtaining employment for the  
10 artist, regardless of who initiated the communication or who finalized the deal. (*Hall v. X*  
11 *Management*, TAC 19-90). The word “procure” is defined as “1. To obtain (something,  
12 esp[ecially] by special effort or means. 2. To achieve or bring about (a result). . . .” (Black’s  
13 Law Dictionary (11th Ed. 2019)).

14 Petitioners testified TLC was an escorting service, and what they referred to was a  
15 “front for prostitution.”<sup>25</sup> HAY testified to knowing about TLC and its principal, Karen, but  
16 denies having any role in procuring employment with TLC for Petitioners. The  
17 preponderance of the evidence, however, demonstrates a pattern of involvement by HAY  
18 in attempting to refer or introduce several of the Petitioners to TLC. Most notably, HAY  
19 introduced VISCARA to TLC after VISCARA inquired about doing “privates,” which are  
20 one-on-one meetings with clients or what VISCARA testified to as “prostitution.” He  
21 provided VISCARA with Karen’s phone number, offered to speak to Karen on VISCARA’s  
22 behalf, coordinated having Karen pick up VISCARA at his Ostego Home, and sent TLC  
23 pictures of VISCARA from her photo shoot so they could be posted on TLC’s website.  
24 HAY’s testimony that he offered to “help” VISCARA lends support to violating Labor  
25 Code section 1700.31 because he “attempted to fill an order for help” when coordinating

26 <sup>25</sup> The burden of proof in actions before the Labor Commissioner requires proof by a preponderance of the  
27 evidence. Here, the preponderance of the evidence establishes it is more probable than not that TLC provided  
28 escort services in what Petitioners characterized as a “front for prostitution.” However, this Determination  
makes no findings regarding criminal violations committed by either party.

1 employment for VISCARA as an escort for TLC.

2 Petitioner RYAN attended various dinners with HAY, Dave, and Karen. RYAN  
3 further testified that Karen and Dave took her out to a separate dinner and explained the  
4 escorting profession. For her first job with TLC, TLC picked up and later dropped RYAN  
5 off at HAY's Ostego Home. HAY also provided TLC with pictures of RYAN's agency  
6 photos so they could be used for the TLC website. In addition, while HAY did not initially  
7 refer EVANS to TLC, HAY suggested to EVANS she contact TLC after she called him and  
8 told him that she was homeless. Petitioner RYE also testified she was sent to Karen's and  
9 Dave's home for her photo shoot shortly after signing with DIRECT MODELS.

10 The preponderance of the evidence demonstrates HAY knowingly attempted to help  
11 procure employment for Petitioners with TLC, an escort service, in violation of Labor Code  
12 section 1700.31. HAY actively participated in helping book employment for VISCARA as  
13 an escort for TLC. HAY also had a role in brokering a relationship or connection with  
14 Petitioners RYAN, RYE and EVANS and TLC so they could work as escorts. HAY helped  
15 obtain this result by referring Petitioners to TLC, introducing them to TLC at social  
16 functions, providing TLC with Petitioners' agency photos, and/or having his DIRECT  
17 MODELS employees take them to the home of Dave and Karen.

18 **C. DIRECT MODELS's Actions and/or Omissions Amount to a Breach of its Duty**  
19 **as a Licensed Talent Agency Pursuant to Labor Code section 1700.33**

20 Labor Code section 1700.33 provides:

21 No talent agency shall send or cause to be sent, any artist to any  
22 place where the health, safety, or welfare of the artist could be  
23 adversely affected, the character of which place the talent  
agency could have ascertained upon reasonable inquiry.

24 In *Szarko*, the Labor Commissioner considered whether Respondent DIRECT  
25 MODELS violated Labor Code section 1700.33. In her extensive review of the legislative  
26 history for Labor Code section 1700.33, coupled with long-standing precedent holding the  
27 Act is a remedial statute, the Labor Commissioner determined:

28 [T]he Act implies into each and every Talent Agency contract

1 the covenant that '[n]o talent agency shall send or cause to be  
2 sent, any artist to any place where the health, safety, or welfare  
3 of the artist could be adversely affected, the character of which  
4 place the talent agency could have ascertained upon reasonable  
5 inquiry.' Labor Code section 1700.33. **This amounts to an  
6 explicit covenant and duty of the agent or agency to engage  
7 in reasonable inquiry to determine whether an artist's  
8 health, safety or welfare would be adversely affected by  
9 being sent to a job they are attempting to procure for the  
10 artist.** [Emphasis in original].

11 . . .

12 Thus, it is a covenant implied by law into the Agency Contract  
13 and all agency contracts, that an agent has an on-going and ever-  
14 present duty to perform 'reasonable inquiry' to assure that the  
15 job they procure for the artist provides for the 'health, safety  
16 and welfare' of the artist. **This is an essential part of the  
17 agent's covenant with the artist and its negotiations with the  
18 employer (the reasonable inquiry), and an agent's failure to  
19 do so is a material breach of any agency agreement.**  
20 [Emphasis in original].

21 (*Szarko, supra*, TAC 50639, at p. 10).

22 In *Szarko*, the Labor Commissioner concluded DIRECT MODELS failed to secure  
23 the health, safety and welfare of petitioner under Labor Code section 1700.33. The Labor  
24 Commissioner held, "[a] reasonable agent upon reasonable inquiry would have realized that  
25 this situation required security" ensuring during procurement that the "party's host would  
26 provide security and provide that information to the artists or would have sent the artists  
27 with security provided by the agency." (*Id.*, at p. 13).

28 The Labor Commissioner finds HAY breached his duty as a talent agent by having  
a role in several of the Petitioners working with TLC. Here, the mere act of referring artists  
DIRECT MODELS represented to escorting work, or what Petitioners testified to was a  
"front for prostitution," sufficiently demonstrates HAY's blatant disregard for Petitioners'  
health, safety or welfare. No reasonable inquiry is necessary for escorting work. HAY's  
acts alone in referring VISCARA to TLC, and arranging for RYAN and RYE to meet TLC  
at dinners or be picked or dropped off at his Ostego Home, militate toward a finding of  
HAY's role in helping procure work for Petitioners in escorting. Under Labor Code section  
1700.33, HAY sent or caused Petitioners "to be sent" to places for escorting work where

1 their health, safety or welfare were threatened. These acts constitute a material breach of  
2 DIRECT MODELS's Agency Contracts with Petitioners.

3 Applying *Szarko*, DIRECT MODELS also materially breached its duty as a talent  
4 agency by sending EVANS to the Karaoke Party. On December 7, 2017, EVANS was sent  
5 to the Karaoke Party, which was planned by people introduced to HAY by Mike  
6 Hagermeister, the host of the Poker Party at issue in *Szarko*. HAY testified during the *Szarko*  
7 matter that the Karaoke Party was "similar" to the Poker Party. Petitioner Szarko informed  
8 HAY **days before** the Karaoke Party that she was groped at the Poker Party, was offered  
9 drugs, was propositioned, and that men who attended the first party subjected other models  
10 from the talent agency to nonconsensual acts. Although he was on notice regarding  
11 petitioner Szarko's experience at the Poker Party, HAY nonetheless sent EVANS and other  
12 models to the Karaoke Party one week later. HAY did not inquire about what arrangements  
13 would be made for personnel or security at the Karaoke Party. Nor did HAY send any  
14 security to the Karaoke Party.

