

1 STATE OF CALIFORNIA
Division of Labor Standards Enforcement
2 Department of Industrial Relations
MICHAEL N. JACKMAN, SBN 149138
3 7575 Metropolitan Drive, Suite 210
San Diego, CA 92108
4 Tel. (619) 767-2023
Fax. (619) 767-2026

5 Attorney for the State Labor Commissioner
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7

8 **BEFORE THE LABOR COMMISSIONER**

9 **STATE OF CALIFORNIA**

10
11 AYLYA MARZOLF,

12 Petitioner,

13 v.

14 LYNN VENTURELLA, an individual,
THE PINKERTON MODEL & TALENT
15 COMPANY, LLC, a California Limited
Liability Company,

16 Respondent.
17

NO. TAC- 29364

**DETERMINATION
OF CONTROVERSY**

18 This matter, a Petition to Determine Controversy under Labor Code §1700.44, came on
19 regularly for hearing in Los Angeles, California, before the undersigned attorney for the Labor
20 Commissioner assigned to hear the case. Petitioner AYALA MARZOLF (hereinafter referred to as
21 “Ms. Marzolf”) appeared by her attorney Steven B. Sitgltiz . Respondents LYNN VENTURELLA
22 (hereinafter referred to as Ms. Venturella) and THE PINKERTON MODEL & TALENT
23 COMPANY, LLC (hereinafter referred to as “Pinkerton”) appeared at the commencement of the
24 hearing by Ms. Venturella, representing both herself and Pinkerton. In further proceedings at the
25 continued hearing, both respondents appeared by their attorney Drew Sherman.
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1 **FINDINGS OF FACT**

2 1. AYALA MARZOLF is an artist, as that term is defined in Labor Code Section 1700.4,
3 and rendered services as an actor in advertisements for Dentyne, Taco Bell, Apple, Speedo,
4 Volkswagen and Adidas.
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6 2. LYNN VENTURELLA was a licensed talent agency within the definition set forth in
7 Labor Code Section 1700.4 during the time relevant to this action.

8 3. Ms. Marzolf was managed by Total Talent Management, a business jointly owned by
9 Nick Roses and Ms. Venturella's husband, Richard Venturella. Ms. Marzolf was properly paid for
10 the work she performed on the Dentyne and Taco Bell advertisements. The wages due from those
11 two jobs were tendered to Total Talent Management (TTM) and that company properly distributed
12 the commissions due to the respondents, with the remainder of the wages going to petitioner, . At
13 some point, TTM ceased doing business, after which time Ms. Marzolf contracted with former TTM
14 partner Nick Roses, who thereafter represented Ms. Marzolf as her manager.
15

16 4. By agreement among Ms. Marzolf, Total Talent Management, Nick Roses and the
17 respondents, wages Ms. Marzolf earned for union jobs was to be paid to TTM, with wages for non-
18 union jobs to be paid to the respondents. Those non-union jobs included the work performed on the
19 Apple, Speedo, Volkswagen and Adidas advertisements. The wages for those jobs (a total of six
20 separate jobs) were tendered to the respondents, and are at issue in this proceeding.
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22 5. Ms. Venturella conceded that the respondents owe Ms. Marzolf \$1,480.36 in wages, but
23 asserts that amount was calculated taking into account amounts she deducted from Ms. Marzolf's
24 wages which she paid to TTM for amounts she believed to be due to that company for management
25 services TTM provided for the petitioner. The respondents did not provide either their client Ms.
26 Marzolf, or the hearing officer in this matter, any accounting for the withholdings or basis for those
27 amounts to be paid to a third party on Ms. Marzolf's behalf.
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1 1700.26 and 1700.27 to maintain such records, to make them available to the Labor Commissioner
2 during reasonable hours, and to furnish them upon the Labor Commissioner's request. The
3 subpoena was properly and timely served upon the respondents, but the respondent failed to provide
4 the records requested.

