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## Social Responsibility in Advertising: Extending Protections for Children in California's Modeling Industry

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# Social Responsibility in Advertising: Extending Protections for Children in California's Modeling Industry

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Jordyn Sifferman

## I. INTRODUCTION

### A. *What is the issue and why should we care?*

In the fashion industry, it is the thin and waif-like bodies of adolescence that fashion designers tend to embrace.<sup>1</sup> Teenagers and preteens who have yet to endure puberty often have the long and lanky body type the industry desires.<sup>2</sup> A thin model provides a hanger-like frame for clothing to drape from, allowing viewers to focus on the pieces rather than the identity of the individual behind the clothes.<sup>3</sup> Regardless of the reasons designers make stylistic choices, the model-thin ideal body type that has become pervasive in Western society often becomes more difficult to maintain as a girl develops into a woman.<sup>4</sup> Hence, the fashion industry is ripe with thin, underage models creating what some describe as a “state of lawlessness,” where “everyone is so young and beautiful, almost anything goes.”<sup>5</sup>

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<sup>1</sup> Kirstie Clements, *Former Vogue Editor: The Truth About Size Zero*, GUARDIAN (July 5, 2013), <https://www.theguardian.com/fashion/2013/jul/05/vogue-truth-size-zero-kirstie-clements> [<https://perma.cc/DT85-B93X>].

<sup>2</sup> *Id.*

<sup>3</sup> Judith J. Wurtman, Ph.D., *Too Skinny Models: Are They Models of Eating Disorder?*, PSYCHOL. TODAY (Feb. 12, 2016), <https://www.psychologytoday.com/us/blog/the-antidepressant-diet/201602/too-skinny-models-are-they-models-eating-disorders> [<https://perma.cc/6FPW-SZGW>].

<sup>4</sup> Sara Ziff, *Why Children Shouldn't be Fashion Models*, CNN (Dec. 4, 2015), <https://www.cnn.com/2015/10/28/opinions/underage-fashion-models-concerns/index.html> [<https://perma.cc/AT3T-FVSV>].

<sup>5</sup> Jennifer Sky, *When Will the Fashion Industry Treat Underage Models Like the Children They Are?*, NEW REPUBLIC (Feb. 23, 2015),

Due to the lack of employment regulations in modeling, models encounter a variety of challenges that threaten their health and wellbeing.<sup>6</sup> Underage models are particularly vulnerable as they are highly likely to suffer abuse within the fashion industry and, due to unequal power dynamics, are less likely to report instances of abuse—particularly when their agencies help facilitate and perpetuate that abuse.<sup>7</sup> Furthermore, a young model developmentally may not be able to handle the mental pressures of the fashion industry, which can lead to depression, eating disorders,<sup>8</sup> and financial exploitation.<sup>9</sup>

The “Me Too” movement brought to light sexual assault in the fashion industry,<sup>10</sup> as models came forward publicly and shared stories of on-the-job abuse.<sup>11</sup> In the wake of the social movement addressing sexual assault, the fashion industry must respond to this information by implementing protections for underage models. Former model Anyelika Perez shared her

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<https://newrepublic.com/article/121125/new-child-labor-law-meets-fashions-unhealthy-obsession-youth> [<https://perma.cc/7DRF-QDVG>].

<sup>6</sup> Blake Ellis and Melanie Hicken, *Rape, Drugs and Porn: Modeling Scams Thrive Amid Lack of Regulation*, CNN (May 15, 2016), <https://money.cnn.com/2016/05/15/news/runway-injustice-modeling-scams/index.html> [<https://perma.cc/ZTW4-V39B>].

<sup>7</sup> Renee Nat, *Modern Slaves? The Dark Side of the Fashion Industry*, ELUXE MAG. (Feb. 3, 2015), <https://eluxemagazine.com/magazine/dark-side-of-the-fashion-industry> [<https://perma.cc/4UHM-CQ3K>].

<sup>8</sup> Priya Elan, ‘*My Agents Told Me to Stop Eating*’ – *The Reality of Body Image in Modelling*, GUARDIAN (Apr. 7, 2016), <https://www.theguardian.com/fashion/2016/apr/07/my-agents-told-me-to-stop-eating-the-reality-of-body-image-in-modelling> [<https://perma.cc/MV77-2RAX>].

<sup>9</sup> Zainab Salbi, *Ex-fashion Model Opens Up About the Dark Side of the Modeling Industry*, WOMEN IN THE WORLD (Dec. 19, 2017), <https://womenintheworld.com/2017/12/19/ex-fashion-model-opens-up-about-the-dark-side-of-the-modeling-industry> [<https://perma.cc/WG95-AMGK>].

<sup>10</sup> TatianaTheAnonymousModel, *Modeling and the Tragedy of Karen Mulder*, JEZEBEL (Jul. 1, 2009), <https://jezebel.com/modeling-and-the-tragedy-of-karen-mulder-5304706> [<https://perma.cc/T2YS-4HK8>].

<sup>11</sup> Emilia Petrarca, *Fashion’s #MeToo Movement Is Loudest on Instagram – Models are Sharing Devastating Stories of Abuse in DMs*, THE CUT (Apr. 5, 2018), <https://www.thecut.com/2018/04/fashions-me-too-movement-instagram-sexual-harassment.html> [<https://perma.cc/BB8N-5TLV>].

experience moving from Venezuela to Paris and eventually to the United States for modeling as a teenager: “It took me a long time to realize that I am not the toy of the agency. They have to treat me right if they want me to do the job correctly. The agency needs to protect us in being treated well, not take advantage of us.”<sup>12</sup> While individual publications and designers have taken steps to minimize risks for underage models<sup>13</sup> offered on a purely voluntary basis, these steps are not adequate solutions. California legislators must act to protect underage models in the fashion industry.

The first section of this paper will provide a brief introduction to the child modeling industry by providing a background of the industry and highlighting a few major issues that plague underage models. That section will examine the financial strain placed on underage models as well as the tendency for young models to become financially dependent on modeling agencies. The section will then look at the pervasiveness of eating disorders among models in the fashion industry before turning to the sexualization of underage girls in American culture, focusing first on advertising and later on on-the-job sexual assault in the modeling industry.

The second section looks at laws and policies around the world designed to protect models, specifically those in fashion industry capitals such as France, the United Kingdom, Spain, Israel, Italy, and Denmark. This section also examines laws regarding underage models in the United States and specifically in New York, as a hub for the US fashion industry. Next, the paper examines the current California laws regarding child entertainers, including the newly passed bill which enacted educational standards regarding sexual assault and eating disorders as concerns talent agencies.

This article proposes three legislative changes in the state of California to help further protect underage models. First, it suggests amending California

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<sup>12</sup> Salbi, *supra* note 9.

<sup>13</sup> Christina Binkley, *Fashion's underage model ban could be good for business*, VOGUE BUS. (Jun. 25, 2019), <https://www.voguebusiness.com/companies/young-model-ban-kering-conde-nast> [<https://perma.cc/3WLJ-2AHJ>].

legislation to increase the penalty for agencies that fail to educate underage models on sexual harassment and eating disorders. Second, it proposes clarifying existing legislation regarding “obscene exhibition” to ban models under the age of eighteen from portraying adults in advertisements or from being asked to pose or dress in an age-inappropriate manner. Finally, it proposes enacting new legislation demanding agency transparency regarding fees and commissions.

Lastly, this paper briefly discusses counterarguments to the proposed amendments. In this regard, the article first addresses the argument that young models should be permitted to begin their careers so long as their parents support their decision to model. Second, the article addresses the argument that there have been several attempts to pass legislation to protect models in the past that have failed. Finally, the article addresses the argument that the fashion industry should be permitted to self-regulate when it comes to protections for underage models. This section importantly highlights why now is the best time to push the State of California to pass greater protections for young models in the industry. Protecting underage workers is, after all, part of a greater social responsibility in the fashion and advertising industries.

## II. THE CHILD MODELING INDUSTRY: BACKGROUND AND CONTEXT

### A. *Reality Television Versus Actual Reality*

Reality television shows like E!’s “Model Squad,” in conjunction with increased accessibility to celebrity supermodels through social media platforms like Instagram, portray the life of a model as extremely glamorous.<sup>14</sup> Viewers may feel like they have a realistic perception of the modeling industry when they watch supermodel television shows. For

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<sup>14</sup> Christian Gollayan, ‘*Model Squad*’ Star Came to NYC Knowing Only Two English Words, N.Y. POST (Sep. 1, 2018), <https://nypost.com/2018/09/01/model-squad-star-came-to-nyc-knowing-only-two-english-words/> [<https://perma.cc/AX75-WXTE>].

example, Victoria's Secret model Devon Windsor admits she orders the "worst food on the menu" as she trots around the globe from Paris fashion week to a girl's trip to Miami with fellow models.<sup>15</sup> Admittedly, the models on popular television series encounter intergroup friendship dramas, including an ongoing discussion about diversity, and struggle to secure the most competitive jobs, like the Victoria's Secret Fashion Show or the *Sport's Illustrated* Swimsuit Edition.<sup>16</sup> Yet, for the most part, the models-turned-reality stars seem to lead idyllic lives filled with beach vacations, handsome, successful boyfriends, and champagne-filled slumber parties.<sup>17</sup> Tracking the lives of Victoria's Secret Angels produces appealing television, but is not an accurate glimpse into the real lives of the majority of models in the industry.<sup>18</sup>

In a 2012 industry-wide survey conducted by Model Alliance, fifty-six percent of models reported beginning their careers between ages twelve and sixteen, with the remaining thirty-seven percent starting modeling between ages seventeen and twenty, and just 6.7 percent entering the industry after age twenty-one.<sup>19</sup> According to the survey, twenty-eight percent of underage models never brought a parent or guardian to a casting call and twenty-four percent rarely brought a parent or guardian to a casting call, leaving only twelve percent who sometimes brought a parent or guardian to a casting call and an even more meager 9.3 percent who always brought a parent or guardian to a casting call.<sup>20</sup> The remaining 26.7% of models responded to the survey with "not applicable."<sup>21</sup> What issues are associated with unsupervised youth in the workplace? The same survey revealed that sixty-eight percent of models reported suffering from anxiety or depression, and seventy-six

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Industry Survey*, MODEL ALLIANCE (2012), <http://modelalliance.org/industry-analysis> [<https://perma.cc/XA6K-76VU>].

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

percent reported exposure to alcohol or drugs while on the job.<sup>22</sup> Not only were models likely to deal with challenges to their mental wellbeing but they were likely to encounter sexual misconduct on the job as well; 29.7 percent reported inappropriate touching on the job, twenty-eight percent claimed they were pressured to have sex with someone at work, eighty-six percent reported being asked to pose nude at a job without advance notice, and 27.5 percent proceeded to posed nude, even though they did not want to, because they felt like given the situation they had to.<sup>23</sup> Outsiders may assume a model dealing with sexual misconduct could turn to his or her modeling agency for assistance. The relationship between model and agent does suggest that the agency should screen potential clients before sending models to auditions and bookings.<sup>24</sup> However, the statistics indicate otherwise, with only 29.1 percent of models who were sexually harassed responding that they felt like they could tell their agency about the incident.<sup>25</sup> Of those who reported sexual misconduct to their agencies, sixty-six percent said their agency dismissed their complaints.<sup>26</sup> The alarming statistics demonstrate two governing facts: underage models are prevalent in the fashion industry, and underage models are very likely to face abuse within the workplace at some point in their careers.

Sara Ziff, founder of the Model Alliance, who began her own modeling career at just fourteen, reflected: “[Fashion] is a grown-up industry with grown-up pressures ... too often we see child models who are being catapulted into working as adults. And they don’t have the maturity to handle those situations.”<sup>27</sup> Since models are often categorized as independent

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Vanessa Helmer, *Why Models Need an Agency*, BALANCE CAREERS (Nov. 20, 2019), <https://www.thebalancecareers.com/reasons-for-modeling-agency-2379478> [<https://perma.cc/3E4E-THYT>].

<sup>25</sup> Industry Survey, *Supra* note 19.

<sup>26</sup> *Id.*

<sup>27</sup> Ziff, *supra* note 4.

contractors, they are not offered the same workplace protections against sexual misconduct as employees.<sup>28</sup> Like many young models, Ziff herself encountered an alarming situation as a teenager. She recalled:

At 14 years old . . . I was sent by my agency at the time to see a photographer who told me to take off all my clothes. I assume the agency didn't know that I would be asked to take off my clothes. Like most castings, I went in with very little information about who I was meeting, the nature of the job and what would be expected.<sup>29</sup>

The glamorous lives models seemingly lead leave them particularly vulnerable to such abuses because it is so common for models to meet photographers—or other members of the industry—in isolated photo studios, warehouses, and even private apartments.<sup>30</sup> A young model may be alone with a photographer for a test shoot without the workplace protections an ordinary teenage worker would have in place while working in retail, office, or fast food environments. A model's struggles may be trivialized as “pretty people problems”<sup>31</sup> by those who believe models have easier lives than the average individual because of their good looks. Despite perceived attractiveness, underage models are still children in need of employment protections.<sup>32</sup>

### *B. Pretty People Problems: Issues Underage Models Encounter and their Externalities*

Underage models are likely to encounter certain issues in the fashion industry. While adult models may face many of the same issues, due to a lack of experience and maturity, underage models are inevitably at a higher risk

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Drake Baer, *Yes, Beautiful People Have a Totally Different Experience of Life*, THE CUT (May 20, 2016), <https://www.thecut.com/2016/05/hot-people-experience-life-differently.html> [<https://perma.cc/K37J-FUSH>].