15 EVANS was groped at the Karaoke Party, witnessed other DIRECT MODELS  
16 artists being groped, and was also propositioned multiple times. In addition, several men at  
17 the party attempted to get EVANS to engage in sexual acts with other artists from DIRECT  
18 MODELS. EVANS testified the Karaoke Party was a "really bad, unsafe environment."  
19 While she spoke to HAY about her experience several days later, the conversation was  
20 "belittling" as HAY did not respect her concerns regarding the party. As in *Szarko*, HAY  
21 took no remedial measures to provide security for the models or make any other reasonable  
22 inquiry regarding whether the party's host would provide security.

23 HAY also breached his duty as a talent agent under Labor Code section 1700.33  
24 when he sent several Petitioners to POV shoots. In *Szarko*, it was agreed that it is an industry  
25 standard for performers in POV shoots to not be left alone with a cameraman. (*Id.*, at p. 5).  
26 HAY admitted it would be "improper to allow for a shoot where only the two actors were  
27 present." (*Id.*, at p. 11). HAY testified in *Szarko* that DIRECT MODELS did not permit  
28 POV shoots because of a model's comfort level or allow a model to be alone with the

1 director male talent.

2 During this TAC Hearing, Petitioner CROSS testified she was sent to do an on-  
3 camera interview and shoot with WOODMAN on June 13 and June 19, 2017. CROSS  
4 testified she expressed concerns to HAY about the “low quality” of WOODMAN’s shoots,  
5 and likened his shoots to “walking into a hotel room shooting with a guy that has a camera.”  
6 Having testified to prohibiting such types of scenes and despite CROSS’s concerns, HAY  
7 nonetheless sent RYE to do a two-part scene with WOODMAN on June 16, 2017. After the  
8 first scene, RYE was left alone with WOODMAN in what ultimately became a POV shoot.  
9 Upon completing the second scene, WOODMAN had RYE engage in a series of graphic  
10 sexual acts that were nonconsensual.

11 HAY’s actions regarding sending models to POV shoots contradict his testimony in  
12 the *Szarko* matter. For example, DIRECT MODELS booked two shoots for RYAN  
13 involving POV shoots in March and April 2017. While the RYAN and RYE bookings (with  
14 WOODMAN) fall slightly outside the statute of limitations, they are relevant to show  
15 HAY’s practice of sending Petitioners to shoots that are dangerous and, in RYE’s case, led  
16 to a series of acts to which she did not consent. (See *United Air Lines, Inc., supra*, 431 U.S.  
17 at 558). HAY’s blatant disregard continued when DIRECT MODELS booked EVANS for  
18 a shoot on November 3, 2017 involving a “man with a camera.” HAY made no reasonable  
19 inquiry to assure that the employment he or DIRECT MODELS procured for Petitioners  
20 did not adversely affect their health, safety and welfare. Such a failure is a material breach  
21 of the Agency Contracts with Petitioners.

22 **D. DIRECT MODELS Breached Labor Code section 1700.24 by Failing to File a**  
23 **Complete Schedule of Fees with the Labor Commissioner and by Failing to**  
24 **keep a Copy of the Schedule of Fees in its office.**

25 Labor Code section 1700.24, in part, provides:

26 Every talent agency shall file with the Labor Commissioner a  
27 schedule of fees to be charged and collected in the conduct of  
28 that occupation, **and** shall also keep a copy of the schedule  
[Emphasis added].

1 Labor Code section 1700.24 requires a talent agency to do two things. First, they  
2 must file with the Labor Commissioner a copy of their schedule of fees showing what the  
3 talent agency will charge and collect from the artists they represent. Second, the talent  
4 agency must post the schedule of fees in a visible place in their office.

5 Petitioners contend DIRECT MODELS violated this section because they failed to  
6 file a complete Schedule of Fees with **all** charges assessed on Petitioners, including Kill  
7 Fees and Travel Fees.

8 Labor Code section 1700.2 provides in pertinent part:

9 (a) As used in this chapter, “fee” means any of the following:

10 (1) Any money or other valuable consideration paid or  
11 promised to be paid for services rendered or to be rendered by  
12 any person conducting the business of a talent agency under this  
chapter.

13 (2) Any money received by any person in excess of that which  
14 has been paid out by him or her for transportation, transfer of  
baggage, or board and lodging for any applicant for  
employment.

15 A kill fee is a charge assessed by a production company or studio on an actor or  
16 performer who cancels a shoot on a last-minute basis. Conversely, an actor or performer is  
17 supposed to be paid a kill fee if the production company or studio cancels a shoot on a last-  
18 minute basis. The rationale behind the kill fee was to help studios or production companies  
19 recoup the costs associated with preparing for a shoot subsequently canceled by an actor or  
20 performer. DIRECT MODELS formalized its policy regarding kill fees under Paragraph 11  
21 of the Best Practices Form, which stated a model would be charged \$300 if they canceled a  
22 shoot any time after 6:00 p.m. the day before the shoot or on the same day of the shoot. Per  
23 Paragraph 11, a producer would receive \$200 of that amount, and DIRECT MODELS  
24 would receive the remaining \$100 in lost commissions. HAY testified that the \$100  
25 DIRECT MODELS received was a “flat limited liability” equating to the talent agency’s  
26 commission and justified by everything the talent agency did to get the artist to the point of  
27 performing the employment. This could include negotiating the terms of the employment,  
28 accepting all information necessary from the employer (*e.g.*, the production company),

1 providing that information to the artist, and arranging all transportation logistics for the  
2 artist.

3 The evidence demonstrates DIRECT MODELS’s kill fee is a “fee” for purposes of  
4 Labor Code section 1700.2(a)(1). Specifically, DIRECT MODELS’s kill fee is a “fee,” or  
5 money, received for services rendered by the talent agency to the artist in conducting its  
6 business as a talent agency. As HAY testified, these services could include negotiating the  
7 employment terms, providing all information to the artist, and coordinating transportation  
8 for the artist. DIRECT MODELS’s contention that such fees are standard and uniform  
9 practices in the industry is immaterial.

10 The plain meaning of Labor Code sections 1700.2(a) and 1700.24 required DIRECT  
11 MODELS to include such fees in its Schedule of Fees. DIRECT MODELS’s failure to do  
12 so means they violated Labor Code section 1700.24 because their Schedule of Fees states  
13 the maximum rate it could charge Petitioners to be 15% of the total earnings “paid to the  
14 artist.” However, DIRECT MODELS failed to include the additional kill fees it charges  
15 Petitioners in its Schedule of Fees.

