

1 DIVISION OF LABOR STANDARDS ENFORCEMENT  
2 Department of Industrial Relations  
State of California  
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8 BEFORE THE LABOR COMMISSIONER  
9 OF THE STATE OF CALIFORNIA

10 HYPERION ANIMATION COMPANY, INC. ) No. TAC 7-99  
11 a California corporation; HYPERION) ENTERTAINMENT, INC. a corporation;) KESWICK FILMS, INC. a corporation;) TOM WILHITE and WILLARD CARROLL, ) DETERMINATION OF  
12 individuals, ) CONTROVERSY  
13 )  
14 ) Petitioners, )  
15 vs. )  
16 )  
17 ) TOLTEC ARTISTS, INC., a )  
California corporation, )  
Respondent. )

18 INTRODUCTION

19 On March 11, 1999, Petitioners, HYPERION ANIMATION COMPANY,  
20 INC., a California corporation; HYPERION ENTERTAINMENT, INC., a  
21 corporation, KESWICK FILMS, INC., a corporation, and TOM WILHITE  
22 and WILLARD CARROLL, individuals, (collectively referred to as  
23 "HYPERION") filed a Petition to Determine Controversy pursuant to  
24 California Labor Code §1700.44, alleging that Respondent, TOLTEC  
25 ARTISTS, INC., a California corporation (hereinafter "TOLTEC"),  
26 acted as a talent agent without having been licensed by the State  
27 Labor Commissioner, seeking that all agreements between the



1 parties be declared void. This Petition was filed after  
2 Respondent filed an action in the Superior Court, County of Los  
3 Angeles (hereinafter "Superior Court action") in December, 1997  
4 seeking the payment of commissions purportedly due under the  
5 provisions of the oral agreement between HYPERION and TOLTEC  
6 under which TOLTEC provided services to HYPERION as a talent  
7 agent. The Superior Court action is still pending having been  
8 stayed by the Court pending outcome of this proceeding.

9 By their Petition, HYPERION seeks a determination that  
10 TOLTEC acted as an unlicensed talent agency in violation of Labor  
11 Code §1700.5; that the parties had an overall oral agency  
12 agreement; that, therefore, the parties' agreement is void; that  
13 TOLTEC reimburse HYPERION for all commissions that were paid to  
14 TOLTEC since TOLTEC and HYPERION entered into their agreement, in  
15 or about 1993, for four animation projects for television: "Life  
16 with Louie," "Itsy Bitsy Spider," "Brave Little Toaster" and  
17 "Happily Ever After"; that the Labor Commissioner issue an order  
18 directing TOLTEC to cease and desist from holding itself out as a  
19 licensed talent agency; and that the Labor Commissioner issue an  
20 order directing TOLTEC to cease and desist from engaging in the  
21 activities of a talent agent, as defined in Labor Code  
22 §1700.4(a), without being licensed.

23 TOLTEC filed a Response to the Petition asserting that the  
24 Petition is barred by the one year statute of limitations  
25 contained in Labor Code §1700.44(c); that TOLTEC never had an  
26 overall representation agreement with HYPERION; that the "Life  
27 With Louie" project, subject of the Superior Court action, is not



1 within the jurisdiction of the Labor Commissioner and the Talent  
2 Agencies Act because it is a "package agreement"; and that some  
3 of the relief sought by HYPERION exceeds the Labor Commissioner's  
4 jurisdiction, as contained in Labor Code §1700 *et. seq.*  
5 (hereinafter the Talent Agencies Act).

6 This controversy was heard on September 1, 1999 in Los  
7 Angeles, California, before the undersigned attorney for the  
8 Labor Commissioner, specially designated to hear this matter.  
9 Petitioner, HYPERION, appeared through attorney, Henry D. Fetter.  
10 Respondent, TOLTEC, appeared through attorneys, Lawrence J.  
11 Zerner and Dennis Mitchell.