<sup>32</sup> Ziff, *supra* note 4.



of abuse due to agency dependence, lack of industry unionization, financial exploitation, eating disorders, and sexual misconduct within the industry.<sup>33</sup> Furthermore, underage models are often used in advertisements and editorials that sexualize the subjects.<sup>34</sup> Notably in this regard, American Apparel, a popular retailer, has repeatedly faced backlash abroad for provocative photos of underage girls.<sup>35</sup> Not only do these portrayals have the potential to harm the models themselves but result in a trickle-down effect that ultimately harms society at large by perpetuating the sexual fantasy of young girls: the “Lolita Effect.”<sup>36</sup> Before turning to the framework of legal protections for underage models in the State of California, it is important to understand more broadly the issues underage models encounter and their overarching impact on society outside of the fashion industry.

### **1. Financial Strain & Agency Dependence: Modeling as Indentured Servitude**

In theory, when a sixteen-year-old student gets a part-time job at the ice cream shop in her neighborhood, there generally are not many expenses tied to that job. She may have to buy a uniform or clothing that fits the workplace dress code, she may have to pay to take public transportation to work or fill her car with gas, but presumably, her job will provide her with an income rather than cause financial strain. Though top supermodels such as Kendall

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<sup>33</sup> *Id.*

<sup>34</sup> Amanda Monteiro, *If Men Were Exploited The Same Way Women Are by The Advertising Industry... (Images)*, COLLECTIVE EVOLUTION (Feb. 1, 2017), <https://www.collective-evolution.com/2017/02/01/if-men-were-exploited-the-same-way-woman-are-by-the-advertising-industry-images/> [<https://perma.cc/LD2Q-36HN>].

<sup>35</sup> Mark Sweney, *American Apparel Warned About ‘Gratuitously Sexual’ Ads in Britain*, BUS. INSIDER (Dec. 5, 2012), <https://www.businessinsider.com/american-apparel-warned-about-sexual-ads-2012-12> [<https://perma.cc/7TP9-3FNN>].

<sup>36</sup> Debra Merskin, *Reviving Lolita? A Media Literacy Examination of Sexual Portrayals of Girls in Fashion Advertising*, 48 AM. BEHAVIORAL SCI. 119, 120-122 (2004).

Jenner, Gisele Bündchen, and Chrissy Teigan earn millions of dollars per year,<sup>37</sup> many models must spend money before they can make money.<sup>38</sup>

Models beginning their careers may go into debt by borrowing from their agency.<sup>39</sup> Models are expected to have current headshots and regularly must pay for test shoots with photographers to build their portfolios.<sup>40</sup> Models may be asked by their agency to visit a dermatologist, dentist, or hair stylist to keep up or improve their look in order to meet the market demand.<sup>41</sup> Models may have to pay for group housing,<sup>42</sup> for transportation to photoshoots and go-sees, and even for services such as “walking lessons” to perfect their runway strut.<sup>43</sup> Unless novice models are supported financially by their families, many models borrow money from their agency to get started and take months or even years to break even; some models leave their careers in debt.<sup>44</sup>

Models are not paid on a weekly or bi-weekly schedule but may wait months for paychecks to materialize after working a job.<sup>45</sup> In order to provide for basic expenses, some models take out cash advances from their agencies, which usually accrue interest or fees.<sup>46</sup> When you consider the expenses that accompany modeling, the likelihood a model will have to borrow from her

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<sup>37</sup> Jennifer Calfas, *After 15 Years, Gisele Bündchen is no Longer the World's Highest-Paid Model*, MONEY (Nov. 21, 2017), <http://time.com/money/5033357/kendall-jenner-makes-more-than-gisele-bundchen/> [<https://perma.cc/8DCU-LR8T>].

<sup>38</sup> Blake Ellis and Melanie Hicken, *The Outrageous Cost of Being a Model*, CNN MONEY (May 12, 2016), <https://money.cnn.com/2016/05/09/news/runway-injustice-model-expenses/index.html> [<https://perma.cc/LY3Z-H988>].

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Blake Ellis & Melanie Hicken, *The ‘Model Apartment’ Trap*, CNN MONEY (May 12, 2016), <https://money.cnn.com/2016/05/11/news/runway-injustice-model-apartments/index.html> [<https://perma.cc/6V8N-5F7R>].

<sup>43</sup> *Id.*

<sup>44</sup> Rose Hackman, *Model Life: To Call it Indentured Servitude is No Exaggeration*, GUARDIAN (Feb. 19, 2015), <https://www.theguardian.com/fashion/2015/feb/19/model-life-indentured-servitude-no-exaggeration> [<https://perma.cc/W3SL-YS3C>].

<sup>45</sup> Ellis & Hicken, *supra* note 42.

<sup>46</sup> *Id.*

agency to make ends meet, and the fact that most agencies demand a twenty percent booking fee, it is easy to see how a young model could become financially dependent on her agency. For fresh-faced teenage models who may not yet understand the long-term financial repercussions of borrowing from their agencies, these early financial habits can lead to unhealthy financial futures, and can put models who do not have financial support from family or elsewhere at risk for further exploitation. Financial dependence in any relationship can lead to abuse and exploitation.<sup>47</sup> In a deposition related to a sexual assault case, Bill Cosby admitted that he asked a modeling agency to connect him with “[models]...who were financially not doing well.”<sup>48</sup> Financially depressed underage models are prime targets for predators, leading to further hardship for these underage workers.<sup>49</sup>

Since models are considered independent contractors instead of employees, their inability to unionize further exacerbates issues pertaining to financial instability and agency dependence.<sup>50</sup> A model may see multiple designers or photographers in a single day. In the case of an underage model, no one is independently responsible for ensuring that the child receives a steady paycheck, does not work too many hours, or is guarded from all forms of abuse and harassment. Neither the agent, the designer, nor the photographer want to claim the responsibility of shepherding a child model.<sup>51</sup>

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<sup>47</sup> Sherri Gordon, *How to Identify Financial Abuse in a Relationship*, VERY WELL MIND (Jan. 19, 2020), <https://www.verywellmind.com/financial-abuse-4155224> [<https://perma.cc/5G2D-GZWJ>].

<sup>48</sup> Sara Ziff, *Why Models Need Labor Protections*, L.A. TIMES (Apr. 11, 2016), <http://www.latimes.com/opinion/op-ed/la-oe-0411-ziff-fashion-models-labor-rights-20160412-story.html> [<https://perma.cc/Q2RQ-EERM>].

<sup>49</sup> Lisa Lockwood, *Sexual Abuse in Modeling: The Outcry Grows*, WOMEN’S WEAR DAILY (Oct. 17, 2017), <https://wwd.com/business-news/media/sexual-abuse-modeling-outcry-grows-11028720/> [<https://perma.cc/36QV-97RN>].

<sup>50</sup> *Talk of The Nation: Which Workers Need Unions, and Which Don’t?*, NAT’L PUB. RADIO (June 17, 2012), <https://www.npr.org/2012/06/07/154519830/which-workers-need-unions-and-which-dont> [<https://perma.cc/8Q69-PF42>].

<sup>51</sup> Kate Abnett, *New Guidelines on Models’ Rights Aim to Fix Industry Wrongs*, BUS. OF FASHION (Sep. 14, 2015), <https://www.businessoffashion.com/articles/intelligence/models-rights-law-industry-education> [<https://perma.cc/833Q-YMMR>].

## 2. Eating Disorders: “We want her down to the bone”<sup>52</sup>

In popular discussion, it seems that eating disorders and fashion models go hand-in-hand. In fact, females in what are called “aesthetic careers” such as modeling, ballet, gymnastics, and figure skating are at the highest risk of developing an eating disorder, according to one study.<sup>53</sup> Another study, conducted by the British Fashion Council, revealed that at least forty percent of models fit the criteria necessary to diagnose an eating disorder.<sup>54</sup> Most runway models have a body mass index that is, on average, twenty-three percent underweight.<sup>55</sup> The dangers of being underweight are exemplified by the tragic stories of Isabelle Caro,<sup>56</sup> Bethaney Wallace,<sup>57</sup> and Anna Carolina Reston,<sup>58</sup> all young models who died due to complications of anorexia. Yet, according to Kirstie Clements, the former Editor-in-Chief of *Vogue Australia*, while not all models have eating disorders, all models are eating

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<sup>52</sup> Charlotte Gush, *The BMI Debate: How Do You Measure the Health of Models?*, VICE (Nov. 23, 2015), [https://i-d.vice.com/en\\_au/article/43w5nn/the-bmi-debate-how-do-you-measure-the-health-of-models](https://i-d.vice.com/en_au/article/43w5nn/the-bmi-debate-how-do-you-measure-the-health-of-models) [<https://perma.cc/84U5-FR4C>].

<sup>53</sup> Sarah Budow, *Role-Modeling: How the Americans with Disabilities Act Blocks BMI-Based Hiring Bans in the United States*, 20 CARDOZO J.L. & GEND. 139, 140 (2013).

<sup>54</sup> Christian Nordqvist, *Eating Disorders Among Fashion Models Rising*, MED. NEWS TODAY (July 8, 2007), <http://www.medicalnewstoday.com/articles/76241.php> [<https://perma.cc/ZR6P-UZNB>].

<sup>55</sup> Edward Lovett, *Most Models Meet Criteria for Anorexia, Size 6 is Plus Size: Magazine*, ABC NEWS (Jan. 13, 2012), <https://abcnews.go.com/blogs/headlines/2012/01/most-models-meet-criteria-for-anorexia-size-6-is-plus-size-magazine> [<https://perma.cc/L5PB-QBY7>].

<sup>56</sup> Barbie Latza Nadeau, *Isabelle Caro: Anorexic Model Dies, Her Mother Commits Suicide. How Should the Fashion Industry Respond?*, DAILY BEAST (Jul. 13, 2017), <https://www.thedailybeast.com/isabelle-caro-anorexic-model-dies-her-mother-commits-suicide-how-should-the-fashion-industry-respond> [<https://perma.cc/CSG4-G984>].

<sup>57</sup> Andrew Levy, *Anorexia Tragedy of Teenage Cover Girl: Parents Tell of Their Grief Over 19-Year-Old Who ‘Didn’t Realise How Beautiful She Was’*, DAILY MAIL (Apr. 30, 2012), <https://www.dailymail.co.uk/news/article-2137423/Bethaney-Wallace-Anorexic-cover-girl-model-19-dies-sleep-weight-drops-6-stone.html> [<https://perma.cc/8XGG-FRPZ>].

<sup>58</sup> Tom Phillips, *‘Everyone Knew She Was Ill. The Other Girls, The Model Agencies...Don’t Believe it When They Say They Didn’t’*, GUARDIAN (Jan. 13, 2007), <https://www.theguardian.com/lifeandstyle/2007/jan/14/fashion.features4> [<https://perma.cc/WY9H-Z4FJ>].

less than they would like.<sup>59</sup> Disordered eating appears to be a systemic problem in the fashion industry. In an exposé of the fashion industry, Clements recalled encounters with models: one model nonchalantly explained the scars on her knees as the result of frequent fainting spells due to hunger, while another casually announced that her roommate, a fit model, was often in the hospital on an IV drip because she had to starve herself to maintain her size.<sup>60</sup> Clements explained that while there were models that would eat a bite or two at each meal to stave off hunger, particularly weight-conscious models resorted to eating tissues as a way to satiate themselves without gaining a pound.<sup>61</sup> The bone-thin ideal perpetuated by the fashion industry cannot be blamed solely on sick models; it is also the designers and industry insiders who fool themselves that a woman can maintain a rail-thin body with yoga and some goji berries.<sup>62</sup>

The stories of models dying from eating disorders can seem like rare instances used as horrific scare tactics. Yet, according to one study, fifty-six percent of models reported skipping meals, seventy percent admitted dieting, sixty percent confessed to bulimic purging, and fifty-one percent admitted to going on some sort of fast or cleanse in order to change their weight.<sup>63</sup> The same study revealed that models felt external pressure to lose weight: sixty-three percent indicated that their agency told them they would be more successful if they lost weight, and sixty-two percent indicated that they were sometimes, often, or always asked to lose weight by someone in the industry.<sup>64</sup> Stella Duval, who began modeling at age fourteen, shared that she was asked to lose weight and was advised to go on a 700-calorie-per-day

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<sup>59</sup> Clements, *supra* note 1.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Rachel F. Rodgers, Sara Ziff, Alice S. Lowy, Kimberly Yu, and S. Bryn Austin, *Results of a Strategic Science Study to Inform Policies Targeting Extreme Thinness Standards in the Fashion Industry*, 50 INT'L J. OF EATING DISORDERS 284, 288 (2017).

