1 2 3 4 5	EDNA GARCIA EARLEY, Bar No. 195661 STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS DIVISION OF LABOR STANDARDS ENFORCEMENT 320 W. 4th Street, Suite 430 Los Angeles, California 90013 Telephone: (213) 897-1511 Facsimile: (213) 897-2877				
6	Attorney for the Labor Commissioner				
7					
8	BEFORE THE LABOR COMMISSIONER				
9	OF THE STATE OF CALIFORNIA				
10					
11	EVETTE WASHINGTON, CASE NO. TAC 23725				
12	DETERMINATION OF CONTROVERSY				
13	Petitioner,				
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16	DIVERSE TALENT GROUP, INC.,				
17	Respondent.				
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19	The above-captioned matter, a Petition to Determine Controversy under				
20	Labor Code §1700.44, came on regularly for hearing on 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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## FINDINGS OF FACT

 Petitioner EVETTE WASHINGTON (hereinafter, "WASHINGTON") is a professional actress.

2. During the relevant time period, Respondent DIVERSE TALENT GROUP, INC. ("DTG") was licensed as a talent agency in the state of California and served as WASHINGTON'S talent agency from 2010 to 2011.

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

4. Specifically, on November 9, 2010, WASHINGTON booked a
 national commercial with the United States Postal Service. WASHINGTON earned
 \$592.20 gross wages for this commercial and received Check No. 1428 from DTG in the
 net amount of \$391.18.<sup>1</sup> This check, however, was not negotiable due to lack of funds and
 a replacement check was never issued by DTG.

5. WASHINGTON also booked and worked on 6 national commercials
 for the company GEICO. WASHINGTON provided evidence showing checks totaling
 \$45,720.64, gross and \$31,479.63<sup>2</sup>, net were paid directly to DTG by GEICO and were
 negotiated by DTG from February 14, 2011 through April 15, 2011. While DTG then
 issued checks to WASHINGTON less commissions and other withholdings, some of the
 DTG checks were non-negotiable. Of the total amount paid to DTG by GEICO, DTG
 failed to pay WASHINGTON \$24,486.47, gross, equaling \$17,475.91 in net wages.

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

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<sup>1</sup> The withholdings for this check include \$141.80 in lawful withholdings and \$59.22 in commissions. <sup>2</sup> The withholdings for these checks also include lawful withholdings and 10%

28 commissions.

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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 d	ated July 21, 2011 from		
4	DTG informing her DTG had been the victim of fraud on the part of	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 i	nto DTG's clients and		
7	cashed the payments. As such, DTG was in the process of setting u	p 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 emai	ls 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: GEICO unpaid checks:	\$391.18 net \$17,475.91 net		
17	GEICO bounced checks and bank fees:	_\$1,485.68 net		
18		\$20.00 bank fee \$232.81 net		
19	······································	\$20.00 bank fee		
20	Reimbursement of 10% commissions paid to DTG: <sup>3</sup>	\$736.02 \$628.68		
21		\$2,502.35		
22	Attorney's Fees:	\$4,572.06 \$700.00		
23	TOTAL	\$28,764.69		
24	/// · · · · · · · · · · · · · · · · · ·			
25	///			
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27				
28	<sup>3</sup> WASHINGTON provided copies of personal checks she wrote to DTG reflecting 10% mailed directly to her from GEICO.	commissions for payments		

. 1	LEGAL ANALYSIS				
2	1. WASHINGTON, a professional actress, is an "artist" within the				
3	3 meaning of Labor Code §1700.4(b).				
. 4	2. DTG is a licensed talent agency. Labor Code §1700.25(a) provides:				
5	(a) A licensee who receives any newment of funds on				
6	(a) A licensee who receives any payment of funds on behalf of an artist shall immediately deposit that				
7	amount in a trust fund account maintained by him or her in a bank or other recognized depository. The				
8	funds, less the licensee's commission, shall be				
. 9	disbursed to the artist <u>within 30 days after receipt</u> . However, notwithstanding the preceding sentence, the				
10	licensee may retain the funds beyond 30 days of receipt				
11	in either the following circumstances:				
12	(1) To the extent necessary to offset an obligation of the artist to the talent agency that is				
13	then due and owing.				
14	(2) When the funds are the subject of a				
15	controversy pending before the Labor Commissioner under Section 1700.44	ľ			
16	concerning a fee alleged to be owed by the artist				
1-7	to the licensee.	-			
18	The evidence presented shows DTG received numerous checks from third party	-			
19	payroll companies for work WASHINGTON performed on one, United States Post Office				
-20	national commercial and five, GEICO national commercials and negotiated the checks but				
21	failed to turn over the monies to WASHINGTON or paid her with checks that did not				
22	have sufficient funds and never issued replacement checks with sufficient funds.				
23	3. Labor Code §1700.25(e) provides:	ŀ			
24	If the Labor Commissioner finds, in proceedings under Section 1700.44, that the licensee's failure to disburse				
25	funds to an artist within the time required by				
26	subdivision (a) was a willful violation, the Labor Commissioner may, in addition to other relief under	ĺ			
27	Section 1700.44, order the following:				
28	(1) Award reasonable attorney's fees to the	.			
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1	prevailing artist.					
<ul> <li>2 (2) Award interest to the prevailing artist on the funds wrongfully withheld at the rate of 10 percent per annum during the period of the</li> </ul>						
. 4	violation.					
5	DTG'S failure to pay WASHINGTON the outstanding monies owed constitutes a					
6	willful violation under Labor Code §1700.25(e). DTG has failed to pay the amounts owed					
7	to date. Accordingly, the Labor Commissioner finds WASHINGTON is entitled to					
8	payment of <u>\$19,625.58</u> reflecting earned but unpaid wages. This amount is apportioned					
. 9	as follows:					
10	USPS Commercial: \$391.18 net GEICO unpaid checks: \$17,475.91 net					
11	GEICO bounced checks and bank fees: \$1,485.68 net					
12	\$20.00 bank fee \$232.81 net					
13	\$20.00 bank fee					
. 14	Total: \$19,625.58					
15						
16	Under Labor Code §1700.25(e), WASHINGTON is also entitled to interest on					
-17-	these unpaid amounts at 10% per year from April 15, $2011^4$ in the amount of <u>\$2,704.57</u>					
18	and attorney's fees in the amount of <u>\$700.00</u> , as claimed. WASHINGTON'S claim for reimbursement of the commissions previously paid to					
19	DTG is denied, based on lack of legal authority to award such amount.					
20	<u>ORDER</u>					
21	For the foregoing reasons, Petitioner EVETTE WASHINGTON is entitled					
22	to collect \$19,625.58 in unpaid earnings plus \$2,704.57 in interest and \$700.00 in					
23	attorney's fees for a total amount of <u>\$23,030.15</u> due from Respondent DIVERSE					
24	TALENT GROUP, INC.					
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27	<sup>4</sup> Due to the number of novments received by DTG on behalf of WASHINGTON Accel					
28	<sup>4</sup> 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.					
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	1	DATED: September 11, 2012 Respectfully submitted,	
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-	4	By: FAMaletael	
	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: JulieAS	
	11	JULIE A. SU State Labor Commissioner	
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DETERMINATION OF CONTROVERSY - TAC23725