16 Labor Code section 1700.2(a)(2) also defines a fee as “any money received by any  
17 person in excess” of what that person paid for in transportation. Petitioners and DIRECT  
18 MODELS stipulated to a \$25 “fee” charged to Petitioners over any airfare DIRECT  
19 MODELS paid in advance for travel to shoots for employment or conventions like AVN or  
20 Exxxotica. Based on Labor Code section 1700.2(a)(2) and the parties’ stipulation, the Labor  
21 Commissioner finds that the \$25 fee is a “fee” for purposes of this section that should have  
22 been included in DIRECT MODELS’s Schedule of Fees.<sup>26</sup>

23 Finally, DIRECT MODELS did not post its Schedule of Fees in its Los Angeles  
24

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25 <sup>26</sup> Contrary to what Petitioners appear to claim in their Post-Hearing Brief, counsel for both parties clearly  
26 stipulated that the damages relating to airfare charges were limited to the \$25 markup DIRECT MODELS  
27 assessed per flight. Two exceptions to this stipulation included the flight DIRECT MODELS charged RYAN  
28 for the Las Vegas trip in August 2017, and the flight it charged RYE for the Florida trip. However, the Labor  
Commissioner does not consider the amount DIRECT MODELS charged RYE because Petitioners base this  
amount on purported violations of Labor Code section 1700.41. Petitioners failed to plead violations of  
Labor Code section 1700.41 as a cause of action in their Petition and First Amended Petition. Their attempt  
to raise it for the first time in their Post-Hearing Brief is untimely.

1 office. For this reason, the Labor Commissioner also finds that DIRECT MODELS violated  
2 Labor Code section 1700.24.

3 **E. DIRECT MODELS Unlawfully Charged Booking Fees in Violation of Labor**  
4 **Code sections 1700.2, 1700.24 and 8 C.C.R. section 12001(b).**

5 Petitioners contend DIRECT MODELS breached their fiduciary duty to Petitioners  
6 by charging production companies, studios, independent producers, and/or third parties  
7 Agency Fees (or booking fees) for Petitioners' performances.

8 Booking fees are fees paid directly to a talent agency by studios, producers and  
9 directors as an additional financial component for the services provided by a talent agency.  
10 DIRECT MODELS's booking fee is \$110 for booking one of the talent agency's female  
11 models. Stated differently, a studio, producer or director would pay DIRECT MODELS  
12 \$110 to book a female model for a shoot. DIRECT MODELS argues booking fees are  
13 "separate" and "independent" of the fee paid to the artist, to which the artist is not entitled.  
14 We are not persuaded by DIRECT MODEL's argument.

15 A talent agency contract, in relevant part:

16 [S]hall contain in words or substance in addition to any other  
17 provisions set forth therein, each of the following provisions:

18 . . .

19 (b) A provision containing a blank space for the insertion of the  
20 compensation or rate of compensation to be paid by the artist to  
21 the talent agency **which compensation shall not exceed the  
maximum compensation or maximum rate of compensation  
set forth in the schedule of fees filed with the Labor  
Commissioner by the talent agency.** [Emphasis added].

22 (8 C.C.R. § 12001(b)).

23 Labor Code section 1700.2(a)(1) defines "fee" to include any money or other  
24 consideration paid to the talent agency for services rendered in the course of its business.  
25 Labor Code section 1700.24 requires every talent agency to file with the Labor  
26 Commissioner a "Schedule of Fees" to be charged and collected in the conduct of that  
27 occupation.

28 SCHECTER and BLITT testified that booking fees are customary practices in the

1 industry. However, HAY and MADJARIAN testified DIRECT MODELS collected  
2 booking fees for services conducted within the course and scope of running a talent agency  
3 business. MADJARIAN further testified it is part of a talent agency’s job to schedule and  
4 speak directly to a production company, or provide shoot information directly to the artist.

5 The broad definition of “fees,” coupled with DIRECT MODELS’s testimony, means  
6 that booking fees are a “fee” within the meaning of Labor Code section 1700.2(a)(1).  
7 Booking fees reflects a fee DIRECT MODELS charged and collected for services it  
8 conducted within the course and scope of running its business as a talent agency.<sup>27</sup>

9 DIRECT MODELS’s booking fees were required to be included in its Schedule of  
10 Fees. Moreover, DIRECT MODELS was prohibited from collecting fees in excess of the  
11 maximum compensation set forth in its Schedule of Fees. (See 8 C.C.R. § 12001(b)). Here,  
12 a review of the Schedule of Fees indicates DIRECT MODELS could seek a maximum  
13 compensation of 15% in commissions from Petitioners’ earnings for services rendered.  
14 DIRECT MODELS’s Schedule of Fees, however, makes no mention of the booking fees it  
15 charged for services rendered in the course of running its business. Accordingly, the  
16 booking fees were unlawfully collected in excess of the 15% commission rate identified in  
17 DIRECT MODELS’s Schedule of Fees, and which was filed with the Labor Commissioner  
18 pursuant to Labor Code section 1700.24.

19 Here, reading Labor Code sections 1700.2(a)(1), 1700.24 and 8 C.C.R. section

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20 <sup>27</sup> In cases involving Labor Code section 1700.44, the burden of proof is found with the party asserting the  
21 affirmative during the hearing. Such party has the burden of proof, including both the initial burden of going  
22 forward and the burden of persuasion by preponderance of the evidence. (See Evidence Code section 115;  
23 see also *McCoy, supra*, 183 Cal.App.3d at 1051-52, fn. 5). To determine whether a basic burden of proof  
24 should be altered “the courts consider a number of factors: the knowledge of the parties concerning the  
25 particular fact, the availability of the evidence to the parties, the most desirable result in terms of public  
26 policy in the absence of proof of the particular fact, and the probability of the existence or nonexistence of  
27 the fact.” (*Amaral v. Cintas Corp. No. 2.* (2008) 163 Cal.App.4th 1157, 1188.) “Where essential facts  
28 necessary to proof lie within the exclusive knowledge or control of one party, ‘fundamental fairness’ is what  
justifies shifting the burden of proof to this party.” (*Id.* at 1190). Here, the Labor Commissioner finds that  
the talent agency is in a better position to have availability to information regarding the purpose of booking  
fees and any arrangements between the talent agency, a third party company, and/or the artist regarding the  
payment of booking fees. Thus, to the extent a talent agency attempts to uphold booking fees it charged third  
party companies, the burden shifting should apply here to the talent agency to prove the validity of such  
fees.

1 12001(b) together compels us to conclude that DIRECT MODELS was required to include  
2 booking fees on its Schedule of Fees.<sup>28</sup> Because DIRECT MODELS failed to include those  
3 amounts in their Schedule of Fees and collected an amount in excess of the Schedule of  
4 Fees, DIRECT MODELS is in violation of those statutes and regulation.