<sup>64</sup> *Id.* at 287.

diet.<sup>65</sup> Duval now believes teens are too young to begin their modeling careers partially due to the pressures to be thin.<sup>66</sup> Regardless of whether these models develop eating disorders, the statistics suggest that the modeling industry encourages distorted eating along with an unhealthy obsession to lose or maintain weight.

In the United States, nearly ten million women suffer from eating disorders.<sup>67</sup> Is this shocking number an externality of the bone-thin women depicted on the runways and in the pages of fashion magazines? Aimee Liu, author and expert on eating disorders, described the perfect storm necessary to trigger an eating disorder in an individual: “Genes create the gun, the fashion industry, images of celebrities, relationships with parents and other environmental factors load the gun. Emotional distress pulls the trigger.”<sup>68</sup> There is no question that the fashion industry’s depictions of unrealistic body standards have a negative impact on models and viewers alike.<sup>69</sup> Those predisposed, genetically or due to other environmental factors, may be triggered to develop an eating disorder. In other words, individuals may be negatively impacted by the bone-thin models that seem to prevail no matter how many deaths occur due to complications from eating disorders.<sup>70</sup> Over the past fifty years, the likelihood of developing anorexia has increased

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<sup>65</sup> Valeriya Safronova, Joanna Nikas, and Natalia V. Osipova, *What It’s Truly Like to Be a Fashion Model*, N.Y. TIMES (Sep. 5, 2017), <https://www.nytimes.com/2017/09/05/fashion/models-racism-sexual-harassment-body-issues-new-york-fashion-week.html> [<https://perma.cc/2ZEM-JUAL>].

<sup>66</sup> *Id.*

<sup>67</sup> Nicole Hunter, *Beauty Is in the Eye of the Retoucher: Why Photoshopped Magazine Images Require Regulation*, 33 WOM’S RTS. L. REP. 82, 100-01 (2011).

<sup>68</sup> Kimberly Taber, *With Model’s Death, Eating Disorders Are Again In Spotlight – Americas – International Herald Tribune*, N.Y. TIMES (Nov. 20, 2006), <https://www.nytimes.com/2006/11/20/world/americas/20iht-models.3604439.html> [<https://perma.cc/BTC8-XGL2>].

<sup>69</sup> *Id.*

<sup>70</sup> R. Sam Barclay, *Do Photos of Thin Models Really Cause Eating Disorders?*, HEALTHLINE (Sep. 1, 2016), <https://www.healthline.com/health-news/do-photos-of-thin-models-really-cause-eating-disorders-041415#2> [<https://perma.cc/8QZJ-ZBRX>].

among women ages fifteen to twenty-four<sup>71</sup>—roughly the same age range in which most models begin their careers.<sup>72</sup> The industry needs to implement greater protections for young models to shield them from the dangerous eating disorders that have plagued the modeling industry for decades, and augment the health and wellbeing of not only those models but also the women all over the world who are impacted by the industry.

### 3. Sexualization of Underage Girls: The “Lolita” Effect

Presenting a young girl as the object of an adult man’s sexual fantasy is hardly a new or novel concept. Yet, accumulation theory indicates that the issue goes deeper than fueling the fantasies of pedophiles: it predicts that the more the industry produces sexualized images of young girls, the more normalized they become to mainstream society.<sup>73</sup> This normalization process ultimately leads to a society that looks at images of young girls or teenagers and perceives minors as sexually available.<sup>74</sup> Advertising is filled with images where underage girls are dressed in makeup and adult clothing and masquerade as adult women; conversely, adult women are dressed down to look like little girls.<sup>75</sup> Supermodel Brooke Shields was sexualized by the entertainment industry before she reached middle school.<sup>76</sup> In 1975, Garry Gross shot a series of images of ten-year-old Shields for Playboy’s special “Sugar and Spice” edition; in 1978, Shields appeared in the film *Pretty Baby*, portraying a child prostitute whose virginity is auctioned off to the highest

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<sup>71</sup> *Statistics & Research on Eating Disorders*, NAT’L EATING DISORDERS ASS’N, <https://www.nationaleatingdisorders.org/statistics-research-eating-disorders> [<https://perma.cc/TME3-DWJL>].

<sup>72</sup> Industry Survey, *Supra* note 19.

<sup>73</sup> Merskin, *supra* note 36.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 122.

<sup>76</sup> *Id.* at 121.

bidder.<sup>77</sup> Playboy’s “Sugar and Spice” series featured pictures of women that were described as “surprising and sensuous,”<sup>78</sup> hardly appropriate terms for a pre-pubescent child.

Shields later brought suit in New York against Gross for the continual use of the nude images of her as a child.<sup>79</sup> Though Shields’ mother initially gave Gross permission to take the photos, Shields sought injunctive relief to prevent Gross’s further use of and profit from the photos.<sup>80</sup> The Appellate Division reasoned that consent by Shields’ mother was ultimately a serious mistake in judgment,<sup>81</sup> holding that an underage model could lawfully disaffirm a parent’s consent granting a photographer unrestricted use.<sup>82</sup>

Hailey Clauson provides a more recent example of the fashion industry’s over-sexualization of an underage model. At age fifteen, slightly older than Shields was at the time of “Sugar and Spice,” Clauson posed for photographer Jason Lee Parry. Parry went on to produce images of the teenager that Clauson’s parents later described as “salacious.”<sup>83</sup> The pictures depicted Clauson in a number of age-inappropriate poses, including one of her spreading her legs on a motorcycle, braless, with her “crotch” as the focal point.<sup>84</sup> The image was eventually sold to Urban Outfitters, who used the

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<sup>77</sup> Christopher Turner, *Sugar and Spice and All Things Not So Nice*, GUARDIAN (Oct. 2, 2009), <https://www.theguardian.com/theguardian/2009/oct/03/brooke-shields-nude-child-photograph> [<https://perma.cc/JAF4-HNCA>].

<sup>78</sup> Michelle Smith, *Playboy, Brooke Shields and Impact on the Fetishisation of Young Girls*, SYDNEY MORNING HERALD (Oct. 16, 2017), <https://www.smh.com.au/lifestyle/playboy-brooke-shields-and-impact-on-the-fetishisation-of-young-girls-20171016-gz1iwj.html> [<https://perma.cc/PA7S-QPY3>].

<sup>79</sup> *Shields v. Gross*, 451 N.Y.S.2d 419 (N.Y. App. Div. 1982) (modified, 58 N.Y.2d 338 (1983)).

<sup>80</sup> *Id.* at 420.

<sup>81</sup> *Id.* at 422.

<sup>82</sup> *Id.* at 421.

<sup>83</sup> TFL, *Hailey Clauson, Urban Outfitters Case Moves Forward*, FASHION LAW (Mar. 12, 2012), <https://www.thefashionlaw.com/home/hailey-clauson-urban-outfitters-case-moves-forward> [<https://perma.cc/DLG9-ZXQD>].

<sup>84</sup> *Id.*



photo of the teenager on t-shirts.<sup>85</sup> Clauson’s parents sued Urban Outfitters, who eventually settled,<sup>86</sup> though the company claimed that they never knew Clauson was underage.<sup>87</sup>

The unregulated fashion industry seems to continue crossing the line between artistic expression and child exploitation. The effect of images portraying underage girls as sex objects is not a new phenomenon; however, it remains a dangerous one. Underage models need protections regarding the types of photo content that they can be featured in, not only for their own sake, but to help shield other children from public view as sex objects.

#### **4. Sexual Misconduct: “What People called Sexual Harassment, we called Compliments” – Paulina Porizkova<sup>88</sup>**

Unlike the retail or service industry jobs many working teenagers tend to occupy in America, models and photographers may meet in isolated studios or private apartments, leaving underage models particularly vulnerable to sexual abuse and misconduct.<sup>89</sup> Supermodel Coco Rocha boasts about succeeding as a model without posing nude, smoking, or posing in anything overtly sexual. However, many models do not have the same free volition as Rocha.<sup>90</sup> It is hard to contest Rocha’s success, yet at age fifteen, the model

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<sup>85</sup> *Id.*

<sup>86</sup> Bill Donahue, *Urban Outfitters Ends Suit Over Racy Pics of Teen Model*, LAW 360 (Feb. 28, 2013), <https://www.law360.com/articles/419794/urban-outfitters-ends-suit-over-racy-pics-of-teen-model> [<https://perma.cc/FNS6-LSVJ>].

<sup>87</sup> Charlotte Cowles, *Urban Outfitters Had No Idea Hailey Clauson Was Underage*, THE CUT (Aug. 22, 2011), [https://www.thecut.com/2011/08/urban\\_outfitters\\_hailey-clauson.html](https://www.thecut.com/2011/08/urban_outfitters_hailey-clauson.html) [<https://perma.cc/YJ5C-PKVZ>].

<sup>88</sup> Alex Rees, *Paulina Porizkova: Models Used to Take Sexual Harassment As a Compliment*, THE CUT (Dec. 6, 2011), <https://www.thecut.com/2011/12/porizkova-on-sexual-harassment-as-a-compliment.html> [<https://perma.cc/L4TZ-TQAK>].

<sup>89</sup> Nadra Nittle, *The Bruce Weber Allegations Shed Light on Sexual Misconduct in Fashion: A Culture That Reveres Photographers and Dehumanizes Models May be to Blame*, RACKED (Dec. 11, 2017), <https://www.racked.com/2017/12/11/16762234/bruce-weber-allegations-sexual-harassment-models> [<https://perma.cc/K6KD-UNY6>].

<sup>90</sup> Rachel Heinrichs, *The Miseducation of Coco Rocha*, 36 FLARE 128, 128–132 (2014) (discussing finding success in the modeling industry).

recalls “being told point-blank by an agent that in order to ‘make it’ as a model I’d have to shoot nude.”<sup>91</sup> Rocha saw the problem for what it was: systematic exploitation of young girls with adult careers.<sup>92</sup> Rocha stated, “[underage girls are sent] roaming the world alone and being sent blindly into compromising situations, [if] they complain, they’re told they’re exaggerating or acting like children.”<sup>93</sup>

Hollywood “Me Too” movement activists encouraged models to come forward regarding sexual misconduct in their careers. Model Cameron Russell started posting anonymous accounts of sexual harassment from fellow models using the hashtag #MyJobShouldNotIncludeAbuse.<sup>94</sup> Tales like the following from Katrine Bregengaard, a researcher and former model, were not uncommon; when she was sixteen, a photographer working for Nike took her and another teenage model to Greece, where he made known that he expected sex in exchange for the trip.<sup>95</sup> Another model recalled an experience she had while shooting with a fifteen-year-old model where the photographer instructed the two models to “look as if they’d had the best oral sex of their lives.”<sup>96</sup> As with instances of sexual misconduct outside the modeling industry, situations that result in misconduct do not always start off as uncomfortable, making it more difficult for underage models to identify sexual abuse.<sup>97</sup> Model Yaris Cedano explained, “You can like this person so much . . . and then when they ask for something inappropriate, you feel weird. You think, how can I not trust this person when he has been so nice through

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> Anne Kingston, *Exploitation Inc.*, 36 FLARE 3, 118 (2014).

<sup>94</sup> Olivia Fleming, *Models Share Stories of Sexual Assault in the Fashion Industry*, HARPER’S BAZAAR (Dec. 19, 2017), <https://www.harpersbazaar.com/culture/features/a12817440/models-sexual-assault-stories-fashion-industry/> [<https://perma.cc/GP8N-5U7E>].

<sup>95</sup> Hackman, *supra* note 44.

<sup>96</sup> Kingston, *supra* note 93 at 4.

<sup>97</sup> Fleming, *supra* note 94.

these three hours?”<sup>98</sup> Situations like the one described by Cedano seem to explain how so many underage models are coerced into doing things they did not sign up for and do not feel comfortable complying with, whether that means changing in front of reporters backstage, posing nude, or becoming the victims of sexual assault or rape.

In theory, the modeling industry could reduce the risk of sexual assault for underage models by requiring that chaperons accompany minors during shoots or runway shows, but these protections do not exist. Underage models may turn to their agencies for protection and career guidance, yet modeling agencies often do not take the necessary steps to protect young models from photographers with predatory reputations.<sup>99</sup> If a magazine is working with a famous photographer, the fact that it is a “big opportunity” for a model can overshadow the danger of the situation.<sup>100</sup> The end payout for a modeling agency, including payment for the work and connections with acclaimed brands and photographers, is likely a contributing factor in the agency’s decision to maintain networks with important industry insiders rather than prioritizing the safety and well-being of teenage models.

