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7
8 BEFORE THE LABOR COMMISSIONER
9 OF THE STATE OF CALIFORNIA
10

11 INTERNATIONAL CREATIVE
MANAGEMENT PARTNERS LLC dba ICM
12 PARTNERS,

13 Petitioner,

14 v.

15 CELINE DION and CDA PRODUCTIONS
(LAS VEGAS), INC.,

16 Respondents.
17
18

Case No. TAC-52673

DETERMINATION OF CONTROVERSY

19 **I. INTRODUCTION**

20 The above-captioned matter, a Petition to Determine Controversy under Labor Code
21 section 1700.44, came on regularly for hearing in Long Beach, California, on December 19,
22 2019 and concluded on February 7, 2020, before the undersigned attorney for the Labor
23 Commissioner. Petitioner, INTERNATIONAL CREATIVE MANAGEMENT PARTNERS
24 LLC dba ICM PARTNERS, (hereinafter, referred to as “ICM” or “Petitioner”) was
25 represented by Patricia L. Glaser, G. Jill Basinger and Matthew P. Bernstein of GLASER WEIL
26 FINK HOWARD AVCHEN & SHAPIRO LLP. Respondents CELINE DION and CDA
27 PRODUCTIONS (LAS VEGAS), INC., (hereinafter, collectively referred to as “Dion” or
28

1 “Respondents”) appeared through Zia F. Modabber and Leah E.A. Solomon of Katten Muchin
2 Rosenman LLP.

3 The matter was taken under submission. Based on the evidence presented at this hearing
4 and on the other papers on file in this matter, the Labor Commissioner hereby adopts the
5 following decision.

6 II. FINDINGS OF FACT

7 A. The Parties

8 Petitioner, ICM is a California licensed talent agency. ICM was founded in the mid-
9 1970s and represents many of the biggest names in entertainment. Rob Prinz (hereinafter, referred
10 to as “Prinz”) is a partner at ICM and the co-head of ICM’s worldwide concerts division¹.

11 Respondent, Celine Dion is an international recording star and one of the best-selling
12 artists of all time with record sales exceeding 200 million dollars worldwide. CDA Productions
13 (Las Vegas), Inc. is Dion’s loan-out company.

14 Prinz’s thirty-year relationship with Dion dates back to 1989. Prinz became a member of
15 Dion’s team as her talent agent and assisted her on the road to her current superstardom level.
16 Through the course of his relationship with Dion, Prinz also formed a close bond with René
17 Angélil (hereinafter, referred to as “Angélil”), who was Dion’s longtime manager and husband
18 prior to his death in January 2016.

19 B. Contractual Course of Dealings between Dion and Prinz

20 1. 1989-1995

21 Beginning in 1989, and prior to executing a 1995 standard agency agreement with
22 Dion, Prinz represented Dion as her agent in all areas of the world excluding Canada,
23 Europe, Eastern Europe, and French speaking territories for a 10% commission. Dion hired
24 Prinz while he was employed with Creative Artists Agency (hereinafter, referred to as “CAA”).

25 2. The 1995 Industry Standard Three-Year Agency Agreement.

26 In 1995, Prinz, through his then-employer CAA, and Dion through her loan-out company,

27 ¹ Rob Prinz is not a named Petitioner but he is a partner at ICM. Consequently, Prinz’s actions described
28 in this Determination are on behalf of ICM and we therefore use Prinz and ICM interchangeably as the
Petitioner.

1 Feeling Productions, Inc. (a/k/a Les Productions Feeling, Inc.) entered into their first agency
2 agreement, which was a standard agency agreement (hereinafter, referred to as the “CAA
3 Agreement”). Dion, signed three interrelated documents: (1) CAA’s standard form contract
4 (hereinafter, referred to as the “CAA Form”); (2) a supplement amending certain terms of the
5 CAA Form; and (3) a “Standard AFTRA Exclusive Agency Contract” (hereinafter, referred to as
6 the “AFTRA Agreement”). Under the CAA Agreement, Dion paid CAA a 10% commission on
7 her gross compensation from performances throughout the world excluding Canada, the U.K.,
8 and Europe. The CAA Agreement specified that CAA was entitled to earn commissions on
9 agreements negotiated by CAA during the term of the agreement even if CAA was terminated.

10 The CAA Form contained standard industry terms and was on a form approved by the
11 Labor Commissioner. Under it, Dion agreed to pay 10% of all:

12 gross compensation ... earned or received by me, whether during the term hereof
13 or thereafter ... upon any contracts or employment ... entered into or negotiated
14 for during the term hereof, even though payments thereon may become due or
payable after the expiration of the term hereof....

15 The AFTRA Agreement also provided for post-term commissions “for so long a period as
16 Artist continues to receive moneys” on “contracts entered into by the Artist during the term.” The
17 CAA Agreement expired in 1998, and Dion never again signed an industry standard agreement.

18 **3. The 1999 Flat Fee Arrangement for a CBS Special.**

19 After the CAA Agreement expired in 1998, the parties’ next agreement was on May 14,
20 1999 when Dion authorized Prinz in writing to negotiate for her appearance on a CBS television
21 special for a \$50,000 flat fee.

22 **4. The 1999 2.5% Agreement for “Confirmed Engagements Booked” by**
23 **Prinz.**

24 The parties’ next agreement was in 1999 when Prinz left CAA to form a new agency.
25 Dion was touring, and Prinz agreed with Angélil that Prinz would earn a 2.5% commission for
26 his services. This agreement was reduced to writing on August 23, 1999 (hereinafter, referred to
27 as the “1999 Agreement”). Contrary to being paid his percentage on money derived from
28 “contracts entered during the term,” including money paid on those contracts after the term,

1 Prinz's commission would only be paid on "confirmed engagements booked by [Prinz] for Celine
2 [Dion]." This agreement, and specifically the lower percentage, reflected Dion's substantially
3 increased value in the marketplace.

4 **5. The 2000 Caesars Palace Residency Where Prinz is Not Hired, and the**
5 **\$50,000 Flat Fee Offer for His Disputed Services.**

6 Next, in 2000, Dion decided to perform shows promoted by Anschutz Entertainment
7 Group (hereinafter, referred to as AEG) under a multi-year residency agreement with Caesars
8 Palace in Las Vegas. Before entering into the agreement, Angélil told Prinz that Dion was not
9 going to use him as the agent. The original term of the residency was three years, but it was later
10 extended to five years, with performances beginning in 2003 and ultimately running through
11 2007.

12 In approximately 2004, Prinz rendered some services in restructuring the performance
13 schedule and extending the term of the residency. The scope and value of those services are
14 disputed. What is undisputed is that Angélil offered Prinz a flat fee of \$50,000, which Prinz
15 refused.

16 **6. The 2007 Agency Agreement for the 2008-2009 "Taking Chances**
17 **World Tour."**

18 When the Las Vegas residency ended in 2007, Dion began the "*Taking Chances World*
19 *Tour*." Until that time, Prinz had never been Dion's agent in Europe. However, in putting the
20 European tour dates together, Dave Platel (hereinafter, referred to as "Platel"), Angélil's close
21 friend and "associate manager" and Prinz's close friend, discovered Angélil was considering
22 using a former agent who had embezzled money from Dion. Platel objected and recommended to
23 Angélil they use Prinz instead. Angélil accepted Platel's recommendation, and Prinz was hired
24 for Europe.

25 Prinz and Dion then entered into a written agreement dated January 11, 2007 (hereinafter,
26 referred to as the "2007 Agency Agreement"), under which Prinz was hired for the tour,
27 specifically defined as "the tour by Celine Dion ... scheduled to commence in February 2008 and
28 scheduled to end in February 2009." For his services in "secur[ing] and negotiat[ing]

1 agreements” for Dion’s appearances, Prinz was entitled to a [REDACTED] (%) percent commission on all
2 “*Taking Chances World Tour*” performances.

3 Notwithstanding the expiration of the 2007 Agreement in 2009, Prinz and Dion continued
4 to operate under the mutual understanding that Prinz was entitled to commission tour
5 performances at the [REDACTED] % rate. This is clear because after 2009, and up until the time he died,
6 Angélil continued to authorize commission payments to Prinz at the [REDACTED] % rate, even though Prinz
7 and Dion had not signed another written agreement.

