

1 DIVISION OF LABOR STANDARDS ENFORCEMENT  
2 Department of Industrial Relations  
3 State of California  
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11 **BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT**  
12 **DEPARTMENT OF INDUSTRIAL RELATIONS**  
13 **STATE OF CALIFORNIA**

Case No.: TAC 29923

13 JANE SCHULMAN, an individual dba VESTA  
14 TALENT AGENCY,

15 Petitioner,

16 v.

17 JOHN GAMMON ANDERSON, an individual,

18 Respondent.  
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**DETERMINATION OF  
CONTROVERSY (LABOR CODE §  
1700.44(a))**

1 **DETERMINATION**

2 **I.**

3 **INTRODUCTION**

4 The Petition filed on January 7, 2013 by Jane Schulman doing business as “Vesta  
5 Talent Agency” (“Vesta<sup>1</sup>”) against John Gammon Anderson (Ms. Schulman and Mr.  
6 Anderson collectively the “Parties”), to determine controversy pursuant to Section 1700.44 of  
7 the Labor Code was heard over two sessions – April 11, 2014 and June 5, 2014 - in the Los  
8 Angeles office of the Labor Commissioner (the “Labor Commissioner”), Division of Labor  
9 Standards Enforcement, Department of Industrial Relations, State of California. Barton L.  
10 Jacka, an attorney for the Labor Commissioner from the Sacramento office, heard the matter on  
11 assignment by the Labor Commissioner.

12 Both Ms. Schulman and Mr. Anderson appeared for both sessions. Neither was  
13 represented by counsel and neither produced any additional witnesses.

14 **II.**

15 **PLEADINGS AND HEARING**

16 **A. Allegations of the Petition.**

17 The Petition alleges in pertinent part that Ms. Schulman was a resident of Los Angeles  
18 County, California, was doing business as Vesta, was a “talent agency” as defined in Labor  
19 Code Section 1700.4 and was licensed under California law. The Petition also alleges:

- 20 • On or about August 9, 2010, the Parties entered into a written contract (the “Agency  
21 Contract”) whereby Mr. Anderson employed Ms. Schulman as his “exclusive talent  
22 agency for a period of 1 year ... to negotiate contracts for the rendition of my  
23 professional services as an artist, or otherwise, in the fields of motion pictures,  
24 legitimate stage, radio broadcasting, television, commercials, print, internet, and all  
25 other fields of entertainment.”

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<sup>1</sup> “Ms. Schulman” and “Vesta” are used interchangeably in this Determination.

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- The Agency Contract, among other provisions, set forth a commission schedule (10% for union jobs and 20% for nonunion jobs), contained termination provisions and set forth requirements for the payment of commissions to Ms. Schulman after termination of the Agency Contract in connection with jobs initially obtained during the term of the Agency Contract.
- Concurrent with Mr. Anderson’s signing of the Agency Contract on August 9, 2010, he signed a “check authorization agreement” (the “Check Authorization Agreement”) in favor of Vesta that authorized Vesta “to receive all payments due in connection with any television, film or modeling projects”, to endorse Mr. Anderson’s name to and to deposit all checks for such payment and to retain from those checks any sums or commissions owed to Vesta.
- A dispute exists under the Agency Contract insofar as Ms. Schulman asserts that she is owed “monies and residuals ... for television jobs procured by [Ms. Schulman], including CSI, America’s Most Wanted, and recurring role on ABC’s The Middle”.
- At the time the Parties entered-into the Agency Contract, Mr. Anderson had no professional credits or training and was not a member of the Screen Actors Guild (“SAG”) or of the American Federation of Television and Radio Artists (“AFTRA”). Ms. Schulman helped Mr. Anderson join both SAG and AFTRA and “procured” for Mr. Anderson “a recurring role in ABC’s The Middle”.
- Around the time that Mr. Anderson got the role in “The Middle”, he “began to act derelict in his duties, including failing to confirm auditions in a timely manner, misdirecting payments to himself, then not paying commissions at all, missing auditions and declaring he didn’t feel like responding to the casting director’s direction.”
- The Parties then agreed that Ms. Schulman would not represent him after the Agency Contract expired but that Mr. Anderson would be required to pay her commissions for episodes of “The Middle” regardless of whether he, she or someone else negotiated extensions to his original contract to appear on that program.

- 1 • In August 2010, Ms. Schulman “set up season two” of Mr. Anderson’s role in “The
- 2 Middle”, “including a table reading to take place after [the Agency Contract] expired.”
- 3 • In September 2010, after the Agency Contract expired, Mr. Anderson asked Ms.
- 4 Schulman again to be his talent agent, but she declined.
- 5 • “Although for months [Mr. Anderson] agreed to continue to pay commission and
- 6 residuals for past and future episodes of The Middle, payments to [Ms. Schulman] with
- 7 appropriate documentation stopped, although a few undocumented residual checks
- 8 came, some were not signed by [Mr. Anderson] and some made it through the US mail
- 9 although only a 5 cent stamp was affixed without [Mr. Anderson’s] return address.”
- 10 • The Petition seeks the following relief: “All payments and monies owed on acting jobs
- 11 procured by [Ms. Schulman], reasonable attorneys’ fees including those incurred by
- 12 petitioner pursuing payments before initiating this action.”

