

1 PATRICIA SALAZAR, State Bar No. 249935
STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
3 320 West 4th Street, Suite 600
Los Angeles, California 90013
4 Telephone: (213) 897-1511
Facsimile: (213) 897-2877
5 Attorney for the Labor Commissioner
6

7
8 BEFORE THE LABOR COMMISSIONER
9 OF THE STATE OF CALIFORNIA

10
11 CREATIVE ARTISTS AGENCY, LLC, a
Delaware limited liability company,

12
13 Petitioner,

14
15 vs.

16 VAGRANT, INC., a California corporation,

17 Respondent.
18

CASE NO. TAC 50209

**DETERMINATION OF
CONTROVERSY**

19 **I. INTRODUCTION**

20 The above-captioned matter, a Petition to Determine Controversy under Labor Code
21 section 1700.44, came on regularly for hearing in Los Angeles, California before the undersigned
22 attorney for the Labor Commissioner. The hearing (hereinafter, the “TAC Hearing”) was held on
23 January 21-22, 2020. Petitioner CREATIVE ARTISTS AGENCY, LLC, a Delaware limited
24 liability company (hereinafter, “Petitioner” or “CAA”) was represented by Jeffrey B. Valle and
25 Jennifer Laser of VALLE MAKOFF LLP. Respondent VAGRANT, INC., a California
26 corporation (hereinafter, “Vagrant” or “Respondent”) was represented by Michael D. Hellman
27
28

1 formerly of FELL, MARKING, ABKIN, MONTGOMERY, GRANET & RANEY, LLP.¹

2 Petitioner filed its *Petition to Determine Controversy* (hereinafter, “Petition”) on
3 November 28, 2017 alleging, *inter alia*, Vagrant failed to pay CAA its 10 percent commission
4 since February 2015 and is obligated to pay 10 percent commission for future compensation
5 Vagrant will receive for *The Fast and the Furious 4* and *The Fast and the Furious 5*. Vagrant
6 filed its *Response and Related Cross-Claim* to the Petition on July 16, 2018.

7 The parties submitted their post-hearing briefs on April 24, 2020. The matter was taken
8 under submission. Due consideration having been given to the testimony, documentary evidence
9 and arguments presented, the Labor Commissioner hereby adopts the following determination
10 (hereinafter, the “Determination”).

11 **II. FINDINGS OF FACT**

12 1. Paul Walker (hereinafter, “Walker”) was an artist who starred as Brian O’Conner
13 in *The Fast and the Furious* franchise.

14 2. A loan-out company is a professional services corporation created by an artist for
15 tax purposes. Under this arrangement, a corporation will enter into an agreement with a studio to
16 “loan” the artist to the production. Vagrant is Walker’s loan-out company.

17 3. CAA is a talent agency licensed by the laws of the State of California.

18 4. Before joining CAA, Walker appeared in the motion pictures, *The Fast and the*
19 *Furious 1* and *The Fast and the Furious 2* (hereinafter, “FF2”). Walker had a strained relationship
20 with Universal, the studio who made *The Fast and the Furious* franchise. He refused to do a
21 cameo for *The Fast and the Furious 3* (hereinafter, “FF3”) and pulled out of another Universal
22 film, titled *Heart of a Soldier*, after Universal incurred significant expenses on the movie.

23 5. Matt Luber (hereinafter, “Luber”), Walker’s talent manager of 13 years wanted
24 Walker to get back into *The Fast and the Furious* franchise. Luber thought CAA could help get
25 Walker back into the franchise because, according to Luber, Kevin Huvane (hereinafter,
26 “Huvane”), the head of CAA, was “the most influential agent in the business,” CAA represented
27 Vin Diesel and had relationships with Universal.

28 ¹ On March 9, 2021, the Labor Commissioner received notice that Mr. Hellman is now with Rimon, P.C.

1 6. In April 2007, Luber and Walker met with Huvane and CAA talent agents Tracy
2 Brennan (hereinafter, “Brennan”) and Christian Andrews (hereinafter, “Andrews”) to discuss
3 having CAA serve as Walker’s talent agency. Several days later, Luber called and informed CAA
4 that Walker agreed to become a client of CAA. Per its standard practice, Vagrant also became
5 CAA’s client.

6 7. Walker and CAA entered into an oral agreement where Walker agreed to pay CAA
7 a 10 percent commission. According to Luber, the agreement included 10 percent commission
8 payments into the future even if a client leaves the agency.

9 8. Walker’s team at CAA included Huvane, Brennan, Andrews, and Marc Von Arx
10 (hereinafter, “Von Arx”), an executive in CAA’s motion picture business affairs group from 2002
11 to 2011.

12 **The Fast and the Furious 4**

13 9. From approximately July 2007 to March 2008, CAA engaged in extensive
14 negotiations with Universal so Walker could rejoin the *Fast and Furious* franchise and work in
15 *The Fast and Furious 4* (hereinafter, “FF4”). When CAA began representing Walker, it was
16 unclear whether Walker would be in FF4 because of his strained relationship with Universal.
17 CAA began working to harmonize the relationship with Universal and have a dialogue to create a
18 willingness and collaboration between Walker and the studio to work together.

