

1 Respondent filed its answer on March 14, 2005. A hearing was scheduled before the
2 undersigned attorney, specially designated by the Labor Commissioner to hear this matter. The
3 hearing was continued multiple times at the request of both parties. The hearing commenced
4 November 1, 2006 through December 1, 2006, in Los Angeles, California. Petitioner was
5 represented by Mark L. Block of Christensen, Miller, Fink, Jacobs, Glazer, Weil & Shapiro, LLP.
6 Respondent was represented by Arsine B. Phillips and Richard Robins of Parker, Milliken, Clark,
7 O'Hara & Samuelian, A Professional Corporation. The parties submitted their closing briefs on
8 April 13, 2007. Due consideration having been given to the testimony, documentary evidence and
9 arguments presented, the Labor Commissioner adopts the following determination of controversy.

10 11 II. STATEMENT OF FACTS

12 1. In July of 1998 Endeavor offered to represent Milano as her talent agency in the
13 entertainment industry. Ms Milano, a well-known television personality, was seeking new
14 representation. In an effort to sign Milano as a new Endeavor client, Endeavor requested a meeting
15 and made an offer to represent Milano. Milano along with her mother and manager, Joan Hyler,
16 attended the meeting with Endeavor representatives, Adam Venit and Leanne Coronel. After the
17 meeting, Ms Hyler communicated to Endeavor agent, Leanne Coronel that Milano accepted the
18 Endeavor offer. The specific financial terms were not discussed either at the meeting or during the
19 telephone acceptance.

20 2. In August of 1998, Milano signed an agreement with Spelling Television Inc., to
21 star in the television series "*Charmed*." The parties' testimony contradicted as to how that offer was
22 communicated to Milano, but clearly Endeavor representatives along with Milano's attorney, Bill
23 Skrzyaniarz, participated in the negotiation of Milano's contract for "*Charmed*," including its
24 financial terms. This agreement covered Milano's employment on "*Charmed*" for the 1998/1999
25 television season. Milano compensated Endeavor during the 1998/1999 season with 10% of her
26 earnings.

1 3. In May of 1999, Endeavor did not have a signed agency agreement with Milano.
2 In an effort to obtain signed documents from Milano, Endeavor sent Milano both a Screen Actors
3 Guild [SAG] Client Confirmation Form to her home address and an Endeavor Standard Agency
4 Agreement to her attorney, Bill Skrzyniarz, for her signature. The Standard Agency Agreement
5 contained the 10% commission structure along with the following language regarding the payment
6 of post termination commissions:

7
8 "I agree to pay you ten percent (10%) of the gross
9 compensation earned or received by me for or in
10 connection with (i) any contracts for, or engagements
11 of, my services ... now in existence or entered into or
12 negotiated for during the term, including, but not
13 limited to, all gross compensation therefrom and
14 payments thereon, that are earned or received by me, or
15 become due or payable to me after the expiration of the
16 term, and (ii) for or in connection with all
17 modifications, renewals, additions, substitutions ... or
18 extensions of or to such contracts and engagements,
19 whether negotiated during or after the term...."

20 4. This language is standard in the industry and was approved by the State Labor
21 Commissioner as required under California law. Milano failed to sign any agreement. In 2000,
22 Endeavor again sent Milano another SAG Client Confirmation Form. Ms. Milano testified she did
23 not receive the SAG Form and decided not to sign the Standard Agency Agreements because she
24 thought it "was a dating period", notwithstanding the relationship eventually lasted six years.

