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SEP 15 2014

State of California
Labor Commissioner
San Francisco
Licensing & Registration

6 Attorneys for Petitioner United Talent Agency, Inc.

7
8 **BEFORE THE LABOR COMMISSIONER**
9 **OF THE STATE OF CALIFORNIA**

10
11 UNITED TALENT AGENCY, INC., a
California corporation,

12
13 Petitioner,

14 v.

15 POPPY PETAL EMA ELIZABETH
16 DEVERAUX DONAHUE, a/k/a
17 POPPY MONTGOMERY, an
individual; TEICHAN
18 PRODUCTIONS, INC., a California
corporation; and DOES 1 through 20,
19 inclusive,

20 Respondents.

Case No.: 37058

**PETITION TO DETERMINE
CONTROVERSY**

(Labor Code Section 1700.44)

21
22
23
24 Petitioner United Talent Agency, Inc. ("Petitioner" or "UTA") hereby files this Petition
25 to Determine Controversy (the "Petition") pursuant to the authority of Section 1700.44 of the
26 California Labor Code and the applicable provisions of the California Code of Regulations.
27 Petitioner submits this matter for resolution by the Labor Commissioner, reserving any and all
28 legal and equitable rights against Respondents which are not within the jurisdiction of the Labor

1 Commissioner. Petitioner alleges as follows:

2 **PARTIES**

3 1. Petitioner is, and was at all times mentioned herein, a corporation organized under
4 the laws of the State of California, with its principal place of business in the County of Los
5 Angeles, State of California. Further, Petitioner is, and was at all times mentioned herein, a
6 talent agency duly licensed pursuant to the laws of the State of California

7 2. Petitioner is informed and believes and thereon alleges that Poppy Petal Ema
8 Elizabeth Deveraux Donahue a/k/a Poppy Montgomery (“Montgomery”) is and was at all times
9 mentioned herein a resident of Los Angeles County. At all times mentioned herein, Montgomery
10 was and is now an “artist” as that term is defined by California Labor Code sections 1700.5 *et*
11 *seq.* (collectively the “Talent Agencies Act.”). *See* CAL. LABOR CODE § 1700.4(b). Montgomery
12 is an actress regularly working in the entertainment industry and, accordingly, is represented by
13 entertainment counsel, business managers, and agents regularly conducting business on her
14 behalf in the County of Los Angeles, State of California.

15 3. Petitioner is informed and believes and thereon alleges that Respondent Teichan
16 Productions, Inc. (“Teichan”) is a California corporation with its principal place of business in
17 Los Angeles County. Petitioner further is informed and believes and thereon alleges that
18 Teichan is, and was at all times mentioned herein, a personal services company, loaning out
19 certain of Montgomery services as an actress in the entertainment industry.

20 4. The true names and capacities, whether individual, corporate, associate or
21 otherwise of the respondents named herein as Does 1 through 20, inclusive, are unknown to
22 UTA which therefore petitions against said respondents by such fictitious names. UTA alleges
23 on information and belief that each of the respondents, including those designated as a Doe, are
24 responsible for the events alleged herein and the damages caused thereby as a principal, agent,
25 co-conspirator, aider and abettor, or alter ego. UTA will seek leave of the Labor Commissioner
26 to amend this Petition to allege the true names and capacities of such respondents when the same
27 have been ascertained.

28 ///

1 GENERAL ALLEGATIONS

2 5. In or around August 2010, Montgomery and UTA entered into an oral contract
3 whereby Montgomery agreed to pay UTA commissions in accordance with industry custom
4 and practice in exchange for UTA's services to act as her talent agent. Specifically, the oral
5 agreement provided for a ten percent (10%) commission payable to UTA on all income and
6 other monies received by Montgomery or on Montgomery's behalf for any employment
7 contracts entered into or negotiated, or any employment accepted by, Montgomery during the
8 term of representation, as well as commissions on any extensions, renewals or additional
9 seasons of said employment contracts or employment, irrespective of the exercise date of those
10 extensions, renewals or additional seasons (the "Talent Agency Agreement").