12 Based on the testimony and evidence received at this  
13 hearing, and the written and oral arguments made by both sides  
14 throughout these proceedings, the Labor Commissioner adopts the  
15 following determination of controversy.

16 **FINDINGS OF FACT**

17 1. HYPERION ANIMATION COMPANY, INC., a California  
18 corporation, HYPERION ENTERTAINMENT, INC., a California  
19 corporation, KESWICK FILMS, INC., a corporation, TOM WILHITE and  
20 WILLARD CARROLL, individuals, all worked under the HYPERION  
21 ANIMATION COMPANY, INC. umbrella in performance of the services  
22 at issue in this case. All monies at issue were paid to  
23 HYPERION, not any of the other individuals or companies, and all  
24 commissions paid to TOLTEC were paid by HYPERION. In determining  
25 the relative rights of the parties in this matter, Petitioner is  
26 collectively referred to as HYPERION, and any relief ordered or  
27 denied will be directed to HYPERION.

1           2. The relationship between HYPERION and Tracy Kramer,  
2 principal in TOLTEC, extends back to 1991 when Mr. Kramer was  
3 employed by Triad Artists, a licensed talent agency. In 1993,  
4 Tracy Kramer left Triad Artists and started TOLTEC, which company  
5 continued to represent HYPERION.

6           3. There is no written agreement between HYPERION and  
7 TOLTEC.

8           4. The oral agreement between the parties was on a project-  
9 by-project basis. HYPERION claims that there was an overall oral  
10 agency agreement whereby TOLTEC represented HYPERION continuously  
11 from 1993 until 1997. TOLTEC claims that the agreement between  
12 the parties was on a project-by-project basis. The only evidence  
13 cited to by HYPERION in support of their assertion that they had  
14 such an overall agreement with TOLTEC was the Memorandum, dated  
15 June 10, 1994 which discusses the four projects at issue in this  
16 matter, and sets out the understanding of the parties with  
17 respect to each one (Hearing Exhibit 1), and a bald statement by  
18 Thomas L. Wilhite, a petitioner and principal of HYPERION, in his  
19 hearing testimony, that such an agreement existed. Exhibit 1 is  
20 not a contract. It merely memorializes agreements between the  
21 parties that were either oral or contained in other, written  
22 instruments. Indeed, Hearing Exhibits A and B, presented by  
23 TOLTEC, and Exhibits 3 and 4, presented by HYPERION, show  
24 executed agreements for the "Life with Louie" project separate  
25 from the other three. Nor does Exhibit 1, relied on by HYPERION,  
26 contain any express language indicating the scope of any  
27 representation agreement between HYPERION and TOLTEC. The manner



1 in which the Memorandum is written, including the separate  
2 commission agreements for each of the four projects listed, with  
3 different commission terms for each, leads to the conclusion that  
4 HYPERION and TOLTEC worked together on a project-by-project  
5 basis. Mr. Wilhite's hearing testimony on this particular  
6 subject is equally unavailing. He did not testify that there was  
7 any particular discussion or express agreement between HYPERION  
8 and TOLTEC for an "overall" representation agreement. And,  
9 evidence was elicited through his cross examination that HYPERION  
10 used agents, other than TOLTEC, on several projects, during the  
11 relevant time period.

12 5. For the "Itsy Bitsy Spider" project, TOLTEC negotiated  
13 for HYPERION to perform "personal services" as producer. (See  
14 Petitioner's Post Hearing Brief).

15 6. For the "Brave Little Toaster" project, TOLTEC  
16 negotiated for HYPERION to perform screen writing services and  
17 direct cable television movies. (See Exhibits 3 and 4).

18 7. For the "Happily Ever After" project, TOLTEC negotiated  
19 for HYPERION to perform "personal services" as producer of the  
20 shows. (See Petitioner's Post Hearing Brief).

21 8. For the "Life With Louie" project, TOLTEC negotiated  
22 with the Fox Children's Network for HYPERION to produce the  
23 television series, provide animation services, hiring talent for  
24 voice-overs, script writing and other services associated with  
25 the production of the series.

