

EXHIBIT A

Court of Appeal, First Appellate District, Division Five - No. A163175, A163815,
A164342

S273512

IN THE SUPREME COURT OF CALIFORNIA

En Banc

ARNOLD LEONG, Plaintiff and Respondent,

v.

WARREN HAVENS et al., Defendants and Appellants;

SUSAN UECKER, Respondent.

**SUPREME COURT
FILED**

APR 27 2022

Jorge Navarrete Clerk

Deputy

AND CONSOLIDATED CASES

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

EXHIBIT B-1

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

ARNOLD LEONG,
Plaintiff and Respondent,

v.

WARREN HAVENS, et al.,
Defendants and Appellants;

SUSAN UECKER,
Respondent.

A163175 /A163815 /A164342

(Alameda County
Super. Ct. No. 2002070640)

BY THE COURT:

The Receiver's "motion to consolidate and dismiss appeals under the disentitlement doctrine," filed on January 14, 2022, is granted. Consolidation is appropriate because all three appeals involve the same underlying trial court action and the common issue of disentitlement. (See *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 165, fn. 3.) The Receiver has demonstrated appellant's continued willful noncompliance with the trial court's receivership orders. Therefore, for the reasons set forth in this court's prior opinion, *Leong v. Havens* (Oct. 23, 2019, A149113, et al.) [nonpub. opn.], dismissal pursuant to the disentitlement doctrine is warranted. (See *Gwartz v. Weilert* (2014) 231 Cal.App.4th 750, 757.)

Appellant's "motion to strike and . . . request under rule 8.54 for a hearing," filed on February 3, 2022, is denied.

Dated: 02/04/2022

Jackson, P.J., P.J.

EXHIBIT B-2

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

ARNOLD LEONG,
Plaintiff and Respondent,

v.

WARREN HAVENS, et al.,
Defendants and Appellants;

SUSAN UECKER,
Respondent.

A163175 /A163815 /A164342

(Alameda County
Super. Ct. No. 2002070640)

BY THE COURT:*

IT IS ORDERED that the order filed on February 4, 2022, is modified to read as follows and the petition for rehearing is DENIED:

The Receiver's "motion to consolidate and dismiss appeals under the disentitlement doctrine," filed on January 14, 2022, is granted. Consolidation is appropriate because all three appeals involve the same underlying trial court action and the common issue of disentitlement. (See *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 165, fn. 3.) The Receiver has demonstrated appellant's continued willful noncompliance with the trial court's receivership orders. Therefore, for the reasons set forth in this court's prior opinion, *Leong v. Havens* (Oct. 23, 2019, A149113, et al.) [nonpub. opn.], dismissal pursuant to the disentitlement doctrine is warranted. (See *Gwartz v. Weilert* (2014) 231 Cal.App.4th 750, 757.)

Appellant's "motion to strike and . . . request under rule 8.54 for a hearing," filed on February 3, 2022, is denied.

* Before Jackson, P.J., Needham, J., and Burns, J.

The modification effects no change in the judgment.

Dated: 03/01/2022

Jackson, P.J., P.J.

EXHIBIT C

S273512

SUPREME COURT NO.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

ARNOLD LEONG,
Plaintiff and Respondent,

v.

WARREN HAVENS, et al.,
Defendants and Appellants;

SUSAN UECKER,
Respondent.

A163175 /A163815 /A164342

(Alameda County
Super. Ct. No. 2002070640)

Appeals from the Superior Court of Alameda County,
of signed and alleged Orders of Judge Frank Roesch

TO THE CHIEF AND ASSOCIATE JUSTICES
OF THE CALIFORNIA SUPREME COURT

THIS PETITION FOR REVIEW FOLLOWS THE 2-4-2022
ORDER OF THE COURT OF APPEAL, FIRST DISTRICT, DIV.
5, *BY 1 JUSTICE*, THAT CONSOLIDATED AND DISMISSED
THE APPEALS UNDER THE CALIFORNIA
"DISENTITLEMENT" DOCTRINE (APP. A), AND THAT WAS
AFFIRMED IN THE 3-1-2022 ORDER ON REHEARING, WITH
CERTAIN MODIFICATIONS, BY 3 JUSTICES (APP. B)

[THIS IS THE 3-9-2022 CORRECTED COPY]

Warren Havens
Appellant and Petitioner, Pro Se

2649 Benvenue Ave.
Berkeley CA 94704
510 914 0910

Individually

And as Next Friend for each of the
incapacitated lawful members of record,
of the Legal Entities in the First and Second
Receiverships in the Case Number above,
2002070640, in the Alameda County Superior Court
Including Skybridge Spectrum Foundation, under IRC 501(c)(3),
Tides Foundation of San Francisco, and Jimmy Stobaugh,

March 6, 2022

Filed on TrueFiling

March 9, 2022 corrected copy. Herein, following changes are made and this
Petition is resubmitted on TrueFiling.