11 6. UTA alleges on information and belief that in or around July 1997,
12 Montgomery created Teichan to serve as her loan-out company. The parties agreed that
13 Teichan would be jointly and severally liable for all of Montgomery's obligations to UTA
14 under the Talent Agency Agreement.

15 7. Shortly after UTA began representing Montgomery, UTA negotiated on
16 Montgomery's behalf and procured employment for Montgomery to appear as an actor on the
17 CBS television series *Unforgettable* (the "Show"). The Show is currently in its third season.

18 8. UTA negotiated a contract for Montgomery to earn \$90,000 per episode for her
19 services on the Show for season one; \$93,600 per episode for season two; and \$97,340 per
20 episode for season three.

21 9. Montgomery (by and through Teichan) paid UTA a ten percent commission on
22 monies earned from the Show through and including season one. Montgomery then suddenly
23 stopped paying UTA its commissions.

24 10. Pursuant to the terms of the Talent Agency Agreement, UTA is entitled to
25 payment of a ten percent commission (or \$9,360 per episode for season two and \$9,734 per
26 episode for season three) on any and all monies which Montgomery receives in connection with
27 seasons two and three of the Show.

28 11. Accordingly, UTA now files this petition to recover commissions on monies

1 received by Montgomery in connection with her services on the Show from and including
2 seasons two and three.

3 **FIRST CAUSE OF ACTION**

4 **(For Breach of Oral Contract Against All Respondents)**

5 12. UTA re-alleges herein by this reference each and every allegation contained in the
6 preceding paragraphs of this Petition as if set forth fully herein.

7 13. In or around August 2010, UTA and Montgomery entered into an oral agreement
8 referred to herein as the Talent Agency Agreement, whereby Montgomery agreed to pay UTA
9 commissions pursuant to industry standards in exchange for UTA's services to act as a talent
10 agency representing Montgomery. Specifically, pursuant to the Talent Agency Agreement
11 between Montgomery and UTA, Montgomery agreed to pay UTA a ten percent commission on
12 any and all income or monies received as a result of employment contracts entered into, or
13 negotiated, or to any employment accepted by Montgomery during the term of UTA's
14 representation, including without limitation, any extensions, renewals or additional seasons of
15 said employment contracts or employment irrespective of the exercise date of such extensions,
16 renewals or additional seasons.

17 14. The parties agreed that Teichan would be jointly and severally liable for all of
18 Montgomery's obligations to UTA under the Talent Agency Agreement.

19 15. UTA has performed all conditions, covenants, and promises required of it in
20 accordance with the terms and conditions of the Talent Agency Agreement, except those
21 conditions, covenants and promises the performance of which was excused by Respondents'
22 conduct.

23 16. While Montgomery was represented by UTA, specifically in or around February
24 2011, Montgomery entered into an agreement to provide acting services on the Show.
25 Montgomery (by and through Teichan) paid UTA its owed commission through and including
26 season one of the Show and then ceased making payments. UTA is owed ten percent of all
27 monies earned by Montgomery for her services on the Show since and including episode one of
28 season two.

1 17. Despite UTA’s demands for payment of said commissions, Respondents have
2 refused to pay UTA the same. Accordingly, Respondents, and each of them, have breached the
3 Talent Agency Agreement.

4 18. As a proximate result of Respondents’ breach of the Talent Agency Agreement,
5 UTA has been damaged in an amount in excess of \$248,222.

6 **SECOND CAUSE OF ACTION**

7 **(For Accounting Against All Respondents)**

8 19. UTA re-alleges herein by this reference each and every allegation contained in the
9 preceding paragraphs of this Petition as if set forth fully herein.

10 20. Respondents received certain sums in connection with Montgomery’s services on
11 the Show, a portion of which is due UTA pursuant to the Talent Agency Agreement.

12 21. The amount of money due and owing from Respondents to UTA pursuant to the
13 Talent Agency Agreement is unknown to UTA and cannot be ascertained without an accounting
14 of the compensation received in connection with the Show.

15 22. Respondents have access to such information, but have not provided UTA with
16 the same. UTA does not have access to such information.

