

1 DIVISION OF LABOR STANDARDS ENFORCEMENT  
Department of Industrial Relations  
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4

5 BEFORE THE LABOR COMMISSIONER

6 STATE OF CALIFORNIA  
7

8 HEATHER SUTHERLAND WILSON, ) CASE NO. TAC 13-96  
9 Petitioner, ) DETERMINATIONS  
10 vs. )  
11 ERIK J. RHULEN, and SIRENS MODEL )  
MANAGEMENT, )  
12 Respondents. )  
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14 LORA-LYN PETERSON, ) CASE NO. TAC 14-96  
15 Petitioner, )  
16 vs. )  
17 ERIK J. RHULEN, and SIRENS MODEL )  
18 MANAGEMENT, )  
19 Respondents. )  
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21 The above-entitled controversies came on regularly for a consolidated  
22 hearing on September 19, 1996, Thomas S. Kerrigan presiding as Special  
23 Hearing Officer for and on behalf of the Labor Commissioner of the State  
24 of California. Petitioners appeared in propria persona. Trope and Trope  
25 appeared on behalf of respondents.

26 Evidence, both oral and documentary, having been introduced by the  
27 respective parties, and the matter having been duly submitted, the Labor  
28

1 Commissioner makes the following Determinations.

2 PRELIMINARY MOTIONS

3 Petitioners made motions at the beginning of the hearing to amend  
4 their petitions to include Femme Fatal, Inc. as a respondent. Respondents  
5 having conceded that this is the correct corporate name of the talent  
6 agency and that Sirens Model Management is merely a fictitious name, these  
7 motions were granted and the petitions were so amended.

8 In addition, respondents made a motion to strike Erik J. Rhulen from  
9 the petitions on the ground that he is not a talent agency within the  
10 meaning of section 1700.4 of the Labor Code and that he conducted his  
11 affairs through Femme Fatal, Inc., the corporation holding the license  
12 under the Talent Agency law. No evidence having been presented by  
13 petitioners to show why this respondent should be held personally liable,  
14 this motion is granted and Erik J. Rhulen is stricken from the petitions.

15 FINDINGS OF FACT

16 1. Petitioners were and are artists within the meaning of the provisions  
17 of Labor Code Section 1700.4 (b)

18 2. Femme Fatal, Inc. was and is a licensee within the meaning of the  
19 provisions of Labor Code Section 1700.3 (b).

20 3. Femme Fatal, Inc. and Lora-Lyn Peterson entered into a one-year  
21 written contract on March 30, 1995, whereby said respondent was retained  
22 and appointed as Peterson's sole and exclusive agent regarding employment  
23 opportunities in the entertainment industry. The parties also entered  
24 into a letter agreement concerning employment with TV Azteca of Mexico,  
25 specifying a 20 percent commission, on October 13, 1995.

26 4. Femme Fatal, Inc. and Heather Sutherland Wilson entered into a  
27 similar letter agreement on October 13, 1995.

28 5. Neither of the two written agreements with Peterson nor the letter

1 agreement with Wilson contains endorsements by the Labor Commissioner as  
2 specified in Title 8, Section 12003 of the California Code of Regulations  
3 and all three of said agreements are devoid of provisions mandated by  
4 Subdivisions (a), (b), (c), (d), (e), and (f) of Section 12001 of said  
5 Regulations.

6 6. Femme Fatal, Inc. secured employment for petitioners with TV Azteca  
7 in Mexico during the latter part of 1995. After traveling to Mexico to  
8 undertake that employment, both petitioners repeatedly complained to Femme  
9 Fatal, Inc. about the conditions of employment on location. Both  
10 petitioners became sick during that employment and Sutherland suffered a  
11 miscarriage shortly thereafter.

12 7. Petitioners visited the offices of Femme Fatal on several occasions  
13 and observed no posting of the agency's fee schedule as required by  
14 Section 1700.24 and no posting of the provisions of the Talent Agency law  
15 as required by Section 1700.28.

