No. _____

In The
Supreme Court of the United States

ROGER S. HANSON,

Petitioner,

v.

JENNIFER ALLERT,

Respondent.

On Petition For A Writ Of Certiorari
To The Court Of Appeal Of California
Fourth Appellate District
Division Three

PETITION FOR WRIT OF CERTIORARI

ROGER S. HANSON, ESQ.
1616 N. Mountainview Place
Fullerton, CA 92831-1226
Phone: (714) 454-6619
Email: rsh_esq@yahoo.com
Member of Bar,
U.S. Supreme Court
In Persona Proper

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTIONS PRESENTED

(1) Whether the ruling made by the state trial court granting the motion under California Evidence Code 1402, removing Respondent from the litigation, foreclosed thereafter any and all efforts of Respondent to seek attorney fees, seize bank accounts, and impose clouds on titles of real property owned by Petitioner?

(2) Whether a state trial court can grant "attorney fees" greatly in excess of a previous award made by the state trial court for "breach of contract" itself, which itself was erroneous, since no contract existed at the time of the grant of said "attorney's fees"?

(3) Whether the Court of Appeals of California failed to recognize the consequences of the trial court's grant of the Evidence Code 1402 motion?

(4) Whether a state court of appeal can refuse to seek explanations of briefs authored by Petitioner during a 30-minute oral argument and thereafter reveal its lack of understanding of Petitioner's briefs?

(5) Whether the Eighth and Fourteenth Amendments to the United States Constitution and the analysis of *Timbs v. Indiana*, 586 U.S. ___ (February 20, 2019) establish error in the trial court granting "attorney fees" of in excess of the alleged and erroneous $131,260.27 following motions by Respondent and her counsel, which awarded $100,000 plus $31,260.27 interest, plus a previous $250,000, also obtained without authority?

RELATED CASES

Jennifer Allert v. Roger S. Hanson, Superior Court of Orange County, No. 30-2015-00786947. Judgment entered June 9, 2017.

Jennifer Allert v. Roger S. Hanson, California Court of Appeals 4th App. Dist. Div. 3 No. G055084. Judgment entered March 6, 2019.

Jennifer Allert v. Roger S. Hanson, Supreme Court of California No. S-255039. Judgment entered May 15, 2019.

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PETITION FOR WRIT OF CERTIORARI

To the Honorable John Roberts, Chief Justice of the United States, and to the Honorable Associate Justices of the United States Supreme Court:

Roger S. Hanson, Petitioner, seeks a writ of certiorari to the Court of Appeal, State of California, Fourth Appellate District, Division Three, based on the unpublished opinion in this case dated March 6, 2019, and to the subsequent denial of review of that opinion by the Supreme Court of California dated May 15, 2019.

OPINION BELOW

The Court of Appeal of California, Fourth Appellate District, Division Three, issued its unpublished opinion on March 6, 2019.

The Supreme Court of California denied a Petition for Review on May 15, 2019.

These rulings appear as App. 1 and App. 50 respectfully to this petition.

JURISDICTIONAL GROUNDS

(i) The Court of Appeal of California, Fourth Appellate District, Division Three, issued its unpublished opinion on March 6, 2019; the Supreme Court of California denied review on May 15, 2019.

(ii) Jurisdiction to review by certiorari a decision of a state court of appeal is provided under 28 U.S.C. § 1257(a).

UNITED STATES CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT VIII

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT XIV

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE WITH RESPECT TO THE RULES OF THIS HONORABLE COURT

With respect to the rules of this Honorable Court, Petitioner Roger S. Hanson, Attorney at Law, seeks the

grant of certiorari based on, and guided by, the two following rules of this Honorable Court:

Rule 10, at pages 6-7, citing the "character of the reasons the court considers:"

> (c) A state court or a United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or *has decided an important federal question in a way that conflicts with relevant decisions of this Court*.

Rule 14, pages 12-13, Content of a Petition for Writ of Certiorari, 1(g)(i):

> If review of a state-court judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (*e.g.*, court opinions ruling on exception, portion of court's charge and exception thereto, assignment of error), so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari. When the portions of the record

relied on under this subparagraph are voluminous, they shall be included in the appendix referred to in subparagraph 1(i).