13 **B. Ms. Schulman’s testimony.**

14 At the commencement of the hearing, Ms. Schulman tendered an April 11, 2014

15 “Request for Determination of Controversy” outlining her arguments supporting the Petition

16 and asking the Labor Commissioner to order Mr. Anderson: (a) to pay Ms. Schulman a 10%

17 commission on sums he received on various projects, accompanied by statements showing

18 what he had been paid; (b) to provide proof of payments he claims he has made to Ms.

19 Schulman; and (c) to reimburse her for attorneys’ fees she paid for responding to accusations

20 by Mr. Anderson. She then testified as follows:

21 In June 2009, Mr. Anderson contacted Ms. Schulman, a licensed talent agent, and asked

22 if she would represent him, Ms. Schulman agreed to do so. On August 6, 2009, the Parties

23 entered into the Agency Contract, the form of which had been approved by the Labor

24 Commissioner, which contained the following pertinent provisions:

- 25 • Mr. Anderson employed Ms. Schulman as his “exclusive talent agency for a period of 1
- 26 year[] (not to exceed 7 years) ... to negotiate contracts for the rendition of my
- 27 professional services as an artist, or otherwise, in the fields of motion pictures,
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1 legitimate stage, radio broadcasting, television, commercials, print, internet, and all  
2 other fields of entertainment.”

- 3 • The compensation due to Ms. Schulman was equal to 10 percent for “union jobs” and  
4 20% for “nonunion jobs” – “not to exceed maximum rate shown on fee schedule of all  
5 monies or things of value as and when received by me [i.e., Mr. Anderson] directly or  
6 indirectly, as compensation for my professional services rendered or agreed to be  
7 rendered during the term hereof under contracts, or any extensions, renewals,  
8 modifications, or substitutions thereof, entered into or negotiated during the term hereof  
9 and to pay the same to you [i.e., Ms. Schulman] thereafter for so long a time as I receive  
10 compensation on any such contracts, extensions, options, or renewals of said contracts;  
11 and for so long as you remain licensed. It is expressly understood that to be entitled to  
12 continue to receive the payment compensation on the aforementioned contracts, after  
13 the termination of this agreement, you shall remain obligated to serve me and perform  
14 obligations with respect to said employment contracts or to extensions or renewals of  
15 said contracts or to any employment requiring my services on which such compensation  
16 is based.”
- 17 • “In the event that I do not obtain a bond-fide offer of employment from a responsible  
18 employer during a period of time in excess of four consecutive months, during of which  
19 said time I shall be ready, able, willing, and available to accept employment, either  
20 party hereto shall have the right to terminate this contract by notice in writing to that  
21 effect sent to the other by registered or certified mail.”

22 On August 6, 2009, Mr. Anderson also signed a “Check Authorization” that allowed  
23 Ms. Schulman to collect Mr. Anderson’s compensation such that she would retain the  
24 commission due to her from that sum and forward the rest to Mr. Anderson.

25 Early in the relationship, Mr. Anderson began to “act out” – not making appointments,  
26 responding to audition notices, etc. In November 2009, Ms. Schulman told Mr. Anderson that  
27 she wanted to terminate the Agency Contract. After a discussion in which Ms. Schulman  
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1 conveyed to Mr. Anderson her concern about his conduct and Mr. Anderson made assurances  
2 to her about his changing his conduct, Ms. Schulman agreed to remain as his talent agent.

3 After this potential disruption in their relationship, the Parties proceed on a more  
4 fruitful footing: Mr. Anderson got auditions and parts in advertisements (e.g., for Verizon) and  
5 in television series (e.g., "CSI") and obtained an audition for Warner Bros.' ABC series, "The  
6 Middle" – a program in which he eventually got a small role. When Mr. Anderson began  
7 "acting out" again, Ms. Schulman coached him on how to make himself more valuable on  
8 series in which he appeared.

9 At some point after he began to appear in "The Middle", Mr. Anderson re-directed his  
10 paychecks so that they went to him instead of (per the August 6, 2009 Check Authorization) to  
11 Ms. Schulman – such that he now had the obligation to pay Ms. Schulman her commission  
12 instead of Ms. Schulman having the obligation to pay Mr. Anderson his compensation net of  
13 her commission. Ms. Schulman then began to receive payments for her commissions from Mr.  
14 Anderson but was not sure whether she was receiving the correct amounts; she also found it  
15 more difficult to contact him.