19 10. CAA significantly improved the financial terms Walker received for FF4. During
20 this stage, Universal initially offered to pay Walker his guaranteed “quote” of \$7.5 million. After
21 extensive back-and-forth negotiations with Universal, CAA increased Walker’s payment for FF4
22 to \$8.5 million and obtained box office bonuses as an advance against Walker’s share of a 35%
23 gross pool.² CAA continued to push for an increase in the gross pool from 35% to 50% and
24 obtained that increase.

25 11. After negotiating the financial terms, and for approximately five months, CAA
26 proceeded to negotiate a perk package, or subsidiary benefits, important to Walker as part of his

27 ² During the TAC Hearing, Brennan testified that a gross pool refers to how much a studio is willing to
28 give non-studio members, *e.g.*, producers or actors in the movie, of the profits measured by box office
numbers so there is more compensation on the back end for the parties to share.

1 work on FF4. In March 2008, Universal prepared a revised agreement for FF4 incorporating
2 additional terms CAA negotiated for Walker. Universal’s cover letter accompanying the revised
3 agreement stated Universal had received no comments from Roger Grad (hereinafter, “Grad”),
4 Walker’s attorney, but incorporated various terms requested by Von Arx. These additional terms,
5 or “perks,” included a variety of benefits for Walker and his family, including two round-trip
6 tickets for Walker’s daughter and her guardian, a \$5,000 per week allowance when shooting in
7 Los Angeles, a triple pop-out trailer with various amenities, a personal trainer and personal
8 assistant, and certain production and post-production approval rights, among others.

9 12. Grad acknowledged Walker’s compensation was increased from \$7.5 million to
10 \$8.5 million and the 50-percent pool was a “good deal” for Walker.

11 13. Throughout the approximate eight-month negotiations for FF4, CAA kept
12 Walker’s team continuously apprised of the different stages of negotiations regarding the
13 financial terms and perk package for Walker.

14 14. From April 2008 to November 2009, CAA received five payments of 10 percent
15 commission for its work on FF4. These commissions were based on the \$8.5 million Walker was
16 paid and subsequent commission payments for box office bonuses.

17 15. On October 10, 2013, CAA was paid 10 percent commission for its work on FF4.

18 **The Fast and the Furious Five**

19 16. From approximately October 2009 to December 2010, CAA engaged in extensive
20 negotiations with Universal for Walker’s role in *The Fast and the Furious 5* (hereinafter, “FF5”).
21 CAA negotiated with Universal and edited multiple drafts of the FF5 agreement.

22 17. CAA also engaged in extensive back-and-forth negotiations, including multiple
23 calls with Universal and Walker’s team, regarding the negotiations of the perk package. The perk
24 package for FF5 included accommodations and per diem for his assistant and bodyguard, a larger
25 budget for his trainer, a larger travel fund for Walker and his family, among other items.

26 18. Throughout these negotiations and conversations with Universal, CAA continued
27 to keep Walker’s team apprised of updates to the agreement, and had multiple communications
28 with Walker’s team regarding different aspects of the agreement.

1 19. A transition occurred in Walker’s legal team during CAA’s negotiations with
2 Universal regarding Walker’s contract for FF5. Grad was replaced with Ron Dorfman
3 (hereinafter, “Dorfman”) as Walker’s attorney for the FF5 negotiations. Grad admitted he did not
4 negotiate the agreement for FF5.

5 20. CAA kept Dorfman and Luber apprised of the negotiations with Universal for FF5.
6 For example, on April 28, 2010, Von Arx copied Dorfman on an email regarding a phone call
7 Von Arx and Brennan had with Luber about concerns regarding the perk benefits. Dorfman also
8 provided comments to drafts of the contract between Walker and Universal, and communicated
9 with Von Arx regarding different terms.

10 21. On December 16, 2010, Von Arx sent Dorfman and Luber the final draft of the
11 contract with Universal for FF5 for Walker’s review and signature. Von Arx stated their
12 “seemingly endless calls and comments to” Universal yielded an agreement that was
13 “significantly improved from the previous pictures.” Von Arx also confirmed that Walker’s team,
14 *i.e.*, Dorfman and Luber, concurred the few points where there was an impasse with Universal did
15 not merit further negotiation or “holding up” Walker’s “final payment any longer.” Von Arx
16 asked Dorfman to have Walker sign and return the contract directly to Universal, but to contact
17 him if Walker had questions and Dorfman wanted Von Arx’s input.

18 22. On January 4, 2011, Universal sent Von Arx and Dorfman copies of the fully
19 executed agreement for FF5.

20 23. CAA obtained \$8.5 million for Walker in FF5. CAA was unable to negotiate the
21 same 50-percent gross pool it negotiated for Walker in FF4. However, CAA negotiated for
22 Walker to receive 5% of “first dollar gross” proceeds. Von Arx testified that first dollar gross
23 allows a participant in a movie, *e.g.*, actor, to receive a share out of every dollar returned to the
24 studio from the exhibitors. Under this structure, if a movie is unsuccessful, the artist would still
25 earn some money because they receive a portion of every dollar made.

26 **Walker terminates his relationship with CAA**

27 24. On February 8, 2011, Dorfman sent a letter on Walker’s behalf terminating the
28 relationship with CAA.

