

1 **STATE OF CALIFORNIA**
2 DEPARTMENT OF INDUSTRIAL RELATIONS
3 DIVISION OF LABOR STANDARDS ENFORCEMENT
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10
11 **BEFORE THE LABOR COMMISSIONER**
12 **OF THE STATE OF CALIFORNIA**

13 LEMON LIME AGENCY, INC.,

14 *Petitioner,*

15 v.

16 BO BARRETT,

17 *Respondent.*

18 Case No. TAC-52850

19 **DETERMINATION OF**
20 **CONTROVERSY**

21 **I. INTRODUCTION**

22 The Labor Commissioner heard the above-captioned Petition to Determine Controversy under
23 Labor Code § 1700.44 on September 14, 2022. LEMON LIME AGENCY, INC.¹ (“Lemon Lime”) appeared via its owner Chaim Magnum. Respondent BO BARRETT (“Barrett”) was represented by
24 Craig J. Englander. Based on evidence presented at the hearing and on the other papers on file in this
25 matter, the Labor Commissioner hereby adopts the following decision.

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28 ¹ The Petition failed to properly name the corporation but upon review of the evidence it is clear the named Petitioner is Lemon Lime Agency, Inc.

1 **II. FINDINGS OF FACT**

2 Lemon Lime is a licensed talent agency specializing in commercial and print advertising. Until
3 October 29, 2021, Lemon Lime was jointly owned by Robin Harrington and Chaim Magnum with Ms.
4 Harrington holding a 51% ownership interest. Barrett is an actor. On June 13, 2021, Lemon Lime and
5 Barrett entered into a written agreement (the “Written Agency Agreement”). According to the terms
6 of the Written Agency Agreement, Lemon Lime would serve as Barrett’s sole and exclusive agent in
7 commercial and print representation for a one-year term. Barrett agreed to pay Lemon Lime 10% for
8 commercial and related services and 20% for print and related services of his gross earnings from jobs
9 Lemon Lime procured. In addition, and pursuant to clause four (4) of the Written Agency Agreement,
10 Barrett agreed to pay Lemon Lime commissions on “...contracts entered into or negotiated for during
11 the term, including but not limited to...payments thereon, that are earned...or become due and payable
12 to [him] after the expiration of the term.” The clause contained an exception to the payment of
13 commissions to Lemon Lime if Barrett was obligated or became obligated to pay commissions to
14 another agent.

15 On October 29, 2021, Ms. Harrington and Mr. Magnum entered into a Stock Purchase
16 Agreement (the “Purchase Agreement”) whereby Mr. Magnum became the sole owner of Lemon Lime.
17 During the hearing, Mr. Magnum testified there was no written agreement in existence as to the division
18 of Lemon Lime’s talent. He further testified the Purchase Agreement² is devoid of any instruction,
19 guidance, and/or understanding of the division of commissions, if any, due from talent. Instead, Ms.
20 Harrington and Mr. Magnum agreed to issue a pre-approved joint announcement (the “Joint
21 Announcement”) to their clients informing them of the change in ownership. The language of the Joint
22 Statement was attached as Exhibit A to the Purchase Agreement. Ms. Harrington sent the Joint
23 Announcement to Lemon Lime’s clients via their casting platform, Casting Networks, on that same
24 day. The announcement read in part:

25 ...we (Robin and Chaim) have decided to end our business alliance...it is our
26 sincere wish that **you experience a seamless transition** with continuous access to job
27 opportunities. Chaim will remain at Lemon Lime and become the sole owner of the

28 ² Due to confidentiality, the parties did not enter the Purchase Agreement in its entirety but Mr. Magnum and Barrett’s attorney testified as to its contents.

1 company. Robin and Lauren will begin operating their new talent agency. **We have**
2 **agreed to remain impartial in an effort to allow you, our trusted clients, the**
3 **opportunity to decide where you would like to continue to be represented. Each of**
4 **you has an open invitation to either agency.**

5 If you wish to remain at Lemon Lime, then nothing needs to be done. If you wish
6 to follow Robin and Lauren, simply respond to the email invitation to follow in a separate
7 thread.