16 In or about June 2010, Ms. Schulman spoke with Warner Bros., which told her that Mr.  
17 Anderson would get a recurring role on "The Middle". She also learned, at about this time, that  
18 Mr. Anderson was looking for another agent. Nonetheless, Ms. Schulman continued to  
19 perform her duties under the Agency Contract. Later that month, Warner Bros. informed Ms.  
20 Schulman that it wanted to employ Mr. Anderson for one of two upcoming episodes of "The  
21 Middle". Both episodes were to be shot in August and September 2010 - after the date on  
22 which the Agency Contract was to terminate.

23 On August 5, 2010 (the day before the Agency Contract terminated), Ms. Schulman  
24 sent Mr. Anderson an e-mail in which she offered for forward "opportunities to you from past  
25 Vesta submissions, which if result in employment will be negotiated by and commissionable to  
26 Vesta in accordance with our contract" and "that any and all residuals and, new jobs resulting  
27 from past Vesta jobs and Vesta submissions will continue to be handled by Vesta which is  
28 entitled to 10% gross of all income earned." Mr. Anderson responded to this e-mail on August

1 14, 2010 only by noting that SAG had sent a check for a job to his sister's house and that Ms.  
2 Schulman's "cut" was in the mail. He did not otherwise respond to Ms. Schulman's assertion  
3 about her post-termination rights, but Ms. Schulman testified that she believed that if Mr.  
4 Anderson benefited from an "extension" of a pre-August 6, 2010 contract – e.g., to play the  
5 same role on "The Middle" for the following season, then she would receive her 10%  
6 commission. She testified that she did not know if she was entitled to a commission for Mr.  
7 Anderson's role in a "spinoff" from a commissionable television show, that she was not  
8 entitled to one if the later role came from someone simply having liked Mr. Anderson's  
9 performance but that she was entitled to a commission if Mr. Anderson was asked by someone  
10 for whom he performed in a commercial to perform in another commercial for the same  
11 product.

12 As of September 24, 2010, Ms. Schulman believed that although Mr. Anderson would  
13 in the future receive checks that required him to pay her a commission, she did not believe that  
14 she was, at that time, owed money based on sums that Mr. Anderson had already received.

15 On October 4, 2010, the Parties exchanged e-mails in which Ms. Schulman stated:  
16 "Just a reminder that per our contractual agreement, all episodes of The Middle are subject to  
17 commission irrespective of you no longer being a client. E.g., I sent up an episode earlier this  
18 summer but have not received any payment. Also, any other residuals for shows shot during  
19 our contracted association, e.g., AMW, CSI, etc., are also commissionable." Mr. Anderson  
20 responded with "Which episode? 'homecoming' has not come in yet. The check will be in the  
21 mail the day I get it."

22 On October 14, 2010, Mr. Anderson reiterated his assurance to Ms. Schulman that he  
23 would pay her the commission for "Homecoming" and in December 2010 he sent her an  
24 unsigned check for \$150.00 for that program (the money, according to Ms. Schulman,  
25 eventually was paid). Ms. Schulman further testified that she then received other, unsigned,  
26 checks from Mr. Anderson (along with some that were signed) and drew the conclusion that he  
27 did not want to pay her owed commissions, but that she did not have copies of and could not  
28 identify any of these checks.

1 From January to March 2011, the dispute between the Parties crystalized. In response  
2 to Ms. Schulman's request for payment of commissions, Mr. Anderson argued that every "job"  
3 (apparently, with respect to a television series, meaning "episode") was considered separate  
4 from every other "job" – with a separate contract and a separate right – or not – to commissions  
5 for getting that job. Accordingly, according to Mr. Anderson, because Ms. Schulman did not  
6 represent him after August 6, 2010, he did not owe her commissions for any job (even if as the  
7 same character in the same television series) for which he entered into a contract after that date.

8 Ms. Schulman then explained that she believed she was owed a specific sum in  
9 commissions but – without a copy of checks made out to Mr. Anderson or other statements  
10 showing what he was paid – she had no way of knowing what she was owed. She explained  
11 that she had not subpoenaed any of these materials prior to the hearing. She stipulated only  
12 that she had properly received the commission (\$150.00) owed to her for Mr. Anderson's work  
13 in "Homecoming".

14 Ms. Schulman's counsel wrote to Mr. Anderson on February 28, 2011, essentially  
15 asking for an accounting of sums paid to Mr. Anderson "for all engagements originally booked  
16 by [Ms. Schulman] during the term of the Agreement and all, extensions, renewals,  
17 modifications, and substitutions thereof all respecting current and future bookings and all  
18 episodes of the following shows: 'America's Most Wanted,' 'CSI', and 'The Middle'" as well  
19 as for all other "episodes, contracts, or engagements with employers originally booked by [Ms.  
20 Schulman] during the term of the Agreement, as may have been extended, renewed, modified,  
21 or substituted by the original employer." The letter referenced eight specific episodes of "The  
22 Middle" for which Ms. Schulman was expressly claiming commissions (for four of these  
23 episodes, the letter sought only residuals and for four it sought his original compensation plus  
24 residuals).