17 23. As a proximate result of Respondents’ failure to provide an accounting, an order
18 from the Labor Commissioner requiring Respondents to provide a full accounting of
19 compensation received in connection with the Show is necessary and proper.

20 **THIRD CAUSE OF ACTION**

21 **(For Quantum Meruit Against All Respondents)**

22 24. UTA re-alleges herein by this reference each and every allegation contained in the
23 preceding paragraphs of this Petition as if set forth fully herein.

24 25. In or around August 2010, Montgomery engaged UTA to represent her as her
25 talent agency in connection with her work as an actor.

26 26. In the course of UTA’s representation of Montgomery, specifically, in or around
27 February 2011, UTA negotiated an employment contract for Montgomery to provide individual
28 acting services on the Show.

1 27. Upon information and belief, Respondents received certain sums in connection
2 with Montgomery's services on the Show.

3 28. Despite having demanded payment, Respondents refuse to compensate UTA for
4 its services.

5 29. Respondents have not paid UTA the fair and reasonable value of UTA's services,
6 the value of which UTA will prove at the hearing. Such amount is presently due and owing to
7 UTA, together with interest on said amount at the legal rate.

8 **FOURTH CAUSE OF ACTION**

9 **(Common Count for Services Performed Against All Respondents)**

10 30. UTA re-alleges herein by this reference each and every allegation contained in the
11 preceding paragraphs of this Petition as if set forth fully herein.

12 31. Within the last two years Respondents, and each of them, have become indebted
13 to UTA in an agreed sum for services provided by UTA at the request of Montgomery and for
14 the benefit of Respondents.

15 32. UTA provided representation and talent agency services at the special request of
16 Montgomery and for the benefit of Respondents, and each of them.

17 33. Despite UTA's repeated demands for payment for said services, Respondents, and
18 each of them, have refused to make payment.

19 34. An outstanding amount subject to proof is due and owing to UTA by
20 Respondents, and each of them.

21 **FIFTH CAUSE OF ACTION**

22 **(For Account Stated Against All Respondents)**

23 35. UTA re-alleges herein by this reference each and every allegation contained in the
24 preceding paragraphs of this Petition as if set forth fully herein.

25 36. In or around August 2010, UTA and Montgomery entered into an oral agreement
26 referred to herein as the Talent Agency Agreement, whereby Montgomery agreed to pay UTA
27 commissions pursuant to industry standards in exchange for UTA's services as a talent agency
28 representing Montgomery. Specifically, pursuant to the Talent Agency Agreement between

1 Montgomery and UTA, Montgomery agreed to pay UTA a ten percent commission on any and
2 all income or monies received as a result of employment contracts entered into, or negotiated, or
3 to any employment accepted by Montgomery during the term of UTA's representation, including
4 without limitation any extensions, renewals or additional seasons of said employment contracts
5 or employment irrespective of the exercise date of such extensions, renewals or additional
6 seasons.

7 37. The parties agreed that Teichan would be jointly and severally liable for all of
8 Montgomery's obligations to UTA under the Talent Agency Agreement.

9 38. UTA has performed all conditions, covenants, and promises required of it in
10 accordance with the terms and conditions of the Talent Agency Agreement, except those
11 conditions, covenants and promises the performance of which was excused by Respondents'
12 conduct.

13 39. While Montgomery was represented by UTA, specifically in or around February
14 2011, Montgomery entered into an agreement to provide acting services on the Show.
15 Montgomery (by and through Teichan) paid UTA its owed commission through and including
16 season one of the Show, and then ceased making payments. UTA is owed ten percent of all
17 monies earned by Respondents for Montgomery's services on the Show since and including
18 episode one of season two.

19 40. UTA has submitted statements to Respondents for the monies owed pursuant to
20 the Talent Agency Agreement. Respondents never objected to those statements, and in fact
21 conceded that those amounts were owed. Despite UTA's statements and demands for payment
22 of said commissions, Respondents have refused to pay UTA the same.

23 41. As a proximate result of Respondents' breach of the Talent Agency Agreement,
24 UTA has been damaged in an amount in excess of \$248,222.