25 5. In 2001, Milano and fellow "*Charmed*" co-star Shannon Doherty began to have
26 serious complications on the set. Milano, testified that Doherty was out to destroy her. The conflict
27 between Milano and Doherty resulted in Milano gaining significant weight and experiencing other
28 serious physical manifestations due to the strained relationship. Soon thereafter, Ms. Doherty was
no longer working on the show, and as a result, Milano's physical and emotional pain subsided

 6. In October 2001, Endeavor agents negotiated a new agreement with Spelling
Television. This negotiation resulted in Milano's episodic compensation to increase from \$57,475
to \$85,000 per episode for the 2001/2002 season. In 2003, Endeavor agents again negotiated an

1 increase in Milano's episodic compensation from \$100,000 to \$125,000 per episode for the
2 2003/2004 season. And finally, her episodic compensation was increased from \$125,000 to
3 \$175,000 per episode for the 2005/2006 television season. Testimony and evidence indicated that
4 Endeavor was actively involved with the negotiations on Milano's behalf. All of the negotiations
5 resulting in Milano's financial increases were completed by September 2003. Milano continued to
6 pay 10% of her earnings to Endeavor. Milano testified she never knew prior to this litigation what
7 percentage of her earnings she was paying Endeavor.

8 7. In early 2004, Endeavor began to represent Shannon Doherty. Milano felt the
9 signing of Doherty was a serious breach of Endeavor's duty of loyalty to her. Milano was so upset
10 by the signing of Doherty that on March 12, 2004, she terminated the relationship with Endeavor
11 and ceased commission payments, including commissions owed for the 2004 through 2006 seasons
12 of "*Charmed*."

13 8. On April 21, 2004, Endeavor sent a letter to Ms. Milano, in care of her attorney
14 Bill Skrzyniarz, confirming her decision to terminate their agency relationship and confirming that
15 Endeavor is entitled to its post termination commissions, including the projects "*Charmed*," "*Walk*
16 *the Line*," "*Max Renegade*" and "*Sanctuary*."

17 9. Ms. Milano's attorney, Bill Skrzyniarz, responded by letter dated April 28, 2004,
18 stating:

19 **"Endeavor is entitled to commissions on**
20 **assignments, employments and engagements on**
21 **projects in which an agreement was substantially**
22 **negotiated or completed.** I am informed that Alyssa is
23 not going to be involved in "*Walk the Line*," "*Max*
24 *Renegade*" and "*Sanctuary*." [Emphasis added]

25
26 10. It is undisputed that all of the negotiations for "*Charmed*" were completed by
27 September 2003, occurring prior to Ms. Milano's termination of Endeavor. Mr. Skrzyniarz's letter
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1 entitling Endeavor to its commission on employments "in which an agreement was substantially
2 negotiated or completed" includes "*Charmed*."

3 11. It is undisputed that Milano paid Endeavor 10% commission throughout the
4 parties' relationship up and until such time as she terminated the relationship in March of 2004. She
5 has failed to pay any commissions to Endeavor since March 2004.

6 12. There was considerable testimony as to the pervasive custom and practice in the
7 industry in which artists who do not sign agency papers, pay post termination commissions on
8 projects negotiated for during the term of the relationship. The evidence overwhelmingly indicated
9 that post termination commissions are paid consistent with the provision contained in the Endeavor
10 Standard Agency Agreement referenced above.

11 13. Endeavor's counsel asked Bill Skrzyniarz about his knowledge of industry
12 custom and practice concerning post termination commissions. In response, Bill Skrzyniarz testified
13 "In some situations ...the new agency will take half the commissions [but] I would think its more
14 prevalent that the contract continue to be paid out [to the agency who negotiated the deal]." It was
15 established that no other talent agent received any commissions on "*Charmed*" after Milano ceased
16 her commission payments to Endeavor in March 2004. Endeavor seeks 10% commission on
17 Milano's earnings for "*Charmed*" through the 2006 season.

18 ARGUMENT

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20 1. Labor Code §1700.4(b) includes "artists rendering professional services in
21 television" in the definition of "artist" and petitioner is therefore an "artist" within the meaning of
22 Labor Code §1700.4(b).

23 2. It was stipulated that the Endeavor Agency, LLC, is a California licensed talent
24 agency.