25 Mr. Anderson's counsel responded with a March 22, 2011 letter that purported to  
26 provide the accounting that Ms. Schulman's counsel had requested, as well as three checks  
27 (two checks (\$27.37 and \$2.31) for "CSI" and one check (\$4.48) for "The Middle"). The letter  
28 also asserted that following the date of the termination of the Agency Contract (stating that this



1 date was July 9, 2010 and not August 6, 2010) “there have been no extensions, options, or  
2 renewals of any contracts executed during the agency contract term.”

3 The accounting (not accompanied by any documentation) contained in the March 22,  
4 2011 listed 10 episodes of “The Middle” for which commissions had been paid or were  
5 enclosed, 4 episodes of “CSI” for which commissions had been paid or were enclosed and one  
6 episode of “AMW” (apparently “America’s Most Wanted”) for which commissions had been  
7 paid.

8 Ms. Schulman then introduced information that she asserted she had compiled from Mr.  
9 Anderson’s “IMDB” (Internet Movie Database – [www.imdb.com](http://www.imdb.com)) page as of April 10, 2014  
10 and which listed three episodes of “The Middle” and one episode each of “America’s Most  
11 Wanted” and “CSI: Crime Scene Investigation” on which Mr. Anderson allegedly had  
12 appeared during the term of the Agency Contract, 25 episodes of “The Middle” on which Mr.  
13 Anderson had appeared after the Agency Contract expired and several other jobs that appeared  
14 to have been done prior to, during and after the Agency Contract term. Ms. Schulman testified  
15 that she did not find credible the “accounting” provided by Mr. Anderson’s counsel on March  
16 22, 2011 because it did not contain any documentation of the sums paid to Mr. Anderson. She  
17 further clarified that from the exhibit listing shows from Mr. Anderson’s “IMDB” page she  
18 wanted only sums owed to her from episodes of “The Middle”, “CSI”, “America’s Most  
19 Wanted” and for “Primary photo” (a term she did not define) for “America’s Most Wanted”  
20 and “CSI”.

21 On cross-examination, Ms. Schulman testified that she had called the producers of the  
22 television shows with respect to which she was seeking commissions, asked for documents and  
23 had been denied; she had not subpoenaed any of the documents. She also had contacted the  
24 Screen Actors Guild (“SAG”), which handles checks for residuals paid to actors by receiving  
25 them from the appropriate employer and forwarding them either to the actor or to the agent, as  
26 appropriate. SAG, according to Ms. Schulman, would tell her only that Mr. Anderson had  
27 informed SAG that Ms. Schulman had been paid for residuals.

28 Further cross-examination of Ms. Schulman elicited the following:

- 1 • She had received some commission checks for original work from Mr. Anderson's
- 2 employers and was in those instances seeking only residuals;
- 3 • In other instances pertaining to television series, she was seeking pay for Mr.
- 4 Anderson's work on subsequent episodes that may have been taped post-Agency
- 5 Contract but with respect to which she was entitled to commissions;
- 6 • She had been paid for the "Valentine's Day", "Signals" and "TV or Not TV?" episodes
- 7 of "The Middle" but did not know whether and how much she was owed for residuals –
- 8 checks for residuals should have gone to SAG and then to Mr. Anderson;
- 9 • She seeks commissions both for Mr. Anderson's primary work and for residuals for all
- 10 episodes of "The Middle" following the May 12, 2010 episode: "Signals"; she had
- 11 received checks for some episode of "The Middle" that followed "Signals" but wanted
- 12 proof that the sums were correct.
- 13 • She had been paid for Mr. Anderson's appearance on one episode of "America's Most
- 14 Wanted" and was seeking only residuals;
- 15 • She had been paid for Mr. Anderson's appearance on one episode of "CSI" and was
- 16 seeking only residuals.

17 **C. Mr. Anderson's testimony.**

18 Mr. Anderson testified that his work on "The Middle" was conducted through episode-

19 by-episode contracts and that Ms. Schulman – in accordance with the Agency Contract, which

20 she had drafted - was entitled to commissions only on episodes pertaining to which the contract

21 was entered while she represented him. Hiller Entertainment Group, his current agent,

22 represented him with respect to post-Agency Contract episodes of "The Middle."

23 Even now, in Season 5 of "The Middle", he does not know if he will have work on any

24 particular episode. He receives a separate, stand-alone contract, at the last minute, immediately

25 prior to the beginning of work on each episode.

26 Accordingly, according to Mr. Anderson, he did not pay Ms. Schulman commissions on

27 episodes of "The Middle" after the May 12, 2010 episode "Signals" (except for one) because

28 his appearance in each episode after "Signals" was pursuant to a separate contract that Ms.

