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IN THE SUPREME COURT OF THE UNITED STATES

In re WORLD BOTANICAL GARDENS, INC.	Case Number: Not Yet Assigned **MOTION FOR RELIEF FROM CLERICAL ERROR**

MOTION FOR RELIEF FROM CLERICAL ERROR

Introduction

Petitioners Douglas Lee, Calvin Andrus and Walter L. Wagner respectfully move the Court to be allowed to file their "*Petition for A Writ of* Certiorari *After Judgment*", which they timely submitted for filing with a postal mailing date of April 20, 2018, and which was date-stamped by the clerk as "received" on April 24, 2018. Thereafter, it was wrongly denied filing due to clerical error wrongly asserting it was submitted for filing "*Out of Time*". Petitioners timely submitted their *Petition* within the 90 days allowable after the denial of their timely-filed appeal by the Ninth Circuit Court of Appeals full *en banc* panel (denied January 25, 2018). This Court's clerk has erroneously asserted that they were required to file their *Petition* after a denial by the earlier/lower 3-person panel within 90 days after the denial of their appeal by that lower 3-person appellate panel, rather than within 90 days after the later denial by the full *en banc* panel several months later, to which full *en banc* panel the petitioners herein had a statutory right to appeal.

This Court's clerk has wrongly asserted that a motion to file the *Petition* "*out-of-time*" should be filed, based on her misapprehension that the *Petition* was required to be filed within 90 days of the denial by the 3-person appellate panel, rather than within 90 days after denial by the 10-person *en banc* panel, which is what actually happened. She re-stamped the *Petition* on June 4, 2018 (*see Attachment "A"*), returned the filing fee and 40 copies of the *Petition*, along with her cover letter (erroneously dated May 10), which petitioners received on June 11, 2018. This Motion was then timely submitted in response thereto.

Facts Relevant to this Motion

1. Petitioners are aggrieved shareholders of World Botanical Gardens, Inc. (WBGI). Its two-officer "management" team concocted a criminal scheme to steal all of the Hawaii real-estate asset for themselves. By their criminal scheme, that two-officer "management" team filed for bankruptcy liquidation without notification to the shareholders[1] as required by bankruptcy statute, wherein all of the assets of the corporation were transferred ("sold" for about 5% of their actual value) to the two "officers" who filed the bankruptcy petition, even while concurrently proclaiming to the shareholders on the WBGI website (www.wbgi.com) that the company was doing well financially. Petitioner Lee, and about 600+ other shareholders, owning approximately 99% of the asset, were completely ignorant of that bankruptcy filing that those two "officers" sought to keep quiet with respect to the shareholders. This sale of the real-estate asset to the two "officers" for a drastically under-valued amount left no asset for division amongst the shareholders who owned 99% of the assets. This criminal scheme has deprived petitioner Lee and the other 600+ shareholders of their real-estate ownership in valuable Hawaii land.

2. Petitioner Lee, after belatedly learning of the bankruptcy filing (because he, along with the other 600 shareholders, received no notice of the filing) some six months after the

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[1] *Without Notification* means that no emails, telephone calls, letters, newsletters, notices on the wbgi.com website, postings at the botanical garden itself, nor any other communication of any form to the shareholders were ever delivered to the 600+ shareholders regarding the illegal bankruptcy filing, prior to the sale of the real-estate asset to themselves for about 5% of its actual value. The bankruptcy was likewise not necessary, as the company was operating in the black, and continues to operate profitably now, though purportedly owned solely by the two "officers" who continue to operate the business, though now as a partnership rather than a shareholder-owned corporation.

sale of the real estate to the two "officers", sought to appeal the corporate liquidation decision and organize a Reorganization effort, to preclude the two "officers" from effectively stealing the assets from the shareholders by their criminal subterfuge in not providing any notice of the proceedings to the shareholders.