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

4 4. The issues in this case are as follows:

5 A. Was a contract formed?

6 B. If so, are Post-Termination Commissions Owed?

7 C. Does a Violation of Title 8 California Code of Regulation §12002, Forfeit
8 the Petitioner's Right to Commissions?

9
10 **A. Was a Contract Formed?**

11 5. The essential elements of a contract were present. Parties capable of contracting
12 who consented with a lawful object and sufficient consideration. (Civil Code §1550.) The parties'
13 agreement for the procurement of employment in the entertainment industry was for a lawful
14 purpose and the understanding that Endeavor would negotiate employment contracts on behalf of
15 Milano for a 10% commission established sufficient consideration. Milano's acceptance established
16 the requisite "meeting of the minds". Milano paid 10% of her employment compensation to
17 Endeavor for more than six years. Consequently, a contract both orally and implied, "one the
18 existence and terms of which are manifested by conduct", was formed. (C.C. 1621)

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20 **B. If So, are Post Termination Commissions Owed?**

21 6. The pivotal question here is whether continued payment of commissions for
22 earnings negotiated by Endeavor during the relationship extinguished upon Milano's termination of
23 Endeavors services. Respondent argues that because no discussions regarding post termination
24 commissions nor payment of post termination commissions occurred, there is no requirement to pay
25 them.

26 7. The petitioner argues that the oral contract for representation necessarily included
27 customs and practice in the industry to supply the terms of Endeavor's compensation for providing
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1 services to Milano. We are persuaded by petitioner's argument.

2 8. California Civil Code §1656 states, "all things that in ... usage are considered as
3 incidental to a contract, or as necessary to carry it into effect, are implied therefrom, unless some of
4 them are expressly mentioned therein..."); Rest. Contracts 2nd §221 ("An agreement is supplemented
5 ... by a reasonable usage with respect to agreements of the same type if each party knows or has
6 reason to know of the usage and neither party knows or has reason to know that the other party has
7 an intention inconsistent with the usage.") "... if there is a reasonable usage which supplies an
8 omitted term and the parties know or have reason to know of the usage, it is a surer guide than the
9 court's own judgment of what is reasonable." (Rest., *supra*, § 221, com. a, p. 151.) "The more
10 general and well-established a usage is, the stronger is the inference that a party knew of or had
11 reason to know of it. *Binder v. Aetna Life Ins. Co.*, 75 Cal.App. 4th 832, 853 (1999)

12 9. The *Binder* case is applicable. Here, the evidence established that the
13 overwhelming industry custom and practice requires an artist to pay post termination commissions
14 for work negotiated by the agent. This custom and practice was supported by standard contracts in
15 the industry and Milano's representative Bill Skrzyniarz's testimony regarding the payment of post
16 termination commissions. Moreover, Mr. Skrzyniarz expressly conceded in his April 28, 2004,
17 letter that commissions were owed for "*Charmed*", in which he states,

18 **"Endeavor is entitled to commissions on**
19 **assignments, employments and engagements on**
20 **projects in which an agreement was substantially**
21 **negotiated or completed ..."**

22 10. This acknowledgment established that Milano, through her attorney,
23 understood the requirement that commissions were owed post termination for monies negotiated by
24 the agent during the terms of the agreement. Here it was undisputed that all negotiations for
25 "*Charmed*" were complete prior to termination. Moreover, Milano's testimony that she had no
26 knowledge of the amount of commissions paid nor whether commissions were owed after
27 termination belied her experience. Milano testified she was employed in the television industry for
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1 more than 26 years completing more than 72 projects. Either Milano knew or should have known of
2 this pervasive industry custom and practice.

3 11. It appeared that Milano's attorney Bill Skrzyniarz knew of the custom and
4 practice and that Endeavor was likely entitled to commissions for "Charmed" after termination.
5 Moreover, Skrzyniarz conceded that commissions were owed in his April 28, 2004 letter. And
6 finally, the industry custom and practice regarding the payment of post termination commissions for
7 earnings negotiated during the relationship is so pervasive, that this custom and practice may be used
8 to supplement the terms of the oral agreement between the parties.