8 **7. Prinz’s 2011 Agreement with Dion for her Second Las Vegas Residency**

9 In January 2008, Dion entered into an agreement with AEG under which Dion would
10 perform in a second Caesars Palace residency in Las Vegas entitled, “*Celine*” (hereinafter,
11 referred to as the “AEG/Dion Residency Agreement”). The residency was supposed to run from
12 February 2010 through the end of 2012. But the first show did not occur until March 15, 2011,
13 and the residency was later extended to include dates that ultimately ran until June 2019. Prinz
14 was the agent, and helped negotiate the AEG/Dion Residency Agreement in 2008 without a
15 written agency agreement for his services.

16 Three years later in 2011, Prinz and Dion negotiated Prinz’s agreement for Dion’s second
17 residency in Las Vegas (hereinafter, referred to as the “2011 Agency Agreement”). The 2011
18 Agency Agreement provides that Prinz was retained for a three-year term and was being hired in
19 connection with rendering his services on:

20 performances by Celine Dion [Artist] at The Colosseum at Caesars Palace in Las
21 Vegas scheduled to commence on March 15, 2011 and scheduled to end three (3)
years later on March 2014.

22 The 2011 Agency Agreement continues:

23 In connection with your services as Agent, You shall be entitled to receive [REDACTED]
24 [REDACTED] (%) percent of the gross performance income received by CDA for any
and all performances by Artist at The Colosseum at Caesars Palace during the
25 aforementioned three (3) year period **and any subsequent performances as a
result of an extension of this Term** [sic]. [Emphasis added]

26 The language of the 2011 Agency Agreement, “Term,” is capitalized but it is not defined,
27 arguably making the 2011 Agency Agreement ambiguous as to whether an extension of “this
28

1 Term” refers to (a) the three-year term of Prinz’s 2011 Agency Agreement, or (b) the term of the
2 AEG/Dion Residency Agreement.

3 In addition, Prinz testified that Angélil agreed he should receive commission on any
4 extensions of the residency beyond the initial three years. Prinz credibly testified that an
5 extension of “this Term” refers to the term of the AEG/Dion Residency Agreement – as opposed
6 to an extension of his 2011 Agency Agreement. Mr. Angélil passed away in January 2016.
7 Respondents failed to provide sufficient evidence to refute or undermine Prinz’s testimony that
8 the language, “Term,” referred to the term of the AEG/Dion Residency Agreement based on his
9 mutual understanding with Angélil.

10 Dion’s *Celine* residency had been extended every year since it began in 2011,
11 ultimately concluding in June 2019. The final year of the *Celine* residency was rolled into
12 the AEG Omnibus Agreement which is discussed further below.

13 Prinz was paid ■% on all *Celine* residency performances from the inception of
14 these performances until the day he was fired in May 2018.

15 **8. The Parties’ Discussions Concerning Prinz’s Commissions before the**
16 **AEG Omnibus Agreement.**

17 In April 2015, Prinz moved to ICM. A few months before he moved, in January
18 2015, he met with Angélil in Las Vegas. Prinz told Angélil he was changing agencies and
19 asked if Dion would come with him. Angélil confirmed she would, but the two did not
20 negotiate any terms of a new agency agreement.

21 In 2015, Angélil became too sick to continue in his role as Dion’s manager and hired Aldo
22 Giampaolo (hereinafter, referred to as “Giampaolo”) to assume that role. Giampaolo and Angélil
23 collaborated in the management role when Giampaolo was first hired, but ultimately Giampaolo
24 became Dion’s sole manager when Angélil’s illness forced him to step down. During that
25 transition, on October 5, 2015, Giampaolo emailed Prinz asking, “Could you reflect our deal we
26 made as far as %” stating that “Rene [Angélil] is asking me and I would appreciate receiving
27 from you.” Prinz responded the next day via email stating, in pertinent part:

28 ///

1 The commission arrangement Rene [Angélil] had implemented with me is as
2 follows:
3 Las Vegas █%
4 Global Touring █% ...

5 * * *

6 For Quebec, earlier this year you had asked me if I would consider reducing to
7 █% to help with cash flow issues you were working on and I said yes.”

8 Prinz also reminded Giampaolo that earlier in 2015, Giampaolo and Angélil asked Prinz
9 to modify his agreement with Angélil to reduce his commission in Quebec to █% and Prinz
10 accepted the entirety of the proposal. Giampaolo testified he subsequently told Prinz that he
11 spoke to Angélil who confirmed Prinz’s understanding of the commission agreement and
12 indicated he appreciated Prinz reducing his commission for the Quebec performances. The
13 collective discussions between Prinz, Giampaolo and Angélil confirming Prinz’s commission
14 rates became what is referred to here as “The 2015 Commission Agreement.” The 2015
15 Commission Agreement was silent regarding governing law or the treatment of Prinz’s
16 commissions in the event he was terminated. Giampaolo’s email did not ask, and Prinz’s response
17 did not include, any reference to the amount of time Prinz would be Dion’s agent and how long
18 he would be entitled to receive these, or any, commissions.

19 As Giampaolo and Prinz confirmed during their testimony, both understood that the 2015
20 Commission Agreement covered Prinz’s agent services on an ongoing basis. Giampaolo testified
21 this was his understanding of Prinz’s commission rates because he checked with Angélil who
22 confirmed the details of the 2015 Commission Agreement and told him to “respect the deal”.
23 Based on the 2015 Commission Agreement, Giampaolo authorized commission payments to ICM
24 at the █% rate for Dion’s global performances, until the time his tenure as Dion’s manager ended
25 in 2017. Similarly, pursuant to the 2015 Commission Agreement, Giampaolo authorized
26 commission payments to ICM at the █% reduced rate for Dion’s 2016 performances in Quebec.
27 Giampaolo also continued to authorize the █% commission payments to ICM for Dion’s
28 performances in Las Vegas for the *Celine* residency.

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1 **C. The AEG Omnibus Agreement.**

2 In 2015, Giampaolo started discussions with AEG about Dion’s future relationship with
3 AEG. Those discussions began with Giampaolo proposing to Jay Marciano (hereinafter, referred
4 to as “Marciano”), AEG’s Chairman and CEO, a loan structure for their future. However, this
5 idea was abandoned and Giampaolo instead proposed the parties enter into a large, long-term
6 agreement for Dion that would cover both her worldwide touring and Las Vegas residency
7 activities. Negotiations eventually led to the execution of a short form agreement dated
8 December 12, 2016, and the subsequent long form AEG Omnibus Agreement dated March 27,
9 2017 (hereinafter, referred to as the “Omnibus Agreement”).

10 **D. Prinz Negotiated and Procured the Omnibus Agreement.**

11 In late 2016 and early 2017, Prinz helped Dion and her team procure and negotiate the
12 Omnibus Agreement. Prinz was the only licensed talent agent on the deal, and ICM was
13 identified as Dion’s agent in the Omnibus Agreement itself. In general terms, the Omnibus
14 Agreement provides that in exchange for payments of at least [REDACTED], Dion agreed to
15 perform in Las Vegas and on global tours from 2017 to [REDACTED], and to give AEG the exclusive right
16 to promote her shows.

17 Specifically, the Omnibus Agreement obligates AEG to pay Dion [REDACTED] per Las Vegas
18 residency performance for [REDACTED] such performances in Las Vegas during the [REDACTED] term.
19 Thus, the total expected minimum guarantee for the Las Vegas residency performances is
20 [REDACTED]. AEG also agreed to pay Dion a guaranteed
21 minimum average of [REDACTED] per live performance outside of Las Vegas for [REDACTED] such
22 performances during the same term. The total expected minimum guarantee related to those
23 performances is therefore [REDACTED]. Further, the
24 Omnibus Agreement provides that if there are not enough Las Vegas performances to total the
25 [REDACTED] target payment to Dion, AEG will schedule additional world tour dates in order to
26 reach that figure. Finally, the Omnibus Agreement includes a [REDACTED] signing bonus upon
27 execution. Under the Omnibus Agreement, the bonus is [REDACTED]
28 [REDACTED]. If she

1 does not earn out the entire amount by the end of the term of the Omnibus Agreement, Dion is
2 required to return any unearned portion.

3 In sum, Prinz helped procure an agreement for Dion with a minimum guaranteed payout
4 of [REDACTED] between 2017 and [REDACTED]
5 [REDACTED]
6 [REDACTED]. These guaranteed minimums in the Omnibus Agreement are not disputed.

7 Prinz was an important member of Dion's team in negotiating and procuring the Omnibus
8 Agreement. Giampaolo testified that he assembled the team to negotiate the Omnibus Agreement
9 and Prinz was "a key" to the negotiations and important in getting the deal done. Further, he
10 agreed that Prinz was not merely a passive participant, but rather engaged meaningfully in the
11 negotiations by, among other things, implementing his "good cop, bad cop" strategy to leverage
12 AEG and Live Nation's competing offers against each other to start a bidding war and ultimately
13 secure the maximum contract value for Dion. Prinz was in constant communication with
14 representatives from AEG and Live Nation, and he spoke with Giampaolo about the deal multiple
15 times every day during the negotiations.