3. He (along with two other shareholders, Andrus and Wagner, appearing herein as co-petitioners) timely appealed to the *Ninth Circuit Court of Appeals*, wherein the appeal was assigned to a 3-person panel for consideration.[2] That 3-person panel fabricated fake facts, falsely proclaiming that petitioner herein Lee had been provided notice of the lower-court proceedings including notice of the proposed sale of assets, and then slept on his rights. Those were not the facts of the bankruptcy trial court below, or the facts on appeal, which very clearly showed a fraudulent effort to keep the shareholders from learning of the bankruptcy, and in particular that petitioner Lee was kept ignorant of that proposed sale, and subsequent illegal sale. That 3-person appellate panel then used those fake facts to deny the appeal on the false claim that petitioner Lee had slept on his rights and was required to appeal at the time of the sale, not six months later (which is when he actually learned of the sale from petitioners Wagner and Andrus, who also belatedly learned of the bankruptcy filing, as they, along with the other 600+ shareholders, were not in the original bankruptcy matrix of parties to the action).

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[2] See Attachment "B", Appendix J which is the proposed *Petition for Certiorari* wrongly rejected for filing by this Court's clerk. This contains the 3-person panels original decision wrongly indicating petitioner Lee failed to appeal within 14 days of the sale order, even though he was never noticed of that order and was ignorant of it, as were the other 600+ shareholders.

4. Petitioner herein Lee (along with the other two shareholders, Andrus and Wagner, appearing herein) then timely filed an appeal of the erroneous 3-person-panel decision, which was based on fake facts in their 'opinion', to the full *en banc* appellate court, consisting of 10 members, pursuant to *Federal Rules of Appellate Procedure* (FRAP), Rule 35, allowing for rehearing *en banc* if the lower 3-person panel errs, which is what occurred herein.

5. Petitioner Lee (along with the other two shareholders, Andrus and Wagner, appearing herein) fully complied with the FRAP Rule 35(b) requirement to have the appeal document to be filed with the full *en banc* appellate court begin with a statement that showed the decision conflicts with a decision of the *Ninth Circuit Court of Appeals* requiring consideration by the full court to secure uniformity of the court's decisions, or begin with a statement that the proceeding involves one or more questions of exceptional importance, which were concisely stated, or both.[3] Specifically, the appeal asserted that the lower 3-person panel below was fabricating fake facts and basing its decision not on the actual facts of the case but on the fake facts; and it also asserted that the claim was timely appealed as per accepted

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[3] Federal Rules of Appellate Procedure, Rule 35(b): **PETITION FOR HEARING OR REHEARING EN BANC.**

"A party may petition for a hearing or rehearing en banc.

(1) The petition must begin with a statement that either:

(A) the panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or

(B) the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue."

case law previously entered by the Ninth Circuit for interlocutory appeals,[4] and thus the 3-person panel decision also conflicted with prior case law.

6. Because the appeal fully complied with the FRAP Rule 35(b) requirement, and because it was fully meritorious in that using fake facts to make a panel decision is of exceptional importance to reverse (as courts are to always required to make their decisions based on the actual facts, not on fraudulent fictions concocted against *pro se* parties), the appeal to the full *en banc* court was allowable as a matter of statutory right (FRAP Rule 35(b)), even if the *en banc* court were to deny the rehearing (which is what occurred).

7. This Court's clerk is essentially asserting that parties may only file for review by this Court following an adverse lower panel decision; or appeal to the full *en banc* appellate court and forego *certiorari* by this Court if the *en banc* court errs. By way of this Court's clerk's decision, the clerk is essentially asserting that parties who seek to have a full *en banc* appeal pursuant to FRAP Rule 35 effectively remove themselves from review by this Court. That is not the intended purpose of Rule 35, and that is contrary to the purpose of *certiorari* by this Court, which is to allow for all petitioners to seek *certiorari* after a final disposition has been made by the lower courts.

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[4] The first sentence of the appeal reads: *"The Panel Decision involves both a question of exceptional importance, and the Panel decision also conflicts with a decision of this Appellate Court."* See *Attachment "B"* for a copy of the proposed Petition filing, wherein that copy of the appeal to the full *en banc* Panel is found in Section J (Appendix), pages 41 to 51.

Conclusion

8. The Court should reverse its clerk's decision to deny the filing of the proposed petition for *Certiorari* and allow it to be filed for determination as to whether *Certiorari* should be granted to petitioners, who have presented strong claims of bias against *pro se* parties and other serious judicial error by the Ninth Circuit, as detailed in *Attachment "B".*

DATED: June 14, 2018

Douglas Lee Calvin Andrus WLW Walter L. Wagner

Additional material from this filing is available in the Clerk's Office.