Societally speaking, the system seems like a double-edged sword; the same photographers and members of the industry accused of sexual misconduct with underage models are often in charge of art direction, often resulting in photos that fetishize and sexualize underage models. At what point, as a society, do we determine that it is not shocking that a sexual predator would sexually exploit a child or teenager in the name of art or fashion? At what point do we demand changes to protect underage models from these predators?

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<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> Nittle, *supra* note 89.

### III. LAWS & POLICIES PROTECTING UNDERAGE MODELS AROUND THE WORLD

As the sobering statistics in the first part of this article indicate, the fashion industry is ripe with opportunity to abuse underage models. From financial exploitation, to the promotion of unhealthy body standards, to sexualization of underage girls and sexual abuse, there must be protections in place for the children and teenagers in the fashion industry. Around the world, many countries have taken steps to protect models.<sup>101</sup> This section offers a glimpse at methods used to protect underage models, such as age restrictions and Body Mass Index (BMI) requirements, along with a brief analysis of whether these methods could reasonably be implemented in California.

#### A. Age Restrictions

Several countries and independent fashion houses have passed regulations, or in the case of fashion houses voluntarily assumed restrictions, barring the use of models under a certain age.<sup>102</sup> In London, designers are contractually obligated to employ models that are sixteen or older for London Fashion week.<sup>103</sup> Fashion houses such as Kering and LVMH (home to over seventy houses, including world renowned names such as Louis Vuitton, Celine, Dior, and Givenchy)<sup>104</sup> have voluntarily opted to stop hiring underage and ultra-thin models.<sup>105</sup> In the United States, the Council of Fashion Designers of America (CFDA) strongly recommends designers employ models over age sixteen, but historically the CFDA has not attempted to enforce the

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<sup>101</sup> Selina Sykes, *Six Countries Taking Steps to Tackle Super-Skinny Models*, EURO NEWS (June 9, 2017), <https://www.euronews.com/2017/09/06/counties-fighting-underweight-modelling> [https://perma.cc/V242-2LBT].

<sup>102</sup> Harriet Agnew, *LVMH and Kering Ban Ultra-Thin and Underage Models*, FIN TIMES (Sep. 6, 2017), <https://www.ft.com/content/a81c697e-92e6-11e7-bdfa-eda243196c2c> [https://perma.cc/WFX6-B6TC].

<sup>103</sup> Abnett, *supra* note 51.

<sup>104</sup> *Fashion & Leather Goods*, LVMH, <https://www.lvmh.com/houses/fashion-leather-goods/> (last visited Apr. 24, 2020), [https://perma.cc/YQZ8-YAVE].

<sup>105</sup> Agnew, *supra* note 102.

restriction.<sup>106</sup> Some of the most prominent fashion designers have adamantly resisted the recommended restrictions on the use of underage models.<sup>107</sup> Marc Jacobs and Diane von Furstenberg—household names in the fashion industry—are both prominent designers that have hired models under age sixteen since the CFDA regulations were enacted.<sup>108</sup> Marc Jacobs contested the ban, stating, “If their parents are willing to let [underage models] do the show, I don’t see any reason that it should be me who tells them they can’t.”<sup>109</sup> Diane von Furstenberg, known for her infamous wrap dress as well as her work through the Diller-von Furstenberg Family Foundation, which supports organizations involved in education, community building, public spaces, human rights, arts, health, and the environment,<sup>110</sup> has also violated the CFDA standards. Despite serving as CFDA president, Diane von Furstenberg hired a fifteen-year-old model for her runway show in 2011.<sup>111</sup>

Though the designer expressed horrible embarrassment for the underage model that “slipped through the cracks,”<sup>112</sup> the incident illuminates the industry’s lackadaisical attitude towards the use and protection of minors. Can an industry that repeatedly violates its own regulations be permitted to continue to self-regulate when those at risk belong to one of the most vulnerable populations? CFDA regulations have not efficiently stopped underage models from walking in shows or posing in advertisements or

<sup>106</sup> Abnett, *supra* note 51.

<sup>107</sup> Shakthi Jothianandan, *Underage, Overworked And on Their Own: How Do We Protect Teen Models?*, SALON (Apr. 2, 2014), [https://www.salon.com/2014/04/02/protecting\\_teen\\_models\\_a\\_push\\_for\\_change\\_in\\_an\\_industry\\_obsessed\\_with\\_youth](https://www.salon.com/2014/04/02/protecting_teen_models_a_push_for_change_in_an_industry_obsessed_with_youth) [<https://perma.cc/M5U9-DR5V>].

<sup>108</sup> Eric Wilson, *Jacobs Flouts Age Limit*, N.Y. TIMES (Feb. 15, 2012), [https://www.nytimes.com/2012/02/16/fashion/marc-jacobs-and-underage-models.html?\\_r=1](https://www.nytimes.com/2012/02/16/fashion/marc-jacobs-and-underage-models.html?_r=1) [<https://perma.cc/8YZX-CZ7G>].

<sup>109</sup> *Id.*

<sup>110</sup> DILLER-VON FURSTENBERG FAM. FOUND., <https://www.dvf.com/dvf-family-foundation.html> (last visited Apr. 24, 2020), [<https://perma.cc/B8HR-YJD9>].

<sup>111</sup> Ella Alexander, *An Honest Mistake*, VOGUE U.K. (Feb. 23, 2011), <https://www.vogue.co.uk/article/diane-von-furstenberg-uses-an-underage-catwalk-model> [<https://perma.cc/U8KL-N6UZ>].

<sup>112</sup> *Id.*

editorials. In fact, the daughter of world-famous supermodel Cindy Crawford, Kaia Gerber, posed in the CR Fashion Book at age thirteen.<sup>113</sup> It appears that designers blame agencies for sending underage models to castings and go-sees, and agencies blame designers for hiring and thus creating a demand for teenage girls. While some agencies pledge not to send out models below age sixteen on go-sees for runway shows,<sup>114</sup> this protection is hollow because the demonstrable issue is circular: designers continue to hire underage models, so agencies continue to provide the profitable commodity, regardless of pledges not to hire minors. The industry deserves more than empty promises from the CFDA and needs actual legislation that will hold designers, art directors, and agencies legally accountable for work with underage models.

### B. Body Mass Index Restrictions

Despite protests from industry leaders,<sup>115</sup> some countries have passed BMI laws to keep underweight models from working.<sup>116</sup> BMI is calculated by dividing weight in kilograms by height in meters.<sup>117</sup> Most health practitioners consider a BMI between 18.5 and 24.9 to be healthy.<sup>118</sup> France, Israel, Spain, Italy, and Denmark have all taken steps to stop the industry from hiring overly thin models.<sup>119</sup> Spain was the first country in the world to ban overly

<sup>113</sup> Landon Peoples, *Vogue & The CFDA Agree To No Longer Hire Models Under 18*, REFINERY 29 (Aug. 16, 2018), <https://www.refinery29.com/en-us/conde-nast-vogue-underage-model-law-controversy> [<https://perma.cc/CBV7-8QZS>].

<sup>114</sup> Amy Odell, *The CFDA Releases Model Health Guidelines for Fashion Week*, THE CUT (Jan. 26, 2012), <https://www.thecut.com/2012/01/cfda-releases-model-health-guidelines.html> [<https://perma.cc/PY6B-RAV7>].

<sup>115</sup> Véronique Hyland, *The French React to Their New 'Skinny Model' Law*, THE CUT (Dec. 21, 2015), <https://www.thecut.com/2015/12/french-skinny-model-law-reactions.html> [<https://perma.cc/KB8S-6B2Q>].

<sup>116</sup> Sykes, *supra* note 101.

<sup>117</sup> Elizabeth Palermo, *Understanding Weight: BMI & Body Fat*, LIVE SCIENCE (Feb. 10, 2015), <https://www.livescience.com/49752-weight-bmi-body-fat.html> [<https://perma.cc/8U6N-KYLG>].

<sup>118</sup> *Id.*

<sup>119</sup> Sykes, *supra* note 101.

thin models; Spanish legislation banned models with a BMI of less than 18, meaning that over one-third of models were turned away from Madrid Fashion Week in 2006—the year the law was enacted.<sup>120</sup> Italy passed a similar law regarding models' BMI and general health, following Spain's lead.<sup>121</sup> In Israel, designers and advertisers may not use models with a BMI of less than 18.5 for advertisements or runway shows.<sup>122</sup> Additionally, Israel requires advertisements to include a disclaimer when an image has been altered to make the model appear thinner.<sup>123</sup> France, the most recent country to enact legislation regarding a model's BMI, provides that models must present health certificates from a doctor demonstrating that they are healthy enough to work based on their BMI, age, bodyweight, and body shape.<sup>124</sup> Additionally, French advertisements with retouching to alter a model's appearance, including weight, must be labeled as such.<sup>125</sup> Regardless of a model's actual BMI, a model photoshopped to appear unrealistically thin can, after all, impact viewers' body image. Unlike Italy, France, Spain, and Israel, Denmark has not passed legislation to prevent designers from using underweight models but has instead enacted a charter which arranges for agencies to mandate health check-ups for models under age twenty-five on a yearly basis and to provide healthy meals and snacks on the job.<sup>126</sup>

Many critics assert that BMI is an improper benchmark and inadequate indicator for overall health because BMI is heavily influenced by geographic ancestry.<sup>127</sup> Others contest that regulating a model's BMI in the United States would violate the Americans with Disabilities Act (ADA) because anorexia

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<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> Eric Schlabs, *Regulating Weight in the Fashion Industry*, REGULATORY REV. (July 27, 2016), <https://www.theregreview.org/2016/07/27/schlabs-regulating-weight-in-the-fashion-industry/> [<https://perma.cc/2AE9-9DSC>].

and bulimia likely qualify as disabilities.<sup>128</sup> The controversy surrounding BMI may lead one to speculate whether a BMI regulatory standard would be helpful in preventing eating disorders and promoting health, or rather arbitrary. Yet, there are still public health experts, and models, who believe BMI standards make a significant difference for models as well as the millions of women and girls who look to models as the beauty ideal.<sup>129</sup> A BMI standard of 18 means that a 5'9" model would need to weigh at least 122 pounds, which is still thin by most people's perceptions but does not pose dangerous health risks.<sup>130</sup> Though some fashion industry professionals are concerned that BMI standards may violate the ADA by discriminating against models with mental illnesses (*i.e.*, eating disorders), it is only by adopting standards that force designers to stop hiring severely underweight models that the industry can combat the constant threat of eating disorders among young models. If fashion capitals such as France and Italy are able to maintain BMI standards while simultaneously upholding their reputations as fashion industry hubs, then the United States has no reason not to implement similar standards to better protect American models from eating disorders.

#### IV. CURRENT LAWS REGARDING CHILD MODELS IN NEW YORK

New York and Los Angeles are considered the leaders of the fashion industry in the United States, and thus are more likely to implement laws regulating the modeling industry than states with a smaller presence in the fashion industry.<sup>131</sup> New York is home to the famous New York Fashion Week, and ranks second only to London among the world's fashion centers;

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<sup>128</sup> *Id.*

<sup>129</sup> Gush, *supra* note 52.

<sup>130</sup> Vanessa Rancano, *Is It Time to Set Weight Minimums for the Fashion Industry?*, NPR (Dec. 22, 2015), <https://www.npr.org/sections/health-shots/2015/12/22/460682633/is-it-time-to-set-weight-minimums-for-the-fashion-industry> [<https://perma.cc/8Z4S-NKUE>].

<sup>131</sup> Richard Florida and Sara Johnson, *The World's Leading Cities for Fashion*, CITY LAB (Sep. 7, 2012), <https://www.citylab.com/life/2012/09/worlds-leading-cities-fashion/3182/> [<https://perma.cc/N2TZ-3JLW>].



Los Angeles is ninth on the list of top fashion centers with more than triple the number of people working in the fashion industry than the national average among the top fifty United States cities.<sup>132</sup> In 2014, New York enacted legislation furthering protections for child models by extending the definition of “child performer” to include models.<sup>133</sup> The law requires that child performers meet health and educational standards, that fifteen percent of the child model’s earnings are put into a trust account and that a guardian, designated by the child’s parent or legal guardian, accompanies the model at work if the model is under sixteen.<sup>134</sup> Employers who violate the legislation face civil penalties up to \$1,000 for the first offense, with increasing financial penalties for each subsequent offense.<sup>135</sup> The legislation does not prevent models under age eighteen from working, but rather offers safeguards and protections for child workers. Brands, including designers at New York Fashion week, must apply for a certificate of eligibility from the state to employ child performers; submit a notice of use of child performers two days prior to the performance (such as a runway show); ensure that the children have valid work permits and that the children are receiving breaks from work; and maintain evidential records of the children’s trust accounts.<sup>136</sup>

The recently enacted New York legislation has profoundly impacted protections for child models.<sup>137</sup> Including child models as child performers is a positive step that will help ensure that child models are neither exploited financially nor subject to the various other dangers child models faced in the

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<sup>132</sup> *Id.*

<sup>133</sup> 2013 *Child Model Frequently Asked Questions*, N.Y. STATE DEP. OF LABOR, <https://labor.ny.gov/workerprotection/laborstandards/secure/ChildModelFAQs.shtm> (last visited Apr. 24, 2020), [<https://perma.cc/UB7Q-7S4H>].

