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STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
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7
8 **BEFORE THE LABOR COMMISSIONER**
9 **OF THE STATE OF CALIFORNIA**
10

11 EVETTE WASHINGTON,

CASE NO. TAC 23725

**DETERMINATION OF
CONTROVERSY**

12
13 Petitioner,

14 vs.

15
16 DIVERSE TALENT GROUP, INC.,

17 Respondent.
18

19 The above-captioned matter, a Petition to Determine Controversy under
20 Labor Code §1700.44, came on regularly for hearing on August 15, 2012 in Los Angeles,
21 California, before the undersigned attorney for the Labor Commissioner assigned to hear
22 this case. Petitioner EVETTE WASHINGTON appeared in pro per. Respondent
23 DIVERSE TALENT GROUP, INC. was properly served with the Petition but failed to
24 appear.

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

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1 FINDINGS OF FACT

2 1. Petitioner EVETTE WASHINGTON (hereinafter,
3 "WASHINGTON") is a 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 WASHINGTON'S talent agency from 2010 to 2011.

7 3. During the time period WASHINGTON was represented by DTG,
8 she booked six national commercials for which she was never paid by DTG even though
9 they received the payments on her behalf.

10 4. Specifically, on November 9, 2010, WASHINGTON booked a
11 national commercial with the United States Postal Service. WASHINGTON earned
12 \$592.20 gross wages for this commercial and received Check No. 1428 from DTG in the
13 net amount of \$391.18.¹ This check, however, was not negotiable due to lack of funds and
14 a replacement check was never issued by DTG.

15 5. WASHINGTON also booked and worked on 6 national commercials
16 for the company GEICO. WASHINGTON provided evidence showing checks totaling
17 \$45,720.64, gross and \$31,479.63², net were paid directly to DTG by GEICO and were
18 negotiated by DTG from February 14, 2011 through April 15, 2011. While DTG then
19 issued checks to WASHINGTON less commissions and other withholdings, some of the
20 DTG checks were non-negotiable. Of the total amount paid to DTG by GEICO, DTG
21 failed to pay WASHINGTON \$24,486.47, gross, equaling \$17,475.91 in net wages.

22 6. WASHINGTON also provided copies of two other checks issued by
23 DTG to her for the GEICO commercials, both of which bounced. Check No.1481 for
24 \$1,485.68, dated March 22, 2011 was issued without sufficient funds; and resulted in
25 WASHINGTON incurring a \$20.00 bank fee. Additionally, a check for \$232.81 was

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27 ¹ The withholdings for this check include \$141.80 in lawful withholdings and \$59.22 in
28 commissions.

² The withholdings for these checks also include lawful withholdings and 10%
commissions.

1 issued to WASHINGTON by DTG dated April 18, 2011, also without sufficient funds,
2 resulting in another \$20.00 bank fee levy.

3 6. WASHINGTON provided a copy of a letter dated July 21, 2011 from
4 DTG informing her DTG had been the victim of fraud on the part of an outside agency
5 hired to help DTG expand its business. DTG explained in the letter that unbeknownst to
6 DTG, a member from the outside agency collected payments sent into DTG's clients and
7 cashed the payments. As such, DTG was in the process of setting up a payment plan to
8 pay back its clients, including WASHINGTON, the monies embezzled by the outside
9 group.

10 6. WASHINGTON also provided copies of emails sent to DTG's
11 representatives inquiring about her payments.

12 7. WASHINGTON filed a Petition to Determine Controversy on July
13 22, 2011 seeking the unpaid monies owed to her by DTG plus return of all commissions
14 paid to DTG, attorney's fees and costs. Those amounts total \$28,764.69 and are as
15 follows:

16	USPS Commercial:	\$391.18 net
17	GEICO unpaid checks:	\$17,475.91 net
18	GEICO-bounced checks and bank fees:	\$1,485.68 net
19		\$20.00 bank fee
20		\$232.81 net
21		\$20.00 bank fee
22	Reimbursement of 10% commissions paid to DTG: ³	\$736.02
23		\$628.68
24		\$2,502.35
25		\$4,572.06
26	Attorney's Fees:	\$700.00
27	TOTAL	\$28,764.69

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28 ³ WASHINGTON provided copies of personal checks she wrote to DTG reflecting 10% commissions for payments mailed directly to her from GEICO.

1 prevailing artist.

2 (2) Award interest to the prevailing artist on the
3 funds wrongfully withheld at the rate of 10
4 percent per annum during the period of the
5 violation.

6 DTG'S failure to pay WASHINGTON the outstanding monies owed constitutes a
7 willful violation under Labor Code §1700.25(e). DTG has failed to pay the amounts owed
8 to date. Accordingly, the Labor Commissioner finds WASHINGTON is entitled to
9 payment of \$19,625.58 reflecting earned but unpaid wages. This amount is apportioned
10 as follows:

10	USPS Commercial:	\$391.18 net
11	GEICO unpaid checks:	\$17,475.91 net
12	GEICO bounced checks and bank fees:	\$1,485.68 net
13		\$20.00 bank fee
14		\$232.81 net
15		\$20.00 bank fee
16	Total:	\$19,625.58

17 Under Labor Code §1700.25(e), WASHINGTON is also entitled to interest on
18 these unpaid amounts at 10% per year from April 15, 2011⁴ in the amount of \$2,704.57
19 and attorney's fees in the amount of \$700.00, as claimed.

20 WASHINGTON'S claim for reimbursement of the commissions previously paid to
21 DTG is denied, based on lack of legal authority to award such amount.

22 **ORDER**

23 For the foregoing reasons, Petitioner EVETTE WASHINGTON is entitled
24 to collect \$19,625.58 in unpaid earnings plus \$2,704.57 in interest and \$700.00 in
25 attorney's fees for a total amount of \$23,030.15 due from Respondent DIVERSE
26 TALENT GROUP, INC.

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⁴ Due to the number of payments received by DTG on behalf of WASHINGTON, April 15, 2011 is 30 days beyond the average date the checks should have been paid to WASHINGTON.

1 DATED: September 11, 2012

Respectfully submitted,

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

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8 ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

9 Dated: September 11, 2012

10 By: Julie A. Su
11 JULIE A. SU
12 State Labor Commissioner
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