5 **F. Petitioners Failed to Demonstrate DIRECT MODELS Breached its Fiduciary**  
6 **Duty by Refusing to Book Petitioners Work after They Questioned DIRECT**  
7 **MODELS’s unlawful actions, fees, and/or penalties.**

8 Petitioners claim DIRECT MODELS refused to book them acting jobs for which  
9 they were available and, in certain cases, requested “in order to punish them (and/or others)  
10 for questioning [DIRECT MODELS’s] unlawful actions, fees and/or penalties . . .”  
11 Petitioners argue that such acts constitute a breach of fiduciary duty. In support of their  
12 Seventh Cause of Action, Petitioners cite to two instances including, DIRECT MODELS’s  
13 refusal to allow RYE to work with male talent, Michael Vegas, and a significant reduction  
14 in RYAN’s work after beginning a relationship with HUNT and after missing some of  
15 HAY’s birthday party festivities in August 2017.

16 There is insufficient evidence to demonstrate that DIRECT MODELS breached its  
17 fiduciary duty under Petitioners’ Seventh Cause of Action regarding Petitioner RYE.  
18 During the TAC Hearing, RYE testified she wanted to work with her friend, Michael Vegas,  
19 but was not allowed to. She later learned that Michael Vegas was on DIRECT MODELS’s  
20 No List. When asked by her counsel if she knew the reason Michael Vegas was on DIRECT  
21 MODEL’s No List, RYE testified she could not recall.

22 Next, Petitioners claim DIRECT MODELS breached their fiduciary duty by  
23 significantly reducing RYAN’s work after HAY, who was in a casual sexual relationship  
24 with her, learned that RYAN began a relationship with HUNT and after RYAN failed to

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25  
26 <sup>28</sup> Respondents argue the Labor Commissioner has previously upheld agency (or booking) fees. (See *Shazia*  
27 *Ali aka Shazia Deen v. Nouveau Model and Talent Management, Inc.*, TAC 14198; *Enrique Renaldo v. Baron*  
28 *Entertainment, Inc.*, TAC 9248; *Robert Harriell & Red Chair On A Green Hill, LLC v. Natalie Chase &*  
*Red Artist Management, LLC*, TAC 10296). These Labor Commissioner cases considered the validity of  
booking fees under Labor Code section 1700.40(b). Here, the Labor Commissioner considers the validity of  
booking fees under Labor Code sections 1700.2(a)(1), 1700.24 and 8 C.C.R. section 12001(b).

1 attend some of HAY’s birthday festivities in August 2017. RYAN’s relationship with  
2 HUNT or her failure to attend several of HAY’s birthday festivities are not examples of  
3 RYAN questioning DIRECT MODELS or HAY about any “unlawful actions, fees and/or  
4 penalties.”<sup>29</sup> Here, Petitioners’ reliance on these facts in support of their claim DIRECT  
5 MODELS breached its fiduciary duty is unavailing.

6 Here, the preponderance of evidence does not establish DIRECT MODELS breached  
7 its fiduciary duty for the reasons Petitioners claim. Therefore, Petitioners failed to provide  
8 sufficient evidence to support their Seventh Cause of Action.

9 **G. DIRECT MODELS Breached its Fiduciary Duty to Petitioners by Booking**  
10 **Petitioners for Scenes with Other Performers They did not Want to Work with**  
11 **and/or for Certain Types of Scenes which They were Uncomfortable**  
12 **Performing**

13 In support of their Eighth Cause of Action, Petitioners claim that DIRECT MODELS  
14 refused to respect Petitioners’ No List, Yes List, and/or refused to schedule work for  
15 Petitioners with people on their Yes List solely out of personal animus. Petitioners claim  
16 DIRECT MODELS also refused to respect their scene lists by having Petitioners perform  
17 certain types of sexual acts they were uncomfortable doing on camera. Petitioners further  
18 claim DIRECT MODELS would threaten them with kill fees if they objected to this  
19 behavior.

20 An agency relationship is a fiduciary one, which obligates the agent to act with  
21 diligence, care and loyalty to the principal. (*Tommy Lee Jones v. William Morris Agency*  
22 *and William Morris Endeavor Entertainment, LLC*, TAC 16396, at p. 16)(“*Jones*”)(citing  
23 Civil Code §2322(c); Rest. 2d Agency §13; *Mendoza v. Rast Produce Co. Inc.* (2006) 140  
24 Cal.App.4th 1395, 1405-1406)). “As a matter of law, the relationship of principal and agent  
25 binds the agent to the utmost good faith in his or her dealings with the principal.” (*Id.*)(citing  
26 *Estate of Baldwin* (1973) 34 Cal.App.3d 596, 605)).

27 <sup>29</sup> RYAN’s credibility regarding testimony relating to HUNT is also questionable where, for example,  
28 RYAN repeatedly denied a dispute she had with HUNT during Exxxotica Denver, but which was  
independently corroborated by Respondents’ witnesses, ALCANTARA and FLEMING.

1 Performers in the adult entertainment industry have a “No List” and “Yes List.” A  
2 “No List” refers to a list of people a performer does not want to work with, while a “Yes  
3 List” identifies a list of people with whom a performer agrees to work. A performer can  
4 also identify what kinds of scenes they are comfortable with doing and not doing. The types  
5 of scenes were reflected in the Model Profile artists for DIRECT MODELS filled out when  
6 they contracted with the agency. Performers cannot be forced to work with people they do  
7 not want to work with, or to do scenes they are uncomfortable performing.

8 On August 23, 2017, RYAN was made to perform a scene with DIRECT MODELS  
9 male artist, Danny Mountain (or “MOUNTAIN”). RYAN informed HAY that  
10 MOUNTAIN was on her No List, however, HAY informed RYAN she had to do the scene  
11 or he would otherwise charge her a kill fee. During the job, MOUNTAIN performed sexual  
12 acts that were part of RYAN’s No List, recorded her on his phone during the scene without  
13 her permission, and referred to her in a denigrating manner.

14 In addition, RYAN’s work declined significantly for what appears to be a personal  
15 animus HAY felt toward either RYAN and/or HUNT. HAY began a casual sexual  
16 relationship with RYAN shortly after she signed with DIRECT MODELS. Their sexual  
17 relationship ended around July or August 2017 reflecting the timeframe RYAN met HUNT.  
18 In August 2017, HAY flew RYAN to Las Vegas for birthday festivities. RYAN stayed with  
19 HUNT who was also in Las Vegas at the time and did not attend several of HAY’s birthday  
20 festivities. HAY testified to feeling “embarrassed” about RYAN’s failure to attend some of  
21 his birthday festivities. On August 14, 2017, DIRECT MODELS deducted \$525 from  
22 RYAN’s pay for flight and hotel expenses for attending HAY’s birthday party festivities.  
23 RYAN testified to experiencing a significant reduction in work after these incidents. The  
24 evidence demonstrates that RYAN experienced a reduction of work exceeding 50% after  
25 September 2017.