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> TFL, *The Use of Underage Models Brings Legal Requirements for Brands*, FASHION LAW (Feb. 5, 2017), <http://www.thefashionlaw.com/home/the-use-of-underage-models-brings-legal-requirements-for-brands?rq=models> [<https://perma.cc/6FV4-UX3G>].

<sup>137</sup> Tyler McCall, *How New York’s Recently Passed Model Law Could Change Fashion Week*, FASHIONISTA (Apr. 11, 2014), <https://fashionista.com/2014/01/new-york-child-model-law-nyfw> [<https://perma.cc/9JAT-5XPJ>].

past.<sup>138</sup> However, while New York is the capital of fashion in the United States, these protections only safeguard children modeling in the state. Underage models throughout the other forty-nine states are left unprotected, unless and until their individual state should take action to protect child models.<sup>139</sup>

## V. CALIFORNIA TALENT PROTECTIONS

In October 2018, California enacted Assembly Bill 2338 (AB 2338), which requires talent agencies to provide information regarding eating disorders, sexual harassment prevention, retaliation, and reporting mechanisms.<sup>140</sup> AB 2338 specifically addresses the unique vulnerability of minors in the entertainment industry by narrowly tailoring certain requirements to entertainment workers between the ages of fourteen and seventeen.<sup>141</sup> Model Alliance founder Sara Ziff remarked, “passage of the Talent Protections Act in California is a huge step forward for models to ensure their basic right to safe working conditions. . .”<sup>142</sup>

Section 1700.52 of AB 2338 is specifically tailored to minors working in the entertainment industry. The section provides:

(a) Prior to the issuance of an entertainment work permit to a minor pursuant to Section 1308.5, the parent or legal guardian of a minor between 14 to 17 years of age, inclusive, hereafter “age-eligible

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<sup>138</sup> *Id.*

<sup>139</sup> Jennifer McShane, *New US Law to Offer More Protection to Underage Models*, IMAGE (Nov. 8, 2015), <https://www.image.ie/fashion/new-us-law-to-offer-more-protection-to-underage-models-39680> [<https://perma.cc/5QT9-S3E4>].

<sup>140</sup> Kristina Launey and Melissa Aristizabal, *CA Legislative Update: Governor Brown’s Job is Done*, SEYFARTH (Oct. 1, 2018), <https://www.calpeculiarities.com/tag/ab-2338/> [<https://perma.cc/EE4J-DLU4>].

<sup>141</sup> TFL, *supra* note 136.

<sup>142</sup> PRESS RELEASE: GOVERNOR SIGNS MARC LEVINE BILL TO PREVENT SEXUAL HARASSMENT IN THE ENTERTAINMENT INDUSTRY (Oct. 1, 2018), <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/1267/2018/10/RELEASE-Governor-Signs-Marc-Levine-Bill-to-Prevent-Sexual-Harassment-in-the-Entertainment-Industry.pdf> [<https://perma.cc/3LXY-LU39>].

minor,” as well as the age-eligible minor, shall receive and complete training in sexual harassment prevention, retaliation, and reporting resources.

(b) Sexual harassment prevention training shall consist of training administered by a third-party vendor, on-site, electronically, via Internet Web site, or other means. Sexual harassment prevention training shall include, at a minimum, the components specified in the Department of Fair Employment and Housing’s Form 185.

(c) Training for each age-eligible minor and his or her parent or legal guardian shall be in the language understood by that person.

(d) A licensee shall request and retain a copy of the minor’s entertainment work permit prior to representing or sending a minor artist on an audition, meeting, or interview for engagement of the minor’s services.<sup>143</sup>

The new law thus acts as an important educational barrier to entry by forcing agencies to provide models with a minimum education on relevant issues, such as those set out in subsection (a) and further explained in subsection (b) above. While the law does not necessarily prevent eating disorders or sexual harassment, it requires modeling and talent agencies to share information and resources with young models and their guardians.<sup>144</sup> Furthermore, since parents and guardians are required to undergo the training alongside minor models, theoretically, parents will be more aware of issues that commonly affect young models. Awareness and education can help parents screen their children for signs of eating disorders and open up a dialogue to discuss sexual harassment. Education alone will not make sexual harassment or eating disorders disappear; however, AB 2338 is an important step towards helping young models.

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<sup>143</sup> A.B. 2338, Gen. Assemb., Reg. Sess. (Cal. 2018).

<sup>144</sup> *Id.*

A. *How California can Protect Underage Models.*

Child labor is deeply rooted in American history.<sup>145</sup> Some scholars cite Puritan ideals as the motivation behind child labor in America as the religion discouraged idleness.<sup>146</sup> However, in addition to encouraging children to be useful, child labor was an economic asset that many believed helped to “further the material greatness of America.”<sup>147</sup> In 1938, Congress passed the Fair Labor Standards Act (FLSA), which allowed Congress to monitor and regulate certain kinds of child labor.<sup>148</sup> Today, at the federal level, most child workers are covered under FLSA, which governs hours and occupational standards for children.<sup>149</sup> Children under the age of fourteen are subject to narrower occupational regulations; however, exemptions are available for specific employment industries such as acting, newspaper delivery, household chores, and babysitting.<sup>150</sup> Both state and federal law govern youth employment, so whichever law imposes the stricter standard is enforced within a state.<sup>151</sup>

According to the Fair Labor Standards Act, which exempts child performers from general standards for youth employment, a child performer is defined as:

[A] person who performs a distinctive, personalized service as a part of an actual broadcast or telecast including an actor, singer, dancer, musician, comedian, or any person who entertains, affords amusement to, or occupies the interest of a radio or television audience by acting, singing, dancing, reading, narrating, performing

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<sup>145</sup> Alan Taylor, *Child Labor in America 100 Years Ago*, ATLANTIC (July 1, 2015), <https://www.theatlantic.com/photo/2015/07/child-labor-in-america-100-years-ago/397478/> [https://perma.cc/2TG4-75A6].

<sup>146</sup> Edith Abbott, *A Study of the Early History of Child Labor in America*, 14 AM. J. SOC. 15, 16 (1908).

<sup>147</sup> *Id.* at 21.

<sup>148</sup> Taylor, *supra* note 145.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> Ariel Tacher, *The Real World: Child Labor and Reality Television*, 20 CARDOZO J. L. & GEND., 489, 496 (2014).

feats of skill, or announcing, or describing or relating facts, events and other matters of interest, and who actively participates in such capacity in the actual presentation of a radio or television program.<sup>152</sup>

Given this definition, a child model is exempt from the FLSA and thus may be governed by differing state laws or, in some cases, no laws at all.<sup>153</sup> Based on the film industry's prevalent role in California, the state has enacted extensive laws governing child entertainers.<sup>154</sup> Though somewhat less well known than the Hollywood film industry, the fashion industry in California, and specifically Los Angeles, attracts designers and, therefore, models.<sup>155</sup>

Currently, California law mandates that all minors ages fifteen to eighteen in the entertainment industry, including photographic models, must have a work permit.<sup>156</sup> In addition, the employer must have a permit to employ minors issued by the Labor Commissioner's Office.<sup>157</sup> The code provides that minors may not be exhibited, used, or employed in any manner that encourages the minor to engage in any obscene, indecent, or immoral purpose, exhibition, or practice.<sup>158</sup> Additionally, minors in the entertainment industry may not work more than eight hours a day, or forty-eight hours a

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<sup>152</sup> 29 C.F.R. § 570.125.

<sup>153</sup> *Child Entertainment Laws as of January 1, 2018*, U.S. DEP'T. OF LABOR, <https://www.dol.gov/agencies/whd/state/child-labor/entertainment> [<https://perma.cc/94S5-VKAY>].

<sup>154</sup> *Id.*

<sup>155</sup> Christine Whitney, *Why Did So Many Fashion Designers Choose L.A. Over New York This Year?*, THE CUT (Feb. 13, 2017), <https://www.thecut.com/2017/02/why-l-a-may-be-fashions-next-big-city.html> [<https://perma.cc/UZT6-RCM7>].

<sup>156</sup> *Child Entertainment Laws as of January 1, 2018*, U.S. DEP'T. OF LABOR, <https://www.dol.gov/agencies/whd/state/child-labor/entertainment> (last visited Apr. 24, 2020), [<https://perma.cc/94S5-VKAY>].

<sup>157</sup> STATE OF CAL. DEP'T. OF INDUS. REL., INFO. ON MINORS AND EMP., <https://www.dir.ca.gov/dlse/DLSE-CL.htm> (last visited Apr. 24, 2020), [<https://perma.cc/L2MJ-7YFR>].

<sup>158</sup> STATE OF CAL. DEP'T. OF INDUS. REL., MINORS SUMMARY CHART, <https://www.dir.ca.gov/dlse/MinorsSummaryCharts.pdf> (last visited Apr. 24, 2020), [<https://perma.cc/SR5A-5YVA>].

week.<sup>159</sup> Time spent on hair and makeup is considered part of the child entertainer's working time.<sup>160</sup> Furthermore, minors employed in the entertainment industry that are not professional actors must be paid at least state minimum wage and overtime pay.<sup>161</sup>

The entertainment industry is defined as pertains to minors as

any organization, or individual, using the services of any minor in: motion pictures of any type (film, videotape, etc.), using any format (theatrical, film, commercial documentary, television program, etc.), by any medium (theater, television, videocassette, etc.); photography; recording; modeling; theatrical productions; publicity; rodeos; circuses; musical performances; and any other performances; and any other performances where minors perform to entertain the public.<sup>162</sup>

## VI. THE LEGAL SOLUTION

### A. Prescribed Legislation

The exploitation of underage models is not an abstruse discussion left to a few unlucky child entertainers who had the misfortune of slipping through the cracks. The fashion industry at large has recognized the issue at hand. The remaining challenge is codifying the solution. Condé Nast, mass media company and publisher of magazines such as *Vogue*, *Vanity Fair*, and *Glamour*,<sup>163</sup> recently set for itself an age requirement, vowing not to shoot models under age eighteen in its magazines unless the article specifically

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<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> STATE OF CAL. DEP'T OF INDUS. REL., CAL. CHILD LAB. LAWS, <https://www.dir.ca.gov/dlse/ChildLaborLawPamphlet.pdf> [<https://perma.cc/52X4-F5KC>].

<sup>162</sup> 8 C.C.R. § 11751.

<sup>163</sup> *What We Do*, CONDÉ NAST, <https://www.condenast.com/about/> (last visited Apr. 24, 2020), [<https://perma.cc/NK8T-8QD>].

features children or focuses on a celebrity profile in which the celebrity is underage.<sup>164</sup> *Vogue* representative Singer stated as follows:

In recognition of the unique vulnerability of minors thrown into a career where they have little control and where abuse has been all too commonplace, the vendor code of conduct stipulates that no model under the age of [eighteen] will be photographed for editorial (unless he or she is the subject of an article, in which case the model will be both chaperoned and styled in an age-appropriate manner).<sup>165</sup>

Is it realistic to transform an idea skimmed among the glossy pages of *Vogue* to California state law? Top talent agency Ford Models recently publicized that it will no longer accept models under age sixteen and will only submit models ages eighteen and older for runway shows.<sup>166</sup> However, some major agencies such as IMG and Next stand firm on their policy to work with underage models.<sup>167</sup> The fashion industry appears to be responsive to the plight of underage models, but self-regulation of this complex issue remains inadequate.

California must thus enact further legislation to limit the exploitation of underage models in three ways. First, California must alter recently enacted legislation by increasing the \$100 fine for violations to a \$1000 fine for first-time violations and increasing penalties for repeated violations, with proceeds going to help eating disorder recovery centers to treat qualified patients who are unable to afford treatment. Second, California must clarify

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<sup>164</sup> TFL, *Condé Nast's Code of Conduct is Here. Is it Enough?*, FASHION LAW (Jan. 31, 2018), <https://www.thefashionlaw.com/home/cond-nasts-long-overdue-code-of-conduct> [<https://perma.cc/8LL3-YYQ7>].

<sup>165</sup> Maya Singer, *Why the Fashion World Needs to Commit to a 18+ Modeling Standard*, VOGUE (Aug. 16, 2018), <https://www.vogue.com/article/why-fashion-needs-to-commit-to-age-appropriate-modeling-standard-vogue-september-2018> [<https://perma.cc/NU5W-8MRT>].