STATEMENT OF THE CASE

This Petition for Writ of Certiorari describes a sequence of errors committed by counsel for Respondent Allert after the Trial Court had granted a motion under California Evidence Code 1402, which had displaced, removed, and banned the Respondent Allert from any further role in this litigation.

The error commenced by counsel to Respondent, the law firm of Horwitz + Armstrong, filing motions to claim that Respondent was entitled to "attorney fees". App. 86 was the first of such motion, a 75-page list of hours and costs, personally filed by John Armstrong of that firm.

That motion is truncated into App. 86, allowed by Rule 1(g)(i), to alleviate costs in this Petition for Certiorari.

The immediate result of this illegal filing was an order of that Trial Court granting "attorney fees" in the amount of $254,587.50, which the Trial Court reduced to $232,525.00.

This sequence was followed by the ruling on June 9, 2017 awarding Respondent $100,000 plus $31,260.27 in "interest" for a finding by that Trial Court that Petitioner Hanson had "breached" his contract with

Respondent Allert by failing to fulfill the claimed contract alleged in App. 51, the First Amended Complaint.

The error here is that the Evidence Code 1402 grant wiped the alleged "contract" from the case.

Petitioner filed a Notice of Appeal, and then both Petitioner Hanson and Respondent Allert filed briefs.

Petitioner's Opening Brief is App. 101, Respondent's Brief is App. 142, and Petitioner Hanson's Closing Brief is App. 186.

After the passage of time, the California Court of Appeal, Fourth Appellate District, Division Three, set the case for oral argument, which occurred January 24, 2019, where both Petitioner, in persona proper, and Respondent Allert, represented by John Armstrong of the Horwitz + Armstrong firm argued, Petitioner opening and closing for an allotted time of 30 minutes, counsel to Respondent allotted 10 minutes.

The Court of Appeal Panel was totally silent, asked zero questions of either litigant, and on March 6, 2019, rendered the Opinion of App. 1.

That Opinion failed to recognize that Respondent was no longer in litigation, and Petitioner sought a rehearing (App. 189).

The Court of Appeal summarily denied rehearing on March 22, 2019 via App. 49, no reason cited for the denial.

Finally, Petitioner sought review in the Supreme Court of California, which review was denied on May 15, 2019 via App. 50.

In summary, a series of non-allowed, non-permitted acts were strung together to obtain a victory for Respondent Allert, who had illegally commenced the process, and had been removed from the litigation because of her dishonesty, and who was aided by counsel who were aware of the dishonesty, but nonetheless placed a willing oar in the water to cause the result.

(1) Formal litigation commenced in this case on May 11, 2015 by the Respondent Allert, aided by her law firm, Horwitz + Armstrong, filing App. 51, the Original Complaint; that Complaint was demurred to by Petitioner Hanson, but prior to the demurrer being heard, Respondent Allert filed a First Amended Complaint, App. 51.

Petitioner Hanson again demurred to that First Amended Complaint, App. 66 and the Trial Court overruled the demurrer.

(2) App. 51, having attached to this Complaint what became Trial Exhibit 26, Exhibit A, was an obvious altered document, with the "1" of the typewritten date of February 1, 2014 covered by a handwritten "7" to alter the App. 51 to read "February 7, 2014".

(3) Petitioner, via his then counsel, George Piggott, filed a motion under California Evidence Code

1402, which placed the burden on the Respondent and her counsel to comply with 1402, viz:

> The party producing a writing as genuine which has been altered, or appears to have been altered, after its execution, in a part material to the question in dispute, must account for the alteration or appearance thereof. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument. If he does that, he may give the writing in evidence, but not otherwise.

(4) The Trial Court, Honorable Walter P. Schwarm, ruled as follows at pages 7-9 of the Memorandum of Intended Decision (MOID), and eventually at pages 7-9 of the Order of June 9, 2017:

> ***1. Whether Defendant Authorized the Alteration of SPCA (Exhibit No. 26?)***
>
> The dispute as to this cause of action pertains to whether Defendant authorized the alteration of the SPCA (Exhibit No. 26). There is no dispute that the original expiration date contained in the SPCA was February 1, 2014. Sometime after the typewritten date of February 1, 2014 was inserted into the SPCA, there was an alteration to the SPCA where a "7" was handwritten over the typewritten "1" to reflect an expiration date of February

7, 2014. Plaintiff claimed Defendant authorized the extension of the expiration date from February 1, 2014 to February 7, 2014. Defendant contends that he never authorized any extension or any alteration of the expiration date.