26 The evidence further shows DIRECT MODELS charged or threatened to charge  
27 Petitioners with kill fees if they expressed concerns about performing certain types of scenes  
28 and/or for certain companies. On Friday, July 7, 2017, HAY called CROSS to book her for

1 a job with the company, CamSoda. CROSS declined the job due to what she believed was  
2 a scheduling conflict. HAY informed CROSS she would be charged a kill fee for the  
3 CamSoda job.<sup>30</sup> When CROSS said she would not pay the kill fee, HAY told her that he  
4 would not book her any more work until she did. VISCARA also testified that DIRECT  
5 MODELS booked her work with CamSoda. If VISCARA told DIRECT MODELS she did  
6 not want to perform this work, DIRECT MODELS informed VISCARA she would be  
7 charged \$150.

8 On June 12 and 16, 2017, EVANS was scheduled to perform a shoot with  
9 WOODMAN consisting of a sexually graphic scene.<sup>31</sup> EVANS's Model Profile did not  
10 indicate she was willing to perform this type of scene. EVANS informed HAY shortly  
11 before the scene she was not prepared for this scene, however, HAY told EVANS she could  
12 not cancel the scene.

13 On March 2, 2018, RYAN was scheduled to work for "JR Prod/J Rock." RYAN  
14 spoke to DIRECT MODELS four days before the shoot and expressed concern about  
15 working for this company because it did not appear to be legitimate. In violation of its own  
16 policies regarding short notice job cancellations, DIRECT MODELS kept the job on the  
17 schedule and charged RYAN a kill fee of \$300 for not performing the shoot.

18 HAY and DIRECT MODELS breached their fiduciary duty in booking shoots with  
19 performers on Petitioners' No List, with companies they were uncomfortable performing  
20 for, and/or for scenes they were uncomfortable performing. Petitioners did not consent to  
21 working with certain artists or to performing certain types of scenes and, contrary to  
22 industry standards, DIRECT MODELS blatantly disregarded Petitioners' boundaries often  
23 with the threat of kill fees if Petitioners objected. DIRECT MODELS failed to act with  
24 loyalty, care and in utmost good faith when working with Petitioners. (*Id.*)

25 \_\_\_\_\_  
26 <sup>30</sup> The parties testified extensively to whether a kill fee was actually charged for the CamSoda job. Here,  
27 what is relevant for purposes of Petitioners' Eighth Cause of Action is that the evidence shows HAY told  
28 CROSS he would not book her any more work until she paid the kill fee.

<sup>31</sup> While these events fall outside the statute of limitations, they are relevant to show HAY's practice of  
booking scenes that Petitioners were uncomfortable performing on camera. (See *United Air Lines, Inc.*,  
*supra*, 431 U.S. at 558).

1           **H. DIRECT MODELS Unlawfully Charged Petitioners for Agency Photos, 8-by-**  
2           **10s, and banners that Amounted to “Registration Fees” under Labor Code**  
3           **section 1700.2(b)(3) in Violation of Labor Code section 1700.40(a).**

4           Petitioners contend DIRECT MODELS violated Labor Code section 1700.40 by  
5 referring Petitioners to TLC, CamSoda, and the Lee Network. Petitioners also claim that  
6 DIRECT MODELS have a “direct or indirect financial interest,” which includes the  
7 payment of kickbacks, with these businesses. Petitioners further claim DIRECT MODELS  
8 refused to schedule work with any production company or producer that did not pay an  
9 agency fee, or booking fee.

10           Labor Code section 1700.40, in relevant part, states the following:

11                   (a) No talent agency shall collect a registration fee. In the event  
12                   that a talent agency shall collect from an artist a fee or expenses  
13                   for obtaining employment for the artist, and the artist shall fail  
14                   to procure the employment, or the artist shall fail to be paid for  
15                   the employment, the talent agency shall, upon demand therefor,  
16                   repay to the artist the fee and expenses so collected. Unless  
17                   repayment thereof is made within 48 hours after demand  
18                   therefor, the talent agency shall pay to the artist an additional  
19                   sum equal to the amount of the fee.

20                   (b) No talent agency may refer an artist to any person, firm, or  
21                   corporation in which the talent agency has a direct or indirect  
22                   financial interest **for other services to be rendered to the**  
23                   **artist**, including, but not limited to, photography, audition  
24                   tapes, demonstration reels or similar materials, business  
25                   management, personal management, coaching, dramatic  
26                   school, casting or talent brochures, agency-client directories, or  
27                   other printing. [Emphasis added].

28           Petitioners claim DIRECT MODELS violated this section because they have a  
“direct or indirect financial interest” in TLC, the Lee Network, and CamSoda.<sup>32</sup> As  
discussed above, the preponderance of the evidence demonstrates HAY had a role in the  
procurement of employment of several of the Petitioners with TLC. The Lee Network,  
which is owned by HAY, is a separately licensed talent agency in Nevada. Most, if not all,  
Petitioners signed with the Lee Network and performed at clubs such as the Sapphire.

          Petitioners misconstrue Labor Code section 1700.40(b) which states that a talent

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<sup>32</sup> No evidence was provided to demonstrate DIRECT MODELS’s “direct or indirect financial interest” in CamSoda.

1 agency cannot refer an artist to a “person, firm, or corporation” in which the talent agency  
2 has a “direct or indirect financial interest” for “**services to be rendered to the artist.**”  
3 [Emphasis added]. The plain meaning of section 1700.40(b) explains that a talent agency is  
4 prohibited from referring artists to entities for services provided **to** the artist, not the other  
5 way around. Here, Petitioners provided services to TLC and/or the Lee Network in escorting  
6 work or feature dancing. TLC and/or the Lee Network did not render or provide services to  
7 Petitioners. Labor Code section 1700.40(b) contemplated this latter scenario for purposes  
8 of liability. To the extent HAY and/or DIRECT MODELS had or have a “direct or indirect”  
9 financial interest in TLC or the Lee Network, their liability may have been triggered if TLC  
10 or the Lee Network provided their services **to** Petitioners. However, Petitioners provided  
11 their services to these businesses.

12 Notwithstanding, the evidence shows DIRECT MODELS violated section  
13 1700.40(a) by collecting registration fees. Registration fees are charges made or “attempted  
14 to be made” to an artist, which include “[p]hotographs, film strips, video tapes, or other  
15 reproductions of the applicant.” (Labor Code § 1700.2(b)(3)).

16 Here, the charges DIRECT MODELS assessed on Petitioners for the cost of agency  
17 photographs, and the 8-by-10s and banners they had to purchase if they attended AVN or  
18 Exxxotica, are registration fees under Labor Code section 1700.2(b)(3).

19 Petitioners CROSS, EVANS and VISCARA were charged for photographs taken by  
20 or to benefit DIRECT MODELS. In addition, Petitioners RYAN and RYE were charged  
21 for banners and/or 8-by-10s used at Exxxotica or AVN conventions which they attended.  
22 Labor Code section 1700.2(b)(3) makes clear that charges for the agency photographs, and  
23 the banners and 8-by-10s used at the conventions, were improper registration fees imposed  
24 on Petitioners by DIRECT MODELS.