<sup>166</sup> Cathaleen Chen, *Talent Agencies Split on Promoting Underage Models*, BUS. OF FASHION (Sep. 7, 2018), <https://www.businessoffashion.com/articles/news-bites/talent-agencies-split-on-promoting-underage-models> [<https://perma.cc/XGP6-7NWU>].

<sup>167</sup> *Id.*

existing legislation regarding obscene, indecent, or immoral exhibition to proactively define the types of advertisements underage models may pose for and explicitly disallow children to portray adults in fashion editorials and advertisements so that child models will not be exploited through age-inappropriate sexual images. Finally, the state must enact new legislation requiring transparency among modeling agencies so that young models are not shocked by hidden and unexplainable fees.

In short, California must:

1. Amend AB 2338 to increase its financial penalties;
2. Clarify existing legislation regarding “obscene exhibition” in order to prevent models under age eighteen from participating in provocative and sexually explicit advertisements and editorials; and
3. Enact additional legislation limiting agency commissions and increasing transparency regarding fees.

**1. Amend AB 2338 to Increase the Penalty for Violations from \$100 per Violation to \$1000 per Violation, with Increasing Penalties for Repeated Violations.**

With AB 2338, California took a major step towards protecting models by implementing a new law that requires talent agencies to provide their talent with education regarding eating disorders and sexual assault.<sup>168</sup> Furthermore, the newly enacted legislation provides that both the minor and the minor’s parent or legal guardian complete training in sexual harassment prevention, retaliation, and reporting resources, as well as on eating disorders.<sup>169</sup> Failure to comply with the law currently results in a \$100 fine per violation, yet, there is no information publicly available regarding how the law is enforced or how many cases of noncompliance have occurred.<sup>170</sup> Additionally, employers are

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<sup>168</sup> 2018 Cal. ALS 967, 2018 Cal. AB 2338, 2018 Cal. Stats. ch. 967.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*



exempt from sexual harassment training for minors working with a ten-day temporary work permit.<sup>171</sup>

The policy implications of AB 2338 are great; California legislators are sending a message to discourage talent agencies and directors from taking advantage of young models and actors who are eager to break into the industry. By providing models with education on what constitutes sexual harassment and what their options are in terms of both prevention and retaliation, young models are more likely to recognize unacceptable behavior and are more likely to feel empowered to come forward to report sexual misconduct. Many adult women, even those who are college-educated, do not understand the behaviors that constitute sexual harassment in the workplace.<sup>172</sup> It is a likely inference that minors are less likely than adults to understand the nuances and complexities of behavior that constitutes sexual harassment. Yet, women ages sixteen to nineteen are four times more likely than the general population to be a victim of rape, attempted rape, or sexual assault.<sup>173</sup> Teens and other low-wage workers are more likely to ignore sexual harassment in the workplace because they may feel powerless or because they need the income from the job to survive.<sup>174</sup> California legislation aims to teach minors and their parents the basics of sexual harassment so models can recognize sexual harassment.<sup>175</sup> Since parents and legal guardians are

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<sup>171</sup> *Entertainment Industry Sexual Harassment Prevention Training Requirements*, DEP'T OF INDUS. REL., <https://www.dir.ca.gov/dlse/Entertainment-Industry-Sexual-Harassment-Prevention-Training-Requirements.html> (last visited Mar. 8, 2020).

<sup>172</sup> Beverly Engel, *Why Don't Victims of Sexual Assault Come Forward Sooner?*, PSYCHOL. TODAY (Nov. 16, 2017), <https://www.psychologytoday.com/us/blog/the-compassion-chronicles/201711/why-dont-victims-sexual-harassment-come-forward-sooner> [<https://perma.cc/5ML9-B3P3>].

<sup>173</sup> *Children and Teens: Statistics*, RAINN (last visited Mar. 18, 2019), <https://www.rainn.org/statistics/children-and-teens> [<https://perma.cc/6DV2-TFDZ>].

<sup>174</sup> *Sexual Harassment: A Severe and Pervasive Problem*, NEW AM. (last visited Mar. 18, 2019), <https://www.newamerica.org/better-life-lab/reports/sexual-harassment-severe-and-pervasive-problem/summary-of-findings/> [<https://perma.cc/XZU9-VGYR>].

<sup>175</sup> See 2018 Cal. ALS 967, 2018 Cal. AB 2338, 2018 Cal. Stat. 967; 2018 Cal. ALS 967, 2018 Cal. AB 2338, 2018 Cal. Stat. 967.

also required to receive sexual harassment training along with young talent, the policy encourages dialogue between parents and underage talent in the industry.

However, AB 2338 is not enough to protect underage models. The small fine of \$100, mere pocket change to most talent agencies, does little to discourage even small talent agencies from violating the law. In the aggregate, should an agency choose not to provide training for all of their models, the financial penalties could be burdensome. But still, should an agency forget or choose not to provide training for a handful of models, the financial implications may not amount to much. If top Los Angeles modeling agency Wilhelmina Models chose to forgo mandatory training for 100 new models, the fine would reach \$10,000. A \$10,000 fine initially seems high, but for a corporation like Wilhelmina, whose profit was \$73.2 million in 2017,<sup>176</sup> \$10,000 is a very small drop in a very large bucket.

Even though AB 2338 was signed recently, presented with this backdrop, it is absolutely necessary to alter the portion of the legislation regarding fines. Since even small modeling agencies usually have the financial resources to pay \$100 per model to avoid providing training and education on sexual harassment and eating disorders, it is necessary to create a policy that actually discourages agencies from forgoing the mandated training. The fine should increase from \$100 per violation to \$1000 per violation with the additional proceeds benefiting causes directly related to eating disorders and sexual harassment, such as centers that provide treatment for individuals suffering from eating disorders. The increased penalty is more than just a nominal fine. While it is easy for a business to write off a \$100 fine on occasion, fines of \$1000 add up quickly. If, in the same hypothetical as presented previously, Wilhelmina chose not to provide education and training to 100 models, the

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<sup>176</sup> Global News Wire, *Wilhelmina International, Inc. Reports Results for the Year Ended 2017*, GLOB. NEWS WIRE (Mar. 22, 2018), <https://globenewswire.com/news-release/2018/03/22/1444324/0/en/Wilhelmina-International-Inc-Reports-Results-for-the-Year-Ended-2017.html> [<https://perma.cc/5G2Q-9RW9>].

fine would increase from \$10,000 to \$100,000. This large financial penalty would more strongly encourage talent agencies to follow protocol regarding talent education. If the California legislature then used the proceeds from fines to contribute to state-funded grants for eating disorder treatment centers, the state would further assist those harmed explicitly and implicitly by the fashion industry by providing treatment to models with eating disorders and all those who may suffer due to unrealistic portrayals in the industry.

## **2. Define “Obscene Exhibition” and Implement a State-Wide Age Standard: Models must be Age 18+ for Runway, Editorial, and Promotional Work**

When ten-year-old Thylane Louby Blondeau posed provocatively in *Vogue Paris*, she was dubbed by many fashion and beauty enthusiasts as “the most beautiful girl in the world” and illuminated the fashion industry’s obsession with turning young girls into fresh-faced provocative adults on the glossy pages of magazines.<sup>177</sup> As previously discussed, underage models are often used in adult advertising to portray adult women. According to a 2016 study, eighty-nine percent of underage models are portrayed sexually in fashion advertising.<sup>178</sup> Children as young as ten are put in makeup, provocative adult clothing, and sexually suggestive poses that lead the viewer to believe, whether consciously or subconsciously, either that the model is an adult or that children have the sexual maturity of an adult.<sup>179</sup>

These advertisements negatively impact not only the models who are sexualized, but also those children worldwide who are not able to consume

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<sup>177</sup> See Jenna Sauers, *Fashion Industry Salivates over Creepy Photos of a 10-Year-Old French Girl*, JEZEBEL (Aug. 2, 2011), <https://jezebel.com/5827092/fashion-industry-salivates-over-creepy-photos-of-10-year-old-french-girl> [<https://perma.cc/Z5SR-45M2>].

<sup>178</sup> Carmen Llovet Rodriguez, Monica Diaz-Bustamante Vetsica & Beatriz Patiño Alves, *The Sexualization of Children Through Advertising, Fashion Brands and Media*, 1 REVISTA PRISMA SOCIAL 158, 180 (2016).

<sup>179</sup> *Id.* at 178.

media with the same cognitive skills and media literacy as adults.<sup>180</sup> Studies have shown a correlation between advertisements for alcohol and cigarettes, for instance, with positive attitudes towards the consumption of these products among children.<sup>181</sup> While some experts believe the overly sexualized images of children, like the provocative childhood photos of Brooke Shields, work to prevent pedophiles from actually harming children by utilizing the images as tools for their fetishes, others worry that sexualized images fuel pedophilic fantasies by normalizing the idea that children desire or consent to sexual acts.<sup>182</sup> It is no surprise, then, that sexualizing child models raises concerns that children outside the modeling industry are consequently also sexualized and fetishized by adults who consume advertisements featuring children. Children who consume these advertisements may internalize the images they see and assume that in order to be accepted or perceived as beautiful, they must be sexually available.<sup>183</sup> Child psychologist Sharon Lamb asserts that girls lose self-esteem when they believe their value comes solely from their sexuality.<sup>184</sup> While some fashion-industry insiders and advertising critics claim that the concern about children in advertising in the United States is somewhat of an alarmist puritanical uprising, in a comparative sense, the United States is less rigid when it comes to children in advertising than many European countries.<sup>185</sup>

California would thus help raise national standards if it altered existing legislation by banning children from portraying adults in fashion editorials

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<sup>180</sup> Brian Wilcox et al., *Report of the APA Task Force on Advertising & Children*, AM. PSYCHOL. ASS'N 5-7 (Feb. 20, 2004), <https://www.apa.org/pubs/info/reports/advertising-children> [<https://perma.cc/F2XX-VT7S>].

<sup>181</sup> *Id.* at 31-32.

<sup>182</sup> *Concern about "sexualised" Children Often Misses the Point*, ECONOMIST (July 19, 2018), <https://www.economist.com/international/2018/07/19/concern-about-sexualised-children-often-misses-the-point> [<https://perma.cc/4BDA-8FK3>].

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> See *Children: Sexual Imagery*, ADVERT. STANDARDS AUTH (last visited Nov. 15, 2018), <https://www.asa.org.uk/advice-online/children-sexual-imagery.html> [<https://perma.cc/FPB2-7THJ>].

and advertisements. This would help raise the United States' advertising laws to align more closely with fashion capitols abroad. By altering the existing passage in the California Labor Code as detailed below, two groups will be protected: (1) child models who will no longer be exploited through age-inappropriate sexual images; and (2) children as a whole, by not perpetuating the “Lolita” standard—that young girls are intended to be sexualized fantasies for adults.

The proposed change in legislation will alter the passage found in Division 2, Part 4 of the California Labor Code, Subsection A (3) of which currently states as follows:

Any person is guilty of a misdemeanor and is punishable by a fine . . . imprisonment . . . or both, who, as parent, relative, guardian, employer, or otherwise having the care, custody, or control of any minor under the age of 16 years, exhibits, uses, or employs, or in any manner or under any pretense, sells, apprentices, gives away, lets out, or disposes of the minor to any person, under any name, title, or pretense for, or who causes, procures, or encourages the minor to engage in any of the following . . . (3) Any obscene, indecent, or immoral purposes, exhibition, or practice whatsoever. Notwithstanding any other law, this paragraph applies to a person with respect to any minor under the age of 18 years.<sup>186</sup>

First, the legislation advocated herein would alter subsection A to include any minor under eighteen years old, in order to include all minors. Further, it will add a subsection specifically targeted at child models and performers, who were previously excluded by law.

Next, the relatively broad and ambiguous term “any obscene, indecent or immoral purposes” should be defined to explicitly prohibit the use of models under age eighteen in advertisements and editorials that portray the child as an adult or in a sexually explicit manner. There are a number of ways a new subsection to this effect could be worded, but the subsection should specify

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<sup>186</sup> CAL. LAB. CODE § 1308 (West 2018).

the sort of conduct prohibited. For example, the language “obscene, indecent and immoral” should be expanded by law to include sexually suggestive material; advertisements portraying products used exclusively by adults; editorials or artwork portraying material inappropriate for the child’s level of maturity based objectively on the child’s age; implied nudity or implied sexual suggestion; implied use of alcohol, tobacco, or other illicit substances; and any other conduct widely accepted as obscene and inappropriate for the minor’s age.

This prohibition would not ban child modeling completely but instead would close off certain sectors of the industry and redirect jobs for child models to those that generate age-appropriate content. Rather than using a preteen model to portray an adult woman, the preteen model would be used to portray someone in their own age range. Of course, this legislative change would have no effect on underage models who are already booked to model children’s clothing in catalog work, portray a child in a television commercial, or model children’s clothing and accessories in a runway show. By altering the law for all young models, children would no longer be at risk of portraying sexualized adults in advertising, and could still earn an income as models by portraying children.

