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8 **BEFORE THE LABOR COMMISSIONER**
9 **OF THE STATE OF CALIFORNIA**
10

11 ROWENA ZIRBEL,

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13 Petitioner,

14 vs.

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16 DIVERSE TALENT GROUP, INC.,

17 Respondent.

CASE NO. TAC 25935

**DETERMINATION OF
CONTROVERSY**

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19 The above-captioned matter, a Petition to Determine Controversy under
20 Labor Code §1700.44, came on regularly for hearing on April 3, 2012 in Los Angeles,
21 California, before the undersigned attorney for the Labor Commissioner assigned to hear
22 this case. Petitioner ROWENA ZIRBEL appeared in pro per. Respondent DIVERSE
23 TALENT GROUP, INC. was properly served with the Petition but failed to appear.

24 Based on the evidence presented at this hearing and on the other papers on
25 file in this matter, the Labor Commissioner hereby adopts the following decision:

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FINDINGS OF FACT

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2 1. Petitioner ROWENA ZIRBEL, (hereinafter, "ZIRBEL"), is a
3 professional actress.

4 2. During the relevant time period, Respondent DIVERSE TALENT
5 GROUP, INC. ("DTG") was licensed as a talent agency in the state of California and
6 served as ZIRBEL'S talent agency commencing on October 6, 2006.

7 3. On November 9, 2010, payroll company Talent Partners sent check
8 no. 32120033 in the amount of \$592.20 gross (\$495.29 net) to ZIRBEL in care of DTG.
9 This check reflected a residual payment for ZIRBEL'S services as an actress in the "Got
10 Milk" commercial for gorgeous hair shot in February 2010. ZIRBEL did not discover that
11 this residual check was paid to her through DTG until approximately September 29, 2011.
12 On June 11, 2011, ZIRBEL received a bill from the Screen Actors Guild ("SAG") noting
13 that her union earnings were a lot higher than she was aware. Upon receiving this bill
14 from SAG, ZIRBEL requested a payroll report from Talent Partners which she received
15 on or about September 29, 2011 (per date on report) and discovered that Talent Partners
16 had sent DTG residual check no. 32120033 back in November 2010 for ZIRBEL'S work
17 on the "Got Milk" commercial but DTG had failed to forward the payment (less its 10%
18 commission) within 30 days of receipt or anytime thereafter, to ZIRBEL.

19 4. On March 16, 2011, payroll company Talent Partners sent check no.
20 32399223 in the amount of \$2,211.39 gross (\$1,909.50 net) to ZIRBEL in care of DTG.
21 This check also reflected a residual payment for ZIRBEL'S services as an actress on a
22 commercial called "Wilkinsonsword" shot in March 2009.

23 5. ZIRBEL filed a Petition to Determine Controversy on January 23,
24 2012 seeking \$2,124.43 which she claims is the total amount she is due after subtracting
25 DTG'S ten percent commission from the two checks in ZIRBEL'S name that were sent to
26 DTG in November 2010 and March 2011.¹

27 ¹ \$592.20 + \$2,211.39 = \$2,803.59 x 10% = \$280.35 total commissions due DTG. This
28 amount is subtracted from the total net amounts of the two checks: \$495.29+\$1,909.50 =
\$2,404.79 - \$280.35 = \$2,124.44 total amount ZIRBEL is claiming is due per this petition.

1 LEGAL ANALYSIS

2 1. ZIRBEL, a professional actress, is an "artist" within the meaning of
3 Labor Code §1700.4(b).

4 2. DTG is a licensed talent agency. Labor Code §1700.25(a) provides:

5 (a) A licensee who receives any payment of funds on
6 behalf of an artist shall immediately deposit that
7 amount in a trust fund account maintained by him or
8 her in a bank or other recognized depository. The
9 funds, less the licensee's commission, shall be
10 disbursed to the artist within 30 days after receipt.
11 However, notwithstanding the preceding sentence, the
12 licensee may retain the funds beyond 30 days of receipt
13 in either the following circumstances:

14 (1) To the extent necessary to offset an
15 obligation of the artist to the talent agency that is
16 then due and owing.

17 (2) When the funds are the subject of a
18 controversy pending before the Labor
19 Commissioner under Section 1700.44
20 concerning a fee alleged to be owed by the artist
21 to the licensee.

22 The evidence presented shows that DTG received two residual checks from payroll
23 company Talent Partners on behalf of ZIRBEL totaling \$2,803.59 gross (\$2,404.79 net)
24 and failed to turn over the monies to ZIRBEL less the agency's commissions within 30
25 days or anytime thereafter. Because these are residual checks from commercials shot in
26 the past, ZIRBEL was unaware check no. 32120033 in the amount of \$592.20 gross
27 (\$495.29 net) for her services as an actress on the "Got Milk" commercial for gorgeous
28 hair, was even paid to DTG by the payroll company back in November 2010. ZIRBEL
did not find out about the non-payment to her until September 2011 and filed her petition
to determine controversy in January 2012. As such, ZIRBEL'S claim is timely.

Likewise, ZIRBEL timely filed her claim for payment on the residual check no.

Note: ZIRBEL listed the amount due as \$2,124.43 but it is actually a penny higher.

1 32399223 in the amount of \$2,211.39 gross (\$1,909.50 net) for her services as an actress
2 on a commercial called "Wilkinsonsword."

3 The total amount of the two aforementioned checks less commissions equals
4 \$2,124.44.

5 3. Labor Code §1700.25(e) provides:

6 If the Labor Commissioner finds, in proceedings under
7 Section 1700.44, that the licensee's failure to disburse
8 funds to an artist within the time required by
9 subdivision (a) was a willful violation, the Labor
10 Commissioner may, in addition to other relief under
11 Section 1700.44, order the following:

12 (1) Award reasonable attorney's fees to the
13 prevailing artist.

14 (2) Award interest to the prevailing artist on the
15 funds wrongfully withheld at the rate of 10
16 percent per annum during the period of the
17 violation.

18 DTG'S failure to pay ZIRBEL the outstanding monies owed constitutes a willful
19 violation under Labor Code §1700.25(e). DTG has failed to pay the amounts owed to
20 date. Accordingly, we award interest on the unpaid monies in the amount of \$256.84

21 broken down as follows:

22	Check No.	Gross Amt	Net Amt	Commission Due (10% of gross)	Total Due ZIRBEL	Date DUE	Interest Due (10%)
23	32120033	\$592.20	\$495.29	\$59.22	\$436.07	12/9/10	\$64.87
24	32399223	\$2,211.39	\$1,909.50	\$221.13	\$1,688.37	4/16/11	\$191.97
25	TOTAL	\$2,803.59	\$2,404.79	\$280.35	\$2,124.44		<u>\$256.84</u>

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ORDER

For the foregoing reasons, Petitioner ROWENA ZIRBEL is entitled to collect \$2,124.44 in unpaid residual earnings plus \$256.84 in interest (calculated at 10% interest on the unpaid residuals from the date the payments were due to ZIRBEL, that is, 30 days after they were received by DIVERSE TALENT GROUP, INC., to the date of this determination, June 4, 2012) for a total amount of **\$2,381.28** due from Respondent DIVERSE TALENT GROUP, INC.

DATED: June 12, 2012

Respectfully submitted,

By: Edna Garcia Earley
EDNA GARCIA EARLEY
Attorneys for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: June 12, 2012

By: Julie A. Su
JULIE A. SU
State Labor Commissioner