9 12. Milano reaped the benefits for the work performed by Endeavor, but unilaterally
10 determined she didn't want to pay anymore. Milano testified, "I felt that the amount of
11 commissions that Endeavor had been paid fulfilled anything that was implied..." Courts have long
12 held, "he who shakes the tree is the one to gather the fruit." *Willison v. Turner* 89 Cal.App.2d 589
13 (1949). Certainly, Milano may terminate a personal services agreement if she feels that her agent is
14 not providing the services contracted for. But she may not unilaterally determine that she has no
15 further obligation to pay for work already performed.

16 13. Further, California Code of Regulations Title 8 § 12001 (b) states, "[t]o be
17 entitled to the payment of compensation after termination of the contract between the artist and the
18 talent agency, the talent agency shall be obligated to serve the artist and perform obligations with
19 respect to any employment contract or to extensions or renewals of said employment contract or to
20 any employment requiring the services of the artist on which such compensation is based." It was
21 clear through testimony and documentary evidence that Endeavor was willing and able to conduct
22 services on behalf of Milano.

23
24 **C) Does a Violation of Title 8 C.C.R. §12002 Forfeit the Petitioner's Right to**
25 **Commissions?**

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27 14. Finally, the respondent alleges that petitioner violated Title 8 California Code of
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1 Regulation §12002, thereby foregoing their right to commission "*Charmed*." §12002 states:

2 A talent agency shall be entitled to recover a fee,
3 commission or compensation under an oral contract
4 between a talent agency and an artist as long as the
5 particular employment for which such fee, commission
6 or compensation is sought to be charged shall have
7 been procured directly through the efforts or services of
8 such talent agency and shall have been confirmed in
9 writing within 72 hours thereafter. Said confirmation
10 may be denied within a reasonable time by the other
11 party. However, the fact that no written confirmation
12 was ever sent shall not be, in and of itself, be sufficient
13 to invalidate the oral contract.

14 15. It was not established that Endeavor complied with this regulation and it should
15 be stressed that a violation of this regulation could serve to repudiate an oral contract between an
16 agent and an artist. The obvious intent of this regulation is to avoid unfair surprise and facilitate full
17 disclosure. All terms of an employment contract must be disclosed to the artist, so that the artist is
18 aware of her duties and responsibilities and the duties and responsibilities of her employer. Here,
19 the duties between Milano and Spelling Television were not in issue. So, notwithstanding the fact
20 that no written confirmation was sent to Milano regarding the "*Charmed*" agreement, it was
21 determined that Milano was aware of all of the essential terms of that agreement. Also, it was
22 determined that Endeavor was involved in the direct procurement of "*Charmed*." Endeavor may not
23 have been the sole procuring force behind "*Charmed*", but nevertheless was directly involved in
24 "*Charmed's*" procurement and subsequent negotiation of the financial terms. As a result, the
25 noncompliance of this regulation under these circumstances is not sufficient to invalidate the oral
26 contract between the parties.

27 16. The respondent cites several cases in support of her proposition, but all of those
28 Labor Commissioner's determinations cited are distinguishable. In each case cited by Milano, the
29 artist was injured as a result of the agent's actions, including self dealing, client exploitation, conflict
30 of interests, fabricating documents, conversion, fraud and embezzlement. Here, it was not
31 established that Endeavor engaged in any of those activities. Here, the respondent benefitted from
32 Endeavor's negotiations and must not be allowed to avoid financial responsibility to her agent for

1 what amounts in this case to be an inconsequential act.

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ORDER

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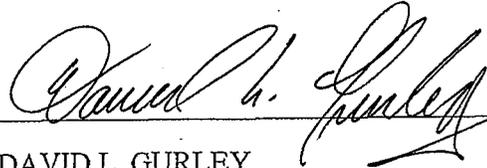
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Dated: 8-6-07



DAVID L. GURLEY
Attorney for the Labor Commissioner

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ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

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Dated: August 6
2007



ANGELA BRADSTREET
State Labor Commissioner

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