25 Thus, DIRECT MODELS owes Petitioners the costs of the agency photos and/or the  
26 banners and 8-by-10s it deducted for these improper Registration Fees. (See *Szarko, supra*,  
27 TAC 50639, at p. 17).

28

1           **I. DIRECT MODELS Breached its Contract with Petitioners in Violating Labor**  
2           **Code sections 1700.2, 1700.24 and 8 C.C.R. section 12001(b), and for its Failure**  
3           **to Take Proper Steps to Procure Employment for Petitioners**

4           In support of their Tenth Cause of Action, Petitioners allege that, in addition to their  
5           breach of fiduciary duty, DIRECT MODELS’s assessment of booking fees without paying  
6           Petitioners their proper share constitutes a breach of contract. Petitioners further claim  
7           DIRECT MODELS breached their contractual duties by failing to “use all reasonable  
8           efforts to procure employment” for Petitioners and DIRECT MODELS did so in a willful,  
9           malicious manner.

10           The Labor Commissioner does not discuss here whether DIRECT MODELS  
11           breached its fiduciary duties by charging booking fees. However, as discussed above, the  
12           Labor Commissioner finds that DIRECT MODELS unlawfully charged booking fees in  
13           violation of Labor Code sections 1700.2(a)(1), 1700.24, and 8 C.C.R. section 12001(b).  
14           Accordingly, the Labor Commissioner finds that DIRECT MODELS’s violation of these  
15           laws and regulation constitute a breach of contract.

16           Similarly, the Labor Commissioner discusses DIRECT MODELS’s acts or  
17           omissions regarding its procurement of employment for Petitioners throughout their other,  
18           various causes of action. For example, the Labor Commissioner finds DIRECT MODELS  
19           breached its fiduciary duty in the manner it procured, or failed to procure, employment for  
20           Petitioners under their Eighth Cause of Action. The Labor Commissioner thus finds that  
21           DIRECT MODELS’s acts or omissions constitute a breach of contract.

22           **J. HAY is Legally Responsible in His Individual Capacity and/or as Owner of**  
23           **DIRECT MODELS for Any Violations Committed**

24           A talent agency means:

25                   [A] person or corporation who engages in the occupation of  
26                   procuring, offering, promising, or attempting to procure  
27                   employment or engagements for an artist or artists, except that  
28                   the activities of procuring, offering, or promising to procure  
                    recording contracts for an artist or artists shall not of itself  
                    subject a person or corporation to regulation and licensing  
                    under this chapter. Talent agencies may, in addition, counsel or  
                    direct artists in the development of their professional careers.

1 (Labor Code § 1700.4(a)).

2 A talent agency must be licensed. Labor Code section 1700.5, in part, states:

3 No person shall engage in or carry on the occupation of a talent  
4 agency without first procuring a license therefor from the Labor  
5 Commissioner.

6 The holder of the license is DIRECT MODELS, the corporation, not HAY as an  
7 individual.

8 “[T]he Talent Agencies Act (§ 1700 et seq.) regulates the activities of a ‘talent  
9 agency,’ i.e., “‘a person or corporation who engages in the occupation of procuring,  
10 offering, promising, or attempting to procure *employment or engagements* for an *artist or*  
11 *artists ....*” (*Styne, supra*, 26 Cal.4th at 50)(citing Labor Code § 1700.4(a)). “The Act  
12 is remedial; its purpose is to protect artists seeking professional employment from the  
13 abuses of talent agencies.” (*Id.*). The Act’s definition of a “talent agency is narrowly focused  
14 on efforts to secure professional ‘employment or engagements’ for an ‘artist or artists.’”  
15 (*Id.* at 50-51). “The Act establishes its scope through a functional, not a titular, definition.  
16 It regulates *conduct*, not labels; it is the act of procuring (or soliciting), not the title of one’s  
17 business, that qualifies one as a talent agency and subjects one to the Act’s licensure and  
18 related requirements.” (*Marathon Entm’t, Inc. v. Blasi* (2008) 42 Cal.4th 974, 986)(citing  
19 Labor Code section 1700.4(a)). The Labor Commissioner can determine whether a person  
20 or corporation is subject to the Act’s requirements based on the conduct and actions of that  
21 person or corporation.

22 In determining the personal liability of directors in relation to the acts of a  
23 corporation, our California Supreme Court has held, “[d]irectors are jointly liable with the  
24 corporation and may be joined as defendants if they personally directed or participated in  
25 the tortious conduct.” (*Frances T. v. Vill. Green Owners Assn.* (1986) 42 Cal.3d 490, 504).  
26 Furthermore, “[d]irectors are liable to third persons injured by their own tortious conduct  
27 regardless of whether they acted on behalf of the corporation and regardless of whether the  
28 corporation is also liable.” (*Id.*) A corporate officer or director may also be held personally

1 liable if they directly authorized or actively participated in the wrongful conduct. (*Taylor-*  
2 *Rush v. Multitech Corp.* (1990) 217 Cal.App.3d 103, 113).

3 Applying these legal principles, the Labor Commissioner finds that HAY can be held  
4 personally liable for his acts and/or for the acts of the talent agency.

5 **i. HAY is Personally Liable Because he Deducted a Personal Debt from**  
6 **VISCARA's Earnings and by Commingling DIRECT MODELS's**  
7 **Statements with his Personal Finances**

8 Labor Code section 1700.25(a), in part, states the following:

9 A licensee who receives any payment of funds on behalf of an  
10 artist shall immediately deposit that amount in a trust fund  
11 account maintained by him or her in a bank or other recognized  
12 depository. The funds, less the licensee's commission, shall be  
13 disbursed to the artist within 30 days after receipt.<sup>33</sup>

14 A talent agency who receives payment of fees on behalf of an artist must immediately  
15 deposit that amount in a trust fund account and disburse the funds to the artist, less the  
16 agent's commission, within 30 days of receipt. In violation of this section, HAY deducted  
17 \$4,330 between June 12, 2017 to July 31, 2017 from VISCARA's earnings for the security  
18 deposit and rents she owed HAY. AVRAS's testimony regarding instructions from HAY  
19 that the rent for the Ostego Home was never supposed to appear on a statement is further  
20 evidence of HAY's attempts to conceal the improper practice of commingling his personal  
21 debts with funds DIRECT MODELS received to pay VISCARA. Here, HAY abused his  
22 position as the owner and CEO of DIRECT MODELS by instructing his staff to deduct  
23 from VISCARA's earnings for personal debts she owed HAY for use of his personal  
24 property. (See *Szarko, supra*, TAC 50639, pp. 6, 16).