26 9. At the time HYPERION canceled their representation  
27 agreement with TOLTEC, the end of 1997 or beginning of 1998,



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HYPERION had paid commissions to Respondent in the sum of \$130,000.00 in connection with the television programs "Happily Ever After" and "Itsy Bitsy Spider," and \$12,000.00 in commissions for writing services on "Brave Little Toaster." The evidence at the hearing with respect to the commissions already paid by HYPERION to TOLTEC for "Life With Louie" were never precisely stated, but are estimated to be between \$180,000.00 and \$190,000.00, based on Mr. Wilhite's unrefuted testimony.

10. TOLTEC claims that the sum of \$267,000.00, in addition to those already paid by HYPERION, in commissions is owed for the "Life With Louie" project. These unpaid commissions are the subject of the December, 1997 Superior Court action, initiated by TOLTEC against HYPERION.

11. TOLTEC is not licensed as a talent agency by the State Labor Commissioner. In December, 1997, in the Superior Court action, TOLTEC alleged that it was a talent agency, licensed by the State Labor Commissioner. It was not until verified responses to interrogatories were served in that action in July, 1998 that TOLTEC disclosed to HYPERION that it is not, in fact, licensed as a talent agency, by the State of California.

12. TOLTEC did not hold itself out as a licensed talent agency, other than the statement made in the Superior Court action, from December, 1997 through July, 1998. HYPERION claims that continuously from 1993, when Tracy Kramer, left TRIAD ARTISTS, to form TOLTEC, he held himself, and TOLTEC, out as a licensed talent agency. However, at the hearing on the Petition, Mr. Wilhite testified that while he thought TOLTEC was licensed,

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2 neither Mr. Kramer nor any other representative of TOLTEC ever  
3 affirmatively told him so. Mr. Kramer merely stated, when he  
4 left TRIAD ARTISTS, that he would continue to offer HYPERION the  
5 same services as he did when employed by TRIAD. Likewise  
6 unpersuasive are the arguments of counsel for HYPERION that  
7 somehow the name "TOLTEC ARTISTS, INC." and logo for the company,  
8 looking something like the name "TRIAD ARTISTS, INC." and their  
9 company logo misled HYPERION into believing that TOLTEC, like  
10 TRIAD was a licensed talent agency.

11 13. All of the agreements between TOLTEC and HYPERION, and  
12 activities of TOLTEC on behalf of HYPERION with respect to the  
13 projects at issue, complained of in the Petition, took place in  
14 1993 and 1994.

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#### CONCLUSIONS OF LAW

17 1. The Labor Commissioner has jurisdiction to hear and  
18 determine this controversy pursuant to Labor Code §1700.44(a).  
19 The Labor Commissioner, in fact, has original jurisdiction to  
20 hear matters arising under the Talent Agencies Act. (*Buchwald v.*  
21 *Superior Court* (1967) 254 Cal.App.2d 347).

22 2. Labor Code §1700.4(b) defines "artists" to include  
23 writers and other "persons" (defined at Labor Code §18 to include  
24 a corporation), providing professional services in connection  
25 with the production of television and other entertainment  
26 enterprises.

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3. HYPERION is an artist with respect to the "Brave Little



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2 Toaster" and "Life With Louie" projects. The services provided by  
3 HYPERION on the projects discussed hereinabove, are writing,  
4 directing, animation, and other professional services associated  
5 with the production of the various television and movie projects.

6 4. HYPERION is not an "artist" as defined in Labor Code  
7 §1700.4(b) with respect to the "Itsy Bitsy Spider" and "Happily  
8 Ever After" projects. The only evidence presented in this  
9 proceeding regarding the actual services provided by HYPERION  
10 through Mr. Wilhite and Mr. Carrol, was that they performed  
11 "personal services" as producers for these two projects. There  
12 was no testimony or documentary evidence presented at the hearing  
13 in this matter that HYPERION performed any **creative** functions on  
14 either project that would bring these services within the  
15 definition of "artist."