1 Schulman did not procure. The one episode – “Homecoming” – for which he did pay Ms.  
2 Schulman, was, he asserted, in error; the contract for that episode was entered into on August  
3 23, 2010, after the Agency Contract expired.

4 In support of this assertion, Mr. Anderson produced a series of August 17-24, 2010 e-  
5 mails between him and his manager in which his appearance in “Homecoming” was described  
6 by his manager as a “one day Guest Star”. He also produced three contracts, dated December  
7 14, 2009, August 23, 2010 (i.e., for the “Homecoming” episode) and March 9, 2014 (the most  
8 recent contract prior to the hearing on the Petition), for episodes of “The Middle”, between  
9 himself and Warner Bros. Television, each written substantially the same except for the  
10 episode number, date and name and his compensation (which appears to increase over the  
11 period). Each also differs in that one is a “minimum three-day contract” for “three-day  
12 minimum employment” one is a “daily contract” for a “day player” and one is a “weekly  
13 contract”. Each contract describes him as playing the character “Darrin”, references a specific  
14 episode and specific period of employment (1, 3 or 5 days) and none refers to any prior or later  
15 episode or contract. Although each provides for compensation if the shooting of the episode  
16 takes longer than the 1-, 3- or 5-day period, none has a provision pertaining to an extension or  
17 renewal of the contract.

18 Mr. Anderson testified that for every episode of “The Middle” on which he works, he  
19 receives a virtually identical, stand-alone contract. The only major difference from episode to  
20 episode – other than an increase in compensation as “The Middle” has lengthened its run – is  
21 that if he has more than 5 lines he is described as a “guest star” and less than 5 lines as a “co-  
22 star”.

23 Mr. Anderson acknowledged that if Ms. Schulman had, during the term of the Agency  
24 Contract, procured for him a “series” contract, he would owe her for the entire run of “The  
25 Middle” – but, he testified, she did not.

26 Mr. Anderson also testified that he had paid Ms. Schulman all residuals owed for the  
27 three episodes of “The Middle” and for the episodes of “CSI” and “America’s Most Wanted”  
28 that he admitted she had earned. He produced several checks made out to agents other than to

1 Vesta (some of which appeared to be for appearances in "The Middle") and two checks made  
2 out to Vesta: one for an appearance on "CSI" and the other (for \$183.53) for "undetermined  
3 commissions".

4 Mr. Anderson then testified he had with him at the hearing other checks made out to  
5 Vesta, as well as pay all stubs showing payments to him for work on "The Middle", "CSI" and  
6 "America's Most Wanted" and that the material he had brought with him, in his opinion, would  
7 constitute the accounting that Ms. Schulman sought. He argued that he owed no commissions  
8 to Ms. Schulman on performance contracts into which he entered after the Agency Contract  
9 ended. He agreed that he had an obligation to pay Ms. Schulman a commission for residuals  
10 on "The Middle", "CSI" and "America's Most Wanted" for performances he agreed to do  
11 during the Agency Contract, but that he had paid Ms. Schulman and that if he had not, the  
12 documents he brought would show any amount still owed.

13 **D. The Parties' agreement to an accounting.**

14 After Mr. Anderson concluded his direct testimony, the Parties conferred and agreed to  
15 review materials provided by Mr. Anderson to determine whether they actually had a dispute  
16 over residual sums and then, if that was not the case, to leave to the Hearing Officer the issue  
17 of commissions owed for episodes of "The Middle" for which episodic contracts were entered-  
18 into after expiration of the Agency Contract.

19 The Parties agreed that Mr. Anderson had an obligation to pay Ms. Schulman a  
20 commission on residuals he received for three episodes of "The Middle", for "CSI" and for  
21 "America's Most Wanted"; the Parties' review of the documents brought to the hearing by Mr.  
22 Anderson would, Mr. Anderson asserted, show that he had paid these commissions. Further,  
23 according to Mr. Anderson, if the Hearing Officer decided that he did owe Ms. Schulman  
24 commissions for episodes of "The Middle" for which he entered into episodic contracts after  
25 expiration of the Agency Contract, the documents would show the sums he had received and  
26 thereby allow determination of commissions owed.

27 Upon the stipulation of the Parties, the hearing was suspended and continued to a later  
28 date.

1 **E. Second (post-accounting) session of hearing.**

2 The hearing re-commenced on June 5, 2014. The Parties agreed that they had copied  
3 and exchanged the documents that Mr. Anderson brought with him to the first session.

4 Mr. Anderson was cross-examined by Ms. Schulman. He testified that in May 2014 he  
5 sent her all checks with sums owed at that time.

6 Ms. Schulman then tendered an “addendum” to the Petition that argued that Mr.  
7 Anderson’s role as “Darrin Davis” in “The Middle” was, according to the standards of the  
8 industry, a “recurring role” and that pursuant to the Agency Contract, Mr. Anderson was  
9 obligated to pay her commissions based on his pay in that role (obtained by Ms. Schulman  
10 during the Agency Contract term) regardless of whether each episode was assigned to him by a  
11 separate contract. She attached to this addendum what she asserted was a \$1,000.00 invoice  
12 from her attorney “for demanding a cease and desist and, payment for overdue commissions”  
13 and requested reimbursement for those costs. Ms. Schulman neither asked Mr. Anderson any  
14 questions about the addendum or its attachment or testified about it herself.

