

1 DIVISION OF LABOR STANDARDS ENFORCEMENT

2 Department of Industrial Relations

3 State of California

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10 Attorney for the Labor Commissioner

11 **BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT**

12 **DEPARTMENT OF INDUSTRIAL RELATIONS**

13 **STATE OF CALIFORNIA**

14 Case No.: TAC 31982

15 TREVOR ANTHONY PITZEL, an individual,

16 Petitioner,

17 v.

18 LINDA GREEN, an individual dba SHA'LIN

19 TALENT AGENCY,

20 Respondent.

21 **DETERMINATION OF**
22 **CONTROVERSY (LABOR CODE §**
23 **1700.44(a))**

1 **DETERMINATION**

2 **I.**

3 **INTRODUCTION**

4 Trevor Pitzel's July 1, 2013 petition (the "Petition") against Linda Green, an individual
5 dba Sha'Lin Talent Agency (Mr. Pitzel and Ms. Green collectively the "Parties") to determine
6 controversy pursuant to Section 1700.44 of the Labor Code was heard on February 28, 2014 in
7 the Los Angeles office of the Labor Commissioner (the "Labor Commissioner"), Division of
8 Labor Standards Enforcement, Department of Industrial Relations, State of California. Barton
9 L. Jacka, an attorney for the Labor Commissioner from the Sacramento office, heard the matter
10 on assignment by the Labor Commissioner.

11 Mr. Pitzel appeared, in pro per and was his only witness. Neither Ms. Green nor any
12 employee, attorney or other person appeared for Mr. Green and no witness appeared offering to
13 proffer testimony for her. Ms. Green was served with the Petition by substitute service
14 (personally on an employee at the offices of Sha'Lin Talent Agency and by mail on Ms. Green)
15 on September 16, 2013. Further, Ms. Green was served by mail with notice of the hearing.

16 **II.**

17 **PLEADINGS AND HEARING**

18 **A. Allegations of the Petition.**

19 The Petition alleges in pertinent part that Mr. Pitzel is an "artist" as defined in Section
20 1700.4 of the Labor Code, residing in Los Angeles County, California and that Ms. Green was
21 acting as a "talent agency". The Parties entered into a December 10, 2012 contract (which was
22 not provided with the Petition or at the hearing) that is alleged to govern the controversy
23 between them. The Petition then alleges:

- 24 • On December 10, 2012, while Mr. Pitzel was a client of Ms. Green, he was hired by
25 20th Century Fox Film to perform in an episode of the television program "Modern
26 Family". That episode was shot on December 13, 2012 and Mr. Pitzel has never
27 received any payment for his services;

- 1 • On January 15, 2013, Mr. Pitzel received a telephone call from Ms. Green; Ms. Green
2 told Mr. Pitzel that pursuant to the previously signed "check authorization" by which
3 Mr. Pitzel had authorized the payment for his work on "Modern Family" to be sent to
4 Ms. Green, Ms. Green had received Mr. Pitzel's compensation for the "Modern Family"
5 episode; due, however, to a death in her family, she would be unable to send payment at
6 that time.
- 7 • On January 22, 2013, Ms. Green cashed the \$750.54 check constituting Mr. Pitzel's
8 compensation for his performance on "Modern Family".
- 9 • Despite repeated requests by Mr. Pitzel and assurances, apologies and even a payment
10 plan promised by Ms. Green, Mr. Pitzel has never received any portion of the \$750.54.

11 **B. Mr. Pitzel's testimony and exhibits.**

12 On December 10, 2012, Mr. Pitzel performed on an episode of "Modern Family". On
13 January 7, 2013, Twentieth Century Fox Film issued Check number 1278497 to Mr. Pitzel, c/o
14 of Ms. Green, in the sum of \$750.54; that check was cashed on January 22, 2013 by "Sha'Lin
15 Talent". In late January 2013, Ms. Green called Mr. Pitzel and told him that receipt of his
16 money would be delayed because she had to attend to issues pertaining to the death of her
17 mother.

18 Mr. Pitzel made further inquiries to Ms. Green in February and March 2013; Ms. Green,
19 on two occasions, told Mr. Pitzel she would send the funds; this did not occur.

20 On April 30, 2013, Ms. Green sent an e-mail to Mr. Pitzel, apologizing for not having
21 sent him his money and asking if he would accept the money in payments. The e-mail also
22 says that: "monies 'were not' handled correctly and I'm trying to get things back in order."

23 Mr. Pitzel responded to Ms. Green with a May 1, 2013 e-mail agreeing to receipt of the
24 money in payments and asking whether Ms. Green would agree to making two payments, each
25 in the sum of \$375.27: the first on May 8, 2013 and the second on May 29, 2013.

26 Ms. Green responded with an e-mail in mid-May 2013, offering to pay the sum in two
27 payments: the first on May 29, 2013 and the second on June 12, 2013. Mr. Pitzel agreed to the
28 terms but never received the funds.

1 Pursuant to Section 1700.25:

2 (a) A licensee who receives any payment of funds on behalf of an artist shall
3 immediately deposit that amount in a trust fund account maintained by him or her in a
4 bank or other recognized depository. The funds, less the licensee's commission, shall
5 be disbursed to the artist within 30 days after receipt. However, notwithstanding the
6 preceding sentence, the licensee may retain the funds beyond 30 days of receipt in
7 either of the following circumstances: ...

8 (2) When the funds are the subject of a controversy pending before the
9 Labor Commissioner concerning a fee alleged to be owed by the artist to the licensee.

10 ...