16 The Labor Commissioner has historically taken the position  
17 that "[t]he definition [of artist] does not include producers,  
18 and the Labor Commissioner does not interpret this statute to  
19 give the Labor Commissioner jurisdiction over disputes where one  
20 of the parties is a producer." (See Alfred Monacella v.  
21 International Creative Management, Inc. et al., No. TAC 7-95).  
22 Despite the seemingly open-ended definition of "artist" found in  
23 Labor Code §1700.4(b), ("...and other artists and persons  
24 rendering professional services in ...other entertainment  
25 enterprises") the Labor Commissioner believes that the  
26 Legislature intended to limit the term "artists" to those  
27 rendering creative services in connection with an entertainment  
project. "Without such a limitation, virtually ever 'person



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2 rendering professional services' connected with an entertainment  
3 project - - would fall within the definition of 'artists.' We do  
4 not believe the Legislature intended such a radically far  
5 reaching result." (American First Run Studios v. Omni  
6 Entertainment Group, No. TAC 32-95, pp. 4-5; See also Burt  
7 Bluestein, et. al v. Production Artists Management, et al., No.  
8 TAC 24-98).

9         5. Labor Code §1700.4(a) defines "talent agency" as a  
10 "person or corporation who engages in the occupation of  
11 procuring, offering, promising or attempting to procure  
12 employment for an artist or artists..."

13         6. TOLTEC is a talent agency as defined in Labor Code  
14 §1700.4(a), quoted hereinabove. In concededly negotiating for  
15 directing and writing services to be provided by HYPERION on the  
16 "Brave Little Toaster" and "Life With Louie" projects discussed  
17 herein, as well as animation and other creative services they  
18 have procured employment on behalf of HYPERION on these projects,  
19 as well as other projects, where deals were not consummated.  
20 (See Park v. Deftones (1999) 71 Cal.App.4th 1465, where the court  
21 held, in part, that the term "procurement" as used in Labor Code  
22 §1700.4(a) to define talent agency, includes activities for which  
23 no commissions are paid). Moreover, evidence leading to the  
24 conclusion that TOLTEC engaged in procuring employment,  
25 specifically with respect the "Life With Louie" project is found  
26 within the allegations contained in the Superior Court action.  
27 TOLTEC alleges in the Complaint that: TOLTEC was hired by  
HYPERION to find a network that would purchase the broadcast



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rights to the project (Paragraph 5); that TOLTEC in fact convinced Fox Children's Network to buy the program (Paragraph 7); that TOLTEC was to receive commissions for these services (Paragraph 8); and that TOLTEC performed these services, making their commissions due and payable (Paragraph 10).

7. Even a single act of procuring employment constitutes "procurement" under the Talent Agencies Act, then bringing all projects and commissions under that agreement, within the jurisdiction of the Labor Commissioner's office. (See *Waisbren v. Peppercorn Prod, Inc.* (1995) 41 Cal.App.4th 246; *Park v. Deftones, supra*, 71 Cal.App.4th 1465).

8. Labor Code §1700.5 provides that "[n]o person shall engage in the occupation of a talent agency without first procuring a license therefor from the Labor Commissioner." It is undisputed that TOLTEC never had such a license.

9. In *Buchwald v. Superior Court, supra*, 254 Cal.App.2d 347, 351, the court held that because "the clear object of the [Talent Agencies] Act is to prevent improper persons from becoming [talent agents] and to regulate such activity for the protection of the public, a contract between an unlicensed [agent] and an artist is void." Having previously determined that HYPERION is an "artist," that TOLTEC is a "talent agency" and that there were a series of oral agreements between the parties on the various projects complained of in the Petition, it must now be decided which, if any of those projects are to be voided by these proceedings.