16 CONCLUSIONS OF LAW

17 1. The written agreements between Femme Fatal, Inc. and petitioners are  
18 void and unenforceable because they fail to comply with the mandatory  
19 provisions of the Talent Agency law. Buchwald v. Superior Court (1967)  
20 254 Cal. App. 3d 347, 351, 62 Cal. Rptr. 364.

21 2. Femme Fatal, Inc. violated Labor Code Section 1700.24 by failing and  
22 refusing to post its fee schedule in its offices.

23 3. Femme Fatal, Inc. violated Labor Code Section 1700.28 by failing and  
24 refusing to post the provisions of the Talent Agency law in its offices.

25 OTHER ISSUES

26 Much of the evidence adduced at the hearing concerned the allegations  
27 of the petitioners that Femme Fatal, Inc. violated Labor Code Section  
28 1700.33 by sending them to Mexico to work under conditions of exceedingly

1 long work days, missed meals, bad food and other adversities. The record  
2 reflects a certain amount of callousness on the part of the employees of  
3 Femme Fatal, Inc., and especially on the part of Mr. Rhulen. Mr. Rhulen  
4 testified at one point that, even though he vacationed in Mexico near the  
5 location of the work, he made no effort to ascertain whether there was any  
6 merit to petitioners' complaints, taking the position "that as long as  
7 they were not in the hospital, it was not a major concern." His  
8 omissions, however, though egregious in themselves, do not, standing  
9 alone, constitute a violation of Section 1700.33. Mr. Rhulen testified as  
10 well and without contradiction that he made early inquiries to certain  
11 agencies concerning the general reputability and safety of TV Azteca prior  
12 to sending these petitioners to Mexico. There is, more importantly, no  
13 evidence in the record that Mr. Rhulen or any of the other employees of  
14 Femme Fatal, Inc. had or could have had foreknowledge of the conditions  
15 that developed on location in that country. Accordingly, no violation of  
16 Section 1700.33 is found.

17       Petitioners also complain that they were assured they would be paid  
18 overtime on this job. The record is in conflict on this point. Moreover,  
19 Mr. Rhulen testified that he tried to negotiate overtime for petitioners  
20 and failed. As a talent agent, Femme Fatal, Inc. was not an insurer of  
21 the wages of petitioners under the circumstances revealed in the record  
22 and cannot be held accountable for TV Azteca's failure to pay this  
23 additional compensation.

24       After the matter was submitted, Petitioner Sutherland moved to reopen  
25 the hearing with respect to allegedly newly discovered charges that Femme  
26 Fatal, Inc. had withheld additional monies from her, representing earnings  
27 from an advertisement campaign for Wanker Beer. In view of the ultimate  
28 decision reached in this case, however, it is unnecessary to consider that

1 evidence.

2 DETERMINATIONS

3 1. All written or other agreements entered into between Femme Fatal,  
4 Inc. and petitioners are hereby declared null and void and unenforceable  
5 for all purposes.

6 2. Femme Fatal, Inc. is hereby ordered to render an accounting to  
7 Petitioner Peterson forthwith for all monies received which are directly  
8 or indirectly attributable to the sale or marketing of her artistic  
9 endeavors since May 30, 1995, and to pay all such sums to Petitioner  
10 Peterson by November 15, 1996.

11 3. Femme Fatal, Inc. is hereby ordered to render an accounting to  
12 Petitioner Wilson forthwith for all monies received which are directly or  
13 indirectly attributable to the sale or marketing of her artistic endeavors  
14 since October 13, 1995, and to pay all such sums to Petitioner Wilson by  
15 December 15, 1996.

16 4. Femme Fatal, Inc. is hereby ordered to post forthwith:

- 17 a. its schedule of fees; and  
18 b. a printed copy of the Talent Agency law.

19 Such postings shall be in a conspicuous place at each of its business  
20 premises.

21 6. Femme Fatal, Inc. shall submit a verified report of compliance with  
22 these Determinations no later than December 20, 1996.

23 DATED: November 13, 1996

Thomas S. Kerrigan  
THOMAS S. KERRIGAN  
Special Hearing Officer

25 The above Determinations are adopted by the Labor Commissioner in  
26 their entirety.

27 DATED:

Roberta E. Mendonca  
ROBERTA MENDONCA  
State Labor Commissioner