5
6 In response to the hearing officer's inquiry regarding production of the subpoenaed
7 documents, Ms. Venturella initially responded that she was not she did not understand the subpoena
8 and was not aware that the subpoena required the respondents to produce documents at the hearing.
9 Later on in her testimony, Ms. Venturella stated that she decided not to bring the documents because
10 she was concerned that to do so would violate a confidentiality agreement between her husband
11 Richard Venturella on behalf of TTM and Nick Roses, Mr. Venturella's former partner in that
12 business. This contradictory testimony leads this hearing officer to doubt Ms. Venturella's
13 credibility and to give little weight to her statements in every other aspect of the case.
14

15 The documentary evidence and testimony in this case show that Ms. Marzolf earned
16 \$6,670.45 for the six jobs at issue, that those amounts were received by the respondents and retained
17 by the respondents beyond the time allowed by statute. The most recent of the earned wages due
18 should have been paid by November 2, 2012, but were retained. The evidence also shows that the
19 respondents have paid Ms. Marzolf a total of \$2,580.00 toward those wages earned, leaving a
20 balance due of \$4,090.45. Interest on that amount to August 1, 2014 is \$715.20.
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22 The evidence also shows that the respondents' failure to disburse the artist's funds within the
23 time required by Labor Code Section 1700.25(a) is a willful violation of that statute. The factor of
24 willfulness is found as a result of evidence offered by both parties in the proceeding showing that the
25 respondents were utterly lacking not only in their failure to keep proper records and account to the
26 petitioner under the Talent Agency Act, but even apart from that statutory requirement, to maintain
27 the kind of financial records accepted in common business practice. The respondents were
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1 contemptible stewards of their client's money, and were utterly unresponsive not only to her
2 counsel's proper demands for an accounting, but also failed to produce the records subpoenaed by
3 the Labor Commissioner.

4 As a consequence of the willful violation of the requirement to timely disburse amounts held
5 in trust for the petitioner, the Labor Commissioner awards Ms. Marzolf, as the prevailing artist, her
6 reasonable attorney fees, pursuant to Labor Code Section 1700.25(e)(1). Following a statement of
7 decision, the parties were directed to submit evidence and argument regarding the award of attorney
8 fees. In response to that direction, counsel for the petitioner submitted a declaration setting forth a
9 basis for petitioner's request for 35 hours of attorney fees at the rate of \$375.00 per hour. The
10 respondent did not submit a response to that request. Accordingly, petitioner is awarded \$13,125.00
11 in attorney fees. The petitioner also requested an award of her costs in this proceeding; however,
12 such an award is not supported by the provisions of the Talent Agency Act, and is therefore denied.
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15 16 **CONCLUSION**

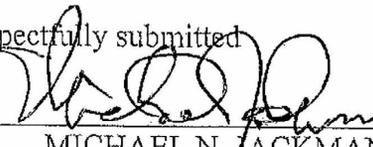
17 The Labor Commissioner finds that Respondents Lynn Venturella and The Pinkerton Model
18 & Talent Company, LLC unlawfully withheld wages due to Petitioner Ayla Marzolf, and that the
19 failure to pay those wages is a willful violation of the Labor Code Section 1700.44(a).

20 Accordingly, Petitioner is awarded \$4,090.45 in wages. Interest is awarded on the wages at
21 the legal rate from November 2, 20012 in the amount of \$715.20. In addition, as a result of a finding
22 of willfulness under Labor Code Section 1700.25(e), Petitioner is awarded reasonable attorney fees
23 in the amount of \$13,125.00.
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25 The total amount of the award is \$17,930.65.
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1 Dated: 8/7/2014

2 Respectfully submitted

3 By: 

4 MICHAEL N. JACKMAN

5 Attorney for the State Labor Commissioner

6
7 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSONER

8 Dated: 8.6.14

9 By: 

10 JULIE A. SU

11 Labor Commissioner, State of California

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

CERTIFICATION OF SERVICE BY MAIL
(C.C.P. 1013A) OR CERTIFIED MAIL

I, JUDITH A. ROJAS, do hereby certify that I am a resident of or employed in the County of San Diego, over 18 years of age, not a party to the within action, and that I am employed at and my business address is: 7575 Metropolitan Drive, Suite 210, San Diego, CA 92108-4421

On August 7, 2014, I served the within **DETERMINATION OF CONTROVERSY** by placing a true copy thereof in an envelope addressed as follows:

Bryan J. Freedman, Esq.
Steven B. Stiglitz, Esq.
Freedman & Taitelman LLP
1901 Avenue of the Stars, Suite 500
Los Angeles, CA 90067

Drew Harris Sherman, Esq.
Sherman Law Corp.
5023 N. Parkway Calabasas
Calabasas, CA 91302

and then sealing the envelope and with postage and certified mail fees (if applicable) thereon fully prepaid, depositing it for pickup in this city by:

Federal Express Overnight Mail

Ordinary First Class Mail

I certify under penalty of perjury that the foregoing is true and correct.

Executed on August 7, 2014, at San Diego, California.


JUDITH A. ROJAS

Case No. TAC-29364

PROOF OF SERVICE