16 Those who were heavily involved in negotiating the Omnibus Agreement recognized
17 Prinz's important role in getting the deal done. One day after Dion and AEG executed the Letter
18 of Intent ("LOI") stating the key terms of what ultimately became the Omnibus Agreement,
19 Giampaolo sent an email to the entire team specifically thanking Prinz, stating:

20 Thank you all for your hard
21 work and professionalism

22 *A special thanks to my partner*
23 *in crime Rob [Prinz] who maneuvered*
24 *with me and strategize to*
25 *Accomplish this agreement* [Emphasis added]

26 On the same day, Marciano sent Prinz an email stating, "Thanks for all your support and
27 helpful insight. It continues and we are all very happy!" Ultimately, in June 2017, Prinz,
28 Marciano, and others enjoyed a celebratory dinner together in Copenhagen on the first stop of
Dion's tour under the Omnibus Agreement.

1 Prinz's role in procuring the Omnibus Agreement is also evident in that ICM is expressly
2 designated as the sole Artist's Talent Agent in the very text of this agreement. The parties do not
3 dispute ICM was the only agency that worked on the deal. In addition, the Omnibus Agreement
4 gave Prinz approval authority over tour itineraries and certain budgets. Finally, ICM is listed as a
5 party to receive notices pertaining to the Omnibus Agreement. Under the Omnibus Agreement,
6 AEG is the exclusive promoter for all of Dion's performances worldwide, including both her
7 touring activities and any Las Vegas residency, from 2017 through [REDACTED]. **The remaining**
8 **performances under the existing 2011 AEG/Dion Residency Agreement were folded into the**
9 **Omnibus Agreement**, and AEG and Dion agreed that they would together negotiate a new
10 residency agreement when the existing one expired, which could be at Caesars Palace or
11 elsewhere. In short, the Omnibus Agreement operates as an extension of the 2011 AEG/Dion
12 Residency Agreement because it covered the residency performances in Las Vegas beginning in
13 2011 which ended in June 2019. There is no new residency agreement. At the time of the
14 Omnibus Agreement in April 2017, the only tour booked was a European tour scheduled to run
15 from June 15, 2017 through August 5, 2017 (hereinafter, referred to as the "2017 Summer Tour").

16 **E. Prinz's Commission Request during Negotiations of the Omnibus Agreement**

17 During negotiations over the Omnibus Agreement, and prompted by Giampaolo, Prinz
18 emailed Giampaolo on November 2, 2016 about his commissions. The email attached the
19 exchange the two had a year earlier, described above, where Prinz provided the commission
20 percentages (which are reflected in his 2007 and 2011 Agency Agreements) as [REDACTED]% for Las
21 Vegas performances and [REDACTED]% on worldwide touring, except Quebec commissioned at [REDACTED]%. In his
22 November 2, 2016 cover email, Prinz wrote that he was "respectfully requesting no change to the
23 overall commission structure." The email stated a number of reasons why Prinz believed his
24 commissions should not go down, and included an offer not to receive commission on any
25 advances when they are paid "but only as shows and tour dates played out. So no lump sum
26 payments on advances paid up front but commission only on shows played and on the fees
27 allocated towards those shows...."

28 ///

1 Prinz concluded his email by stating:

2 This commission arrangement, over time, has been reduced justifiably as the
3 numbers have gotten larger. I do think we have landed at a fair place *and hope*
4 *that you and Celine will agree.* [] Thank you for your consideration.” [Emphasis
added.]

5 Giampaolo did not ask for any changes to the agreement, but rather confirmed verbally to
6 Prinz that they could proceed under the terms of the 2015 Commission Agreement. Giampaolo
7 reconfirmed verbally to Prinz shortly after this that “we were good to move forward.” Giampaolo
8 agreed to these longstanding commission terms on Dion’s behalf and had the authority to do so.

9 **F. Giampaolo Is Fired and the July 4th Paris Memo**

10 Shortly after Dion and AEG executed the long-form Omnibus Agreement at the end of
11 March 2017, Dion terminated Giampaolo from his role as her manager. During this time period,
12 Dion and her team met with representatives from Deloitte & Touche (hereinafter, referred to as
13 “Deloitte”) to review her finances. Deloitte conducted an audit of expenses. During a meeting
14 reporting the results of that audit, Deloitte identified the amount of money being paid to Prinz as
15 “exorbitant” and “very high,” and the commissions were a big line item expense for Dion.

16 After Giampaolo was fired, Prinz reached out to Dion’s team to discuss how he would be
17 paid under the Omnibus Agreement and to discuss how to calculate Dion’s [REDACTED] signing
18 bonus given the two different commission rates of [REDACTED] % and [REDACTED] % on the Omnibus Agreement.
19 Jamie Young (hereinafter, referred to as “Young”), Dion’s transactional attorney, informed Prinz
20 that Dion wanted all business to go through her. In response, Prinz sent an email to Young
21 confirming his commission rates and proposing to earn a commission on the signing bonus at a
22 blended rate. Young agreed with those calculations.

23 Ultimately, after Giampaolo’s termination, Dion hired Denis Savage (hereinafter, referred
24 to as “Savage”) and Dave Platel (hereinafter, referred to as “Platel”) as her co-managers. In July
25 2017, while in Paris for Dion’s tour, Prinz asked to meet with Savage and Platel to discuss
26 matters regarding his representation of Dion. The parties agreed to meet in Paris on July 4, 2017.
27 In anticipation of discussions with Prinz, Platel and Savage looked for all evidence in Dion’s
28 possession of Prinz’s agreements. They found the 2007 Agency Agreement for the “*Taking*

1 *Chances World Tour*” had expired. And they found the 2011 Agency Agreement for the second
2 Las Vegas residency.

3 Before the July 4th meeting, and mindful of Deloitte’s expressed opinion about the size of
4 Prinz’s fees, Savage and Platel prepared a memo for Prinz detailing what commissions Dion was
5 prepared to pay going forward. They delivered that memo (hereinafter, referred to as the “Paris
6 Memo”) to Prinz during the meeting. Savage and Platel explained, and the Paris Memo stated,
7 that they would pay a █% commission for the 2017 Summer Tour, as this rate had been the
8 commission rate in the past, and that Prinz should bill Dion monthly. But thereafter, the Paris
9 Memo stated there would be a “New agreement for 2018 and beyond, to be negotiated this
10 fall...Sept/Oct.”

11 After the meeting, on July 25, 2017, Prinz emailed Savage and Platel attaching
12 invoices for the 2017 Summer Tour at █%, and a commission on the signing bonus. At the
13 end of his email, Prinz referenced the Paris Memo and their conversation, writing “I am
14 open to hearing your thoughts regarding your suggestion that we modify our existing
15 commission arrangement come Sept./Oct.”

16 When the 2017 Summer Tour ended, Platel decided he did not want to negotiate with
17 Prinz because of his long and close relationship with him so he asked Young to do so.

18 After the July 4th meeting, Respondents continued to pay ICM █% on global tour
19 performances and █% for Las Vegas residency performances as they had since 2007. Savage
20 testified that Respondents continued to pay ICM these commission rates through May 2018 “*to be*
21 *nice.*” To date, ICM has not been paid any commission on Dion’s █ signing bonus.

22 **G. The Parties Fail to Reach a Commission Agreement after the “Paris Memo”**
23 **and Prinz is Terminated.**

24 In November 2017, Young informed Prinz she would be handling the negotiations. She
25 explained that Dion wished to continue with Prinz as the agent, and wanted him to pursue new
26 opportunities for Dion. Young explained that Dion wanted to do luxury brands, commercials,
27 movies, television, and that she would pay him a higher percentage to procure these new
28 opportunities. Young further explained that Dion’s team felt he had been paid enough on the

1 Omnibus Agreement, and Dion would no longer pay him for concert performances that had come
2 to her for decades because of her superstar status.