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10. Labor Code §1700.44(c) provides that:

No action or proceeding shall be brought pursuant to this chapter with respect to any violation which is alleged to have occurred more than one year prior to commencement of the action or proceeding.

In *Park v. Deftones, id.*, (1999) the court upheld the Labor Commissioner's position in the underlying Talent Agency Controversy (TAC No. 9-97) that the Petition was timely because it was brought within one year of the date that Park, the unlicensed talent agent, brought an action in superior court to recover unpaid commissions.

11. TOLTEC raises the issue, in their defense to the instant Petition, that the entire Petition is barred by the statute of limitations stated in Labor Code §1700.44(c), since the contracts complained of were all entered into in 1993 and 1994, the Superior Court action was commenced in December, 1997, and the Petition to Determine Controversy was filed in March, 1999.

12. A statute of limitations is procedural. It only affects the remedy, not the substantive right or obligation. It runs only against causes of action and defenses seeking affirmative relief, and not against any other defenses to an action. Neither the statute of limitations nor the doctrine of laches operates to bar the defense of illegality of a contract, and in any action or proceeding where a party is seeking to enforce the terms of an illegal contract, the other party may allege and prove the illegality as a defense, without regard to whether the statute of limitations for bringing an action or

1 proceeding has expired. (See Witkin, California Procedure 4th  
2 Ed., "Actions," pages 512, 532; See also Thomas Hayden Church v.  
3 Ross Brown Case No. TAC 52-92 and Nick Sevano v. Artistic  
4 Productions, Inc. Case No. TAC 8-93). Thus the one year statute  
5 of limitations period set forth in Labor Code §1700.44(c) does  
6 not bar HYPERION from asserting the defense of illegality of the  
7 contract with TOLTEC on the ground that TOLTEC acted as a talent  
8 agent without a license.

9 [T]he courts generally will not enforce an  
10 illegal bargain or lend their assistance to a  
11 party who seeks compensation for an illegal  
12 act [cite omitted]. (*Waisbren v. Peppercorn*,  
13 *supra*, 41, Cal.App.4th 246, 262)

14 This principle is in harmony with the legislative intent  
15 underlying Labor Code §1700.44(c). Like other statutes of  
16 limitation, it was designed to bar the untimely assertion of  
17 affirmative claims for damages, and not to prevent the invocation  
18 of legitimate defenses, asserted defensively.

19 13. Based on the foregoing authority, the contracts with  
20 respect to the "Brave Little Toaster" and "Life With Louie"  
21 projects between HYPERION and TOLTEC are void *ab initio*. TOLTEC  
22 is barred from making further claims or seeking damages, unpaid  
23 commissions, etc. from HYPERION on these two projects. Having  
24 determined that there was no overall oral agency agreement  
25 between HYPERION and TOLTEC, each agreement, on the two projects  
26 over which the Labor Commissioner has jurisdiction, is declared  
27 void for defensive purposes.

14. The commissions sought by TOLTEC from HYPERION in the



1 Superior Court action for the "Life With Louie" project are not  
2 barred by the statute of limitations contained in Labor Code  
3 §1700.44(c). While the Superior Court action was filed in  
4 December, 1997, and the Petition not filed until March, 1999, it  
5 is still timely. As explained above, TOLTEC alleged in their  
6 Superior Court action that they were licensed by the Labor  
7 Commissioner in connection with TOLTEC's representation of  
8 HYPERION on the "Life With Louie" project, and did not disclose  
9 the "erroneous" allegation until July, 1998 in connection with  
10 responses to discovery. HYPERION asserts that this false  
11 allegation in the court complaint misled them and, along with  
12 their prior belief that TOLTEC was a licensed talent agency,  
13 caused them to refrain from filing a petition to determine  
14 controversy with the Labor Commissioner's office. TOLTEC claims  
15 that it did not intentionally mislead HYPERION in a manner that  
16 should extend the statute of limitations, but even if it did in  
17 the allegations contained in the Superior Court action, that  
18 would only affect the "Life With Louie" project, subject of the  
19 current court action.