1 **Payment of commissions after Walker terminates his agency relationship with CAA**

2 25. CAA received its commissions based on information contained in profit
3 participation statements. David Sookiazian (hereinafter, "Sookiazian"), Director of Revenue at
4 CAA and custodian of CAA business records used as part of his work in the accounting
5 department, testified about profit participation statements. Profit participation statements, or
6 accounting statements, are provided to an artist by the studios who may be due a certain amount
7 of money for participation in a project on the back end. The statements show profit or loss of a
8 film at any given point in time, and include information on domestic receipts, streaming video
9 service revenue, and expenses. A studio will provide these statements to an artist on a quarterly,
10 semi-annual or annual basis depending on the age of the movie.

11 26. A studio may send the profit participation statement and payment for the talent
12 agency's client directly to the agency. The talent agency will collect its 10 percent commission
13 and remit the remaining amount to the client. Conversely, the client may receive the profit
14 participation statement and payment, and the talent agency may receive a copy informing them of
15 the payment. The talent agency will then receive its commission either by invoicing the client's
16 business manager or the business manager will send the agency its commission with no invoice.
17 Sookiazian testified the client will usually instruct the studio to remit payment or any supporting
18 documentation to their agent or accountant. This is usually done at the direction of the client.

19 27. Sookiazian testified CAA does not do anything until it has the direction and
20 permission of the client.

21 28. Sookiazian testified it is not unusual for an invoice for commissions to go unpaid
22 for some time. In response to such delay, CAA contacts the business manager or attorney of
23 former and current clients to work with them and ensure they do not collect large amounts of
24 money at one time. Sookiazian testified clients often transition between talent agencies, and can
25 return to CAA. CAA tries to accommodate former or current clients in terms of payment plans. It
26 can take from three months to two years to collect on commission payments.

27 ///

28 ///

1 29. Sookiazian testified CAA accommodated Walker to avoid hardship by creating
2 payment schedules for the \$8.5 million Walker received for FF5. CAA received its payments
3 through a combination of deducting 10% from five profit participation statements for periods
4 ending on June 30, 2011 through June 30, 2012, plus an additional 10% for one of the statements,
5 and against a commercial endorsement CAA procured for Walker. This reflects 1.5 years to pay
6 the 10% commission on the \$8.5 million Walker owed CAA for FF5.

7 30. CAA continued to receive its 10% commission payments for FF5 in 2011 through
8 2013, including a check Vagrant paid CAA on October 8, 2013.

9 31. On November 30, 2013, Walker died in a tragic car accident.

10 32. During 2014, CAA received no profit participation statements or payments from
11 Universal.

12 **Commission Payments after CAA's correspondence in January 2015**

13 33. On January 28, 2015, a former employee in CAA's accounting department
14 contacted Vagrant's business management firm regarding the outstanding profit participation
15 statements. CAA informed the firm that Dorfman authorized CAA's receipt of the outstanding
16 statements. The firm recommended CAA obtain the statements directly from Universal.

17 34. On January 29, 2015, Universal sent CAA profit participation statements for FF4
18 and FF5. Vagrant's business management firm was copied on the correspondence.

19 35. On February 25, 2015, CAA communicated with Universal requesting future profit
20 participation statements and payments regarding FF4 and FF5 be sent to CAA. CAA observed
21 that the profit participation statements were being sent to William Morris Endeavor, another
22 talent agency. CAA copied Dorfman on its request to Universal. On March 3, 2015, Dorfman
23 confirmed the arrangement in a follow-up email to Universal.

24 36. On February 26, 2015, CAA deducted its 10% commission for FF4 after Universal
25 sent CAA a profit participation statement, dated June 30, 2014, and a check payable to Vagrant.
26 CAA remitted the difference after deducting its 10% commission via a check payable to Vagrant.

27 ///

28 ///

1 37. On February 26, 2015, CAA deducted its 10% commission twice for FF5 after
2 Universal sent CAA two profit participation statements, dated December 31, 2013 and June 30,
3 2014. CAA remitted the difference to Vagrant after deducting its 10% commissions.

4 38. CAA stopped receiving participation statements and corresponding checks for FF4
5 and FF5 after this.

6 **CAA investigates after the January 2015 Correspondence**

7 39. Larry Rappaport (hereinafter, “Rappaport”), attorney for CAA, was asked to
8 determine why CAA stopped receiving commissions. On June 1, 2017, Rappaport contacted
9 Dorfman via letter and email asking about the profit participation statements for FF4 and FF5.
10 After Dorfman failed to respond, Rappaport sent him another letter and email on June 9, 2017
11 regarding the profit participation statements and commissions owed to CAA for FF4 and FF5.

12 40. After Dorfman failed to respond, Rappaport contacted the law firm, Wolfe
13 Rifkind, where he believed Dorfman had been. After some back and forth regarding locating
14 Dorfman at the firm, Rappaport was provided the correct email and got in touch with Dorfman.
15 Dorfman informed Rappaport he did understand why the checks had stopped and that they should
16 have gone to CAA. Dorfman indicated he would speak to the accountant about the outstanding
17 balance, the issuance of the checks, and follow-up with Rappaport.