Loge testified that the SPCA was presented to Defendant on January 29, 2014. On that date, Loge saw Defendant sign the SPCA and place his initials on the date line next to his signature to reflect the signing date of January 29, 2014 instead of the preprinted date of January 17, 2014. Loge also saw Defendant change the expiration date from February 1, 2014 to February 7, 2014. According to Loge, Loge told Defendant that the potential buyer may need more time, and Defendant suggested the extension to February 7, 2014. At trial, Loge was clear that these changes occurred on January 29, 2014, but that he did not know why Defendant did not initial the change to the expiration date.

Loge's deposition testimony showed several inconsistencies. First, at his deposition, Loge testified that he was present when Defendant changed the expiration date, but that the change occurred on February 4, 2014. He testified at deposition that he did not remember whether he or Defendant changed the expiration date. His deposition testimony also showed Defendant refused to initial the change to

the expiration date because his signature was sufficient.

Plaintiff testified that the alteration to the expiration date occurred on January 29, 2014. Plaintiff remembered a conversation regarding the extension of the expiration period, but did not remember if Defendant changed the date. Plaintiff remembered Defendant signing the SPCA, but did not remember if the change was on the SPCA when Defendant signed it. On February 4, 2014, Plaintiff testified there was a discussion regarding the commission of $100,000. During this discussion, Defendant said he did not want to pay the full $100,000 commission. Plaintiff offered to pay Defendant's escrow fees in an attempt to reduce the commission (Exhibit No. 35.) At a meeting on April 3, 2014, Plaintiff testified Defendant expressed surprise when he saw the alteration contained on the SPCA. Plaintiff told Jim Vermilya that there was an oversight with respect to having Defendant initial the alteration.

Defendant testified he signed the SPCA before it was altered. Defendant first learned of the alteration on April 3, 2014. Defendant denied altering the SPCA.

The court finds that Plaintiff has not carried her burden of proof of showing that Defendant authorized the alteration by clear and convincing evidence, or by

> a preponderance of evidence. First, Defendant's testimony was inconsistent with Plaintiff's testimony and Loge's testimony. Loge's memory is unreliable as shown by the discrepancies between his trial testimony and deposition testimony. Despite Plaintiff's testimony that there was a discussion regarding an extension on January 29, 2014, Plaintiff also testified that Defendant expressed surprise at seeing the alteration on April 3, 2014. Defendant's surprise tends to support the inference that he was unaware of the alteration. Although Plaintiff testified she and Defendant discussed the commission of $100,000 on February 4, 2014, this discussion did not pertain to extending the expiration period from February 1, 2014 to February 7, 2014. Finally, Defendant initialed the change to the date next to his signature. These initials support the inference that Defendant used his initials to indicate his assent to changes in the SPCA. The absence of his initials to the change in the expiration period supports the inference that he did not authorize the extension of the expiration period especially since he initialed the change to the date next to his signature.

This ruling removed Respondent Allert from litigation in this case and thereafter disallowed motions filed on her behalf by Horwitz + Armstrong.

Inasmuch as the order of the California Court of Appeal, Fourth Appellate District, Division Three, failed to address the consequences of the grant of the motion under California Evidence Code 1402, the contents of the Opening Brief of Petitioner, the Reply Brief of Respondent, and the Closing Brief of Petitioner must be examined. They are respectively, App. 101, 142, and 166.

(a) App. 101 sets forth at pages 12 and 13 the key ruling which determined that Respondent Allert altered Exhibit A, which became Trial Exhibit 26;

(b) App. 142 failed to address the contents of App. 101 whatsoever;

(c) App. 166 addressed this failure of App. 142.