- (1) PDF bookmarks added.
- (2) Proof of Service modified and carried out on TrueFiling.
- (3) Pages added in Table of Contents.
- (4) "Typo" errors in text and formatting have been corrected as well and some
text added for clarification (no new substance). These changes are shown
herein- deletions in text line-out, and addition in text boxes.
- (5) Cover sheets to App. A and App. B are added.

In addition, separately filed confidentially is a Form FW001 to waive filing
fees addressed to the Supreme Court. (The same was filed and granted in the
subject Court of Appeal cases. The financial information therein has not
changed.)

/s/ _____
Warren Havens

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1.
DEFINITIONS, AUTHORITIES, AND APPENDIXES

The "Order" means the Order of 2-4-2022 (Appendix A) and the "Order on Rehearing" means the Order of 3-1-2022 on rehearing (Appendix B). The Order references a 2019 Order on "disentitlement" included as Appendix C. I submitted a request for clarification of the Order on Rehearing, not answered, included as Appendix D. Several other Appendixes are included. "COA" means the California Court of Appeal, District 1, Div. 5. The "Appeals" mean the COA appeals listed in the caption page above and in the Order.

Some authorities are provided below. Other authorities, including tables of authorities, are in my briefs in the COA under the subject Appeals

LIST OF APPENDIXES

Use the List of Appendixes after the Conclusion. It adds text to some items below.

- APPENDIX A The 2-4-2022 COA Order.
- APPENDIX B The 3-1-2022 COA Order on Rehearing.
- APPENDIX C The 2019 COA Order referenced in the 2-4-2022 Order.
- APPENDIX D Havens Motion for Rehearing, denied in full, with no reasons given, in the 3-1-2022 Order on Rehearing. (Providing this makes shorter the Argument section above, by reference.)
- APPENDIX E ~~F~~ Havens's (my) Motion for Clarification of the Order on Rehearing, asking for a decision thereupon by 3-4-2022, which was not responded to. (Providing this makes shorter the Argument section above, by reference.)

APPENDIX **F** **G** An Order and opinion of the Federal Communications Commission ("FCC") that the Superior Court's Receiver (Susan Uecker) is not entitled under FCC law, to any relief in her appeals to the FCC, rejecting her arguments under the California receivership court's authority and receivership law. This is a form of federal-agency disentitlement. The Receiver evaded and was a "fugitive" from the most central FCC law, in its enabling Act and statutes, under the Communications Act of 1934, as amended, and under the FCC rules and polices under the Communications Act.

APPENDIX **G** **H** FCC NOTICE OF VIOLATION to Susan Uecker, In the Matter of Susan L. Uecker, Receiver. Licensee of Radio Station KTRB (AM), Facility ID # 66246. File No. EB-11-SF-0182. NOV No. V201232960011. Dec. 21, 2011.

APPENDIX **H** **I** A US D.O.J. online article on disentitlement.

[Go to next page.]

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ISSUES PRESENTED AND GROUNDS FOR REVIEW

The following table has the Issues Presented and Rule 8.500(b) Grounds for review. "COA" means the Court of Appeal, Dist. 1, Div. 5. The Issues Presented, separately or combined, compel grant of this Petition.

Grounds for Review.¹

	A	B
	ISSUE PRESENTED	
A	FEDERAL LAW ISSUES ²	
1	Is the Order with the Rehearing Order, neither of which had an opinion (with findings of fact and legal analysis and conclusions with authorities stated), and the California Disentitlement doctrine applied there, in violation of Due Process of law under	(1)

¹ Column B numbers in parentheses refer to Rule 8.500(b):

(1) When necessary to secure uniformity of decision or to settle an important question of law; (2) When the Court of Appeal lacked jurisdiction; (3) When the Court of Appeal decision lacked the concurrence of sufficient qualified justices; or (4) For ... transferring....

² Federal law supremacy applies. In this regard, see: See *Brown v. Hotel Employees*, 468 U.S. 491 (1984) holding that when “state law regulates conduct that is actually protected by federal law ... the federal law must prevail” (underlining added). The principles in *Brown* and the related Issues herein on involving federal pre-emption and protections, are assertions in my opposition to the Receiver's motion leading to the 2-4-2022 Order and underlying my petition for rehearing of that order, and in my subsequent filings on this COA disentitlement proceeding, including App. D.

	the US Constitution's Fifth Amendment, due to lack of a hearing and a decision thereupon with reasons given?	
2	(A) Is the Order with the Rehearing Order, and the California Disentitlement doctrine applied there, in violation of Due Process of law under the US Constitution's Fifth Amendment, due to the doctrine being undefined in law (statutes and rules) and under the unbridled discretion of the COA? (B) Can a judge-made doctrine be used to deprive a right under the US Constitution, in any case?	(1)
2	Is the Order with the Rehearing Order lawful, in applying the <i>California</i> disentitlement doctrine in civil cases on California law and California court jurisdiction matters -- that is founded on the <i>US Supreme Court's</i> disentitlement rulings under <i>federal court</i> and federal jurisdiction matters -- where (A) there is a split in the US Circuit Appeal Courts on civil-case disentitlement, and (B) uncertainty in consequent California state court decisions on disentitlement.	(1)
3	Is the COA's Order with the Rehearing Order, and the Superior Court's underlying allege-issued (not actually issued) Orders against Havens, subject to Federal Agency (FCC) disentitlement,	(1), (2)