Furthermore, the subsection should list the criteria an agency or art director may use to determine whether or not the advertisement or editorial contains content inappropriate for children. The list should be categorized as non-exhaustive, and a particular advertisement does not need to fulfill all or any of the criteria to be deemed inappropriate for child models. Some of the criteria may include, among others, provocative adult wardrobe (such as makeup, miniskirts, fishnet stockings, fitted gowns, tube tops, crop tops, etc.); suggestive poses or, in the case of advertisement or commercials, suggestive copy (such as Calvin Klein’s iconic “nothing comes between me

and my Calvins”);<sup>187</sup> the explicit or implicit indication that the child performer is an adult when in fact the performer is underage; full nudity or implied nudity that sexualizes the child in any manner; or use or implied use of products or substances a child may not legally obtain (alcohol, tobacco, illegal substances, etc.). Underage models are not in a position to determine what is and is not developmentally appropriate. The experiences of models mentioned in this article indicate that models in their early teens do not always realize the extent of their abuse until they look back at their career years later. By providing guidance to advertisers on provisions that, for example, make it illegal to put teenagers in lingerie or ask an underage model to pose nude, lawmakers send advertisers and agencies a message that the latter groups will be held accountable for the end results of their work product.

At first, it may be difficult to decipher where the line should be drawn for advertisers. However, fear of wading into a gray area should not prohibit lawmakers from taking action. It may not be possible to ensure an underage model is never placed in an uncomfortable or compromising position, but statutory requirements will cause photographers, art directors, modeling agencies, and advertising executives to think critically about the content they create using child models. A draft statute may thus read as follows:

*Models under age eighteen, whether employed through an agency or hired temporarily as independent contractors, may not be used to create adult content or advertisements portraying material deemed inappropriate for minors. Such material includes, but is not limited to:*

*a) Visual depictions of sexual acts between minors, or minor(s) and adult(s), including but not limited to compromising poses where the photo or video focuses on the minor’s genitalia or body in a lewd or sexual manner.*

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<sup>187</sup> Jonathan Evans, *The NSFW History of Calvin Klein’s Provocative Ads*, ESQUIRE (July 7, 2016), <https://www.esquire.com/style/news/g2841/nsfw-history-calvin-klein-advertising/> [<https://perma.cc/P5H3-YU86>].

- i) Sexual acts are not limited to intercourse and need not be nude.*
- b) Suggestive copy or scripts where the implication is that the minor is engaged in sexually explicit activities.*
- c) Provocative wardrobe where the minor is nude, impliedly nude, or in clothing intended for adults, including underwear, lingerie, and other age-inappropriate wardrobe pieces.*
- d) Any other materials that falsely indicate the minor model is an adult when in fact the minor model is under eighteen. This section may include the portrayed use of recreational drugs, alcohol, and sexual paraphanelia. Notwithstanding this section, a minor may portray the use of drugs and alcohol for advertisements with the aim of educating or raising awareness of the dangers of underage drinking or drug use or similar public service announcements.*

Such an expansion of the California Labor Code would call for advertisers, photographers, and creative directors to differentiate between the underage model as the protagonist in an adult advertisement and a minor being used to sell products intended to be used by children or for familial purposes. Upon the implementation of stricter laws surrounding the use of children in advertisements, child models would be less likely to be portrayed as sexual objects in advertisements.

This code provision could, moreover, potentially have a ripple effect. It would protect not only underage models in California but youth worldwide who are subjected to the messages about youth and sexuality that are spread by global advertisements. Since California is a leader in the fashion industry, a law implemented by that state may be emulated elsewhere. Society has already recognized that not adhering to such standards can negatively impact the lives of children, taking into account that “[c]hildhood is a unique period of rapid physical and psychological development during which young people’s physical, mental and emotional health and well-being can be permanently affected for better or worse.”<sup>188</sup> Since California is a global hub

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<sup>188</sup> Save the Children, U.N. GLOBAL COMPACT & UNICEF, CHILD. RTS. & BUS. PRINCIPLES 3 (UN Global Compact, 2012).



for fashion and advertising, California has the opportunity to become a leader in the fight for children's rights globally by limiting the use of underage models to age appropriate images. The law modifying how advertisements are permitted to portray children will impact how society at large views children. This change in law would not only provide the stated protections for the models it regulates, but would also send a broader message to people everywhere that children should not be sexualized by adults.

### 3. Implement a State Standard Regarding Transparency in Agency Fees

Social media and reality television have glamorized the lives of models, painting an unrealistic portrait that the average fashion model travels to and from work in a limo and dates a professional athlete.<sup>189</sup> In actuality, the average model working in New York City earns \$48,000 a year, a mere one-third of the average Manhattanite salary.<sup>190</sup> Modeling agencies not only take a twenty percent fee from every booking but also build in fees for services that young models feel powerless to decline and sometimes are unaware they are charged for.<sup>191</sup> Agencies may charge young models, for example, for everything from mandatory walking lessons to personal grooming, test shoots, transportation, and even corporate gifts.<sup>192</sup>

Some models claim that deductions from their final pay stem from services other than agency commission, going so far as to imply that agencies automatically deduct money from models' paychecks without permission.

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<sup>189</sup> *The Life of a Fashion Model: Grueling Not Glitzy*, NPR, <https://www.npr.org/2011/09/28/140882246/the-life-of-a-fashion-model-grueling-not-glitzy>, (last visited Mar. 13, 2019) [<https://perma.cc/AU8W-7E48>].

<sup>190</sup> Lauren Lyons Cole, *Kendall Jenner and Gisele Bundchen earn Millions-but most models make less than \$50,000 a Year*, BUS. INSIDER (Feb. 8, 2018), <https://www.businessinsider.com/new-york-fashion-week-model-salary-2017-9> [<https://perma.cc/6Q7Z-GFD2>].

<sup>191</sup> Erica Gonzales, *How much Modeling Really Pays (if You're Not Gigi or Kendall)*, HARPER'S BAZAAR (May 12, 2016), <https://www.harpersbazaar.com/fashion/models/a15585/how-much-modeling-costs/> [<https://perma.cc/V3GH-XXCZ>].

<sup>192</sup> *Id.*

For example, model Louisa Raske claims her agency even charged her for flowers the agency gave her for her birthday.<sup>193</sup> Another model shared her experience stating, “as a model, I have NEVER seen proof of the various charges that are made against my account, all of which are typically made without my specific prior authorization.”<sup>194</sup> Critics have compared modeling agencies to indentured servitude because models are often “in the red” with their agencies for years despite booking consistent work.<sup>195</sup> Furthermore, when models do question their agencies regarding billing and accounting, another working model stated, “most models are made to feel stupid or like they are inconveniencing the accountant by asking questions relating to the business side of the industry.”<sup>196</sup> Early on in their careers, underage models may not be aware of predatory agency practices that may cause a model to go into debt. Something has to change at the agency level so that underage models are not disadvantaged financially before they reach adulthood. There must be legal protections in place to safeguard the finances of minors, so they have the best opportunity to build a stable financial foundation as they enter adulthood. One way to implement these protections is by amending legislation to specify which fees may be charged to minors; capping maximum fees for lessons, grooming, and test shoots; and legally mandating a certain level of transparency regarding transportation, travel fees, and corporate expenses.

The California Labor Code defines talent agencies as follows:

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<sup>193</sup> Ellis et al., *supra* note 38.

<sup>194</sup> Lisa Davies, *The Case For Greater Financial Transparency*, MODEL ALLIANCE (last visited Nov. 16, 2018), <http://modelalliance.org/2012/financial-transparency-by-lisa-davies/financial-transparency-by-lisa-davies>, [https://perma.cc/BG55-ZCSH].

<sup>195</sup> Rose Hackman, *Model Life: To Call It Indentured Servitude is No Exaggeration*, GUARDIAN (Feb. 19, 2015), <http://www.theguardian.com/fashion/2015/feb/19/model-life-indentured-servitude-no-exaggeration> [https://perma.cc/QG3U-CFQ4]. See also Jennifer Sky, *It's Time to Rethink Exploitive Model Housing*, FASHIONISTA (Mar. 13, 2018), <https://fashionista.com/2018/03/fashion-model-agency-apartment-exploitation> [https://perma.cc/3KYE-P22H].

<sup>196</sup> *Id.*

(a) "Talent agency" means a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists, except that the activities of procuring, offering, or promising to procure recording contracts for an artist or artists shall not of itself subject a person or corporation to regulation and licensing under this chapter. Talent agencies may, in addition, counsel or direct artists in the development of their professional careers.<sup>197</sup>

Artists, then, are defined as follows:

(b) "Artists" means actors and actresses rendering services on the legitimate stage and in the production of motion pictures, radio artists, musical artists, musical organizations, directors of legitimate stage, motion picture and radio productions, musical directors, writers, cinematographers, composers, lyricists, arrangers, models, and other artists and persons rendering professional services in motion picture, theatrical, radio, television and other entertainment enterprises.<sup>198</sup>

The statutory definition of talent agency and artist thus encompasses modeling agencies and models. The Labor Code allows agencies to withhold payment to models to the extent necessary to offset the financial obligations of the artist to the agency.<sup>199</sup> The Code provides that every agency must file with the Labor Commissioner a schedule of the fees that will be charged and collected by artists and should keep the schedule of fees posted in a conspicuous place in the agency's office.<sup>200</sup> Modeling agencies are supposed to maintain records regarding the funds received on behalf of a given model and a record regarding the disbursement of said funds.<sup>201</sup>

Models and other artists may contest that an agency wrongfully withheld funds and seek retribution.<sup>202</sup> However, the statute does not cover an agency's

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<sup>197</sup> CAL. LAB. CODE § 1700.4 (West 2019).

<sup>198</sup> *Id.*

<sup>199</sup> CAL. LAB. CODE § 1700.25 (West 2019).

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

obligation to provide models and other artists with an up-to-date record of earnings, fees, and commissions to empower them with the knowledge necessary to do so.

Section 1700.25 of the California Labor Code should be amended to add further financial protections by regulating permissible deductions by agencies. The statute must explicitly state the fees that agencies are permitted to deduct from a model's paycheck and ban agencies from charging frivolities like birthday flowers. Furthermore, modeling agencies should be required to provide an accounting or list the fees deducted on the paycheck itself, and underage models should be required to sign off in advance on fees from agencies to avoid frivolous costs such as birthday flowers and "internet fees."<sup>203</sup> Admittedly, there are some legitimate fees that young models must incur, such as test shoots and travel costs. However, the changes proposed herein should importantly provide underage models with a basic understanding of charges and how much they are expected to repay through earnings. Providing a basic understanding will help protect models from becoming indebted to their agencies. By passing legislation that demands modeling and talent agencies be more transparent with models and talent, snowballing fees may be identified and dealt with earlier on by models and other talent.

This new provision, added as a subsection of § 1700.25 of the California Labor Code, could include the following:

*a) Talent agencies shall charge artists no fees other than Transportation Costs; Housing Costs; Grooming Costs; Lessons for walking, acting, and posing, which are to be capped at a maximum fee per year; Travel Costs; and Professional Product Costs (which for a model may include test shoots, headshots, model books, and comp cards, etc.). Unacceptable costs include but are not limited to: Corporate gifts, birthday gifts, internet usage fees, and storage of online data or materials.*

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<sup>203</sup> Davies, *supra* note 194.

*b) Transparency of all fees charged or implemented by the agency to the artist, including notification of the precise form of deduction or withholding (such as a lump sum, a percentage from each paycheck, or monthly payments) from the artist's earnings, along with a short explanation and description of each fee. A talent agency may not simply state that a fee is an "administrative cost" but must describe the fee with an adequate level of specificity that an artist may be able to contest the fee if necessary.*

*c) The artist must be able to sign-off in advance on the fee implemented by the agency prior to incurring the fee, or if pre-approval is not reasonably possible, notice of the fee must be given along with an opportunity to contest within thirty days of notice.*

By adding a new subsection to the California Labor Code along these lines, underage models, along with other artists and talent, will gain new protections from hidden fees otherwise dubiously and erroneously charged by talent agencies. If agencies are required to be more transparent with models regarding upfront costs, models will be empowered with more autonomy over their finances. Individual models can determine whether they are willing to accept services such as lessons, beauty treatments, and aesthetic enhancements from their agencies by weighing the financial impact before it is incurred.