8 Please know that this decision did not come easy for us. But in the end, it is our shared
9 belief that **empowering our clients to decide is the most honorable and amicable**
10 **pathway forward.** As L. Frank Baum...was famously quoted, "Everything has to come
11 to an end, sometime." **May this end lead to bright new beginnings for us all.**
12 (Emphasis added.)

13 Shortly after the joint statement went out, Mr. Magnum sent his own message to Lemon Lime
14 clients via the same platform. In his message, he expressed his excitement in announcing he was the
15 sole owner of the agency. He also stated Ms. Harrington decided to retire from the company and remain
16 living in Mexico³. Mr. Magnum reiterated his commitment to the clients and asked them to contact
17 him to discuss the "new adventure" and he would answer any questions.

18 On or around November 1, 2021, Lemon Lime sent Barrett a notification for an audition for a
19 Taco Bell commercial via Casting Networks. Barrett confirmed and attended the audition. In an email
20 on November 5, 2021, Barrett informed Mr. Magnum he was going to Wildflowers, Ms. Harrington's
21 new talent agency. He expressed the difficulty in making his decision and expressed his gratitude to Mr.
22 Magnum. Barrett also said he hoped his choosing to go to Ms. Harrington's new agency did not affect
23 their friendship. A few minutes later, Mr. Magnum responded by saying, "Thanks for the note Bo! We
24 had a good run. I'll follow up with a closing email in the coming week."

25 On or around November 8, Lemon Lime received an email from the casting agent for a call
26 back and a request that Barrett submit a self-tape. Lemon Lime forwarded the information to Barrett
27 through Casting Networks. Based on the information Lemon Lime provided him, Barrett submitted
28 the self-tape directly to the casting producers. This was the last communication between Lemon Lime
and Barrett through the Casting Networks platform because Barrett deleted his profile thereafter.

³ Through testimony, Barrett established the statement was inaccurate. Ms. Harrington did not retire, she left Lemon Lime to start her own agency.

1 Later that same day, Mr. Magnum sent Barrett a text message letting him know he had things
2 coming in that were set up before Barrett moved to Wildflowers. Barrett told him his new agent had
3 already taken care of his outstanding jobs including the Taco Bell commercial. Mr. Magnum replied by
4 stating:

5 ...I will have to email you about your contract. It is not as cut and dry as you may
6 have been told. I've spoken to the State Board, SAG and ATA. My lawyer is preparing
7 a letter for you this week that explains everything told to us by the above. It would be
8 advisable if you move everything back and let me wrap up your exit. But feel free to
9 move in any direction you like. I'll do the same...Sorry if this Seems complicated...

10 On or around November 16, 2021, Mr. Magnum's attorney, David Schnider, emailed Barrett a
11 letter with the subject "Breach of Commercial and Print Agency Contract." Mr. Schnider informed
12 Barrett he remained contractually obligated to pay Lemon Lime commissions on any work he obtained
13 through the end of his Written Agency Agreement. Mr. Schnider also made Barrett aware he would
14 be personally liable for payment of commissions made to another agency other than Lemon Lime
15 during that term.

16 According to Mr. Magnum, the Joint Announcement gave Lemon Lime talent the "freedom" to
17 stay with Lemon Lime or go to Wildflowers, Ms. Harrington's new agency. However, he claims the
18 announcement did not release Lemon Lime's talent of their obligations under the Written Agency
19 Agreement and as a result, talent who left, owed Lemon Lime commissions on jobs procured by Lemon
20 Lime prior to their separation, and remained liable until the end of the term contained in the Written
21 Agency Agreement.

22 Conversely, Barrett testified the Joint Statement offered him and other talent the ability to leave
23 Lemon Lime without any restrictions. Neither party called Ms. Harrington as a witness to testify about
24 the Joint Statement and the intent, if any, regarding the division of commissions.