Petitioner asserts that certiorari should be granted to, inter alia, rule on this key issue of adequacy of briefs. Of key interest is the order of the Court of Appeal denying relief to this Petitioner, and its failure to address at all the merits of the appeal, substituting for the failure a contention that this Three Justice Panel could not, in effect, understand the briefs of the Petitioner (App. 1).

In the Oral Argument of 30 minutes of January 24, 2019, that Three Justice Panel failed to ask *any* question of either Petitioner, or counsel to Respondent, John Armstrong.

This Petition for Certiorari seeks being granted to address, inter alia, whether a state court of appeal can deny relief where, by its own admission in its unpublished opinion, it admits inability to comprehend or understand the briefs of this Petitioner, but has willfully declined to ask Petitioner to "explain", "augment", or "correct" deficiencies in those briefs during a 30-minute oral argument.

The order of the Trial Court of June 9, 2013 is set forth as App. 18, and basically awarded $100,000 and interest to Respondent on its assertion that Petitioner "breached the contract" set forth in the First Amended Complaint; Petitioner asserts this outright error of the App. 18 since Respondent was no longer in the case following the grant of Evidence Code 1402, and therefore the Ruling of App. 18 of the Trial Court is clear error, and no legal or intellectual sense can be made of this finding of "breach of contract", or can be of consequence.

THE OPINION OF CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION THREE

The above court issued its unpublished decision on March 6, 2019, which appears in App. 1. (*Allert v. Hanson*, No. G055084, Opinion by Moore, Justice, concurred in by O'Leary, Presiding Justice, and Fybel, Justice.)

THE LEGALLY NON-AVAILABLE TO ALLERT EFFORTS TO SECURE "ATTORNEY FEES" FOR RESPONDENT ALLERT AND AGAINST PETITIONER HANSON

On July 11, 2017, Respondent Allert, via her firm of Horwitz + Armstrong, filed a document entitled "Declaration of John R. Armstrong, Esq. in Support of Plaintiff's Motion for Attorney's Fees."

This some 75-page effort is summarized in App. 86 as allowed in Rule 1(g)(i) of the Supreme Court Rules.

As a consequence of this filing on July 11, 2017, the Trial Court issued its "Tentative Ruling" on August 15, 2017, as set forth in App. 43.

These fees are set forth in App. 209 and the originally sought fee of $254,587.50 was reduced by the Trial Court to $234,525 (Minute Order of October 30, 2017).

Under the state law of California and California Civil Code 1717, and facts of this case, Respondent Allert is not, and was not, entitled to "attorney's fees", under any misguided theory.

As will be set forth infra, the granting of the command of the California Evidence Code 1402 is involved here, and the ruling by the Trial Court of Orange County California on said Evidence Code removed Respondent Allert from future litigation in the case, such as many efforts being made to secure monetary judgments against Petitioner Hanson and in favor of Respondent Allert. These efforts bring the consequences

of the 8th and 14th Amendments as set forth in *Timbs v. Indiana*, 586 U.S. ___ (February 20, 2019) before this Honorable Supreme Court of the United States.

SUMMARY OF MULTI-PAGED EFFORT OF THE FIRM HORWITZ + ARMSTRONG TO SECURE ATTORNEY'S FEES FOR RESPONDENT ALLERT

On July 11, 2017, John R. Armstrong, the named co-partner in Horwitz + Armstrong filed a 75-page listing of alleged attorney's fees expended on behalf of Respondent Allert (App. 86).

In accord with Rule 1(g)(i), typical excerpts of that filing are set forth in App. 86, to cut down the immense paper work of 75-pages of alleged work done.

The Trial Court of Orange County immediately awarded $254,587.50, which was eventually lowered to $234,525.00.

The award of the Trial Court to Allert on June 9, 2017 was $100,000 plus interest of $31,260.27, i.e. $131,260.27. (App. 18).

Clearly, the award exceeded greatly the $131,260.27 and was a total of $250,000.00 plus $234,525.00 or $484,525.00.

It is contended that said award violated the reasoning and restriction of both *Timbs v. Indiana*, 586 U.S. ___ February 20, 2019 and Article 17 of the

Constitution of the State of California, which, in parallel to *Timbs v. Indiana*, prohibits such excessive fines and punishment as set forth in Argument IV, infra.

