

1 STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
3 DIVISION OF LABOR STANDARDS ENFORCEMENT
4 David L. Gurley, Esq. (SBN 194298)
5 300 Oceangate, Suite 850
6 Long Beach, CA 90802
7 Telephone No.: (562) 590-5461
8 Facsimile No.: (562) 499-6438

9 Attorney for the Labor Commissioner

10
11 **BEFORE THE LABOR COMMISSIONER**
12
13 **OF THE STATE OF CALIFORNIA**

14 DIRECT MODELS, INC., dba LA DIRECT) **CASE NO.: TAC-39188**
15 MODELS,)
16) **DETERMINATION OF CONTROVERSY**
17 Petitioner,)
18)
19 vs.)
20)
21 "RAVEN ROCKET" AKA ANGELINA)
22 MORALES,)
23 Respondent.)

24 **I. INTRODUCTION**

25 The above-captioned petition was filed on March 26, 2015, by DIRECT MODELS, INC.,
26 dba LA DIRECT MODELS (hereinafter "Petitioner"), alleging that "RAVEN ROCKET" aka
27 ANGELINA MORALES (hereinafter "Respondent"), breached the exclusivity
28 provision of her talent agency contract by utilizing talent agents other than the Petitioner to
procure entertainment engagements on her behalf and failing to remit commissions based from
those earnings to the Petitioner in violation of the parties agreement. Petitioner seeks \$31,200.00
in unpaid commissions.

1 Respondent failed to file an answer. A hearing was scheduled before the undersigned
2 attorney, specially designated by the Labor Commissioner to hear this matter. The hearing
3 commenced on April 21, 2016 in Long Beach, California. Petitioner appeared through their
4 attorney, Karen Tynan from the Tynan Law Office. Respondent appeared in pro se. Due
5 consideration having been given to the testimony, documentary evidence and arguments
6 presented, the Labor Commissioner adopts the following determination of controversy.
7

8 II. STATEMENT OF FACTS

9 1. The Respondent is an adult-film actress that specializes in solo or “girl-girl”
10 performances. The Petitioner is a licensed talent agent that procures employment or
11 engagements for adult-film performers.
12

13 2. On November 4, 2012, the parties hereto entered into an “Exclusive Contract
14 Between Artist and Talent Agency” (hereinafter “Contract”). The Contract provided in pertinent
15 part:

16 “I [Respondent] hereby employ you [Petitioner] as my exclusive talent
17 agency for a period of (3) years,... to negotiate contracts for my
18 professional services as an artist. As compensation for your services, I
19 hereby agree to pay you a sum equal to fifteen percent (15%) ... of all
20 monies or things of value as and when received by me, directly or
21 indirectly, as compensation for my professional services rendered or agreed
22 to be rendered during the term hereof ... for so long as you remain licensed.
23 ... It is expressly understood that to be entitled to continue to receive the
24 payment compensation of the aforementioned contracts, after the
25 termination of this agreement, you shall remain obligated to serve me and
26 perform obligations with respect to said employment contracts ... requiring
27 my services on which compensation is based.”
28

3. The parties performed under the terms of the Contract from November 4, 2012
through July 21, 2014. Throughout 2013, the Respondent worked steadily and was nominated
for best new starlet and best actress for girl-girl only performances during the adult-film award
season. During the first six months of 2014, the work steadily declined and the Respondent
expressed her dissatisfaction in a July 21, 2014, e-mail acknowledging the parties had enjoyed “a

1 good run” for the last year and half but then expressly requested that the exclusive booking
2 agreement between the parties be terminated.

3 4. Respondent’s primary booking agent and Petitioner’s sub-agent Chris Fleming
4 (“Fleming”), responded in an e-mail refusing to accept the termination and instead demanded the
5 Respondent perform under the terms of the Contract. Fleming’s response acknowledged the
6 decline of the work but maintained this is the natural progression for an adult film actress that
7 limits herself to girl-girl performances. Fleming stated that the public demand is for boy-girl
8 performances which the Respondent made clear she would never perform. Finally, Fleming
9 expressly stated that Petitioner would continue to seek employment opportunities for Respondent
10 and consequently rejected Respondent’s purported termination of the Contract. As argued by
11 Fleming in the e-mail, the Contract “shall remain in full force and effect until November 4,
12 2015.”