25 Lemon Lime seeks two things: (1) An award of 10% commissions from the gross earnings for
26 the Taco Bell Commercial; and (2) Commissions on commercials procured by Wildflowers after
27 Barrett's November 5, 2021, separation through the end of the term of his Written Agency Agreement.

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1 **III. LEGAL ANALYSIS**

2 Lemon Lime is a talent agency within the meaning of Labor Code §1700.4(a). Barrett is an
3 artist under Labor Code §1700.4(b). The Labor Commissioner is vested with jurisdiction over any
4 controversies arising over the contract between talent agencies and the artists they represent. Lab.
5 Code, §1700.23. The Labor Commissioner’s jurisdiction includes the resolution of contract claims
6 brought by artists or agents seeking damages for breach of a talent agency contract. *Garson v. Div. of*
7 *Labor Law Enforcement* (1943) 33 Cal.2d 861, *Robinson v. Superior Court* (1950) 35 Cal.2d 379.

8 The issues in this case is as follows:

- 9 1. Is Lemon Lime entitled to commissions on the Taco Bell Commercial?
10 2. Is Lemon Lime entitled to commissions on commercials Barrett booked after his
11 November 5, 2021 separation from Lemon Lime?

12 **A. Lemon Lime is Entitled to Commissions on the Taco Bell Commercial**

13 Labor Code §1700.4(a) defines “talent agency” as “a person or corporation who engages in the
14 occupation of procuring, offering, promising, or attempting to procure employment or engagements for
15 an artists or artists...” “Procurement” within the meaning of Labor Code section 1700.4(a) includes
16 an active participation in a communication with a potential purchase or the artist’s services...regardless
17 of who initiated communication. *Hall v. X Management* TAC No. 19-90, pp.29-31. The term
18 “procure,” as used in Labor Code § 1700.4(a), means “to get possession of: obtain, acquire, to cause to
19 happen or be done: bring about.” *Wachs v. Curry* (1993) 13 Cal.App.4th 616, 628.

20 A talent agency is entitled to receive post-termination commissions for all employment secured
21 by the agency prior to its termination. *Paradigm Talent Agency v. Charles Carroll, et al.* (TAC No.
22 12728, pp. 13, 16). Commissions are owed post termination for monies negotiated by the agent during
23 the term of agreement and the artist cannot unilaterally determine there is no further obligation to pay
24 for work already performed. *The Endeavor Agency, LLC v. Alyssa Milano* (TAC No. 10-05 pp. 7, 8).
25 The Written Agency Agreement expressly provides that Barrett shall pay commissions to Lemon Lime
26 on all “...contracts entered into or negotiated for during the term, including but not limited
27 to...payments thereon, that are earned...or become due and payable to [him] after the expiration of the
28 term.”

1 Here, Lemon Lime sent Barrett notice of the audition for the Taco Bell commercial on
2 November 1, 2021 – four days before Barrett ended his Written Agency Agreement with Lemon Lime.
3 As of November 8, 2021, even though Barrett was no longer with the agency, his profile with Casting
4 Networks was still active and Lemon Lime was able to send Barrett information regarding the call-
5 back. In addition, Lemon Lime also forwarded Barrett the email that requested he submit a self-tape
6 and Barrett sent the self-tape directly to the Taco Bell casting producers. Conversely, there was no
7 evidence that Harrington or Wildflowers performed services for this engagement. Therefore, Lemon
8 Lime obtained and therefore procured the Taco Bell commercial that Barrett eventually booked. As
9 such, Lemon Lime is entitled to post-termination commissions on the Taco Bell Commercial.

10 **B. Lemon Lime Is Not Entitled to Commissions For Jobs Procured Post Barrett's**
11 **November 5, 2021 Separation?**

12 Parties to a contract requiring performance can agree to end or change their agreement at any
13 time. 6 Cal.Jur. § 230, p.382; *Tompkins v. Davidow*, (1915) 27 Cal.App. 327. The parties' release of
14 their contractual obligations upon termination can be confirmed by language contained in the actual
15 writing or by evidence and testimony of the parties. *Id.* at 335. In the present case, Mr. Magnum and
16 Ms. Harrington did not enter into an agreement that delineated who was allowed to collect and retain
17 commissions from clients who terminated their representation from Lemon Lime. Aside from Mr.
18 Magnum and Barrett's testimony, the only information and evidence presented at hearing was the
19 Written Agency Agreement and the Joint Statement issued to Lemon Lime clients.