REASONS FOR GRANTING THE PETITION

ARGUMENT I

THE STATE TRIAL COURT ENGAGED IN A SELF-CONSTRUCTED PROCESS TERMED "WAIVER" WHERE THAT TRIAL COURT SOUGHT TO SHOW THAT PETITIONER HANSON WAS NOT ENTITLED TO THE CONSEQUENCES TO RESPONDENT ALLERT OF THE RULING UNDER EVIDENCE CODE 1402.

At pages 11-13 of App. 18, the Trial Court ruled in the June 9, 2017 Final Statement of Decision that Petitioner Hanson had "waived" the finding at pages 7-9 and that Petitioner had not altered/forged Trial Exhibit 26.

Petitioner asserts obvious inconsistency in the ruling set forth in the Opening Brief of Petitioner (App. 101) at Argument I, pages 8-15, inclusive, and the Trial Court's personal non-noticed effort to show that Petitioner had "waived" the consequences of the Evidence Code 1402 ruling, which removed Respondent from litigation.

Examination of pages 11-13 of App. 101 show clear error in the Trial Court's selection of the 19 items (a,b . . . r,s) which in fact and law, could *not* be waived, and were, in truth, and in real estate sales of California property, necessary both to Respondent in her closing of the sale of the Nasiell's home and in Petitioner's successful removal of Respondent from the litigation as a consequence of the Evidence Code 1402 ruling.

ARGUMENT II

ERRORS ABOUNDED IN THIS COURT OF APPEAL'S DECISION FOLLOWING THE GRANT OF RULING UNDER CALIFORNIA EVIDENCE CODE 1402, WHICH REMOVED RESPONDENT ALLERT FROM LITIGATION.

As a consequence of the grant of a motion under Evidence Code 1402, Respondent Allert and her legal representative, the firm of Horwitz + Armstrong, were removed from the litigation in this case.

As a further consequence, that firm was precluded the filing of any motion that sought "attorney's fees" on behalf of the Respondent and against this Petitioner.

On the date of July 11, 2017, the Horwitz + Armstrong firm, acting for Respondent via John R. Armstrong, Esq., filed a document entitled "Declaration of John R. Armstrong, Esq." in support of "Plaintiff's Motion for Attorney's Fees" (App. 86). This multipaged effort is synopsized and truncated in that App. 86 as permitted by Rule 14, 1(g)(i), by use of some 6

exemplary pages of the claimed attorney's fees, i.e., "specific portions of the record or summary thereof".

This prolific filing resulted in the Trial Court responding on August 15, 2017 by App. 51, which commenced with:

> "The motion for attorney fees brought by Plaintiff Jennifer Allert is GRANTED in its entirety, pursuant to Civil Code Section 1717".

That App. 51 continued by its finding that the Trial Court's finding as to the breach of contract cause of action based on the "Single Party Compensation Agreement", and the "Single Party Compensation Agreement provided for attorney's fees".

Finally, App. 51 concludes with:

> "Defendant (i.e. this Petitioner/Appellant) Hanson has not provided a legal basis that would prevent the Court from awarding attorney's fees."

The foregoing findings by the Trial Court are plainly erroneous as can be shown by App. 18, the Final Statement of Decision of June 9, 2017.

That Appendix dated June 9, 2017, once again, ruled at pages 7-9 of this Court that Petitioner Hanson had not been the alterer of App. 51, the First Amended Complaint, where Respondent Allert and her firm had failed to prevail in the ruling under Evidence Code 1402 and the Respondent was no longer in the litigation.

If Respondent Allert was no longer in the litigation, she could not seek attorney's fees and the Trial Court thereafter erred by its original award of $254,587.50, originally reduced to $234,525 by the Trial Court as "attorney's fees" to be recovered by Allert.

The above error was continued in the Court of Appeal where that Court failed to recognize that Allert had been removed from the litigation.

Petitioner Hanson, in his Petition for Rehearing (App. 189), elaborately contended that California Evidence Code 1402 brought the correct ruling removing Respondent from the case (App. 187), pages 3-5, inclusive and B. The Failure to Include the Key Facts Regarding the Grant of Evidence Code 1402 Motion, pages 6-7.