3 In the fall of 2017, Young informed Prinz that Dion's team would not pay him anything
4 further under the Omnibus Agreement nor were they offering or willing to try to renegotiate the
5 commission agreement. When it became clear that ICM would not accept Dion's decision to
6 unilaterally cease commission payments on the Omnibus Agreement, Dion terminated Prinz and
7 stopped paying all commissions. Dion decided she did not need to continue to pay ICM because
8 Prinz had already done the work. Dion testified, "*I don't know the exact amount of money to be*
9 *– the exact amount of money, but what I know is that we didn't need Rob's help anymore, and*
10 *we thought that – I thought that if I don't need Rob's help, it would make no sense for me to*
11 *pay Rob if I don't need his help.*"

12 No agreement was reached between the parties and, in February 2018, after meeting with
13 ICM and his attorneys, Prinz met with Young in her office. There, Prinz took the position that he
14 was entitled to commission the entire Omnibus Agreement for the length of its term. He said he
15 believed he would earn [REDACTED] under the Omnibus Agreement, but that he would cap his
16 fees at [REDACTED]. Negotiations continued, but by the spring of 2018, the parties were at an
17 impasse.

18 As a result, Dion decided she no longer wanted to work with Prinz and on May 7, 2018,
19 Young sent him a letter terminating any agency relationship, including any relationship existing
20 under the 2011 Agency Agreement "if and to the extent the [2011 Agreement] has not already
21 expired by its terms or has not otherwise already terminated."

22 To date, ICM has been paid a [REDACTED]% commission on all world tour dates, including the 2017
23 Summer Tour, and a [REDACTED]% commission on all Las Vegas residency dates up to the date of his
24 termination, May 7, 2018. Since the signing of the Omnibus Agreement in March 2017, Dion
25 paid Prinz and ICM approximately \$1.5 million based on the [REDACTED]% and [REDACTED]% commission rates.
26 Platel and Savage both testified that payments made for performances after the 2017 Summer
27 Tour – the period the parties were trying to negotiate an agreement for the future – were made
28

1 because Prinz was still Dion’s agent, and *as a gesture of good will* based on their many years of
2 working together.

3 Dion toured Asia and Australia from June 26, 2018–August 14, 2018 (hereinafter, referred
4 to as the “2018 Summer Tour”). That tour was booked before Prinz was terminated in May 2018,
5 but the booking was done by AEG and Dion directly with no involvement from Prinz. Prinz was
6 not paid for the 2018 Summer Tour.

7 Petitioner now brings this action before the Labor Commissioner seeking to receive
8 unpaid commissions from the time of his termination in May 2018 through the end of the
9 Omnibus Agreement in [REDACTED]. Petitioner argues Prinz helped negotiate the Omnibus
10 Agreement prior to his termination and, under prevailing industry custom and practice, an
11 agent is entitled to commission deals he/she negotiated prior to the agent’s termination.

12 III. ISSUES

13 The issues in this case are as follows:

- 14 A. Was an enforceable oral contract formed between the parties?
- 15 B. Did Prinz procure the “AEG Omnibus Agreement”?
- 16 C. Can we use extrinsic evidence to establish the parties’ intent?
- 17 D. Are post-termination commissions owed?
- 18 E. Is 1.5 million in commissions already paid to Prinz fair for his work on
19 the Omnibus Agreement?
- 20 F. Is Prinz entitled to commission the [REDACTED] Sign-on-Bonus?
- 21 G. Does ICM have standing?

22 IV. LEGAL FINDINGS

23 Labor Code section 1700.4(b) includes “musical artists” in the definition of “artist” and
24 Petitioner is therefore an “artist” within the meaning of this section. .

25 It was stipulated that ICM is a California licensed talent agency.

26 Labor Code section 1700.23 provides that the Labor Commissioner is vested with
27 jurisdiction over “any controversy between the artist and the talent agency relating to the terms of
28 the contract,” and the Labor Commissioner’s jurisdiction has been held to include the resolution

1 of contract claims brought by artists or agents seeking damages for breach of a talent agency
2 contract. (*Garson v. Div. Of Labor Law Enforcement* (1949) 33 Cal.2d 861; *Robinson v. Superior*
3 *Court* (1950) 35 Cal.2d 379.) Therefore, the Labor Commissioner has jurisdiction to determine
4 this matter.

5 Although the Omnibus Agreement is valued at [REDACTED], the
6 Labor Commissioner has dealt with similar matters, albeit not in this monetary range. In similar
7 fact patterns, we have consistently applied the rule stating, “[a] talent agency is generally entitled
8 to receive post termination commissions for all employment secured by the agency prior to its
9 termination.” (*ICM Partners v. James Bates*, Case No. TAC-24469, p. 6 (2017) (“*Bates*”) (citing
10 *Paradigm Talent Agency v. Charles Carroll*, Case No. TAC 12728 (2011) (“*Paradigm*”).
11 Further, “[c]ommissions are owed post termination for monies negotiated by the agent during the
12 term of the agreement and the artist cannot unilaterally determine there is no further obligation to
13 pay for work already performed.” (*The Endeavor Agency, LLC v. Alyssa Milano*, Case No. TAC
14 10-05 (2007) (“*Milano*”). In such matters, the Labor Commissioner considers: (1) whether a
15 valid agency contract was formed, (2) whether the agent procured the artist’s income-generating
16 engagement at issue prior to termination, and (3) whether pervasive industry custom and practice
17 concerning the continued payments of post termination commissions applies. (*See, e.g., Milano*,
18 at p. 4-8; *Bates*, *supra*, Case No. TAC-24469 at p. 4-6). The evidence presented to the Labor
19 Commissioner in this matter demonstrates that the answer to all three questions is in the
20 affirmative.

21 **A. A Contract was Formed between the Parties**

22 The evidence and testimony presented at the hearing demonstrates conclusively that Prinz
23 and Dion negotiated an oral and implied talent agent contract in 2015 that was later manifested by
24 the parties’ conduct. The essential elements of a contract are that “[p]arties capable of
25 contracting consented with a lawful object and sufficient consideration.” (Civil Code § 1550;
26 *Milano, supra*, Case No. TAC 10-05 at p. 6.) The existence and terms of an implied contract are
27 manifested by conduct, and such an implied contract is formed, in the absence of a written
28 agreement, where the parties’ conduct demonstrates a meeting of the minds. (*See Civil Code §*

1 1621; *Milano*, at p. 6.) The parties do not dispute that an agreement for Prinz to procure
2 employment in the entertainment industry is for a lawful purpose. Nor do the parties dispute that
3 Dion’s payment of commissions under any such contract is sufficient consideration. The
4 evidence presented at the hearing demonstrates that, much like the contract in *Milano*, the 2015
5 Commission Agreement between Prinz and Dion is an oral and implied contract formed between
6 the parties, the existence and terms of which were manifested by the parties’ subsequent conduct.

7 The *Milano* facts are instructive. In 1998, Alyssa Milano verbally accepted Endeavor’s
8 offer to represent her in her acting career, but, like here, never signed a written agreement.
9 *Milano*, Case No. TAC 10-05 at 2. No financial terms were discussed between the parties at the
10 meeting where Endeavor offered representation or during Milano’s subsequent acceptance via
11 telephone call. *Id.* Shortly thereafter, Endeavor procured for Milano a starring role on the
12 television show *Charmed*. *Id.* The *Charmed* agreement covered the 1998 to 1999 television
13 season, and despite the parties’ lack of a signed written agreement, Milano consistently paid
14 Endeavor 10% commission on her earnings. *Id.* Endeavor then negotiated new agreements for
15 Milano to star in *Charmed* in 2001 and again in 2003 and Milano continued to pay 10%
16 commission on her earnings for those engagements, despite the continued lack of a signed written
17 agreement with Endeavor. *Id.* at 3-4.

18 In 2004, Milano terminated Endeavor and ceased making commission payments,
19 including those owed to Endeavor for the 2004-2006 seasons of *Charmed* that Endeavor had
20 negotiated on her behalf. *Id.* at 4. In considering whether a contract was formed between
21 the parties, the Labor Commissioner determined that the parties’ course of dealing after
22 Milano’s acceptance of the contract whereby she continued to pay Endeavor 10% of her
23 *Charmed* earnings for over six years demonstrated the existence of “a contract both orally
24 and implied, ‘one the existence and terms of which are manifested by conduct.’” *Id.* at 6.

25 Respondents argue *Milano* has no application because *Milano* involved one unsigned
26 writing exchanged between the parties over the entire course of their relationship. Respondents
27 argue Prinz and Dion signed at least three different contracts and exchanged any number of
28 writings confirming the different terms of their agreement between 1995 and 2011. We are not

1 persuaded by Respondent’s argument. From 2011 through Prinz’s termination in May of 2018,
2 Prinz and Dion worked under the same material terms. Dion consistently paid Prinz for work
3 procured by Prinz. When Prinz procured a world tour or Las Vegas residency, there is no dispute
4 that Dion paid Prinz █% and █% accordingly from 2007 through May 2018. And finally,
5 Giampaolo, Angélil and Prinz confirmed these material terms prior to Prinz procuring the
6 Omnibus Agreement and agreed that these terms would be ongoing for Prinz.