25 **ii. HAY is also Personally Liable Because of His Role between Petitioners**  
26 **and The Luxury Companion**

27 The preponderance of the evidence demonstrated HAY is good friends with Karen  
28 and Dave from TLC, and that TLC provides escorting services, or what Petitioners referred

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33 In their Post-Hearing Brief, Petitioners seek relief, in part, by claiming DIRECT MODELS violated Labor Code sections 1700.25, 1700.26, 1700.35 and 1700.41. This Determination does not address these alleged violations, however, because Petitioners failed to raise them in their Petition and First Amended Petition. Here, the Labor Commissioner only considers section 1700.25 for the narrow purpose of determining whether HAY can be held personally liable.

1 to is a “front for prostitution.” HAY is personally liable because he used his personal  
2 relationships with Karen and Dave to help procure employment for several of the Petitioners  
3 as escorts for TLC. For example, HAY actively participated in helping procure employment  
4 for VISCARA as an escort for TLC. HAY used social dinners with Dave and Karen, inviting  
5 artists represented by DIRECT MODELS like RYAN, to create opportunities for RYAN to  
6 meet with TLC in what led to employment with TLC. Here, HAY blurred the lines between  
7 his obligations and duties to Petitioners and his personal relationships with people involved  
8 in escorting services.

9           iii.   **HAY is also Personally Liable Because he Committed Acts of Sexual**  
10           **Coercion Against Some of the Petitioners**

11           Moreover, and perhaps most egregiously, HAY is personally liable because he  
12 abused his position of authority and power to sexually abuse the artists he was supposed to  
13 represent. The purpose of the Talent Agencies Act cannot be understated. It is to protect  
14 artists seeking professional employment from the abuses of talent agencies and from  
15 abusive talent agents. Petitioners sought the representation of DIRECT MODELS,  
16 including HAY, to develop and grow as artists in the adult entertainment industry. As a  
17 talent agent in a position of power, HAY began sexual relationships with three of the five  
18 Petitioners. In at least one case, the work for Petitioner RYAN decreased significantly  
19 immediately after the end of her sexual relationship with HAY.

20           The evidence establishes HAY demanded RYAN perform a sexual act on him. In  
21 addition, VISCARA credibly testified to accounts of sexual assault by HAY, which  
22 occurred on or around August 27, 2017. The evidence further shows that EVANS received  
23 a message from HAY asking for a sexual act in what amounted to, at a minimum, a high  
24 level of discomfort. HAY was in a position of power, leadership, authority, and had access  
25 to employment opportunities for Petitioners. Rather than diligently representing the artists  
26 who trusted him with their careers, HAY abused his position through sexual acts, including  
27 coerced sexual acts, for his personal gain.

28           The TAA was passed to protect artists like Petitioners against the abusive practices

1 of talent agents like HAY. The Act, nor the Labor Commissioner, will tolerate such abusive  
2 practices. HAY is personally and jointly liable for all the violations committed.

3 **K. Termination Dates**

4 The next issue is whether HAY’s and DIRECT MODELS’s breach of the Agency  
5 Contracts excuses Petitioners from their contractual obligations under the contracts.

6 The question of whether a breach is “so material” such that it constitutes cause for  
7 the injured party to terminate the contract is a question of fact. (*Superior Motels, Inc. v.*  
8 *Rinn Motor Hotels, Inc.* (1987) 195 Cal.App.3d 1032, 1051-1052). California courts allow  
9 for the termination of the contract if the breach is “material,” “substantial,” or “total.” (*Id.*  
10 at 1051).

11 As we discussed in *Szarko*, implied into the Agency Contracts and all agency  
12 contracts is an agent’s duty to perform a “reasonable inquiry” to assure that an employment  
13 they procure for the artist provides for their “health, safety and welfare.” (*Szarko, supra,*  
14 TAC 50639, at p. 10). An agent’s failure to do so constitutes a material breach of any agency  
15 agreement. (*Id.*). HAY’s acts of sexual coercion alone are a material breach of the Agency  
16 Contracts, which constitute cause for termination.

17 HAY and DIRECT MODELS materially breached their Agency Contracts through  
18 their active role in helping procure employment for VISCARA as an escort with TLC,  
19 HAY’s sexual acts of coercion, and/or by failing to provide for Petitioners’ health, safety  
20 and welfare. On June 2, 2017, HAY attempted to help procure employment for VISCARA  
21 with TLC as an escort via a series of text exchanges where HAY introduced VISCARA and  
22 KAREN, and helped with the logistics of their first meeting. On June 16, 2017, HAY sent  
23 RYE to perform what ultimately became a POV shoot with WOODMAN, which resulted  
24 in a series of graphic sexual acts that were nonconsensual. On September 6, 2017, HAY  
25 instructed RYAN to do a sexual act on him while on route to Los Angeles, which she  
26 reluctantly performed. On December 7, 2017, HAY sent EVANS to the Karaoke Party  
27 where she was groped, propositioned, and asked by men at the party to engage in sexual  
28 acts with other DIRECT MODELS artists. Regarding CROSS, DIRECT MODELS stopped

1 engaging with her on June 30, 2017, which reflects the last employment DIRECT MODELS  
2 procured for her.

3 HAY's and DIRECT MODELS's acts and omissions resulted in the material breach  
4 of the Agency Contracts, and sufficient cause for Petitioners to terminate their Agency  
5 Contracts. Because the Labor Commissioner has determined the Agency Contracts are void,  
6 Petitioners are also excused from any further performance or obligations based on HAY's  
7 and DIRECT MODELS's material breach of the Agency Contracts or when they last  
8 engaged Petitioners. In addition, because HAY's and DIRECT MODELS's acts and  
9 omissions resulted in a material breach and voiding of the Agency Contracts, all  
10 commissions from Petitioners' termination dates as described below are ordered disgorged.

11 **L. The Cross Petition**

12 On August 8, 2018, DIRECT MODELS filed a Petition in the matter of *Direct*  
13 *Models Inc. dba LA DIRECT MODELS, A California Corporation v. Charlotte Cross*, TAC  
14 Case No. 52670. The parties stipulated to consolidating this instant matter (TAC Case No.  
15 52663) with the Cross Petition, or TAC Case No. 52670.

16 Because the Labor Commissioner finds that the Agency Contract between CROSS  
17 and DIRECT MODELS and HAY is void and all commissions CROSS paid are ordered  
18 disgorged as described below, the Labor Commissioner hereby dismisses the Cross Petition  
19 with prejudice.

20 **M. Attorney's Fees and Costs**

21 In their First Amended Petition, Petitioners seek attorneys' fees and costs. Attorneys'  
22 fees are available as indicated under Labor Code section 1700.25(e)(1), which states in  
23 pertinent part:

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

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

1 Here, RYE was told and DIRECT MODELS has conceded she was overcharged \$25  
2 as a “convenience fee” for the purchase of airline tickets later billed to RYE (and the other  
3 Petitioners) and deducted from their earnings.