18 41. From about June 30, 2017 to July 11, 2017, Rappaport and Dorfman had several
19 communications regarding the status of the profit participation statements and commissions. At
20 this time, CAA had no indication there was a dispute in the commission payments.

21 42. In mid-to-late July 2017, Dorfman informed Rappaport there appeared to be a
22 transition with Walker’s affairs involving Walker’s father and daughter. Walker’s daughter who
23 either had just turned or was about to turn 18 wanted to become more involved in her father’s
24 affairs and had her own team. Rappaport was informed this was a transition period and it might
25 slow down the process. Dorfman informed Rappaport he would contact her attorneys.

26 43. Rappaport could no longer reach Dorfman after this conversation. Rappaport again
27 contacted Wolfe Rifkind and, around August 2017, got in touch with two attorneys from the firm,
28 Mr. Weiman and Mr. Heck (hereinafter, “Weiman” and “Heck”). Weiman and Heck asked

1 Rappaport for a significant amount of information, including on the agreement, whether it was a
2 written or oral agreement, the commission amounts and when they were paid. Rappaport did not
3 think there was a dispute at this time, but that Weiman and Heck were being cautious and were
4 gathering information because they were not familiar with the background.

5 44. On August 29, 2017, as Rappaport provided Weiman and Heck with the
6 information, CAA and Walker’s estate signed a tolling agreement (hereinafter, “Tolling
7 Agreement”). The Tolling Agreement defines the term as “August 29, 2017 up to and including
8 November 29, 2017.”

9 45. Walker’s father signed on behalf of the “Estate of Paul William Walker IV” as the
10 Executor and Personal Representative.

11 46. Rappaport testified the Tolling Agreement provided the attorneys for Vagrant
12 some time to ascertain the situation and then begin making payments or CAA would proceed with
13 collecting the payments. He intended to provide a “short fuse” on the Tolling Agreement.

14 47. On November 28, 2017, CAA filed its Petition with the Labor Commissioner.

15 48. On November 28, 2017, CAA also filed suit against Vagrant in the Los Angeles
16 Superior Court alleging breach of oral agreement, conversion, money had and received, services
17 rendered, equitable lien, constructive trust, and declaratory relief.

18 49. In its *Response and Related Cross-Claim*, Respondent claims, *inter alia*, all
19 payments CAA received in connection with FF4 and FF5 should be returned to Vagrant, and
20 CAA’s claims, if valid, are subject to a one-year statute of limitations.

21 ISSUES

22 **A. Was a contract formed between the parties?**

23 **B. Did CAA procure employment for Walker in FF4 and FF5?**

24 **C. Is CAA entitled to payment of future commissions for FF4 and FF5?**

25 **D. Can the parties’ Tolling Agreement extend the statute of limitations under Labor**
26 **Code section 1700.44(c)?**

1 III. LEGAL ANALYSIS

2 A talent agent is a corporation or person who procures, offers, promises, or attempts to
3 procure employment or engagements for an artist or artists. (See Labor Code § 1700.4(a).) Labor
4 Code section 1700.4(b) defines an “artist” as “actors and actresses rendering services on the
5 legitimate stage and in the production of motion pictures . . . motion picture and radio productions
6 . . . and other artists and persons rendering professional services in motion picture, theatrical,
7 radio, television and other entertainment enterprises.

8 Walker was an “artist” within the meaning of Labor Code section 1700.4(b). CAA is a
9 talent agency within the meaning of Labor Code section 1700.4(a).

10 **A. Was a Contract Formed Between the Parties?**

11 The essential elements of a contract include “[p]arties capable of contracting who
12 consented with a lawful object and sufficient consideration.” (Civil Code § 1550; *The Endeavor*
13 *Agency, LLC v. Alyssa Milano*, Case No. TAC 10-05, at p. 6 (2007) (“*Milano*”).) The existence
14 and terms of an implied contract are manifested by conduct, and such an implied contract is
15 formed, absent a written agreement, where the parties’ conduct demonstrates a meeting of the
16 minds. (See Civil Code § 1621; *Milano*, at p. 6.) Like *Milano*, the agreement between Walker,
17 including his loan-out company, Vagrant, and CAA is an oral and implied contract formed
18 between the parties, the existence and terms of which were manifested by the parties’ subsequent
19 conduct.

20 The *Milano* facts are instructive. In 1998, Alyssa Milano verbally accepted Endeavor’s
21 offer to represent her in her acting career, but, like here, never signed a written agreement.
22 (*Milano*, at p. 2.) No financial terms were discussed between the parties at the meeting where
23 Endeavor offered representation or during Milano’s subsequent acceptance via telephone call.
24 (*Id.*) Endeavor procured for Milano a starring role on the television show *Charmed*. (*Id.*) Despite
25 the parties’ lack of a signed written agreement, Milano consistently paid Endeavor 10%
26 commission on her earnings for her role in *Charmed*. (*Id.*, at pp. 2, 3-4.)