20 When Barrett signed the Written Agency Contract, Mr. Magnum and Ms. Harrington both
21 possessed ownership interest in Lemon Lime. Mr. Magnum and Ms. Harrington decided to part ways
22 and entered into a Purchase Agreement. Shortly thereafter, Lemon Lime issued the Joint
23 Announcement that allowed clients to choose between remaining at Lemon Lime under its new
24 ownership or gave them the freedom to terminate their relationship with Lemon Lime and join Ms.
25 Harrington at her new agency. To that end, through the Joint Announcement, Lemon Lime instructed
26 its recipients to do nothing if they wished to stay or respond to an email invitation if they decided to
27 leave.

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1 Mr. Magnum argues the Joint Announcement invited Lemon Lime clients to stay and also gave
2 them the freedom to representation by Ms. Harrington. Yet, he argues clients who chose to separate
3 from Lemon Lime were not released from their contractual obligation to Lemon Lime and are obligated
4 to pay commissions until the termination of their Written Agency Agreement with Lemon Lime
5 regardless of who procures the work. Mr. Magnum provided no legal authority to support his claim.

6 Unfortunately, Mr. Magnum and Barrett did not call Ms. Harrington as a witness. But, even
7 without her testimony, it is clear that Mr. Magnum's actions and argument go against the spirit of the
8 announcement – to empower Lemon Lime's clients to choose and allow them to experience a “seamless
9 transition.” That language contained in the Joint Announcement is what Barrett relied on when he
10 decided to leave Lemon Lime with the belief that he could terminate his contract by mutual accord of
11 all parties and be released of all contractual obligations after November 5, 2021. The Joint
12 Announcement was an invitation to terminate the relationship which was accepted by Barrett. Absent
13 any evidentiary evidence to the contrary of this agreement between Lemon Lime and Barrett, the Labor
14 Commissioner must deny Magnum's requested relief for commissions owed on jobs procured after
15 Barrett terminated his relationship with Lemon Lime on November 5, 2021.

16 **ORDER**

17 For the above-stated reasons, IT IS HEREBY ORDERED that this Petition to Determine
18 Controversy is granted in part and denied in part:

19 Petitioner, LEMON LIME AGENCY, INC., is entitled to 10% commission for earnings
20 connected with the Taco Bell commercial and interest calculated at 10% per annum through the date of
21 satisfaction of the award. Respondent, BO BARRETT shall provide an accounting to LEMON LIME,
22 INC., of all earnings from the Taco Bell commercial within 30 days of receipt of this Determination
23 and is required to remit 10% commission plus interest within 30 days of the accounting for unpaid
24 commissions consistent with this Order.

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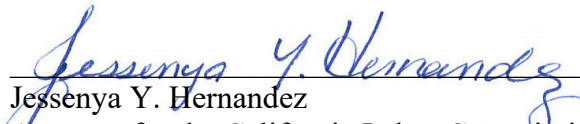
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1 LEMON LIME AGENCY, INC. is not entitled to any commissions on jobs BO BARRETT
2 booked after his October 31, 2021 separation from LEMON LIME AGENCY, INC.

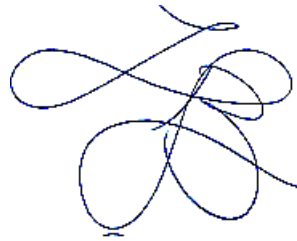
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4 Respectfully submitted,

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6 Dated: 3/9/2023


7 Jessenya Y. Hernandez
8 Attorney for the California Labor Commissioner

9 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

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11
12
13
14 Dated: 3/9/2023


15 Lilia Garcia-Brower
16 Labor Commissioner