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STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
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BEFORE THE LABOR COMMISSIONER

OF THE STATE OF CALIFORNIA

DANIEL A. GREEN, an individual, Petitioner, vs. CHRISTINA SCOTT, A/K/A CHRISTINA WALKER, Respondent.	**CASE NO. TAC 52671** **DETERMINATION OF CONTROVERSY**

I. INTRODUCTION

The above-captioned matter, a Petition to Determine Controversy pursuant to Labor Code section 1700.44, was filed on August 09, 2018, by DANIEL A. GREEN, an individual (hereinafter "Petitioner"), alleging that CHRISTINA SCOTT A/K/A CHRISTINA WALKER, (hereinafter "Respondent") violated the Talent Agencies Act (hereinafter "Act"). Labor Code section 1700, *et seq*. Petitioner seeks $1,072.50 from Respondent.

On May 31, 2019, a hearing was held by the undersigned attorney specially designated by the Labor Commissioner to hear this matter. Both Parties appeared in *pro per*. Due consideration having been given to the testimony and documentary evidence of the parties, the Labor Commissioner adopts the following determination of controversy.

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II. BACKGROUND FACTS

1. Petitioner Daniel A. Green is an actor, including of television commercials.

2. Respondent is a licensed talent agent registered with the State Labor Commissioner.

3. On or about January 20, 2014, Petitioner and Respondent entered into a Commercial Representation Agreement (hereinafter "Agreement"), under which Respondent agreed to be Petitioner's "sole and exclusive talent agent." Under the Agreement, Petitioner agreed to pay Respondent fifteen percent (15%) of his gross compensation for work performed by Petitioner. Paragraph 4 of the Agreement provides in relevant part: "I [Petitioner] also agree that any agency fee paid directly to the actor's representative by a production company or product people will not be used to offset any portion of my 15 (fifteen) percent obligation to you [Respondent]." There was no evidence that the Agreement was ever submitted to the Labor Commissioner for approval as required under the Act.

4. In or about June 2018, Petitioner acted in a commercial for Advocate Healthcare. Petitioner received $1,100.00 in compensation for video/digital worldwide web use and $550.00 for print usage, for a total of $1,650.00. Respondent deducted 15% pursuant to the Agreement ($247.50) and disbursed the remainder $1,402.50 to Petitioner.

5. On or about March 12, 2018, Petitioner acted in a commercial for Evoke Health. Petitioner received a Talent Release Form (Form) from Evoke Health. Petitioner attached the Form to his Petition. The Form appears to have been signed by Petitioner. The Form indicates that Petitioner will receive $1,000.00 for the day of work plus a 20% agent's fee "(if applicable)." (Exhibit 1) The Form also indicates that Petitioner is entitled to $5,500.00 plus a 20% agent's fee also "(if applicable)" as a buyout for print usage. (Exhibit 1) According to Respondent, she received $200.00 in agent's fees for the $1,000.00 daily rate Petitioner was paid. Respondent also received the $5,500.00 buyout. Petitioner deducted $825.00 (15%) from the net payment and disbursed the remaining $4,199.25 to Petitioner. Respondent also received an additional 20% of $5,500.00 from the production company as her agent's fee.

6. On or about August 3, 2018, Petitioner emailed Respondent demanding she return the deductions Respondent took from the two jobs. Petitioner demands $247.50 from the Advocate Healthcare project, which Petitioner appears to confuse as a payment made for the Evoke Health project. Petitioner also demands that Respondent return the $825.00 deduction Respondent took from the Evoke Health project.

7. On or about August 6, 2018, Petitioner severed his business relationship with Respondent.

8. In this proceeding, Petitioner seeks $1,072.50 from Respondent ($247.50 + $825.00) on grounds that the two deductions were illegal since the production company had already paid Respondent 20% as his (Petitioner's) agency fee.

III. LEGAL ANALYSIS

1. Labor Code section 1700.4, subsection (b), includes "actors" in the definition of "artist." Petitioner is therefore an "artist" under the Act.

2. At all times relevant, Respondent was a licensed talent agent. (Exhibit A) Respondent stated she was not necessarily Petitioner's agent but rather more of a manager. Respondent's claim is irrelevant at best. The Agreement expressly provides that Respondent was hired by Petitioner as his "sole and exclusive talent agent." In addition, during the hearing Respondent testified that she procured all jobs for Petitioner by, amongst other things, pitching and submitting them.

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

4. The issue here is whether the $1,072.50 in fees taken by Respondent were unlawful given the additional 20% payment in agent's fees received by Respondent from the production company.