25 **SIXTH CAUSE OF ACTION**

26 **(For Open Book Account Against All Respondents)**

27 42. UTA re-alleges herein by this reference each and every allegation contained in the
28 preceding paragraphs of this Petition as if set forth fully herein.

1 43. Within the last two years, Respondents have become indebted to UTA on an
2 account for money due for UTA's representation and talent agency services at the special request
3 of Montgomery and for the benefit of Respondents, and each of them.

4 44. Despite UTA's repeated demands for payment for said services, Respondents
5 have refused to make payment.

6 45. An outstanding amount subject to proof at the hearing is due and owing to UTA
7 by Respondents, and each of them.

8 **SEVENTH CAUSE OF ACTION**

9 **(For Declaratory Relief Against All Respondents)**

10 46. UTA re-alleges herein by this reference each and every allegation contained in the
11 preceding paragraphs of this Petition as if set forth fully herein.

12 47. UTA contends that it is entitled to a ten percent commission on any and all
13 monies received by Respondents in connection with the Show as a result of the Talent Agency
14 Agreement. Respondents contend that they do not owe UTA such commissions.

15 48. Accordingly, an actual controversy has arisen and now exists between
16 Respondents and UTA regarding commissions owed by Respondents to UTA.

17 49. UTA desires a judicial determination of its rights and duties, and a declaration
18 that Respondents, and each of them, are obligated to pay UTA a ten percent commission on any
19 and all compensation Respondents receive in connection with the Show.

20 50. A judicial declaration therefore is necessary and appropriate at this time under the
21 circumstances in order to determine UTA's rights and Respondents' obligations under the Talent
22 Agency Agreement.

23 WHEREFORE, UTA prays for judgment in its favor and against Respondents as follows:

24 **On the First Cause of Action:**

- 25 1. For general damages in an amount to be proven at the hearing;
26 2. For pre-judgment interest at the maximum rate permitted by law;
27 3. For costs of the hearing; and
28 4. For such other and further relief as the hearing officer may deem just and proper.

1 **On the Second Cause of Action:**

- 2 1. For an accounting by Respondents;
- 3 2. For payment to UTA of the amount due from Respondents as a result of the
- 4 accounting;
- 5 3. For pre-judgment interest at the maximum rate permitted by law;
- 6 4. For costs of the hearing; and
- 7 5. For such other and further relief as the hearing officer may deem just and proper.

8 **On the Third Cause of Action:**

- 9 1. For the value of services provided according to proof;
- 10 2. For pre-judgment interest at the maximum rate permitted by law;
- 11 3. For costs of the hearing; and
- 12 4. For such other and further relief as the hearing officer may deem just and proper.

13 **On the Fourth Cause of Action:**

- 14 1. For general damages in an amount to be proven at the hearing;
- 15 2. For pre-judgment interest at the maximum rate permitted by law;
- 16 3. For costs of the hearing; and
- 17 4. For such other and further relief as the hearing officer may deem just and proper.

18 **On the Fifth Cause of Action:**

- 19 1. For general damages in an amount to proven at the hearing;
- 20 2. For pre-judgment interest at the maximum rate permitted by law;
- 21 3. For costs of the hearing; and
- 22 4. For such other and further relief as the hearing officer may deem just and proper.

23 **On the Sixth Cause of Action:**

- 24 1. For general damages in an amount to proven at the hearing;
- 25 2. For pre-judgment interest at the maximum rate permitted by law;
- 26 3. For costs of the hearing; and
- 27 4. For such other and further relief as the hearing officer may deem just and proper.

28 **On the Seventh Cause of Action:**

1. For an order declaring that Respondents are obligated to pay UTA ten percent

1 commission on all compensation Respondents receive from the Show now and in the future;

2 2. For costs of the hearing; and

3 3. For such other and further relief as the hearing officer may deem just and proper.

4
5 DATED: September 9, 2014

FREEDMAN + TAITELMAN, LLP

6
7 By: 

8 Bryan J. Freedman
9 Jordan D. Susman
10 Attorneys for Petitioner United Talent
11 Agency, Inc.