15 Mr. Anderson closed by arguing that he had complied with the Agency Contract and  
16 provided to Ms. Schulman all records required to show that compliance. He reiterated that  
17 each episode of “The Middle” was given to him via a separate contract and that Ms. Schulman  
18 was not entitled to commissions for such contracts entered-into after expiration of the Agency  
19 Contract; he did not, he argued, get through her services a series contract or multiple episode  
20 contract.

21 He further argued that Ms. Schulman had received all checks for residuals but that he  
22 was agreeable to “opening his books” to the possibility that he owes money on residuals  
23 received for pre-Agency Contract expiration work.

24 **III.**

25 **FINDINGS OF FACT**

26 1. Ms. Schulman, a licensed talent agent pursuant to Labor Code Section  
27 1700.4(a), was entitled under the Agency Contract to 10% of any sums received by Mr.  
28 Anderson, an artist pursuant to Section 1700.4(b), for his work on “CSI”, “The Middle” and

1 "America's Most Wanted" – whether for the initial work or for residuals from later showings  
2 of that work, on the following conditions pertinent to this matter:

3           A.     That the contract under which Mr. Anderson performed was entered-into  
4 or negotiated during the term of the Agency Contract or was an "extension", "option", or  
5 "renewal" entered-into or negotiated during the term of the Agency Contract; and

6           B.     That Ms. Schulman complied with her obligation, after the expiration of  
7 the Agency Contract, to serve Mr. Anderson and to perform obligations with respect to these  
8 contracts, extensions or renewals of such contracts or to employment upon which her claim for  
9 commissions is based.

10           2.     Ms. Schulman drafted the form Agency Contract.

11           3.     The Parties' dispute, by the close of the hearing, pertained to:

12           A.     Commissions owed for residuals received for episodes of "CSI",  
13 "America's Most Wanted" and "The Middle" pertaining to which the contract indisputably  
14 were entered-into or negotiated during the term of the Agency Contract; and

15           B.     Commissions owed for Mr. Anderson's performance fee and for  
16 residuals received by him for episodes of "The Middle" pertaining to which the contract was  
17 entered-into or negotiated after the term of the Agency Contract.

18           4.     No evidence, aside from Mr. Anderson's admissions, showed the amount of  
19 money Mr. Anderson received from his performances in "CSI", "The Middle" and "America's  
20 Most Wanted" – either initially or from residuals. In this respect, although not required, it is  
21 notable that Ms. Schulman did not attempt, either prior to the first session or – after receiving  
22 the documents provided by Mr. Anderson in his "accounting" – prior to the second session - to  
23 subpoena documents from parties other than Mr. Anderson that would have shown sums he had  
24 received.

25           5.     Mr. Anderson demonstrated – with respect to residuals for which he admitted  
26 he had an obligation to pay commissions to Ms. Schulman - that he had paid each such  
27 commission.

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1 6. Throughout the term of the Agency Contract and up to the time of hearing, Mr.  
2 Anderson has played the same role – that of “Darrin Davis” – in the same television show:  
3 “The Middle”, produced by the same entity: Warner Bros. Television for telecast on the same  
4 network: ABC.

5 7. Each contract for Mr. Anderson’s role in “The Middle” that was submitted in  
6 evidence appears to be a “stand alone” agreement pertaining to a particular episode of the  
7 series. None refers to a prior agreement and none has a provision providing for an extension –  
8 other than that if the episode in question takes longer than the one-, three- or five-day period  
9 contemplated by the contract, Mr. Anderson’s compensation is increased.

10 **IV.**

11 **CONCLUSIONS OF LAW**

12 **A. Jurisdiction.**

13 Labor Code Section 1700.44(a) states: “In cases of controversy arising under this  
14 chapter [4, of Part 6 of Division 2 of the Labor Code], the parties involved shall refer the  
15 matters in dispute to the Labor Commissioner, who shall hear and determine the same, subject  
16 to an appeal within 10 days after determination, to the superior court where the same shall be  
17 heard de novo. To stay any award of money, the party aggrieved shall execute a bond  
18 approved by the superior court in a sum not exceeding twice the amount of the judgment. In all  
19 other cases the bond shall be in a sum of not less than one thousand dollars (\$1,000) and  
20 approved by the superior court.” The contractual relationship between Ms. Schulman, a  
21 licensed talent agent and Mr. Anderson, an artist, is governed by Chapter 4 and the Labor  
22 Commissioner, who is charged with determining her jurisdiction over a case (see Styne v.  
23 Stevens, 26 Cal. 4<sup>th</sup> 42, 54-55 (2001)) has jurisdiction over this controversy.