7 **B. Prinz Procured the Omnibus Agreement**

8 The Talent Agencies Act (hereinafter, referred to as the “TAA”) provides that a “talent
9 agency” is “a person or corporation who engages in the occupation of procuring, offering,
10 promising, or attempting to procure employment or engagements for an artist or artists,” and
11 further states that “[n]o person shall engage in or carry on the occupation of a talent agency
12 without first procuring a license . . . from the Labor Commissioner.” (Labor Code §§ 1700.4(a),
13 1700.5.) The Labor Commissioner has explained that, “[u]nder the Talent Agencies Act,
14 ‘procuring employment’ is not limited to soliciting employment or the initiating of contacts with
15 employers. ‘Procurement’ within the meaning of Labor Code section 1700.4(a) includes active
16 participation in a communication with a potential purchaser of the artists services aimed at
17 obtaining employment for the artist, regardless of who initiated the communication.” (*Bates*,
18 *supra*, Case No. TAC-24469 at p. 5 (citing *Hall v. X Management*, Case No. TAC 19-90, pp. 29-
19 31 (1992)). Procurement also includes the process of negotiating an agreement for an artist’s
20 services. (*Bates* citing *Pryor v. Franklin*, Case No. TAC 17 MP 114 (1982)). There is no serious
21 dispute that Prinz and ICM procured the Omnibus Agreement which was confirmed repeatedly by
22 Giampaolo.

23 **C. Extrinsic Evidence Establishes Prinz and Dion Negotiated an Oral and**
24 **Implied Talent Agency Agreement Manifested by the Parties’ Conduct**

25 In any case involving the interpretation of a contract, the “fundamental goal . . . is to give
26 effect to the mutual intention of the parties.” (*Bank of the West v. Super. Ct.* (1992) 2 Cal.4th
27 1254, 1264. Importantly, courts routinely look to extrinsic evidence of the parties’ course of
28 dealing in determining “what is reasonable and what the parties intended.” (*City of Los Angeles v.*

1 *Anchor Cas. Co.* (1962) 204 Cal.App.2d 175, 183; *Hindin/Owen/Engelke, Inc. v. Four Seasons*
2 *Healthcare, Inc.*, 267 Fed. App'x 648, 650 (9th Cir. 2008) (the court “may determine the intent of
3 contracting parties from extrinsic evidence including... their course of dealing....”) (citation
4 omitted). Here, Prinz represented Dion for more than 30 years. Consequently, the parties’ long
5 course of dealing is instructive. We review the last 13 years of the parties’ course of dealing here
6 as we find the last 13 years to be an accurate reflection of the parties’ intent with respect to the
7 Omnibus Agreement.

8 The abundance of extrinsic evidence present here supports the Labor Commissioner’s
9 conclusion that a valid talent agent contract was formed between the parties. For example, the
10 2007 Agency Agreement in connection with the “*Taking Chances World Tour*” dated January 11,
11 2007, entitled Prinz to a [REDACTED] (%) percent commission on all “*Taking Chances World Tour*”
12 performances. Notwithstanding the expiration of the written “*Taking Chances World Tour*”
13 Agreement in 2009, Prinz and Dion continued to operate under their mutual understanding that
14 Prinz was entitled to a commission for global tour performances at the [REDACTED] % rate.

15 This is clear from the parties’ course of conduct. After 2009, and up until the time he
16 died, Angélil continued to authorize commission payments to Prinz at the [REDACTED] % rate, even though
17 Prinz and Dion had not signed another written agreement.

18 In January 2008, Dion entered into an agreement with AEG for a second Caesars Palace
19 residency in Las Vegas entitled, “*Celine*,” which was memorialized by the AEG/Dion Residency
20 Agreement. Prinz was the agent, and helped negotiate the AEG/Dion Residency Agreement in
21 2008 without a written agency agreement for his services in place.

22 In 2011, the parties negotiated Prinz’s agreement for the second residency. The 2011
23 Agency Agreement provides that Prinz was retained for a three-year term March 15, 2011
24 through March 2014. The 2011 Agency Agreement further entitled Prinz to receive [REDACTED]
25 [REDACTED] (%) percent of the gross performance income received by Dion for any and all
26 performances during her second residency in Las Vegas over this three-year period “**and any**
27 **subsequent performances as a result of an extension of this Term [sic].**” Prinz credibly
28 testified that Angélil agreed he should receive a commission for any extensions of the residency

1 beyond the initial three years, supporting their mutual understanding and agreement that an
2 extension of “this Term” referred to the term of the AEG/Dion Residency Agreement.
3 Respondents fail to provide any basis for the Labor Commissioner to dispute this position.

4 Dion’s *Celine* residency had been extended every year since it began in 2011,
5 ultimately concluding in June 2019. The final year of the *Celine* residency was rolled into
6 the Omnibus Agreement. Prinz was paid █% on all *Celine* residency performances up
7 until the day he was fired in May 2018. The parties’ actions here speak volumes. As long as
8 Dion performed in Las Vegas, Prinz received █% on all projects which he procured.
9 Respondents fail to provide any basis to change, now or in the future, what have been the
10 parties’ long-standing terms.

11 In April 2015, before Mr. Angélil passed away, Giampaolo told Prinz that he spoke to
12 Angélil who confirmed Prinz was entitled to a commission of █% for the Las Vegas
13 performances, and a █% commission for global touring. The one exception to this agreement was
14 Angélil’s request to reduce Quebec at █%, which Prinz agreed. As both Giampaolo and Prinz
15 confirmed, both understood that the 2015 Commission Agreement covered Prinz’s agent services
16 on an ongoing basis. Giampaolo testified this was his understanding of Prinz’s commission rates
17 because he checked with Angélil who confirmed the details of the 2015 Commission Agreement
18 and told him to “respect the deal”. Based on the 2015 Commission Agreement, Giampaolo
19 authorized commission payments to ICM at the █% rate for Dion’s global performances, until the
20 time his tenure as Dion’s manager ended in 2017.

21 Similarly, pursuant to the 2015 Commission Agreement, Giampaolo authorized
22 commission payments to ICM at the █% reduced rate for Dion’s 2016 performances in Quebec.
23 Giampaolo also continued to authorize █% commission payments to ICM for Dion’s
24 performances in Las Vegas for the *Celine* residency.

25 The existence and terms of the 2015 Commission Agreement between Prinz and Dion are
26 clearly manifested by the parties’ conduct, both before and after entering into the agreement.
27 After the “*Taking Chances World Tour*” Agreement expired in 2009, Prinz never had another
28 written agreement with Dion concerning his services as Dion’s agent with respect to global

1 touring. Nonetheless, the parties continued to understand that Prinz's commission rate for such
2 performances was █% and Dion paid Prinz accordingly. Dion also paid Prinz █% commissions
3 for her Las Vegas residency performances through Prinz's termination. These payments
4 demonstrate that the parties had a meeting of the minds as to the existence and terms of a contract
5 for Prinz's agent services. (*See Milano, supra, Case No. TAC 10-05 at p. 6.*)

6 Finally and importantly, Dion continued to pay Prinz the agreed-upon rates from the 2015
7 Commission Agreement after she fired Giampaolo and hired Savage and Platel as her managers.
8 Despite Respondents' arguments that these payments were pursuant to a new contract,
9 Respondents testified Prinz never agreed to a new contract and Dion paid him "*to be nice.*"
10 Specifically, Platel and Savage testified that these commission payments were made because
11 Prinz was still Dion's agent, and as *a gesture of good will* based on their many years of working
12 together. This testimony was not credible and the continued payment to Prinz at the 2015
13 commission rates manifested the parties' intent by this conduct. Thus, the parties' conduct both
14 before and after entering into the 2015 Commission Agreement provides ample evidence of an
15 implied oral contract between ICM and Dion with respect to Prinz's services in connection with
16 the Omnibus Agreement.

17 In short, Prinz was always entitled to a █% commission for global tours and a █%
18 commission for Las Vegas performances (except Quebec). These were the terms of the deal
19 which the parties understood, agreed to, and performed under for more than 10 years. Based on
20 the parties' long-standing course of dealing, a █% commission for global tours and █%
21 commission for Las Vegas residency performances were both reasonable and intended by the
22 parties.