20 Contrary to TOLTEC's assertion in defense of the Petition,  
21 it did affirmatively and expressly mislead HYPERION by alleging  
22 that it was a licensed talent agency in the Superior Court  
23 Complaint. The conduct of TOLTEC did induce HYPERION to refrain  
24 from filing a Petition with the Labor Commissioner's office to  
25 determine this controversy during the time between the filing of  
26 the Superior Court action, December, 1997 and the responses to  
27 discovery wherein TOLTEC disclosed that it is not licensed in

1 July, 1998.

2 As explained in *Jean Laughlin Benner v. Industrial Accident*  
3 *Commission* (1945) 26 Cal.2d 436, the Supreme Court applied the  
4 doctrine of estoppel to prevent a party from asserting statute of  
5 limitations as a defense, where that party engaged in conduct  
6 that induces the other party to delay taking action until after  
7 expiration of the time limitation. In *Benner v. Indus. Acc.*  
8 *Com., supra*, 26 Cal.2d 346, 349 the court held that while the  
9 Industrial Accident Commission (an administrative agency) failed  
10 to consider the issue of estoppel, even though it had the  
11 authority to do so, in a situation where an application for  
12 worker's compensation benefits was filed five days late because  
13 petitioner was induced to refrain from filing timely by the  
14 conduct of representatives of the hospital and the insurance  
15 company. The court stated that pleas by the employer and  
16 insurance company for more time to complete their investigation  
17 constituted conduct on which the claimant had the right to rely  
18 "and which should operate as an estoppel to the plea of statute  
19 of limitations." Likewise, in the instant case, the purposes of  
20 the Talent Agencies Act are furthered by applying this principle.  
21 By affirmatively alleging that it was a licensed talent agency in  
22 the Superior Court action, TOLTEC misled HYPERION to refrain from  
23 filing a petition to determine controversy with respect to the  
24 commissions sought by TOLTEC against HYPERION on the "Life With  
25 Louie" project. It was not until TOLTEC disclosed that they were  
26 not and are not licensed as a talent agency that HYPERION was on  
27



1 notice that they should file the instant Petition. TOLTEC is,  
2 therefore, estopped from asserting statute of limitations as a  
3 defense to the Petition filed in this matter. This conclusion  
4 avoids "...the encouragement of preemptive proceedings before..."  
5 the Labor Commissioner's office by parties filing petitions to  
6 determine a controversy in anticipation of a possible court  
7 action to recover commissions on void contracts, and "...assures  
8 that the party who has engaged in illegal activity may not avoid  
9 its consequences through the timing of his own collection  
10 action." (*Park v. Deftones, supra.*, 71 Cal.App.4th 1465, 1469).

11 15. However, HYPERION is not merely asserting a defensive  
12 claim in their Petition, but also seeking affirmative relief in  
13 the form of disgorgement of the commissions already paid to  
14 TOLTEC under the voided contracts. As explained above, the  
15 statute of limitations runs against affirmative claims. (*Witkin,*  
16 California Procedure, id, "Actions," pp. 512, 532). Thus the  
17 only affirmative claims of HYPERION that survive the one year  
18 statute of limitations stated in Labor Code §1700.44(c), as that  
19 statute of limitations has been extended herein, are the  
20 commissions sought in the Superior Court action by TOLTEC, and  
21 any commissions that were paid by HYPERION to TOLTEC within one  
22 year of the date the Superior Court action was filed, December  
23 19, 1997. (*Church v. Brown, supra,* TAC No. 52-92; *Sevano v.*  
24 Artistic Prod's, Inc., supra., TAC No. 8-93). There was no  
25 evidence presented at the hearing by HYPERION whether any  
26 commissions were paid to TOLTEC during this period of time. The  
27 only evidence of commissions paid offered by HYPERION at the

1 hearing, Exhibit 2, was not admitted into evidence because it  
2 could not be properly authenticated, and cannot be considered  
3 here.

