1 2 3 4 5 6 7	STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIO DIVISION OF LABOR STANDARDS ENFOI David L. Gurley, Esq. (194298) 1500 Hughes Ste. C-202 Long Beach, CA 90810 Telephone No. (424) 450-2585 Fax No. (562) 546-1359 Attorney for the Labor Commissioner		
8	BEFORE THE LAF	OR COMMISSIONER	
9	OF THE STATE OF CALIFORNIA		
10			
11	SHARON ALSINA,	CASE NO. TAC-52785	
12	Petitioner,	DETERMINATION OF CONTROVERSY	
13	vs.		
14	PACIFIC TALENT & MODELS, INC.		
15	Respondent.		
16			
17	I. INTRO	ODUCTION	
18 10	The above-captioned matter, a P	etition to Determine Controversy under Labor	
19 20	Code §1700.44, came on for hearing before the	undersigned attorney for the Labor	
20 21	Commissioner. Petitioner SHARON ALSINA, an individual, (hereinafter "ALSINA") appeared		
21	in pro per. Respondent PACIFIC TALENT & MODELS, INC., (hereinafter "PTM") appeared		
23	through PTM's CEO, Jeff Donaldson.		
24		at this hearing and on the other papers on file in	
25	this matter, the Labor Commissioner hereby add	opts the following decision.	
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1	II. FINDINGS OF FACT
2	1. On or about May 23, 2019, ALSINA and PTM entered into an Exclusive Contract
3	Between Artist and Talent Agency (hereinafter "Agency Contract") whereby PTM served as
4	ALSINA's licensed talent agent for two years.
5	2. Paragraph 3 of the Agency Contract provides that ALSINA would pay PTM "ten
6	percent (10%) of the gross compensation of union work and twenty percent (20%) of the gross
7	compensation of non-union work" for all monies received by ALSINA for work performed in
8	the entertainment industry during the term of the Agency Contract.
9	3. PTM is a California licensed talent agent and remained a licensed agent
10	throughout the parties' relationship. The Labor Commissioner approved the Agency Contract
11	including the 20% commission fee charged by PTM for securing non-union work; and the 10%
12	commission rate for union work.
13	4. On September 25, 2020, PTM secured ALSINA two (2) voice over jobs with Sony
14	Interactive Entertainment, LLC (hereinafter "SIE"). ALSINA believed the jobs collectively paid
15	\$1,800.00 for one day's work; PTM would receive a \$300.00 commission rate off the top and
16	ALSINA would receive \$1,500.00. ¹
17	5. On or around September 28, 2020, ALSINA signed an agreement between
18	ALSINA and the production company SEI (hereinafter "Talent Agreement"). The Talent
19	Agreement specified the financial terms for the voice over jobs as follows:
20	One Thousand Eight Hundred Dollars (\$1,800.00) which includes \$750.00 +
21	20% agency fee for voicing each one of two packs – "Cyberpunk" and "Metal", at the session on September 28, 2020.
22	6. ALSINA completed the two voice over jobs, and on November 25, 2020, PTM
23	issued ALSINA a check for \$1,200.00, ostensibly retaining \$300.00 off the top of the \$1,800.00
24	payment issued by SEI to PTM as an "Agency Fee". PTM then retained an additional 20% or
25	\$300.00 from ALSINA's \$1,500.00 earnings as PTM's 20% commission rate.
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28	1 20% of \$1,800.00 is \$360.00, leaving ALSINA a payment of \$1,440.00 and not \$1,500.00. ALSINA did not explain this discrepancy at hearing. 2
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1	7. Respondent argues the 20% "Agency Fee" is specifically referenced in the Talent
2	Agreement as a separately negotiated fee and identified as + 20% agency fee. Consequently, the
3	agency fee is a separate and distinct amount from the \$1,500.00 (\$750.00 for each one of two
4	packs -"Cyberpunk" and "Metal") promised to the artist. According to PTM, PTM deducted their
5	20% commission, leaving ALSINA a final payment of \$1,200.00.
6	8. Finally, PTM submitted documents explaining the "agency fee" to ALSINA at the
7	time ALSINA signed the Agency Contract. ALSINA executed these materials and acknowledged
8	receipt of these documents.
9	9. On November 3, 2020, ALSINA terminated PTM. ALSINA now demands
10	\$300.00, or the return of the 20% "agency fee" paid by SIE to PTM, arguing PTM collected
11	double commissions.