24 **B. Ms. Schulman’s claim for and accounting of and residuals from Mr. Anderson’s**  
25 **performances in “CSI”, “America’s Most Wanted” and Agency Contract-term**  
26 **episodes of “The Middle”.**

27 The Petition sought an accounting by Mr. Anderson and commissions owed to Ms.  
28 Schulman under the Agency Contract that would be determinable following the accounting. At

1 the conclusion of the first session of the hearing, Mr. Anderson agreed to provide an  
2 accounting in the form of the documents he brought to the hearing; almost two months elapsed  
3 between the first and second session of the hearing and, at that second session, Ms. Schulman,  
4 while maintaining that Mr. Anderson had not paid her residuals that he owed her, did nothing  
5 to indicate that the accounting he had provided was insufficient. She had previously testified  
6 that she had asked third parties for documents that would show sums Mr. Anderson had  
7 received for his work on the three television programs but she did not seek or have issued  
8 subpoenas for such documents. See 8 California Code of Regulations (“CCR”) § 12027  
9 (authorizing the Labor Commissioner, at request of a party, to issue subpoenas for documents  
10 and witnesses).

11 Accordingly, I find that Ms. Schulman, assuming arguendo that she was entitled to an  
12 accounting at the conclusion of the first session, failed to show that she still was entitled to it at  
13 the conclusion of the second session.

14 With respect to residuals allegedly owed, the parties were left in the following posture:  
15 Ms. Schulman had the burden to show that Mr. Anderson had received sums requiring him to  
16 pay her a particular sum in commissions. Mr. Anderson then was required to show what he  
17 had paid. What transpired was different: the evidence of what Mr. Anderson was paid came  
18 from Mr. Anderson; and, when he provided the evidence of what he had paid in commissions,  
19 that sum equaled 10% of what he had received.

20 Ms. Schulman argued that Mr. Anderson had not provided a full accounting but neither  
21 sought to admit into evidence the materials he provided her after the first session of the hearing  
22 nor to obtain from third parties, by subpoena (if they were unwilling to comply voluntarily),  
23 materials that would show what he had been paid. See 8 California Code of Regulations §  
24 12027 (authorizing the Labor Commissioner, at request of a party, to issue subpoenas for  
25 documents and witnesses).

26 Accordingly, Ms. Schulman failed to fulfill her burden to show that she is still owed  
27 sums for residuals and this claim is denied.

28



1 C. Ms. Schulman's claim for commissions from Mr. Anderson's post-Agency  
2 Contract agreements for performances in "The Middle".

3 The Agency Contract required Mr. Anderson to pay Ms. Schulman a 10% commission  
4 "as compensation for [Ms. Schulman's] professional services rendered or agreed to be rendered  
5 during the term hereof under contracts, or any extensions, renewals, modifications, or  
6 substitutions thereof, entered into or negotiated during the term hereof and to pay the same to  
7 [Ms. Schulman] thereafter for so long a time as [Mr. Anderson] receive[s] compensation on  
8 any such contracts, extensions, options, or renewals of said contracts; and for so long as [Ms.  
9 Schulman] remain[s] licensed. It is expressly understood that to be entitled to continue to  
10 receive the payment compensation on the aforementioned contracts, after the termination of  
11 this agreement, [Ms. Schulman] shall remain obligated to serve [Mr. Anderson] and perform  
12 obligations with respect to said employment contracts or to extensions or renewals of said  
13 contracts or to any employment requiring my services on which such compensation is based."

14 Accordingly, the first prerequisite for Ms. Schulman's right to compensation was that a  
15 "contract" be entered into or negotiated during the term of the Agency Contract; or that an  
16 extension, renewal, modification of a "contract" be entered or negotiated during the term of the  
17 Agency Contract.

18 Ms. Schulman argues for a different reading of the Agency Contract: i.e., that all that is  
19 required is that the "contract" be entered-into during the term of the Agency Contract and any  
20 extensions, renewals, modification or substitutions of that "contract" – even if entered-into or  
21 negotiated after the term of the Agency Contract - satisfy the prerequisite.

22 That approach has a certain attractiveness: Ms. Schulman procured the role of "Darrin  
23 Davis" for Mr. Anderson, a role that he retained well after their relationship ended and feels  
24 entitled to compensation - even after the termination of their agency relationship – for her  
25 having procured a long-term role for him, provided that she was willing and able to meet any  
26 reasonable demand Mr. Anderson made to "serve [him] and perform obligations with respect to  
27 said employment contracts", etc. as required by the Agency Contract.  
28

1 The Agency Contract, however, simply does not say this. Even if one concluded that  
2 the Agency Contract is ambiguous – that this provision reasonably could be read as Ms.  
3 Schulman asserts – that finding would be of no avail. In that case, the ambiguity would be read  
4 against Ms. Schulman as the party who drafted the form Agency Agreement that she utilized  
5 for Vesta. See Victoria v. Superior Court (Kaiser Foundation Hospitals), 40 Cal. 3d 734, 739  
6 (1985).