4 16. The "Life With Louie" project is not a traditional  
5 "package agreement," exempt from coverage under the talent agency  
6 laws, enforced by the State Labor Commissioner, although some  
7 elements of a traditional packaging agreement are present in this  
8 case. But even if it were a packaging agreement, because  
9 HYPERION is responsible for the payment of commissions directly  
10 to TOLTEC under the agreement between them, the Labor  
11 Commissioner would have jurisdiction to determine any controversy  
12 with respect to whether those commissions are owed. As a defense  
13 to this action, TOLTEC claims that any commissions paid or due  
14 for the "Life With Louie" action are not under the Labor  
15 Commissioner's jurisdiction because it is part of a package  
16 agreement, traditionally excluded from the provisions of the  
17 Talent Agencies Act. In support of this position, TOLTEC cites  
18 to Exhibit 1, which is a Memorandum between TOLTEC and HYPERION  
19 which outlines the commission structure to be paid by HYPERION to  
20 TOLTEC on various projects, including "Life With Louie." In the  
21 portion of that Memorandum addressing the "Life With Louie"  
22 project, it states, "[t]raditional package agency commission, 3-  
23 3-10." The remainder of the paragraph goes on to explain in  
24 detail how those commissions are to be paid by HYPERION to  
25 TOLTEC.

26 The State Labor Commissioner has historically taken the  
27 position that "packaging agreements" are exempt from State



1 regulation, and that the Labor Commissioner lacks jurisdiction to  
2 resolve disputes under the Talent Agencies Act when the subject  
3 of that dispute is a traditional packaging agreement. (See  
4 Opinion Letter of Jose Millan, State Labor Commissioner, dated  
5 October 30, 1998, attached to Respondent's hearing Brief, which  
6 also included a Declaration of David Gurley, staff counsel at the  
7 Labor Commissioner's office, which was not read or considered in  
8 rendering this decision).<sup>1</sup> In that Opinion Letter, it is  
9 explained that the traditional definition of a "packaging  
10 agreement," found on page 2, is:

11           A 'package' agreement, or 'packaging  
12           agreement' as the term is customarily  
13           understood in the television and motion  
14           picture industries is more analogous to  
              selling an idea or a concept...The concept of  
              packaging is a 'pitch' that must be sold  
              prior to any procurement of employment.

15 A traditional packaging agreement also includes putting together  
16 the talent and production for the project. It is then sold to a  
17 producer in this completed "packaged" form. Moreover, in a  
18 traditional package agreement, **no commissions** can be paid by the  
19 artist to the agent for those services, as the agent is paid  
20 directly by the production company, who purchases the package.

21 (Id.) These criteria, defining packaging agreements, are  
22 precisely why the Labor Commissioner has not traditionally been  
23 involved in disputes about them. Where no commissions or other

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25 <sup>1</sup> Petitioner objects to consideration of the Labor Commissioner's October 30,  
26 1998 Opinion Letter. However, based on the holding in *Tidewater Marine v.*  
27 *Bradshaw* (1996) 14 Cal.4th 557, it is appropriate to consider the opinions  
and interpretations expressed by the Labor Commissioner in response to  
inquiries from the public seeking explanations about the Labor  
Commissioner's opinions on issues over which the Division of Labor  
Standards Enforcement has enforcement authority.



1 form of payments are made between artist and agent, there is no  
2 dispute under the Act.

3 The Labor Commissioner, however, would and does assert  
4 jurisdiction where, as in this case, the artist is obligated to  
5 pay the agent commissions under what has been termed by TOLTEC as  
6 a "package agreement."