12	
13	III. LEGAL ANALYSIS
14	1. Labor Code §1700.4(b) includes "actors" in the definition of "artist" and ALSINA
15	is therefore an "artist" within the meaning of Labor Code §1700.4(b).
16	2. At all times relevant, PTM was a licensed talent agency.
17	3. Labor Code §1700.23 provides that the Labor Commissioner is vested with
18	jurisdiction over "any controversy between the artist and the talent agency relating to the terms of
19	the contract," and the Labor Commissioner's jurisdiction has been held to include the resolution
20	of contract claims brought by artists or agents seeking damages for breach of a talent agency
21	contract. (Garson v. Div. Of Labor Law Enforcement (1949) 33 Cal.2d 861, Robinson v. Superior
22	Court (1950) 35 Cal.2d 379.) Therefore, the Labor Commissioner has jurisdiction to determine
23	this matter.
24	A. 20% AGENCY FEE
25	4. The sole issue in this case is whether the 20% "agency fee" collected by
26	PTM is a separately negotiated fee between PTM and the production company, SEI, in which
27	case PTM is entitled to such fees; or whether the "agency fee" negotiated and collected by PTM
28	belongs to ALSINA as part of her earnings. 3
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1	5. This issue was discussed by the Labor Commissioner in <i>Shazi Ali aka Shazda</i>	
2	Deen v. Nouveau Model and Talent Management, Inc., (Ali) TAC 14198. The Labor	
3	Commissioner concluded in <i>Ali</i> ,	
4		
5	[s]o long as said fees are not "registration fees" or fees charged for services expressly listed in Labor Code §1700.40(b) (or similar	
6	services), and are not intended to be part of an artist's compensation (even though they may be based on a percentage of the artist's total	
7	earnings), we find that the Agency Fees are between the talent agency and the third party companies and the Labor Commissioner	
8	has no jurisdiction over such fee arrangements. We note that the evidence, however, must clearly establish that the Agency Fee is	
9	separate and apart from the fees the production company pays to the artist. There must be no question that the fees are intended for the	
10	agency and are not meant for the artist. <i>Shazi Ali aka Shazda Deen</i> v. <i>Nouveau Model and Talent Management, Inc.</i> , TAC 14198 at pg.	
11	4.	
12	6. However, in Cargle v. Howard, TAC 36595 (hereinafter "Cargle"), the Labor	
13	Commissioner announced that where an "Agency Fee" was actually intended for the artist, it was	
14	illegal for an agent to collect it as their own. The situation here is analogous to Ali, as the	
15	evidence supports a finding that the "agency fees" were not intended to be a portion of	
16	Petitioner's compensation. Specifically, the Talent Agreement clearly identifies the payment for	
17	each job was \$750.00 for total earnings of \$1,500.00. According to the approved Agency	
18	Contract, PMT is entitled to 20% of ALSINA's earnings of \$1,500.00 or \$300.00 and ALSINA is	
19	therefore entitled to \$1,200.00.	
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For the reasons set forth above, the Petition to Determine Controversy is DENIED. IT IS SO ORDERED. Respectfully submitted, IT IS SO ORDERED. IT	1	ORDER
4 5 Dated: March 30, 2022 Respectfully submitted, 6 7 By: June 1 7 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER 11 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER 12 Jated: March 30, 2022 By: 14 Dated: March 30, 2022 By: 15 LILLIA GARCIA-BROWER 16 California State Labor Commissioner 17 18 19 20 21 22 23 24 24 25 25 26 27 28	2	For the reasons set forth above, the Petition to Determine Controversy is DENIED.
5 Dated: March 30, 2022 Respectfully submitted, 6 By: DAVID L. GURLEY 7 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER 10 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER 12 Dated: March 30, 2022 13 Dated: March 30, 2022 14 Dated: March 30, 2022 15 LILLA GARCIA-BROWER 16 Lilla GARCIA-BROWER 17 Lilla GARCIA-BROWER 18 URITION OF THE LABOR COMMISSIONER 19 Dated: March 30, 2022 11 By: 12 Lilla GARCIA-BROWER 15 California State Labor Commissioner 16 Image: California State Labor Commissioner 17 Image: California State Labor Commissioner 18 Image: California State Labor Commissioner 19 Image: California State Labor Commissioner 10 Image: California State Labor Commissioner 11 Image: California State C	3	IT IS SO ORDERED.
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