27 In 2004, Milano terminated Endeavor and ceased making commission payments,
28 including those owed to Endeavor for the 2004-2006 seasons of *Charmed* that Endeavor had

1 negotiated on her behalf. (*Id.*, at p. 4.) In considering whether a contract was formed, the Labor
2 Commissioner determined that the parties' course of dealing after Milano's acceptance of the
3 contract whereby she continued to pay Endeavor 10% of her *Charmed* earnings for over six years
4 demonstrated the existence of "a contract both orally and implied, 'one the existence and terms of
5 which are manifested by conduct.'" (*Id.*, at p. 6.)

6 Here, the evidence demonstrates that Walker entered into an oral contract with CAA.
7 Walker, along with his manager, Luber, met with CAA agents to discuss CAA representing
8 Walker. Like *Milano*, Luber subsequently called CAA, confirming Walker agreed to become
9 CAA's client. Per its standard practice, Vagrant also became CAA's client. Luber testified
10 Walker knew about the standard 10% commission payment structure and, importantly, never
11 deviated from it. Walker's conduct, in the absence of a written contract, demonstrated there was a
12 meeting of the minds. CAA received 10% commission payments from Walker for his work in
13 FF4 and FF5 while CAA represented him. CAA continued to receive 10% commission payments
14 after Walker terminated his agency relationship in February 2011. The evidence shows Walker
15 paid CAA 10% commissions beginning April 2008 to October 2013 for FF4. The evidence
16 further shows Walker paid CAA 10% for FF5 beginning October 2011 through October 2013,
17 one month before Walker's untimely and tragic death in November 2013.

18 In 2014, CAA investigated why it received no commission payments for FF4 or FF5. As
19 part of its investigation, CAA reached out to Walker's attorney, Dorfman. The evidence showed
20 Dorfman represented Walker while he was still with CAA and also negotiated FF5, which put
21 Dorfman in the position to confirm Walker's ongoing obligations to pay 10% commissions to the
22 talent agency. Universal sent CAA additional profit participation payments in February 2015,
23 resulting in the payment of 10% commissions to CAA.

24 Respondent argues there was no "meeting of the minds" based on Grad's testimony that
25 he made it clear to CAA it would not be compensated for its work on the *Fast and Furious*
26 movies. However, Grad's testimony is contradictory. Grad appeared to suggest there was a
27 meeting of the minds after a lunch meeting with Brennan and Andrews, followed-up by a call
28 with Huvane, where he informed CAA its compensation would be based on a sliding scale fee

1 with a carve-out to that payment structure for the *Fast and Furious* movies. The evidence
2 establishes there was no meeting of the minds during these conversations. Grad conceded Luber
3 was an “advocate” for Walker to do the *Fast and Furious* movies and every other movie Luber
4 thought would be right for Walker. He also testified being aware of meetings Luber attended
5 which he did not attend. And, most important, Grad later admitted in his testimony he reached no
6 agreement with CAA for a sliding scale or carve-out.

7 The essential elements of a contract, coupled with the parties’ conduct during the
8 cumulative seven years of CAA receiving its 10% commission, demonstrates Walker entered into
9 an oral contract with CAA.

10 **B. Did CAA Procure Employment for Walker in FF4 and FF5?**

11 A talent agent is a corporation or person who procures, offers, promises, or attempts to
12 procure employment or engagements for an artist or artists. (See Labor Code § 1700.4(a)). While
13 not specifically defined by the Talent Agencies Act (hereinafter, “TAA” or the “Act”), the
14 different definitions for employment require an act on behalf of the employed. (See *Malloy v.*
15 *Board of Education* (1894) 102 Cal. 642, 646; Industrial Welfare Commission Wage Order No.
16 12-2001, section 2(D)-(F)).

17 The Labor Commissioner has ruled that the term “procure” means, “to initiate a
18 proceeding; to cause a thing to be done; to instigate; to contrive, bring about, effect or cause. To
19 persuade, induce, prevail upon, or cause a person to do something.” (*Maureen McDonald, p/k/a,*
20 *Mozella v. Peter Torres, individually and dba Peter Torres Management*, Case No. TAC 27-04, at
21 p. 6 (2005) (“*McDonald*”).) Procurement also includes the solicitation, negotiation or acceptance
22 of a negotiated instrument for the engagements at issue. (*Id.*, at p. 8.) Additionally, procurement
23 “includes an active participation in a communication with a potential purchaser of the artist’s
24 services aimed at obtaining employment for the artist, regardless of who initiated the
25 communication.” (*ICM Partners v. James Bates*, Case No. TAC-24469, at p. 5 (2017) (“*Bates*”)
26 (citing *Hall v. X Management*, Case No. TAC 19-90, at pp. 29-31 (1992)).) “The Labor
27 Commissioner has long held that ‘procurement’ includes the process of negotiating an agreement
28 for an artist’s services.” (*Bates*, at p. 5) (citing *Pryor v. Franklin* (TAC 17 MP 114).)