13
14 5. Respondent countered with an e-mail stating, “I refuse to sit in a contract with a
15 company who regardless of how hard you may or may not work to find shoots... My beef is
16 simply my freedom. I want out. ... You do not own me. Sorry.”

17 6. This e-mail coupled with Respondent’s testimony made it clear, she was not
18 unhappy with the procurement offered or general representation efforts by the Petitioner but
19 rather as expressed in her communications, wanted the freedom “to be left alone.” In short,
20 Respondent no longer wanted to be exclusively represented by the Petitioner in contrast to the
21 express terms of paragraph 1 of the Contract, stating, “I hereby employ you as my exclusive
22 talent agency for a period of 3 years...”

23 7. On September 3, 2014, the Petitioner’s principal, CEO/Owner Derek Hay sent an
24 e-mail to Respondent offering her a September 9, 2014, girl-girl engagement requesting whether
25 Petitioner should accept the employment on Respondent’s behalf or decline it. The Respondent
26 acknowledged she received the e-mail but failed to respond to it.

27 8. Respondent’s testimony was unequivocal in regards to the state of her relationship
28 with Petitioner after July 21, 2014. According to Respondent, she made every effort to

1 disconnect all forms of communication with the Petitioner. She refused to answer calls or
2 respond to e-mails and deleted Petitioner's contacts from her phone. Respondent's testimony
3 was clear that if an offer to perform stemmed from the Petitioner's efforts, she would reject it
4 every time. In short, the Respondent was not ready, willing or available to accept any offer of
5 employment from the Petition after July 21, 2014.

6 9. In or around November 2014, respondent began accepting engagements offered to
7 her by another talent agency, Ideal Image Models ("Ideal"). After November of 2014 and
8 throughout 2015, Ideal continued offering the Respondent employment opportunities which
9 Respondent admittedly accepted.

10 10. On November 28, 2014, Petitioner sent an e-mail to Respondent indicating that
11 Petitioner would commence legal action against Respondent for violating the exclusive
12 representation provision between the parties. Petitioner filed this petition on March 26, 2015.

13 11. On May 26, 2015, Respondent e-mailed Veronica Noland, an employee of
14 Petitioner and indicated that she had not been offered employment for more than four months
15 and as a result she considered the contract between the parties terminated. Respondent relies on
16 paragraph 5 of the Contract which states:
17

18 In the event that I do not obtain a bona-fide offer of employment from a
19 responsible employer during the period of time in excess of four (4)
20 consecutive months, during of which said time I shall be ready, able, willing
21 and available to accept employment either party hereto shall have the right to
22 terminate this contact..."

23 12. Respondent continued to accept employment engagements offered by her new
24 talent agency, Ideal after November 2014 and continues to be represented by Ideal as of the date
25 of this hearing. The exact number of engagements offered by Ideal and accepted by Respondent
26 after November 2014 is unclear.

27 ///

28 ///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. ARGUMENT

1. Petitioner is a “talent agency” within the meaning of Labor Code section 1700.4(a).

2. Labor Code section 1700.4(b) includes “artists rendering professional services in motion pictures” in the definition of “artist” and Respondent is therefore an “artist” within the meaning of Labor Code section 1700.4(b).

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

4. The sole issue is whether Respondent breached the implied covenant of good faith and fair dealing by refusing to accept employment opportunities offered by the Petitioner and instead accepting engagements offered by another talent agent “Ideal” in violation of the exclusive representation provision found at paragraph 1 of the Contract. We conclude the actions of Respondent constitute a material breach of the Contract.

5. In general, the *wrongful* act, the unjustified or unexcused, failure to perform on a contract, is the *breach*. (See Rest.2d Contracts §235(2).) Ordinarily, a breach is the result of an intentional act, but negligent performance may also constitute a breach, giving rise to alternative contract and tort actions. (See Witkin 10th Ed. Contracts §847 citing Cal.Proc.4th, Actions §§ 158, 159). Any breach, total or partial, that causes a measurable injury, gives the injured party a right to damages as compensation thereof. (See *Borgonovo v. Henderson* (1960) 182 C.A.2d 220, 231, quoting Rest.2d Contracts §236; Corbin §948). There is nothing in the record that justifiably excuses the Respondent’s performance under the Contract. Petitioner performed their part of the bargain.