Further, Petitioner Hanson addressed the clear error of the Trial Court in its effort to show that Petitioner "waived" the foregoing errors of the Trial Court, and that the Court of Appeals totally failed to recognize the error.

To tie this error down, the Petition for Rehearing (App. 189) addressed the "waiver" giving the Court of Appeal notice of that Court's failure to recognize that Respondent Allert was no longer in the litigation (App. 189, pages 7-8, and the other key contention at F, pages 10-14, where Respondent Allert admitted her personal providing the known alteration to the law firm of Horwitz + Armstrong.

ARGUMENT III

PETITIONER HANSON ADDRESSES THE SEVERAL ERRORS OF THE COURT OF APPEAL IN ITS OPINION OF MARCH 6, 2019, WHICH WAS OFFERED IN SPITE OF THAT COURT OF APPEAL'S FAILURE TO RECOGNIZE THAT RESPONDENT ALLERT WAS NO LONGER A LITIGANT IN THE CASE FOLLOWING THE GRANT OF THE RULING UNDER EVIDENCE CODE 1402.

A key opening observation is that the three-justice Court of Appeals heard oral argument of 30 minutes duration from Appellant/Petitioner Roger S. Hanson, and never asked a single question!!

Then the Opinion of March 6, 2019 asserts that the three-justice panel could not understand the briefs written by Petitioner/Appellant. (App. 1).

This Petitioner suggests that if in fact such lack of understanding prevailed, a logical solution may have been for at least one of the panel to ask specific questions to hopefully elucidate the claimed-to-be murky problem.

This is an issue concerning the seeking of certiorari pursuant to the two rules of this Honorable Court addressing reasons to consider granting of certiorari in state cases.

Specifically, Petitioner avers that the decision in *Timbs v. Indiana*, 586 U.S. ___ (February 20, 2019),

heralds a conclusion that an excessive fine has been affixed by the state trial court, and has been ignored by the California Court of Appeals.

Addressing key statements in that Opinion, the following is of concern:

(a) At page 4, the Opinion fails to even mention that the Opening Brief at pages 8-15 (App. 101) contains key findings by the Trial Court that Respondent Allert had failed to establish who had altered Exhibit A, Trial Exhibit 26, and that removed Allert from the litigation pursuant to California Evidence Code 1402.

(b) At pages 4-5, the Opinion notes that "Petitioner filed a brief" (in fact, 4 briefs were filed), that "purported to prove his assertions", but because "the case was already under submission" . . . there is no indication of a response by Allert or the Court in the record.

It is here noted by this Petitioner that a question in a time of 30 minutes to Petitioner by at least one of the three-justice panel could have, at least potentially, cleared up the mystery.

(c) At page 5, the Opinion claims that the Trial Court found "that the alteration of the expiration date was not a *material* alteration", but no ruling exists in the Opinion supporting any legal authority that allowed the Trial Court to so conclude, and in fact and in law, the grant of the 1402 Evidence Code ruling is the only necessary and allowed ruling, which here removed Respondent Allert from the case, and that removal was never recognized by the Opinion.

(d) At page 6, the Opinion asserts that the Trial Court (apparently) determined that Petitioner "waived the expiration" and such was "supported by Hanson's own testimony and several documents". This finding is totally erroneous as can be verified that the Trial Court's effort at "waiver" was totally incompetent and was shown to be erroneous.

(e) At page 6, the Opinion affirms that Respondent was awarded $100,000 plus $31,260.27 interest for attorney fees that she had no right to receive, per California Civil Code 1717.

(f) At page 7, the Discussion commences its attack on Petitioner's Brief, and the admission that the three-justice panel could not comprehend anything contained therein.

(g) At page 10, the Opinion asserts in paragraph 3 that "Section 1402 only precludes the admissibility of altered documents when they are material to the question in dispute."

Clearly, this is an *erroneous belief* of the Opinion, for the Code 1402 itself addresses the requirement of the proponent, here, Allert the Respondent, to comply with her burden of showing who altered the document. See Evidence Code 1402:

> The party producing a writing as genuine which has been altered, or appears to have been altered, after its execution, in a part material to the question in dispute, must account for the alteration or appearance thereof. He may show that the alteration was made by

> another, without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument. If he does that, he may give the writing in evidence, but not otherwise.