5. This issue regarding Agency Fees was originally discussed by the Labor Commissioner in *Shazi Ali aka Shazda Deen v. Nouveau Model and Talent Management, Inc., (Ali) TAC 14198.* The Labor Commissioner concluded in *Ali*:

> "[s]o long as said fees are not "registration fees" or fees charged for services expressly listed in Labor Code §1700.40(b) (or similar services), **and are not intended to be part of an artist's compensation** (even though they may be based on a percentage of the artist's total earnings), we find that the Agency Fees are between the talent agency and the third party companies and the Labor Commissioner has no jurisdiction over such fee arrangements. *We note that the evidence, however, must clearly establish that the Agency Fee is separate and apart from the fees the production company pays to the artist. There must be no question that the fees are intended for the agency and are not meant for the artist.*

Shazi Ali aka Shazda Deen v. Nouveau Model and Talent Management, Inc., TAC 14198 at pg. 4 [emphasis added]. In *Ali* it was announced that as long as the "agency fee" was intended for the agent by the production company and was not intended to be part of the artist's compensation, the artist had no right to it. *Id.*

7. In *Cargle v. Howard, TAC 36595* (hereinafter *"Cargle"*), the Labor Commissioner announced that where an "Agency Fee" was actually intended for the artist it was illegal for an agent to collect it as their own. The Labor Commissioner concluded in *Cargle* that:

> Here, unlike *Ali,* ample evidence that the "agency fees" were intended for Cargle and not [the Agent] comes from the testimony of Mathew Coates, executive producer for Kovel/Fuller Advertising Agency [the production company]. Coates credibly testified that [the production company] was not aware the additional fees were for the direct benefit of [the Agent]. Coates further testified that he believed [the Agent] was only receiving 20% of the contract fee negotiated by [the Agent] and not the 40% that [the Agent] was actually collecting. As such, the "agency fee" was unlawfully collected by [the Agent] in excess of the 20% commission rate approved by the Labor Commissioner pursuant to Labor Code §1700.24 which requires the Labor Commissioner to approve the maximum amount of fees charged and collected by a talent agent.

8. Here, Petitioner failed to prove that the "agent's fee" was intended to be part of his compensation. The Form Petitioner received from Evoke Health states that the 20% "agent's fee" will be paid "if applicable." This supports a finding that if Respondent had not had an agent on this project, the additional 20% in agent's fees would not be paid at all. Thus, the additional 20% was not intended as part of Petitioner's compensation. Petitioner appears to have confused the $247.50 deduction Respondent took from his work on the Advocate Healthcare project as relating to his work on the Evoke Health project. The evidence did not establish that Respondent also received a 20% "agency fee" from the production company for the work that Petitioner performed on that project. Respondent admitted she received an additional 20% of the $1,000.00 Petitioner received in wages on the Evoke Health project. She also testified that she received an additional 20% of the $5,500.00 Petitioner received as a buyout payment also for the same Evoke Health project. However, even assuming for the sake of argument, that Respondent received an additional 20% in agency fees from the production company for the work Petitioner performed on the Advocate Healthcare project, Petitioner still failed to establish that such payment was intended to be part of his compensation.

Petitioner failed to establish that the additional 20% in agent's fees was intended by the production company to be part of his compensation. In fact, the Form Petitioner attached to his

Petition supports a finding that the additional 20% was only intended to be paid to Petitioner's agent "if applicable." (Exhibit 1)

IV. ORDER

For the reasons set forth above, the Petition to Determine Controversy is **DENIED**.

IT IS SO ORDERED.

Dated: January 17, 2020

Respectfully Submitted,

By: _____
Abdel Nassar
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: January ___, 2020

By: _____
Lilia Garcia-Brower
California State Labor Commissioner

STATE OF CALIFORNIA
Department of Industrial Relations
DIVISION OF LABOR STANDARDS ENFORCEMENT

PROOF OF SERVICE

DANIEL A. GREEN
v.
CHRISTINA SCOTT, A.K.A. CHRISTINA WALKER
Case No. TAC-52671

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is Division of Labor Standards Enforcement, Department of Industrial Relations, 320 W. 4th Street, Room 600, Los Angeles, California 90013.

On January 21, 2020, I served the following document(s) described as:

DETERMINATION OF CONTROVERSY

on the interested party(ies) in this action as follows:

Daniel A. Green
[redacted]

Christina Scott aka Christina Walker
[redacted]

☒ **(BY MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business at our office address in Los Angeles, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

☐ **(BY EMAIL)** I caused the documents to be sent to the persons at the email addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ **(STATE)** I declare under penalty of perjury, under the laws of the State of California that the above is true and correct.

Executed on January 21, 2020, at Los Angeles, California.

Rowena Valleser