1 6. In short, Petitioner performed his part of the bargain and Respondent reaped the
2 benefits. But after a certain amount of time, Respondent unilaterally determined she no longer
3 wanted to perform her part of the bargain because “[m]y beef is simply my freedom. I want out.
4 ... You do not own me. Sorry.” A contractor cannot decide to stop building a house in the
5 middle of a project, just like an actor cannot walk away from a movie in the middle of
6 production without incurring damages sustained by the injured party. The fact that the
7 Respondent was engaged in adult material does not change this analysis.

8 7. Further, California Code of Regulations Title 8 section 12001 (b) states, “[t]o be
9 entitled to the payment of compensation after termination of the contract between the artist and
10 the talent agency, the talent agency shall be obligated to serve the artist and perform obligations
11 with respect to any employment contract or to extensions or renewals of said employment
12 contract or to any employment requiring the services of the artist on which such compensation is
13 based.” It was clear through testimony and documentary evidence Petitioner was willing and
14 able to conduct services on behalf of Respondent and did so.

15 8. We disagree with Respondent’s position that after 4 months of not being provided
16 with a bona fide offer the contract is terminated. Paragraph 5 of the Contract provides:
17

18 In the event that I [Respondent] do not obtain a bona-fide offer of
19 employment from a responsible employer during the period of time in
20 excess of four (4) consecutive months, during of which said time I shall be
21 ready, able, willing and available to accept employment either party hereto
22 shall have the right to terminate this contact...”

23 9. Petitioner provided a bona fide offer on September 3, 2014, asking whether
24 Respondent should accept the deal or reject it and the Respondent failed to respond. Moreover,
25 Respondent was unequivocal in that she made every effort to disconnect all forms of
26 communication with Petitioner. She refused to answer calls, respond to e-mails and deleted the
27 Petitioner’s contacts from her phone. As she stated, if an offer to perform came from Petitioner,
28 she would reject it every time. Consequently, Respondent was not ready, willing or available to

1 accept employment after July 21, 2014 within the meaning of Paragraph 5 of the Contract and as
2 a result the contract remained valid and in effect.

3 10. Under the terms of the Contract, Petitioner shall represent Respondent for three
4 (3) years as her exclusive talent agent and shall use all reasonable efforts to procure employment
5 on Respondent's behalf. In return, Respondent is obligated to pay commissions to the Petitioner
6 in a sum equal to "fifteen percent (15%) ... of all monies or things of value as and when received
7 by me [Respondent], directly or indirectly, as compensation for my professional services
8 rendered or agreed to be rendered during the term hereof ... for so long as you remain licensed
9 ..."

10 11. Consequently, Respondent was obligated to pay 15% on all monies earned for
11 professional services whether or not the performances were procured by Petitioner.
12 Respondent's obligation to pay commissions to Petitioner was terminated by the express terms of
13 the contract on November 4, 2015. Respondent is obligated to pay 15% commissions to
14 Petitioner for any employment she accepted in the adult film industry from July 22, 2014 through
15 November 4, 2015.
16

17 **ORDER**

18 For the above-stated reasons, IT IS HEREBY ORDERED that:

19 1. Respondent, "RAVEN ROCKET" aka ANGELINA MORALES, provide to
20 Petitioner DIRECT MODELS, INC., dba LA DIRECT MODELS, within 30 days, an accounting
21 of her earnings from July 22, 2014 through November 4, 2015 derived from employment in the
22 adult film industry and pay commissions to LA DIRECT MODELS in the amount of 15% of
23 those earnings, plus interest at the rate of 10% per year from the dates that the earnings upon
24 which these commissions are based were received by MORALES through the date of satisfaction
25 of the award.

26 ///

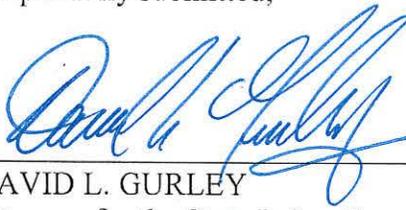
27 ///

28 ///

1 Dated: January 23, 2017

Respectfully submitted,

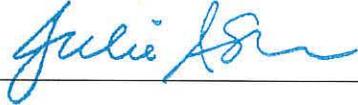
2
3 By:


4 _____
5 DAVID L. GURLEY
6 Attorney for the State Labor Commissioner

7 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

8
9 Dated: January 24, 2017

By: _____


10 JULIE A. SU
11 California State Labor Commissioner