23 **D. Application of Industry Custom and Practice Confirms Post-Termination**
24 **Commissions are Owed**

25 Petitioner argues that industry custom and practice supports the argument they are entitled
26 to commission future performances stemming from the Omnibus Agreement through █.
27 Respondents, however, contend Prinz ignores the fact that there is no industry custom or practice
28 for how an agent would be paid by a superstar artist on a █ year agreement. Respondents

1 further argue commissions paid to an agent for procuring a tour range from a few months to two
2 years. We are not persuaded by Respondents' arguments and agree with Petitioner.

3 The legal issue is not obscured by a [REDACTED] performing engagement attached
4 to a [REDACTED] price tag. The unusual terms of this superstar's contract does not change the
5 legal analysis. Dion's mega contract is derived not only from her enormous talents but also from
6 the contributions of her team in the negotiation of the contract. And Prinz was an integral member
7 of Dion's inner circle for more than 30 years, a valued member of the team and a contributor to
8 the procurement of the Omnibus Agreement.

9 Like any tool of contract interpretation, industry custom and practice is useful *only to the*
10 *extent it illuminates the parties' intent.* (See *Paez v. Mut. Indem. Acc., Health & Life Ins. Co. of*
11 *Cal.* (1931)116 Cal.App.654, 660 ("The primary purpose in the admission of 'evidence of
12 industry custom and practice' is to ascertain the intention of the parties to the contract . . .").

13 Industry custom "can be invoked only to interpret, not create contractual terms." (*Varni*
14 *Bros. Corp. v. Wine World, Inc.*(1995) 35 Cal.App.4th 880, 889 (1995) (citation omitted); see
15 also *Midwest Television, Inc. v. Scott, Lancaster, Mills & Atha, Inc.* (1988) 205 Cal.App.3d 442,
16 451 (1988) ("[E]vidence of such custom is admissible to supply a missing term or to aid in
17 interpretation only if it does not alter or vary the terms of the contract.)) It may not be used to
18 add to a contract "new duties and obligations to which the parties never agreed." (*Dameron*
19 *Hosp. Ass'n v. AAA N. Cal., Nev. & Utah Ins. Exchange* (2014) 229 Cal.App.4th 549, 569.) As
20 the California Court of Appeal has explained:

21 If the parties have omitted from [their] agreement something that was so clearly a
22 part of their understanding that the agreement would be unworkable without it, and
23 which would have been incorporated without question if either party had requested
24 it, the missing stipulation will be implied as part of the agreement. But before this
25 may be done justification, and the necessity for it, must be found in the agreement.
Nothing may be added by way of implication except that which is necessary to
carry out the intentions of the parties, as derived from the agreement itself and
not merely from the circumstances under which it was made. [Emphasis added].

26 (*Sharpe v. Arabian Am. Oil Co.* (1952) 111 Cal.App.2d 99, 102 ("*Sharpe*") (holding that, where a
27 written agreement was silent as to whether the plaintiff would be entitled to overtime pay, the
28 parties did not intend to incorporate the industry custom of paying overtime)).

1 In *Sharpe*, the court concluded the parties did not intend to incorporate the industry
2 custom. While we hold the opposite here, we agree with the legal principles explained by the
3 *Sharpe* Court. The payment of post-termination commissions to Prinz was implied and
4 understood by the parties. Furthermore, the parties' intentions were consistently demonstrated by
5 their other agreements, like, for example, the 2007 Agency Agreement, 2011 Agency Agreement,
6 2015 Commission Agreement, and the parties' conduct and understanding leading up to Prinz's
7 important role in helping procure the Omnibus Agreement. As stated by the *Sharpe* court, the
8 payment of post-termination commissions are necessary to carry out the intention of the parties.
9 (*Id.*) The intentions of the parties were consistently manifested by the actions of Angélil,
10 Giampaolo and Prinz to "respect the deal," the parties' mutual understanding that such
11 commissions were to be paid on an ongoing basis, and the prior and current conduct of the parties
12 to continue paying Prinz these commission rates through May 2018 when he was terminated.

13 Here, we are not creating terms unknown to the parties. As discussed, the parties knew
14 Prinz procured the deal and understood, or should have understood, the agent should be
15 compensated for the life of the deal. Angélil said "respect the deal" and that is what we are doing
16 here. The material terms of the deal were known to the parties and, as we have held many times,
17 cannot be unilaterally erased after the work was done. Additionally, it is pervasive custom and
18 practice in the entertainment industry that "[a] talent agency is entitled to receive post termination
19 commissions for all employment secured by the agency prior to its termination." (*Bates, supra*,
20 Case No. TAC-24469 at p. 6 (citing *Paradigm, supra*, Case No. TAC 12728, pp. 13, 16).
21 Moreover, "[c]ommissions are owed post termination for monies negotiated by the agent during
22 the term of the agreement and the artist cannot unilaterally determine there is no further
23 obligation to pay for work already performed." (*Bates* citing *Milano, supra*, Case No. TAC 10-05
24 at p. 8).

25 The evidence is clear that industry custom and practice applies to the oral and implied
26 2015 Commission Agreement. The rule has long been held to extend to work performed without
27 a written contract under the principles of contractual construction:

28 ///

1 California Civil Code § 1656 states, “all things that in . . . usage are considered as
2 incidental to a contract, or as necessary to carry it into effect, are implied
3 therefrom, unless some of them are expressly mentioned therein . . .”) [sic]; Rest.
4 Contracts 2nd §221 (“An agreement is supplemented . . . by a reasonable usage
5 with respect to agreements of the same type if each party knows or has reason to
6 know of the usage and neither party knows or has reason to know that the other
7 party has an intention inconsistent with the usage.”) “. . . if there is a reasonable
8 usage which supplies an omitted term and the parties know or have reason to know
9 of the usage, it is a surer guide than the court’s own judgment of what is
10 reasonable.” (Rest., *supra*, § 221, com. a, p. 151.) “The more general and well-
11 established a usage is, the stronger is the inference that a party knew of or had
12 reason to know of it. *Binder v. Aetna Life Ins. Co.*, 75 Cal.App. 4th 832, 853
13 (1999).

14 (Milano, Case No. TAC 10-05, at p. 7.)

15 This is exactly how the parties have conducted themselves since 2007 and is consistent
16 with the industry standard and custom. It cannot be disputed that the remaining 2011 residency
17 performances were rolled into the Omnibus Agreement thereby extending the longstanding
18 agreement with AEG. In short, if Prinz procured a tour or a residency, he was paid for that entire
19 tour and residency. That is the parties’ history and it should be no different with the Omnibus
20 Agreement. Prinz negotiated the Omnibus Agreement and should be compensated for his efforts.

21 **1. Respondents Argue Prinz is not entitled to Commissions for Dion’s**
22 **World Touring and Residency Performances for the Life of the**
23 **Omnibus Agreement.**

24 Respondents argue that none of Prinz’s agency agreements give him a contractual right to
25 commission Dion’s touring and residency performances for the life of the Omnibus Agreement.
26 In support of these arguments, Respondents examine the parties’ actual commission arrangements
27 for touring and residency engagements. We briefly respond to Respondents’ arguments here.

28 First, Respondents maintain Prinz has no contract for touring commissions beyond the
2017 Summer Tour. Respondents argue the 2007 Agency Agreement provided for a █%
commission on performances for the “*Taking Chances World Tour.*” That tour ended in 2009,
and the 2007 Agency Agreement does not apply to any other tour (let alone for every
performance Dion may complete through █ under the Omnibus Agreement). Respondents
allege the parties were free to enter into agreements for subsequent tours. In support of this
argument, Respondents cite to the 2017 Summer Tour referenced in the Paris Memo whereby

1 Savage and Platel agreed that CDA would pay Prinz a █% commission.

2 We agree that in a vacuum the 2007 Agency Agreement for the “*Taking Chances World*
3 *Tour*” does not provide Prinz a contractual right to commission Dion’s touring performances for
4 the life of the Omnibus Agreement, although the 2007 Agency Agreement provides important
5 information highlighting the parties’ course of conduct. But our agreement with Respondents
6 argument ends there. We do not agree, as Respondents allege, that the “Paris Memo”
7 extinguishes Prinz’s right to commission the Omnibus Agreement. The Paris Memo was an
8 unconvincing attempt on the part of Platel and Savage to undo an agreement already in place.

9 In 2015, the parties, including Angélil, agreed to a █% commission for the Las Vegas
10 performances and a █% commission for global touring. Both Giampaolo and Prinz confirmed
11 their understanding that the 2015 Commission Agreement covered Prinz’s agent services on an
12 ongoing basis.