7 In the instant case, TOLTEC pitched and sold just such a  
8 "package" to Fox Children's Network, which became "Life With  
9 Louie," with HYPERION providing a group of services, that TOLTEC  
10 claims is a traditional package agreement. Just the fact that  
11 TOLTEC is to receive commissions under this agreement from  
12 HYPERION separates it from a traditional package agreement.  
13 Exhibit 1, relied on by TOLTEC for their assertion that this  
14 project is a package agreement not under the Labor Commissioner's  
15 jurisdiction, is merely a recitation of the "package  
16 commissions," By the wording of the commission arrangement  
17 between HYPERION and TOLTEC on this project as evidenced by the  
18 wording contained in Exhibit 1, it appears to be a more accurate  
19 statement that this agreement is a typical or traditional  
20 agent/artist commission arrangement, and the only meaning that  
21 can be attributed to the word "package" is that TOLTEC negotiated  
22 for HYPERION to provide a group or package of services, such as  
23 writing, animation, directing, and producing the television  
24 series. The parties' dispute with respect to this project is,  
25 then, under the jurisdiction of the Labor Commissioner's office  
26 whether it is a packaging agreement or not because the essence of  
27 this dispute is over commissions claimed to be owed to an agent



1 by an artist.  
2

3 ORDER

4 Based on the above findings, the Labor Commissioner orders  
5 that:

6 1. The contracts between HYPERION and TOLTEC on the "Brave  
7 Little Toaster" and "Life With Louie" projects are void and  
8 unenforceable. As a consequence of having engaged in the  
9 occupation of a talent agency, within the meaning of Labor Code  
10 §1700.4(a), without having been licensed therefor as required by  
11 Labor Code §1700.5, the oral contracts or agreements between  
12 HYPERION and TOLTEC are unlawful and void *ab initio*. TOLTEC has  
13 no enforceable rights under any of those contracts;

14 2. The Labor Commissioner has no jurisdiction to determine  
15 the controversy with respect to the "Happily Ever After" and  
16 "Itsy Bitsy Spider" projects as there is insufficient evidence in  
17 the record that the services performed by HYPERION on those two  
18 projects falls within the statutory definition of "artist" found  
19 in Labor Code §1700.4(b);

20 3. The one year statute of limitations found in Labor Code  
21 §1700.44(c) does not bar HYPERION from asserting the defense of  
22 illegality in any court action or Labor Commissioner proceeding  
23 brought by TOLTEC to enforce the provisions of any of the  
24 contracts between the parties;

25 4. HYPERION is not responsible for the payment of any of  
26 the commissions claimed by TOLTEC in the Superior Court action,  
27 since that contract has been declared void and unenforceable,



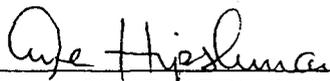
1 TOLTEC is estopped from asserting statute of limitations against  
2 HYPERION as to those matters contained in the Superior Court  
3 action, by stating therein that it was a licensed talent agency,  
4 and the Petition to Determine Controversy herein with respect to  
5 the issues contained in the Superior Court action was timely  
6 brought after disclosure by TOLTEC that it is not licensed;

7 5. TOLTEC must disgorge and repay to HYPERION any  
8 commissions paid by HYPERION to TOLTEC within one year of the  
9 date TOLTEC filed the superior court action, December 19, 1997;

10 6. No disgorgement of any of the other commissions already  
11 paid by HYPERION to TOLTEC can be ordered, since any affirmative  
12 relief requested by HYPERION, for events occurring more than one  
13 year prior to the filing of the Superior Court action, is barred  
14 by the statute of limitations contained in Labor Code  
15 §1700.44(c); and

16 7. The other relief requested: that the Labor Commissioner  
17 issue an order directing TOLTEC to cease from holding itself out  
18 as a licensed talent agency; and that the Labor Commissioner  
19 issue an order directing TOLTEC to cease operating an unlicensed  
20 talent agency, is not within the jurisdiction of the Labor  
21 Commissioner, and cannot be ordered.

22  
23  
24 Dated: 12-27-99

  
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ANNE HIPSHMAN  
Attorney for the Labor Commissioner

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ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER:

Dated:

  
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MARCY V. SAUNDERS  
State Labor Commissioner