1 Respondent relies on 8 Cal. Code Regs. (“C.C.R.”) § 12002 to support its position CAA
2 did not procure employment for Walker in FF4 or FF5. A talent agency is entitled to recover
3 commission or compensation under an oral contract between the agency and the artist provided
4 the corresponding employment for said commission, or compensation was “procured directly
5 through the efforts and services of such talent agency and shall have been confirmed in writing
6 within 72 hours thereafter.” (8 C.C.R. §12002.) “However, the fact that no written confirmation
7 was ever sent shall not be, in and of itself, sufficient to invalidate the oral contract.” (*Id.*)
8 Respondent claims CAA did not procure employment for Walker in FF4 or FF5 because he was
9 already part of *The Fast and the Furious* franchise and Universal wanted Walker to reprise his
10 role as Brian O’Conner in FF4 and FF5. Respondent relies on *Agency for the Performing Arts,*
11 *Inc. v. Shawnee Smith and Red Headed Woman, Inc.*, Case No. TAC 18-06 (2007) (“*Shawnee*
12 *Smith*”) for the proposition that CAA is not entitled to commissions because Walker, like the
13 artist in *Shawnee Smith*, reprised his role in the production.

14 **i. CAA Procured Employment for Walker in FF4.**

15 The evidence overwhelmingly demonstrates CAA procured employment for Walker in
16 FF4. Universal and Walker had a strained relationship after Walker refused to do a cameo in
17 FF3 and pulled out of another Universal movie titled, *Heart of a Soldier*, after Universal incurred
18 significant expenses. Brennan testified it was unclear whether Walker would be in FF4 because of
19 his strained relationship with Universal. CAA worked for several months to harmonize the
20 relationship between Universal and Walker so they could work together. By July 2007 and
21 through March 2008, CAA engaged in extensive negotiations for Walker’s role in FF4. The
22 evidence included multiple communications with Universal, Paul’s team (Grad and Luber), and
23 among the CAA team to improve the financial terms and perk benefits important to Walker in
24 order close the deal. After eight months of negotiating with Universal, CAA increased Walker’s
25 compensation from \$7.5 million to \$8.5 million, obtained box office bonuses as an advance
26 against Walker’s share of a 50% gross pool, and secured a comprehensive perk package.

27 **ii. CAA Also Secured Employment for Walker in FF5.**

28 Like its role in FF4, CAA engaged in extensive negotiations with Universal for Walker’s

1 role in FF5. The evidence demonstrated a significant amount of communications including
2 emails, notes memorializing phone calls led by CAA with Universal and/or Walker’s team, drafts
3 of the agreement, and CAA’s revisions to multiple versions of the agreement. Von Arx at CAA
4 sent Dorfman the final version of the agreement for Walker’s review and signature. CAA
5 negotiated \$8.5 million for Walker, his receipt of 5% of the “first dollar gross proceeds,” and a
6 perk benefits package.

7 CAA solicited an engagement for Walker by working to harmonize the relationship with
8 Universal, extensively negotiated the agreements for FF4 and FF5, and participated in
9 communications with Universal to obtain employment for Walker. All these activities are
10 examples of procurement and there is no question CAA participated in them all. (See *McDonald*,
11 *supra*, Case No. TAC 27-04, at p. 6, 8; *Bates*, *supra*, Case No. TAC 19-90, at p. 5.)

12 **iii. Respondent’s Arguments.**

13 Respondent directs the Labor Commissioner’s attention to 8 C.C.R. §12002 and argues
14 Petitioner had to prove it “directly procured” the employment, **and** confirmed the employment in
15 writing within 72 hours. Respondent’s analysis is incomplete because it fails to include the
16 section of 8 C.C.R. § 12002, which states that the lack of written confirmation is insufficient to
17 invalidate an oral contract. In addition, the Labor Commissioner has explained that procurement
18 can include soliciting an engagement, negotiating agreements for the employment, and actively
19 participating in communication with the purchaser of the artist’s services. All these examples are
20 present here. Moreover, Respondents kept Walker’s team consistently apprised and updated on
21 the status of the negotiations for FF4 and FF5, which included the financial terms and perk
22 benefits, circulating multiple drafts of the agreements for review and comments, and collecting
23 their input. Finally, Respondent’s reliance on *Shawnee Smith* is misplaced. There, the Labor
24 Commissioner found Smith’s attorney, not the agent, procured her employment. (*Shawnee Smith*,
25 *supra*, Case No. TAC 18-06, at 4.) Here, CAA obtained the role for Walker in FF4 and FF5 and
26 negotiated the agreements for each project.

27 For all the reasons stated above, CAA procured Walker’s employment in FF4 and FF5.
28

1 **C. Is CAA entitled to future commission payments for FF4 and FF5?**

2 “A talent agency is entitled to receive post-termination commissions for all employment
3 secured by the agency prior to its termination.” (*Bates, supra*, Case No. TAC 24469, at p. 6)
4 (citing *Paradigm Talent Agency v. Charles Carroll, et al.* (TAC Case No. 12728, at pp. 13, 16.)).
5 Moreover, “[c]ommissions are owed post termination for monies negotiated by the agent during
6 the term of the agreement and the artist cannot unilaterally determine there is no further
7 obligation to pay for work already performed.” (*Bates*, at p. 6) (citing *Milano, supra*, Case No.
8 TAC 10-05, at pp. 7-8).