11 (b) A separate record shall be maintained of all funds received on behalf of an
12 artist and the record shall further indicate the disposition of the funds.

13 (c) If disputed by the artist and the dispute is referred to the Labor
14 Commissioner, the failure of a licensee to disburse funds to an artist within 30 days of
15 receipt shall constitute a "controversy" within the meaning of Section 1700.44.

16 (d) Any funds specified in subdivision (a) that are the subject of a controversy
17 pending before the Labor Commissioner under Section 1700.44 shall be retained in the
18 trust fund account specified in subdivision (a) and shall not be used by the licensee for
19 any purpose until the controversy is determined by the Labor Commissioner or settled
20 by the parties.

21 (e) If the Labor Commissioner finds, in proceedings under Section 1700.44, that
22 the licensee's failure to disburse funds to an artist within the time required by
23 subdivision (a) was a willful violation, the Labor Commissioner may, in addition to
24 other relief under Section 1700.44, order the following:

25 ...

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

1 The evidence is undisputed that Ms. Green had an obligation to deposit into a trust fund
2 account all sums paid by Twentieth Century Fox Film for Mr. Pitzel and then within thirty days
3 to disburse those sums, less Ms. Green's 10% commission, to Mr. Pitzel.

4 The evidence shows that Ms. Green's commission was paid to her in a check separate
5 from check number 1278497 and that all of the \$750.54 contained in that check was owed to
6 Mr. Pitzel and should have been paid to him within 30 days of receipt on January 22, 2013 (i.e.,
7 by February 21, 2013). It has not and therefore \$750.54 has been due and owing to Mr. Pitzel
8 since February 21, 2013.

9 Ms. Green not only failed to segregate the sums tendered to her by Twentieth Century
10 Fox Film as required by Section 1700.25(a) but also willfully "fail[ed] to disburse funds to
11 [Mr. Pitzel] within [30 days]". (§ 1700.25(e).) Accordingly, pursuant to Section
12 1700.25(e)(2), Mr. Pitzel is awarded interest the rate of 10% per year on the \$750.54 since
13 February 21, 2013 – a total in interest of \$144.77.

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IV.

ORDER

The relief sought in the Petition is granted as follows:

Ms. Green shall pay Mr. Pitzel: \$750.54 for failure to pay him sums owed to him under their agreement; and \$144.77 in interest; for a total of: **\$895.31**.

Respectfully submitted:

Dated: January 26, 2015

DIVISION OF LABOR STANDARDS
ENFORCEMENT, Department of Industrial Relations,
State of California

By: Barton L. Jacka
BARTON L. JACKA
Attorney for the Labor Commissioner

Adopted as the determination of the Labor Commissioner:

Dated: _____

JULIE A. SU
CALIFORNIA LABOR COMMISSIONER

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Respectfully submitted:

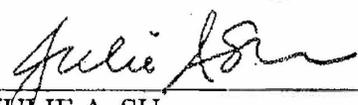
Dated: January 26, 2015

DIVISION OF LABOR STANDARDS
ENFORCEMENT, Department of Industrial Relations,
State of California

By: 
BARTON L. JACKA
Attorney for the Labor Commissioner

Adopted as the determination of the Labor Commissioner:

Dated: 1-27-15


JULIE A. SU
CALIFORNIA LABOR COMMISSIONER

PROOF OF SERVICE
(C.C.P. 1013)

CASE NAME: *Trevor Anthony Pitzel v. Linda Green, dba Sha'lin Talent Agency*
CASE NO: TAC - 31982

I, David Spicer, hereby certify that I am employed in the County of Sacramento, over 18 years of age, not a party to the within action, and that I am employed at and my business address is: DIVISION OF LABOR STANDARDS ENFORCEMENT, Legal Unit, 2031 Howe Avenue, Suite 100, Sacramento, California 95825.

On January 28, 2015 I served the following document:

Determination of Controversy

A. First Class Mail - I caused each such envelope, with first-class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S. mail in Sacramento, California, for collection and mailing to the office of the addressee on the date shown below following ordinary business practices.

B. By Facsimile Service - I caused a true copy thereof to be transmitted on the date shown below from telecopier (916) 263-2920 to the telecopier number published for the addressee.

C. By Overnight Delivery - I caused each document identified herein to be picked up and delivered by Federal Express (FedEx), for collection and delivery to the addressee on the date shown below following ordinary business practices.

D. By Personal Service - I caused, by personally delivering, or causing to be delivered, a true copy thereof to the person(s) and at the address(es) set forth below.

E. By Certified Mail - I caused each such envelope, with fully prepaid postage thereon for certified mail, to be deposited in a recognized place of deposit of the U.S. mail in Sacramento, California, for collection and mailing to the office of the addressee on the date shown below following ordinary business practices.

Type of Service

Addressee

A

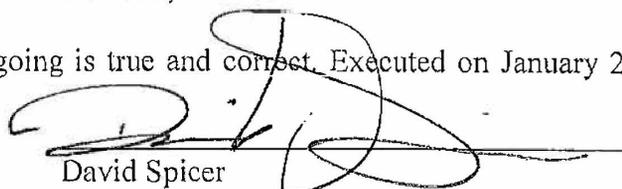
Trevor Anthony Pitzel
1212 N. Formosa Avenue, #3
West Hollywood, CA 90046

Linda Green
3003 W. Olive Avenue
Burbank, CA 91502

Linda Green
239 W. Olive Avenue
Burbank, CA 91502

Linda Green
120 S. Victory Boulevard, #202
Burbank, CA 91502

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 28, 2015 at Sacramento, California.



David Spicer
Assistant to Barton Jacka