7 Further, the very regulation that governs how the Agency Contract could have been  
8 written to afford Ms. Schulman post-termination commissions (assuming, arguendo, that the  
9 “stand-alone” agreements used for Mr. Anderson’s performance in “The Middle” otherwise  
10 qualified), demonstrates the flaw in the Agency Contract’s language:

11 Said talent agency contract may provide for the payment of compensation after the  
12 termination thereof with respect to any employment contracts entered into or negotiated  
13 for or to any employment accepted by the artist during the term of the talent agency  
14 contract, or any extensions, options or renewals of said employment contracts or  
15 employment.

16 8 CCR § 12001(b) (outlining the terms that must be contained in talent agency contracts with  
17 artists.

18 Accordingly, by the terms of the Agency Contract, Ms. Schulman could not have been  
19 and is not entitled to commissions for any of the episodic agreements with which he entered-  
20 into after termination of their relationship, even if those agreements were extensions, renewals,  
21 modification or substitutions of some pre-existing “contract”; and there is no evidence from  
22 which one could conclude that the entirety of Mr. Anderson’s role as “Darrin Davis” is  
23  
24  
25  
26  
27  
28

1 pursuant to a single "contract".

2 **D. Ms. Schulman's claim for attorney's fees.**

3 This claim is unsupported and is denied.

4 **IV.**

5 **ORDER**

6 The relief sought in the Petition is DENIED.

7

8 **Respectfully submitted:**

9

10 Dated: June 14, 2016

DIVISION OF LABOR STANDARDS  
ENFORCEMENT, Department of Industrial Relations,  
State of California

11

12

13

By: Barton L. Jacka  
BARTON L. JACKA  
Attorney for the Labor Commissioner

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16 **Adopted as the determination of the Labor Commissioner:**

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18 Dated: \_\_\_\_\_

\_\_\_\_\_  
JULIE A. SU  
CALIFORNIA LABOR COMMISSIONER

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1 pursuant to a single "contract".

2 **D. Ms. Schulman's claim for attorney's fees.**

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4 **IV.**

5 **ORDER**

6 The relief sought in the Petition is DENIED.

7

8 **Respectfully submitted:**

9

10 Dated: June 14, 2016

DIVISION OF LABOR STANDARDS  
ENFORCEMENT, Department of Industrial Relations,  
State of California

11

12

13

By: Barton L. Jacka  
BARTON L. JACKA  
Attorney for the Labor Commissioner

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15

16 **Adopted as the determination of the Labor Commissioner:**

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18

Dated: 06-29-2016

Julie A. Su  
JULIE A. SU  
CALIFORNIA LABOR COMMISSIONER

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PROOF OF SERVICE

(C.C.P. 1013)

**CASE NAME:** *Jane Schulman, dba Vesta Talent Agency v. John Gammon Anderson*  
**CASE NO:** TAC - 29923

I, David Spicer, hereby certify that I am employed in the County of Sacramento, over 18 years of age, not a party to the within action, and that I am employed at and my business address is: DIVISION OF LABOR STANDARDS ENFORCEMENT, Legal Unit, 2031 Howe Avenue, Suite 100, Sacramento, California 95825.

On July 1, 2016 I served the following document:

*Determination of Controversy*

A. **First Class Mail** - I caused each such envelope, with first-class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S. mail in Sacramento, California, for collection and mailing to the office of the addressee on the date shown below following ordinary business practices.

B. **By Facsimile Service** - I caused a true copy thereof to be transmitted on the date shown below from telecopier (916) 263-2920 to the telecopier number published for the addressee.

C. **By Overnight Delivery** - I caused each document identified herein to be picked up and delivered by Federal Express (FedEx), for collection and delivery to the addressee on the date shown below following ordinary business practices.

D. **By Personal Service** - I caused, by personally delivering, or causing to be delivered, a true copy thereof to the person(s) and at the address(es) set forth below.

E. **By Certified Mail** - I caused each such envelope, with fully prepaid postage thereon for certified mail, to be deposited in a recognized place of deposit of the U.S. mail in Sacramento, California, for collection and mailing to the office of the addressee on the date shown below following ordinary business practices.

Type of Service

Addressee

A

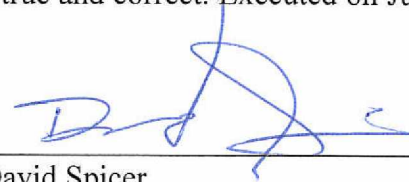
Jane Schulman  
Vesta Talent Agency

Jane Schulman  
Vesta Talent Agency

John Gammon Anderson

John Gammon Anderson

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 1, 2016 at Sacramento, California.



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David Spicer  
Assistant to Barton Jacka