9 CAA is entitled to receive future commission payments for FF4 and FF5. CAA negotiated
10 Walker’s financial terms for FF4 and FF5, including the \$8.5 million compensation, the box
11 office bonuses as an advance against Walker’s share of a 50% gross pool in FF4, and receipt of
12 5% of “first dollar gross” proceeds in FF5. Vagrant cannot unilaterally determine it no longer
13 owes CAA commission simply because Walker terminated his agency relationship with CAA in
14 February 2011. On the contrary, the payment of post-termination commissions was implied and
15 understood by the parties, and were manifested as such by their actions. Walker continued to pay
16 CAA its 10% commission until October 2013 in FF4. Walker also paid CAA its 10 percent
17 commissions for FF5 from October 2011 through October 2013. Walker’s team, specifically,
18 Dorfman confirmed the same understanding when it authorized Universal to send profit
19 participation statements and payments directly to CAA in February 2015, and informed
20 Rappaport in June 2017 that CAA should have received its unpaid commissions.

21 Thus, CAA is entitled to post-termination commissions for the work it procured for
22 Walker in FF4 and FF5.

23 **D. Can the parties’ Tolling Agreement extend the statute of limitations under Labor**
24 **Code section 1700.44(c)?**

25 **i. The One-Year Statute of Limitations**

26 Labor Code section 1700.44(c) states:

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

1 A statute of limitations may be tolled by “various circumstances, events or acts.” (*Don*
2 *Johnson Prods., Inc. v. Rysher Ent., LLC* (2012) 209 Cal.App.4th 919, 929) (“*Johnson*”). Tolling
3 agreements “permit efforts to be made to settle the matter without litigation, furthers the highly
4 favored public policy of settling disputes.” (*Id.* at 928.)

5 The parties do not appear to dispute the Tolling Agreement but offer distinct arguments on
6 the issue of the one-year statute of limitation and payment of commissions. Petitioner relies on
7 *William Morris Agency, LLC v. Dan O’Shannon, et al.*, Case No. TAC 06-05 (2007)
8 (“*O’Shannon*”) in support of its position that the one-year statute of limitations for ongoing
9 commission payments has not yet begun to run because Vagrant continues to receive profit
10 participation statements from Universal and has a continuing obligation to pay CAA its
11 commissions. Respondent relies on the legislative history cited by *O’Shannon* for the proposition
12 that all rights arising out of contracts the Labor Commissioner is charged with regulating are
13 subject to the one-year statute of limitation.

14 The parties’ reliance on *O’Shannon* is misplaced. In *O’Shannon*, petitioner William
15 Morris Agency (hereinafter, “William Morris”) argued Labor Code section 1700.44(c) was
16 limited to claims brought with respect to a “violation” of the TAA. (*O’Shannon*, at pp. 22-23.)
17 William Morris argued that O’Shannon’s failure to pay commissions did not violate the Act but
18 was instead a violation of the oral agency agreement between the parties. (*Id.*) William Morris
19 stated the correct statute of limitations was a two-year statute of limitations under Code of Civil
20 Procedure section 339. (*Id.*, at p. 23.) It attached the legislative history in support of its position,
21 and contended the legislative history “does not reflect any intent to have the one-year statute
22 override longer statutes of limitations applicable to common law claims between talents agencies
23 and artists.” (*Id.*) In rejecting William Morris’s claim, the Labor Commissioner concluded “we do
24 not find anything in the Legislative History that [] reflects that the drafters did not mean for it to
25 override longer statute of limitations applicable to a breach of contract action.” (*Id.*, at pp. 23-24.)
26 The Labor Commissioner concluded the applicable statute of limitations in the action was a one-
27 year statute of limitations. (*Id.* at p. 24.) “[H]ad the Legislature intended that there be two
28 different statutes of limitations, one for purely contract claims and one for other violations of the

1 Act, we believe the Legislature would have stated so.” (*Id.*)

2 *O’Shannon* does not apply to the arguments offered by the parties. Rather, this case
3 presents the unique question of whether the parties’ Tolling Agreement, which provides for a
4 Term of August 29, 2017 to November 29, 2017, can extend the TAA’s one-year statute of
5 limitations provided by Labor Code section 1700.44(c). The Labor Commissioner answers in the
6 affirmative. The Tolling Agreement allowed the parties to investigate the matter in an effort to
7 resolve it. (See *Johnson, supra*, 209 Cal.App.4th at 928.) Rappaport testified the Tolling
8 Agreement provided the attorneys for Vagrant some time to ascertain the situation to begin
9 making payments. The parties entered this agreement, which provided for a “short fuse.” The
10 parties do not appear to dispute the Tolling Agreement. Moreover, the Tolling Agreement is
11 consistent with “the highly favored public policy of settling disputes.” (*Id.*)

12 Relying on *Prudential-LMI Com. Ins. v. Superior Court* (1990) 51 Cal.3d 674, 688-690,
13 Petitioner states *any* statute on CAA’s commissions owed before August 29, 2016 should be
14 equitably tolled based on when CAA learned for the first time that Vagrant would not pay
15 commissions. *Prudential* concerned an action against an insurance company after the company
16 denied coverage from losses to an apartment building, and a one-year statute of limitation under
17 Insurance Code section 2071. Here, Labor Code section 1700.44(c), requires the Labor
18 Commissioner to consider the one-year statute against claims involving TAA violations. Any
19 commissions Vagrant owes CAA are limited to commissions due after August 29, 2016.