## VII. ISSUES WITH PRESCRIBED LEGISLATION

It has been a long and arduous fight for advocates of models' rights to gain the protections in place today.<sup>204</sup> Since models often operate as independent contractors, it is difficult to monitor employment standards in the same way one would for a traditional nine-to-five employee. Furthermore, because so many young girls dream of becoming models due to the glamorized allure of the industry, aspiring models may turn—and regularly do turn—a blind

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<sup>204</sup> Alice Newbold, *Can the Model Alliance Respect Programme make a Difference?*, VOGUE (May 22, 2018), <https://www.vogue.co.uk/article/sara-ziff-on-model-alliance-respect-programme> [<https://perma.cc/3D48-VHFB>] (Model Alliance member Sara Ziff shares the long struggle for models' rights).

eye to unfair treatment, at least in the short term. As has been shown, since so many underage models become starry-eyed with the idea of making it big as a model, agencies are able, either purposefully or unconsciously, to take advantage of minors who are willing to accept unfair working conditions, outlandish agency fees, and sometimes even sexual harassment all to get a gig. Nevertheless, dissenters and maintainers of the status quo will argue that these young models should be able to pursue their careers at any age, despite the risk, and that the state should not step in to regulate further because the fashion industry can regulate itself. Thus, in this section, the article will address popular counterarguments.

*A. Counterargument: Minimum age requirements would decrease career opportunities*

Representatives of large and small modeling agencies alike, and even independent designers, may argue that enacting a minimum age requirement for models to pose for fashion editorials and adult advertisements will allow fewer models the opportunity to pursue their careers. The same dissenters likely believe that if a model's parents allow the model to pursue a career in modeling, then state regulations should not prevent ambitious young models from chasing their dreams. Looking closely at this argument, it becomes apparent that its logic does not transcend industries. If the owner of a steel mill said that he wanted to allow child workers to begin operating heavy machinery at age twelve so that young workers would have the opportunity to build a career, society at large would scoff at that logic. While models do not operate heavy machinery, they face the dangers described in this article, such as sexual harassment, eating disorders, and predatory financial schemes from modeling agencies. It is only because the modeling industry regularly employs children that there is an assumption that a model may miss her chance at success if she does not start as a child. If agencies hire adult models, then young girls who dream of modeling will still have the same career

opportunities as adults later on, because eventually no one in the industry will have been able to start before age eighteen.

Furthermore, while it cannot be said that age universally defines maturity, if adult outsiders have trouble understanding conditions inside the industry, think how hard it would be for an outsider who's also a minor. An aspiring teenage model cannot be expected to understand the intricacies of a modeling contract, what it means to work as an independent contractor, what constitutes sexual assault, and which clothing items and poses are overly provocative on a teenage model. Most teenagers are not equipped to handle the pressures of the industry, let alone stand up to photographers and agents who may push them into uncomfortable situations. Due to the risks and pressures of the industry, there must be a legislated minimum age requirement.

While it is ultimately a child's parent or guardian who is responsible for looking out for the child's best interest, as a state, California also has an interest in child welfare and so must put in place certain minimum age safeguards in the modeling context. It is not only children who view the fashion and entertainment industry through rose-colored glasses. Adults who have not experienced the industry directly may not understand the common industry dangers and may not understand how to properly protect their own children. By enacting a minimum age requirement for models in the industry, underage models are less likely to be exposed to unsafe working conditions, sexual harassment, and work that sexualizes them in an age inappropriate manner.

*B. Counterargument: There have been several attempts to introduce legislation in Congress to protect child performers, including child models, but the bills have not passed*

To industry insiders, the discussion surrounding the protection of child models is not novel. In the past, legislators have introduced bills furthering protections for child models, yet, many of these bills faced enormous

pushback from the fashion industry, sometimes from models themselves.<sup>205</sup> Dissenters may posit that there have been numerous attempts to introduce legislation in the past and that those bills failed, so why should the changes proposed here be any different? For instance, in 2016, California legislators proposed a bill requiring models to get a doctor's sign-off that the model is a healthy weight and that the model does not suffer from an eating disorder.<sup>206</sup> The bill proposed a variety of services for models at risk of eating disorders, not only to encourage healthy models but to relieve pressure from adolescent girls who, it has been shown, feel enormous pressure to maintain ultra-thin bodies after looking at fashion magazines and advertisements.<sup>207</sup> The law was never enacted and faced criticism from models themselves, some of whom asserted that BMI standards actually prohibit healthy models who are naturally thin from working.<sup>208</sup>

Similarly, dissenters may point to the New York State Assembly's failed "Models' Harassment Protection Act" presented by Rep. Nily Rozic in 2017.<sup>209</sup> The goal of the act was to hold modeling agencies accountable in

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<sup>205</sup> Erica Tempesta, *'We Stuffed Our Underwear with Sandbags': Ex-Model Reveals Shocking Tricks Used by Runway Stars to Break Controversial Weight Laws that Make too-thin Catwalkers Illegal*, DAILY MAIL (Apr. 23, 2015, 7:41 PM), <https://www.dailymail.co.uk/femail/article-3052802/Ex-model-reveals-shocking-tricks-used-runway-stars-break-controversial-weight-laws-make-catwalkers-illegal.html> [<https://perma.cc/98WL-NXJQ>] (A model describes BMI laws as 'discriminatory' and 'misguided').

<sup>206</sup> *Proposed California Law Aims to Reduce Eating Disorders Among Models*, FASHION LAW (Feb. 23, 2017), <http://www.thefashionlaw.com/home/proposed-california-law-aims-to-reduce-eating-disorders-among-models?rq=models> [<https://perma.cc/KN9V-GUKZ>].

<sup>207</sup> A.B. 2539, Gen. Assemb., Reg. Sess. (Cal. 2016), available at [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160AB2539](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB2539) (last visited Nov. 21, 2018) [<https://perma.cc/7CDY-KNKL>].

<sup>208</sup> Ava Baccari, *The BMI approach may not measure up as a health indicator for fashion models*, GLOBE AND MAIL (Oct. 15, 2015), <https://www.theglobeandmail.com/life/fashion-and-beauty/the-bmi-approach-may-not-measure-up-when-determining-the-health-of-fashion-models/article26780895/> [<https://perma.cc/R7AG-KS45>].

<sup>209</sup> Eliza Brooke, *New Legislation Aims to Protect Models from Sexual Misconduct*, RACKED (Oct. 23, 2017), <https://www.racked.com/2017/10/23/16524628/models-harassment-protection-act> [<https://perma.cc/638R-XTF6>].



protecting models from sexual harassment by making it illegal for modeling agencies to subject models to harassment of any kind.<sup>210</sup> Though sexual harassment on the job is recognized as a systematic and pervasive issue in the modeling industry,<sup>211</sup> and the bill received widespread and public support from models in the industry, the bill never made it past the ensuing Senate committee.<sup>212</sup> Some may believe the modeling industry is too niche to garner the widespread support necessary to push bills through Congress; however, fashion industry issues have gained mainstream attention over the past two years. There is potential that lobbying efforts on behalf of the fashion industry could have played a role as well. Between the “Me Too movement” and recent articles in widely read publications like *Vogue*, the public at large has gained a broader understanding of the modeling industry’s shortcomings. Now—while the public is paying attention—is the time to demand that the State of California enact stricter protections for children in the modeling industry. New York serves as an example that regulations increasing protections for underage models are both plausible and necessary.<sup>213</sup>

*C. Counterargument: Vogue, the CFDA, and independent designers have already vowed to stop using underage models; why is a change in the law necessary?*

There are many ways to address employment issues, and new legislation is only one potential solution. Since the CFDA has pledged not to hire models

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<sup>210</sup> *Id.*

<sup>211</sup> Rosemary Feitelberg, *Bill Geared for Protecting Models Against Sexual Harassment Is Supported by Assemblywoman Nily Rozic*, WWD (Oct. 23, 2017), <https://wwd.com/fashion-news/fashion-scoops/bill-geared-for-protecting-models-against-sexual-harassment-is-supported-by-assemblywoman-nily-rozic-11033396/> [<https://perma.cc/P7RC-AXVJ>].

<sup>212</sup> A.B. A8752, Legis., 202nd Sess. (N.Y. 2017), available at <https://www.nysenate.gov/legislation/bills/2017/a8752> (last visited Nov. 21, 2018) [<https://perma.cc/GY42-XCV2>].

<sup>213</sup> See TFL, *supra* note 83.

under the age of sixteen,<sup>214</sup> and publication powerhouse Condé Nast has vowed to stop using models under eighteen,<sup>215</sup> why do regulations need to be codified at all? Unfortunately, the fashion industry seems to have no problem breaking pacts and promises. This is not the first time *Vogue* has vowed to quit hiring underage models; in fact, in May 2012, the publication made the same promise but continued to work with minors.<sup>216</sup> Though the CFDA asked New York Fashion Week designers not to book models under age sixteen, every year there seem to be models who “slip through the cracks.”<sup>217</sup> From fifteen-year-old Valerija Sestic in 2011 to fourteen-year-old Ondria Hardin the next season,<sup>218</sup> fashion designers find ways to employ underage models by turning a blind eye and practicing the “ignorance is bliss” mentality. While the fashion industry seems to have taken steps to protect the youngest and most vulnerable in the industry, these measures do not hold the industry overall accountable. At face value, the fashion industry appears to have selectively enacted self-regulating measures to protect underage models, but without true compliance with new standards, “appearances” are where protections end. In an industry focused primarily on aesthetics, does it really come as a surprise that protections for underage models are just that—pretty fluff? For years the fashion industry has been left to self-regulate, and by

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<sup>214</sup> Lexi Nisita, *Surprise: Underage Models aren't Going Anywhere*, REFINERY 29 (Oct. 23, 2012), <https://www.refinery29.com/en-us/2012/10/38350/underage-models> [<https://perma.cc/6K7L-4HBN>].

<sup>215</sup> Alice Tidey, *Vogue Announces it Will No Longer Hire Models Under 18*, EURONEWS (Aug. 17, 2018), <https://www.euronews.com/2018/08/17/vogue-announces-it-will-no-longer-hire-models-under-18> [<https://perma.cc/4LUQ-JAK5>].

<sup>216</sup> *The Ongoing Battle Over Underage Models*, FASHION LAW (Sept. 27, 2012), <http://www.thefashionlaw.com/home/the-ongoing-battle-over-underage-models?rq=models> [<https://perma.cc/95NF-YPGN>].

<sup>217</sup> Ella Alexander, *An Honest Mistake*, VOGUE (Feb. 23, 2011), <https://www.vogue.co.uk/article/diane-von-furstenberg-uses-an-underage-catwalk-model> [<https://perma.cc/SQ7H-UXPT>] (Diane Von Furstenburg issues a public apology for allowing a fifteen-year-old in her runway show).

<sup>218</sup> Eric Wilson, *Checking Models' IDs at the Door*, N.Y. TIMES (Feb. 8, 2012), <https://www.nytimes.com/2012/02/09/fashion/efforts-to-stop-use-of-underage-models-during-new-york-fashion-week.html> [<https://perma.cc/7P2X-NBT9>].

extension regulate the modeling industry. Yet, issues such as eating disorders and sexual harassment remain common among underage models. The fashion industry cannot be trusted to self-regulate when it comes to shielding underage models from the dangerous realities of the modeling industry; therefore, industry pacts must be codified into state law to hold the industry accountable to its promises.

## VIII. CONCLUSION

In a world where Americans are exposed to an estimated 5,000 advertisements a day,<sup>219</sup> a portion of which come from the fashion industry, we must demand greater social responsibility, particularly when children are involved. The California state legislature must act to protect underage models from common abuses in the industry. Underage models are often sexualized inappropriately; they face sexual harassment in the workplace and may develop eating disorders from the industry's pressures to maintain a rail-thin body. These issues affect not only models within the industry, but also viewers, especially young girls, who see models in the fashion industry and feel enormous pressure to strive for this glorified body type that may not be healthy. Furthermore, underage models may become dependent on their modeling agencies financially, setting themselves up for an unstable financial future before they reach adulthood. The solution to these issues is trifold. The California legislature must 1) increase the \$100 fine to \$1000 for talent agencies that fail to properly educate underage talent about sexual harassment and eating disorders; 2) clarify legislation to define "obscene exhibition" and limit the type of work underage models may participate in; and 3) enact new legislation demanding transparency from modeling and talent agencies regarding fees and commissions.

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<sup>219</sup> Caitlin Johnson, *Cutting Through Advertising Clutter*, CBS (Sep. 17, 2006), <https://www.cbsnews.com/news/cutting-through-advertising-clutter/> [<https://perma.cc/VPR9-UGFF>].

While underage models will always have more difficulty coping with the pressures of the fashion industry than adult models, broader legislative protections for underage models will help underage models alleviate pressures, and will protect models from age-inappropriate dangers. Hopefully, these changes will create a safer working environment for underage models that will allow models to work in the fashion industry without unlawful exploitation due to their youth. By enacting greater protections for underage models, the State of California can be a pioneer for socially responsible change and higher standards for talent agencies and others in the fashion industry, impacting not only the models themselves but millions of people who consume fashion advertising daily.