13 In November 2016, as Prinz and Giampaolo were negotiating with AEG and Live Nation
14 for what ultimately became the Omnibus Agreement, Giampaolo again asked Prinz to confirm his
15 commission arrangement. In response, Prinz forwarded Giampaolo the email from 2015
16 containing the terms of the 2015 Commission Agreement. Giampaolo confirmed verbally to
17 Prinz that they could proceed under the terms of the 2015 Commission Agreement and testified to
18 this arrangement. The deal was in place in 2015 and any efforts by Platel and Savage to undo the
19 deal in 2017, after the Omnibus Agreement was completed, are not credible or persuasive.

20 Moreover, we conclude Platel backed out of any attempt to renegotiate a new deal against
21 his friend, asking Young to conduct the renegotiations, because he was uncomfortable carrying
22 out the order on his good friend. And even though Platel testified on Dion’s behalf as her
23 manager, it was clear the loss of Prinz to the Dion team over a monetary dispute was a heavy
24 burden for Platel to endure. This was evident in Platel’s emotional testimony and supports our
25 finding that Platel’s efforts to undo the Omnibus deal with the Paris Memo is unpersuasive.

26 Respondents argue that, at the time of Prinz’s termination, the only booked concert dates
27 were for Dion’s 2018 Summer Tour, and those dates were booked by Dion and AEG without
28 Prinz’s involvement. Respondents further argue Prinz is not entitled to commission for the 2018

1 Summer Tour because he did not have an exclusive agency agreement, which would presumably
2 have entitled him to commission for any show booked while he was the agent. Again, we
3 disagree. The 2018 Summer Tour was part of the Omnibus Agreement. Because Prinz
4 negotiated the Omnibus Agreement, he was entitled to commission the 2018 Summer Tour and
5 all other performances stemming from the Omnibus Agreement. Put simply, Prinz was the only
6 talent agent who could commission the deal and, if Angélil were alive, we believe he would have
7 continued to honor the deal. The deal was already completed and ICM and Prinz rightfully
8 ignored Dion’s efforts to strip Prinz of the money he had already earned. Courts have long held,
9 “he who shakes the tree is the one to gather the fruit.” (*Willison v. Turner* (1949) 89 Cal.App.2d
10 589. Certainly, Dion may terminate a personal services agreement if she feels her agent is not
11 providing for the services contracted. However, she may not unilaterally determine she has no
12 further obligation to pay for work already performed. (*Gersh v. Hughley*, Case No. TAC 47191,
13 at p. 8)

14 Finally, Respondents argue the 2011 Agency Agreement cannot be interpreted to entitle
15 ICM to commissions on the Las Vegas residency performances for the life of the Omnibus
16 Agreement as Prinz’s agreement 2011 Agency Agreement is fully integrated, and covered only
17 “performances by Celine Dion (“Artist”) *at the Colosseum at Caesars Palace in Las Vegas*
18 scheduled to commence on March 15, 2011 and scheduled to end (3) years later on March 2014
19 (emphasis added).”

20 Again we disagree. First, we resolve the ambiguity in the 2011 Agency Agreement in
21 Prinz’s favor because of the parties’ course of conduct as previously described. That is Prinz
22 received commission on the extensions of the AEG/Dion Residency Agreement which was
23 extended, until June 2019. Notably, the Omnibus Agreement expressly stated the **final year of**
24 **the Celine residency was rolled into this same agreement.** Prinz procured the *Celine*
25 residency and was paid a ■■■% commission on all *Celine* residency performances up until
26 the day he was fired in May 2018. Prinz was the agent on *Celine* and it was rolled into the
27 Omnibus agreement, which he also procured. For the reasons discussed above, the *Celine*
28 residency was subsumed by the Omnibus Agreement becoming one agreement in which the

1 material terms were agreed upon by the parties in 2015. And finally, Dion continued to pay
2 Prinz under these terms until he was terminated in May of 2018. Dion's earnings are
3 guaranteed under the Omnibus Agreement and we see no reason why Prinz's earnings
4 should be treated any differently.

5 **E. Is the \$1.5 Million in Commissions already Paid to Prinz Fair for his Work on**
6 **the Omnibus Agreement?**

7 Respondents argue from the signing of the Omnibus Agreement until he was terminated,
8 Prinz was paid approximately \$1.5 million and maintain under all the circumstances that this *is*
9 *more than fair compensation for his services*. Dion argues "Prinz did not find AEG for Dion ...
10 nor was Prinz the 'lead negotiator' or architect of the Omnibus Agreement. Prinz was nothing
11 more and nothing less than part of a team that included Jamie Young and others representing
12 Dion on a new agreement with her long-time promoter." We do not know what Young or
13 Giampaolo were paid as team members. What we do know is that Dion enjoys a minimum
14 guaranteed payout of [REDACTED]. The fact that the Omnibus Agreement contains these
15 minimum guarantees is not disputed. A straight mathematical calculation concludes that if Dion
16 pays [REDACTED] to the agent who procured the [REDACTED] deal, Dion would pay the agent a
17 [REDACTED] % commission percentage [REDACTED]. Payment to the
18 agent who procured the deal of [REDACTED] is well below any reasonable
19 commissionable standard no matter how popular and bankable the artist. This number represents
20 a tiny fraction of what Dion will earn from the Omnibus Agreement and fails to adequately
21 compensate ICM and Prinz in a commensurate manner. Obviously, this number also fails to pay
22 ICM and Prinz in a manner consistent with the [REDACTED] % and [REDACTED] % commissions historically received.

23 **F. Sign-On Bonus**

24 The Omnibus Agreement includes a [REDACTED] signing bonus upon execution. Under the
25 Omnibus Agreement, the bonus is [REDACTED], such that Dion
26 [REDACTED] a portion of the [REDACTED] basis. [REDACTED]

27 [REDACTED]
28 [REDACTED]

1 There was no evidence presented of any prior course of conduct with respect to a signing
2 bonus and there was no evidence provided of an industry custom and practice regarding a sign-on
3 bonus. Moreover, ICM failed to present any evidence of even a rudimentary understanding as to
4 how the sign-on bonus would be commissioned. This is further supported by Prinz's November
5 2, 2016 email to Giampaolo where Prinz included an offer not to receive commission on any
6 advances when they are paid "but only as shows and tour dates played out. So no lump sum
7 payments on advances paid up front but commission only on shows played and on the fees
8 allocated towards those shows...." Prinz's understanding of what commissions he was entitled to
9 regarding the sign-on bonus was further complicated by his proposal to Dion's team after
10 Giampaolo was terminated. Prinz wanted to discuss how to calculate the [REDACTED] signing
11 bonus given the two different commission rates of [REDACTED]% and [REDACTED]% on the Omnibus Agreement.
12 Prinz sent an email proposing to earn a commission on the signing bonus at a blended rate.
13 Collectively, these communications by Prinz presented a confusing and inconsistent
14 understanding of the sign-on bonus commission structure.

15 In short, ICM failed to provide evidence of a meeting of the minds with Dion regarding an
16 agreed upon commission rate for the sign-on bonus and for these reasons, Prinz and ICM are not
17 entitled to commission the sign-on bonus.

18 **G. ICM's Petition Is Procedurally Sound**

19 Respondents sought to dismiss the matter from the Labor Commissioner's jurisdiction,
20 claiming the Labor Commissioner has no jurisdiction to hear the matter due to governing law
21 provisions contained in the 2007 Agency Agreement and the 2011 Agency Agreement.
22 Respondents also argue that ICM does not have standing in this action. We briefly address those
23 arguments below.

24 **1. The Labor Commissioner has Subject Matter Jurisdiction to Adjudicate** 25 **the Parties' Dispute because Despite a Nevada Choice of Law in two** 26 **Agreements.**

26 Respondents argue "The Labor Commissioner is only authorized to apply California's
27 laws." (*Nickolas Carter v. Wright*, Case No. TAC 9-00, 2001 WL 36518557, at 2 ("*Carter*").)

1 Consequently, if another state’s laws apply to the parties’ dispute, the Labor Commissioner
2 “must, as a matter of law, dismiss the petition based on lack of subject matter jurisdiction.” (*Id.*)

3 In support, Respondents rely on the fully integrated 2007 Agency Agreement and 2011
4 Agency Agreement between Dion and Prinz, which provide that they “shall be construed in
5 accordance with and governed by the laws of the state of Nevada.” Respondents further point out
6 that Dion was living in Nevada, and all of the performances under the 2011 Agency Agreement
7 took place in Nevada and argue this is more than a sufficient basis to enforce the parties’ choice
8 of law provision. Consequently, Respondents argue the Labor Commissioner lacks subject matter
9 jurisdiction and seeks dismissal of the Petition. We reject Respondents’ argument that the
10 Labor Commissioner lacks subject matter jurisdiction.