20 Applying Labor Code section 1700.44(c) and the parties’ Tolling Agreement, CAA can
21 seek unpaid commissions beginning August 29, 2016. CAA established the profit participation
22 statements, the accounting statements showing what compensation was due to Walker, were dated
23 based on when the time period for that particular statement ended, *i.e.*, or “P/E.” Universal did not
24 send profit participation statements to Vagrant for FF4 and FF5 with periods ending June 30,
25 2016 until September 20, 2016.³ Thus, Vagrant owes CAA unpaid commissions for these profit
26 participation statements because Vagrant did not receive them until after August 29, 2016.

27 ///

28 ³ Petitioner’s Exhibits 54, 68, 76 and 77.

1 **IV. ORDER**

2 For the reasons set forth above, IT IS HEREBY ORDERED that:

3 1. Respondent Vagrant, Inc. shall provide to CAA copies of all participation statements that
4 accompanied the participation payments Respondent received from Universal for *The Fast and*
5 *the Furious 4* and *The Fast and the Furious 5* since August 29, 2016;

6 2. Respondent Vagrant, Inc. shall pay to CAA the unpaid 10% commission on the
7 participation payments Respondent received from Universal for *The Fast and the Furious 4* in the
8 amount of **\$378,608.36**, which includes interest, and *The Fast and the Furious 5* in the amount of
9 **\$250,834.52**, which includes interest, since August 29, 2016, on that obligation at the rate of 10%
10 per annum as follows:

11

12 Payment Descriptions for FF4	CAA Commission Earned	10% Interest on Unpaid Commission (through April 13, 2021)	Total Amount Owed (with Interest)
13 Participation P/E 06/30/16 (sent 9/20/16)	\$75,926.14	\$34,718.01	\$110,644.15
14 Participation P/E 12/31/16 (sent 4/5/17)	\$84,614.60	\$34,124.02	\$118,738.62
15 Participation P/E 06/30/17 (sent 9/18/17)	\$33,713.27	\$12,062.89	\$ 45,776.18
16 Participation P/E 06/30/18 (sent 8/28/2018)	\$41,788.30	\$11,013.79	\$ 52,802.09
17 Participation P/E 6/30/19 (sent 9/17/2019)	\$43,733.80	\$ 6,913.53	\$ 50,647.33
18 TOTAL AMOUNT OWED FOR FF4:	\$279,776.11	\$98,832.25	\$378,608.36

19

20 Payment Descriptions for FF5	CAA Commission Earned	10% Interest on Unpaid Commission (through April 13, 2021)	Total Amount Owed (with Interest)
21 Participation P/E 06/30/16 (sent 9/20/16)	\$55,487.83	\$25,372.38	\$80,860.21
22 Participation P/E 6/30/17 (sent 9/19/17)	\$50,847.11	\$18,179.58	\$69,026.69
23 Participation P/E 06/30/18 (sent 9/14/18)	\$32,388.40	\$ 8,385.49	\$40,773.89
24 Participation P/E 06/30/19 (sent 9/9/19)	\$51,984.40	\$ 8,189.32	\$60,173.72
25 TOTAL AMOUNT OWED FOR FF5:	\$190,707.24	\$60,126.7	\$250,834.52

26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Respondent Vagrant, Inc. is obligated to pay CAA its 10% commission on all participation statements that Respondent will receive in the future for *The Fast and the Furious 4* and *The Fast and the Furious 5*.

Dated: April 19, 2021

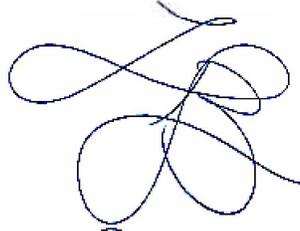
Respectfully submitted,



PATRICIA SALAZAR
Attorney for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: April 19, 2021



LILIA GARCIA-BROWER
State Labor Commissioner

**PROOF OF SERVICE
TAC-50209**

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

I, Jhonna Lyn Estioko, declare and state as follows:

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, Suite 600, Los Angeles, California 90013.

On April 19, 2021, I served the following documents described as:

DETERMINATION OF CONTROVERSY

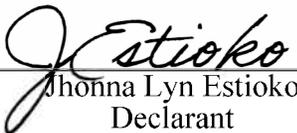
on the persons below as follows:

Attorney(s) for Petitioner
Jeffrey B. Valle (JValle@vallemakoff.com)
Jennifer Laser (jlaser@vallemakoff.com)
VALLE MAKOFF LLP
11911 San Vicente Blvd., Suite 324
Los Angeles, CA 90049

Attorney for Respondent
Michael D. Hellman
(Michael.hellman@rimonlaw.com)
RIMON, P.C.
200 East Carrillo Street, Suite 201
Santa Barbara, CA 93101

- (BY CERTIFIED MAIL)** By placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
- (BY E-MAIL SERVICE)** I caused such document(s) to be delivered electronically via e-mail to the e-mail address of the addressee(s) listed above.
- (STATE)** I declare under penalty of perjury, under the laws of the State of California that the above is true and correct.

Executed on April 19, 2021, at Los Angeles, California.


Jhonna Lyn Estioko
Declarant