(h) The Opinion continues at pages 11-12 in confused claims concerning the "waiver" process of the Trial Court.

(i) At page 12, footnote 4, the Opinion continues, in apparently not understanding that Civil Code 1717 precludes any attorney fees and this has been cited by Petitioner in App. 101, the Opening Brief at pages 18 and 19.

Indeed, the Opinion does not tell its reader why the three-justice panel believes that any attorney fees are capable of being awarded; in fact, and in law, none could be awarded.

(j) On the "Unclean Hands" consideration, the Opinion fails to admit that the Respondent admitted under oath in her deposition of September 21, 2015, pages 15-16, that she *knew* alteration of legal documents violated the ethics of real estate agent requirements.

Specifically, Allert, under examination by Petitioner Hanson, testified:

> Q. Would you say that anybody that alters surreptitiously a legal document in a real

estate transaction would be violating the covenants of ethics?

A. Yep.

Q. You would say that?

A. Uh-huh.

(k) Finally, under confusion over "waiver" at page 13, the Opinion establishes its own confusion in disallowing Petitioner's challenge to the Trial Court's "waiver" scheme, which Petitioner longly and loudly challenged. See App. 101, the Opening Brief, at pages 19-21, and Argument V, pages 22-27.

ARGUMENT IV

NO THEORY HAS EVER BEEN ADVANCED AND/OR ADMITTED IN THIS LITIGATION BY THE PETITIONER, OR HAS BEEN FOUND BY THE CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION THREE, THAT ANY "ATTORNEY FEES" COULD BE SOUGHT BY AND GRANTED TO RESPONDENT ALLERT.

An examination of the pleadings in this case, and the ruling of March 6, 2019, of the Court of Appeal fails to establish that *any* attorney's fees can inure to Respondent Allert and California Civil Code 1717 prohibits the grant of "attorney fees" to Respondent Allert (App. 101, pages 18-19).

A fair examination of the Opinion leaves one with the conclusion that not only did the Opinion fail to recognize that the 1402 ruling removed Respondent from the litigation, but that Opinion itself was laden with errors as discussed in Argument III, supra.

ARGUMENT V

THE TRIAL COURT ERRED IN THE FINAL STATEMENT OF DECISION ON JUNE 9, 2017 AT PAGES 7-13 IN TWO KEY WAYS: (1) PETITIONER DID NOT, AND COULD NOT, BREACH THE CONTRACT THAT WAS WIPED OUT OF EVIDENCE BY THE EVIDENCE CODE 1402 RULING; AND (2) PETITIONER COULD NOT WAIVE THE 5 + 19 ITEMS SELECTED BY THE TRIAL COURT

In this separate Argument, Petitioner asserts that it would be, and was, impossible to breach the only alleged contract that was claimed to exist between Petitioner Hanson and Respondent Allert, since that "contract" attached to the First Amended Complaint (App. 51) was itself previously obliterated due to the 1402 Evidence Code Ruling; thus, the Trial Court could not award $100,000 + $31,260.27 interest to the Respondent.

Secondly, the issue of "waiver" manufactured by the Court, the Honorable Walter Schwarm, was shown to be a totally erroneous structure of 5 + 19 items that the Court had selected that could not be waived since

they were all required by both litigants to finalize the sale/transfer of real property in California.

Reference is to App. 101, the Opening Brief of Petitioner, pages 15-27.

It is to be noted that the Respondent in her brief did not address and attempt to refute the allegations of App. 101 and it is apparent that the failure to challenge vested on impossibility to do so.

As shown in other Arguments in this petition, the California Court of Appeals failed to recognize the consequences of the grant of Evidence Code 1402, which dispatched Respondent from the litigation.

CONCLUSION

By the foregoing facts and law, supported by the named Appendices, certiorari should be granted because the huge amount of "attorney's fee" was, and is, in stark violation of this Court's reasoning and ruling in *Timbs v. Indiana*, 586 U.S. ___ (February 20, 2019), a unanimous decision authored by the Honorable Ruth Bader Ginsburg.

Dated: August 13, 2019

Respectfully submitted,

ROGER S. HANSON, ESQ.