11 Respondents, in their Opening Brief, cite, *Nickolas Carter et al. v. Wright*, Case No. TAC
12 9-00, at p. 2 (2001) for the proposition that “[t]he Labor Commissioner is only authorized to
13 apply California’s laws. Consequently, if the Labor Commissioner determines that [another
14 state]’s laws apply, we must, as a matter of law, dismiss the petition based on lack of subject
15 matter jurisdiction.”

16 Respondents’ argument fails for two reasons. First, there currently is no written
17 agreement containing a choice of law provision. The 2007 Agency Agreement expired by its own
18 terms after the end of Dion’s tour in 2009. The 2011 Las Vegas Residency Agency Agreement
19 was subsumed by the 2015 Commission Agreement, which became the operative agreement
20 between the parties and later confirmed between Prinz and Giampaolo in 2016. The 2015
21 Commission Agreement does not include a governing law provision. Therefore, this agreement
22 should be interpreted under California law because Prinz and ICM were to perform the agreed-
23 upon agent services from ICM’s California offices and negotiated the agreement from there as
24 well. (*See* Civil Code § 1646 (“A contract is to be interpreted according to the law and usage of
25 the place where it is to be performed; or, if it does not indicate a place of performance, according
26 to the law and usage of the place where it is made.”)).

27 Second, in determining choice of law conflicts, California courts use a three-part analysis
28 that rests on the following factors: (1) whether the conflicting states have the same law; (2) if not,

1 whether the non-forum state has an interest in applying its law to the case; and (3) if so, which
2 state has a greater interest in applying its own law. (*See Reich v. Purcell* (1967) 67 Cal.2d 551,
3 555-56 (“*Reich*”).) In fact, we applied this analysis in *Carter, supra*, Case No. TAC 9-00).

4 In *Carter*, Respondents brought their motion to dismiss for lack of jurisdiction, arguing
5 the Labor Commissioner lacked jurisdiction for several reasons, including that the relevant
6 agreement provided for Florida law to control. (*Carter*, at p. 1.) Aside from a governing law
7 provision, the Respondents identified various other factors that favored Florida law, including
8 that both parties resided in Florida at the time of the alleged violations, the agreement was
9 negotiated and executed in Florida, Florida has a statutory scheme designed to protect against the
10 same allegations brought by the Petitioner, and the Petitioner had filed a case in Florida four years
11 earlier alleging the same causes of action. *Id.*

12 In finding that we lacked jurisdiction to adjudicate the matter, the Labor Commissioner
13 applied the three-part governmental interest test from the *Reich* decision. (*Id.*, at pp. 3-4.) In
14 making its determination, the Labor Commissioner noted the Petitioner had already initiated a
15 substantially similar dispute in Florida, which provides a statutory scheme for protecting its
16 artists, and has a superseding interest in protecting its own citizens. (*Id.*, at p. 3.) In addition, the
17 Labor Commissioner noted that the limited duration of the relationship between the parties and
18 the obscure and limited allegations of illegal conduct in California, as compared to the more
19 frequent and significant conduct in Florida, lent support for Florida’s superseding interest in
20 seeing its laws applied and enforced. (*Id.*, at p. 4.)

21 The facts here are distinguished from *Carter*. Contrary to Nevada law, California law
22 contains the Talent Agencies Act (or, “TAA”), a statutory scheme uniquely suited to address a
23 breach of contract dispute between a licensed California talent agency and an artist. In addition,
24 unlike *Carter*, California has a substantial interest in applying its own laws to this matter.
25 Whereas in *Carter*, none of the parties resided in California, in this case both Prinz and ICM
26 reside in California. Further, as opposed to the alleged activities in *Carter* which were few and
27 obscurely related to California, here the 2015 Commission Agreement was negotiated by Prinz
28 and ICM from the ICM offices in California, and much of the work involved in procuring the

1 Omnibus Agreement took place from the ICM offices in California. Finally, due to Dion's
2 breach, Prinz and ICM have been and continue to be harmed in California. In short, California
3 has a superseding interest in applying its laws and, therefore, the Labor Commissioner has
4 jurisdiction to adjudicate this matter.

5 **2. ICM Has Standing**

6 Next, Respondents argue that because the 2007 Agency Agreement and the 2011 Las
7 Vegas Residency Agency Agreement are between Dion and Prinz, as an individual, that ICM is
8 an improper party to bring this petition.

9 Here, the parties' course of conduct demonstrates that Respondents understood an agent
10 relationship to exist between Dion and ICM. Specifically, since the 2015 Commission
11 Agreement, Respondents paid all commissions to ICM and *never* to Prinz directly. Also,
12 Respondents themselves designated ICM as Dion's agent in the Omnibus Agreement, and
13 identified ICM as an approval party and a party to receive notices under the Omnibus Agreement.
14 Respondents' argument that ICM is not the talent agent and therefore does not have standing
15 ignores the realities of the relationship between the parties which clearly demonstrates a talent
16 agent relationship between Dion and ICM, through Prinz.

17 **IV. ORDER**

18 For the above-stated reasons, IT IS HEREBY ORDERED Petitioner INTERNATIONAL
19 CREATIVE MANAGEMENT PARTNERS LLC dba ICM PARTNERS is:

20 (1) awarded commissions in favor of ICM and against Respondents, CELINE DION and
21 CDA PRODUCTIONS (LAS VEGAS), INC., in an amount equal to [REDACTED]
22 ([REDACTED]%) of the gross compensation earned or received by Respondents from all Las Vegas
23 residency performances, including any substitutions thereof, under the Omnibus Agreement;

24 (2) awarded commissions in favor of ICM and against Respondents, CELINE DION and
25 CDA PRODUCTIONS (LAS VEGAS), INC., in an amount equal to [REDACTED] percent ([REDACTED]%) of the
26 gross compensation paid to or for the benefit of Respondents from global touring performances
27 under the Omnibus Agreement;

28

1 (3) awarded commissions in favor of ICM and against Respondents, CELINE DION and
2 CDA PRODUCTIONS (LAS VEGAS), INC., in an amount equal to [REDACTED] percent
3 ([REDACTED]%) of the gross compensation paid to or for the benefit of Respondents from performances in
4 Quebec under the Omnibus Agreement;

5 (4) be provided with a written accounting with respect to all monies or other consideration
6 received by or on behalf of Respondents in connection with the Omnibus Agreement;

7 (5) be provided a quarterly accounting thereafter; and

8 (6) awarded interest calculated at ten percent (10%) per annum.

9 (7) Prinz is not entitled to commission the [REDACTED] Sign-On bonus;

10
11 Dated: November 13, 2020

Respectfully submitted,

12
13 By: 
14 DAVID L. GURLEY
15 Attorney for the California State
16 Labor Commissioner

17 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

18
19
20 Dated: November 13, 2020

By: 
21 LILIA GARCIA-BROWER
22 California State Labor Commissioner

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA**)
3 **COUNTY OF LOS ANGELES**) S.S.

4 I, Lindsey Lara, declare and state as follows:

5 I am employed in the State of California, County of Los Angeles. I am over the age of
6 eighteen years old and not a party to the within action; my business address is: 300 Oceangate,
Suite 850, Long Beach, CA 90802.

7 On November 16, 2020, I served the foregoing document described as:
8 **DETERMINATION OF CONTROVERSY**, on all interested parties in this action by placing a
true copy thereof enclosed in a sealed envelope addressed as follows:

9 Patricia L. Glaser, Esq.
10 G. Jill Basinger, Esq.
11 Matthew P. Bernstein, Esq.
12 **GLASER WEIL FINK HOWARD**
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Attorneys for Respondents

15 **Attorneys for Petitioner**

16 **(BY CERTIFIED MAIL)** I am readily familiar with the business practice for collection
17 and processing of correspondence for mailing with the United States Postal Service. This
18 correspondence shall be deposited with fully prepaid postage thereon for certified mail
19 with the United States Postal Service this same day in the ordinary course of business at
our office address in Long Beach, California. Service made pursuant to this paragraph,
upon motion of a party served, shall be presumed invalid if the postal cancellation date of
postage meter date on the envelope is more than one day after the date of deposit for
mailing contained in this affidavit.

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

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

24 Executed this 16th day of November 2020, at Long Beach, California.

25 

26 Lindsey Lara
27 Declarant