4 In addition, HAY directed his DIRECT MODELS staff to deduct from VISCARA’s  
5 earnings \$4,330 for the security deposit and rents owed by VISCARA to HAY for his homes  
6 in Los Angeles and Las Vegas. HAY instructed his staff to modify VISCARA’s DIRECT  
7 MODELS statements to attempt to conceal DIRECT MODELS’s practice of deducting  
8 against VISCARA’s earnings for personal debts owed to HAY.

9 HAY and DIRECT MODELS failed to pay Petitioners their full earnings and  
10 concealed, or attempted to conceal, the true nature of the “convenience fee,” and how  
11 DIRECT MODELS mismanaged earnings it received on behalf of VISCARA.  
12 Consequently, DIRECT MODELS’s failure to remit Petitioners’ earnings created a  
13 “willful” withholding within the meaning of Labor Code section 1700.25.<sup>34</sup>

14 In their Post-Hearing Brief, counsel for Petitioners seeks \$147,521.31 in attorneys’  
15 fees and costs based on “344.4 hours of legal time,” “35.8 hours of travel time and 16.8  
16 hours of paralegal time,” plus \$3,405.31 in costs. Petitioners’ counsel bases his request for  
17 attorneys’ fees and costs on an hourly rate of \$400 per hour, \$140 per hour for travel and  
18 \$80 per hour for “all other work.” Petitioners’ counsel provides a declaration in his Post-  
19 Hearing Brief summarizing the above costs and fees. Counsel for DIRECT MODELS  
20 opposed Petitioners’ request stating it was premature and that such a request must be  
21 properly filed via an application for fees and costs.

22 As attorneys’ fees are awarded in TAC determinations under Labor Code section  
23 1700.25, the Labor Commissioner finds that counsel for Petitioners does not need to  
24 separately file an application seeking attorneys’ fee. However, the question remains of what  
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26 <sup>34</sup> In support of their request for attorneys’ fees, Petitioners claim DIRECT MODELS violated Labor Code  
27 section 1700.25 by placing funds in the trust account belonging to Direct Models LV. However, the plain  
28 meaning of Labor Code section 1700.25(a) simply requires that the funds be deposited “in a trust fund  
account maintained by him or her in a bank or other recognized depository.” There is no requirement the  
trust account be under the name of DIRECT MODELS in Los Angeles. Thus, any award of attorneys’ fees  
for Petitioners is not based on this argument.



1 obligations under the Agency Contract with HAY and DIRECT MODELS as of September  
2 6, 2017.

3 3. The Agency Contract between Petitioner ANDI RYE and Respondents  
4 DEREK HAY and DIRECT MODELS is void and terminated from the material breach of  
5 the Agency Contract by DIRECT MODELS and HAY, or the earliest possible date, which  
6 is June 19, 2017. Petitioner RYE is hereby excused from further performance and any  
7 contractual obligations under the Agency Contract with HAY and DIRECT MODELS as  
8 of June 19, 2017.

9 4. The Agency Contract between Petitioner HADLEY VISCARA and  
10 Respondents DEREK HAY and DIRECT MODELS is void and terminated as of the  
11 material breach of the Agency Contract by DIRECT MODELS and HAY, or the earliest  
12 possible date, which is June 19, 2017. Petitioner VISCARA is hereby excused from further  
13 performance and any contractual obligations under the Agency Contract with HAY and  
14 DIRECT MODELS as of June 19, 2017.

15 5. The Agency Contract between Petitioner SHAY EVANS and Respondents  
16 DEREK HAY and DIRECT MODELS is void and terminated as of the material breach of  
17 the Agency Contract by DIRECT MODELS and HAY, or as of December 6, 2017.  
18 Petitioner EVANS is hereby excused from further performance and any contractual  
19 obligations under the Agency Contract with HAY and DIRECT MODELS as of December  
20 6, 2017.

21 6. Before the termination of the Agency Contracts, Respondents DEREK HAY  
22 and DIRECT MODELS unlawfully and willfully withheld amounts in violation of Labor  
23 Code sections 1700.2, 1700.24 and 1700.40. For the reasons stated above, Respondents are  
24 ordered to pay the following amounts.

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	<b>Booking Fees</b>	<b>Kill Fees</b>	<b>\$25 Fee for Flight Charges</b>	<b>Registration Fees</b>	<b>Other Fees</b>	<b>Total</b>	<b>+ 10% Interest</b>	<b>Grand Total</b>
<b>CROSS</b>	\$195.00			\$150.00		\$345.00	\$68.24	\$413.24
<b>RYAN</b>	\$5,720.00	\$1,100.00	\$225.00	\$342.00	\$525.00	\$7,912.00	\$1,565.06	\$9,477.06
<b>RYE</b>	\$2,805.00		\$50.00	\$260.00		\$3,115.00	\$616.17	\$3,731.17
<b>VISCARA</b>	\$5,305.00	\$300.00	\$50.00	\$200.00	\$116.99	\$5971.99	\$1,181.31	\$7,153.30
<b>EVANS</b>	\$1,490.00	\$1,100.00	\$75.00	\$200.00		\$2,865.00	\$566.72	\$3,431.72

7. All commissions received by Respondents DEREK HAY and DIRECT MODELS for Petitioners CROSS, RYAN, RYE, VISCARA and EVANS for the period of June 19, 2017 to June 19, 2018 are hereby disgorged. Respondents are hereby ordered to provide Petitioners with an accounting of all commissions received by Respondents from Petitioners CROSS, RYAN, RYE, VISCARA and EVANS for the period of June 19, 2017 to June 19, 2018 within 30 days of the issuance of this Determination to properly determine return of said commissions to Petitioners.

8. The case, *Direct Models Inc. dba LA DIRECT MODELS, A California Corporation v. Charlotte Cross*, TAC Case No. 52670, is dismissed with prejudice.

9. Respondents DEREK HAY, an Individual; and DIRECT MODELS, INC. dba LA DIRECT MODELS, a California corporation are ordered to pay Petitioners' counsel, Allan B. Gelbard, his attorneys' fees of \$103,264.92 and costs of \$3,405.31.

**IT IS ORDERED.**

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1 Dated: June 15, 2020

Respectfully submitted,



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PATRICIA SALAZAR  
Attorney for the Labor Commissioner

7 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

8 Dated: June 15, 2020



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LILIA GARCIA-BROWER  
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 June 15, 2020, 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:

Allan B. Gelbard  
Law Offices of Allan B. Gelbard  
15760 Ventura Blvd., Ste 801  
Encino, CA 91436  
[Allan@GelbardLaw.com](mailto:Allan@GelbardLaw.com)  
[xxxesq@aol.com](mailto:xxxesq@aol.com)

Richard Freeman  
The Law Offices of Richard Freeman  
703 Second Street, Ste 350  
Santa Rosa, CA 95404-6525  
[rfreemanattorney@sonic.net](mailto:rfreemanattorney@sonic.net)

**(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 15th day of June 2020, at Long Beach, California.

\_\_\_\_\_  
Lindsey Lara  
Declarant