	that causes (A) federal pre-emption of the California state-law disentitlement here, and (B) lack jurisdiction of the COA and Superior Court here (on this basis alone)?	
4	Is the Order in violation of Due Process of law under the US Constitution's Fifth Amendment, that protects rights to fair notice and a hearing, due to its rejection of (i) my request for modest additional time, in health and financial hardship to oppose the motion for consolidation and disentitlement stated (under my Declaration under perjury, and not opposed and refuted), and (ii) my related motion actions, and with no reasons given for these rejections?	(1), (2)
	Note. Some other Federal Law Issues are within California Law Issues below, and vice versa.	
B	CALIFORNIA-LAW ISSUES	
1	Is the Order invalid if, as I allege in my motion for rehearing (App. E hereto) it was decided on one or more unbriefed issues that entitlement the challenging party to rehearing under Government Code sec. 68081, and where my motion for rehearing was, it sates, denied (with no qualification, thus denied in full)	(1)

	(the "modifications" also not explained, followed the denial language).	
1	Is the Order which did not have an opinion as described in requirements of the California Constitution, <u>Art. VI § 14</u> , unlawful and invalid?	(1)
1b	Is the Order with the Rehearing Order, neither of which had an opinion as described in the California Constitution (see Issue B. 1) unlawful and invalid?	(1)
2a	Is the Order issued by only <i>one</i> Judge (or "Justice") unlawful and invalid? <u>See Cal. Const. Art. 6, Sec. 3; CRC 8.500(b)(3); <i>Gwartz v. Weilert</i>, 231 Cal. App. 4th 750.</u>	(1), (3)
2b	If the answer to B, 2a is - yes, then did the Order on Rehearing, by 3 Judges, cure the defect, without starting there was a defect and it was cured, and indicating that there is no substantive change made.?	(1), (3)
3	(A) Is the Order inequitable and unlawful and invalid, due to (i) its rejection of my request for modest additional time, in health and financial hardship to oppose the motion for consolidation and disentitlement stated (under my Declaration under perjury, and	(1)

	<p>not opposed and refuted), and (ii) its rejection of my related motion actions, and with no reasons given for these rejections? (B) Does the COA have authority to take such action sue <input type="checkbox"/> <i>sua</i> sponte, where the request as not opposed by any party in the appeals, or does <input type="checkbox"/> <i>that</i> violate the party presentation principle." See <i>US v. Sineneng-Smith</i>, 140 S. Ct. 1575, discussed in the Argument section below.</p>	
4	<p>(A) Can the COA apply the California disentitlement doctrine as to alleged acts of disobedience of orders or alleged orders of the subject Superior Court that, under law, did not control the acts before (i) federal courts, or (ii) non-California state courts, or (iii) the FCC, and <input type="checkbox"/> <i>that</i> also pertained to asserts, certain FCC defined "geographic" radio licenses, with situs or location entirely outside of the State of California and the limits of California jurisdiction?</p> <p>(B) Same issue as in (A) immediately above, but where, in addition, those acts in those non-California courts and FCC proceedings are ongoing and not yet final. (B) <input type="checkbox"/> (C) Can the COA make a <i>final</i> order, including to dismiss appeals under disentitlement, based on such <i>non-final</i> proceedings?</p>	(1) (2)

5	<p>(A) Can the COA apply the California disentitlement doctrine as to alleged acts of disobedience of orders or alleged orders of the subject Superior Court in a legal-action that was terminated in full as to all actions of all parties and all orders of the court in the legal action? (The terminated action was the receivership pendent lite action, prominently shown in the docket of the Case below.)</p> <p>(B) Are such alleged acts of disobedience deemed <i>permanent</i> and not subject to any action by the subject Superior Court to terminate the alleged disobedience or otherwise find it is no longer valid? (C) Would such a <i>permanence</i> application violate the US Constitution Fifth Amendment that protects due process of law where a court has no rights to bar that process of law by applying such <i>permanence</i>?</p>	(1)
6	<p>(A) Can the COA apply the California disentitlement doctrine to dismiss appeals of orders of the Superior Court that, if successful, would or may show that there was no disobedience (cause of disentitlement), of any lawful <u>and not moot</u> order or alleged order of the Superior Court? (B) Does that, in '(A)' violate or undermine principles of administration of justice where (i) it is clear that allowing the appellant to, at least, file opening briefs, may show</p>	(1)

	that there was no such disobedience, and (ii) if the showings failed, the COA could at that time proceed to apply disentitlement dismissal?	
7	(A) Can the COA consolidate appeals of distinct orders of the Superior Court. appealable under different C.C.P. sections, that had different appeal timelines (due dates for appellant filings), at the same time as dismissing them under the disentitlement doctrine, with no due-process "fair warning" after the an order to consolidate, that the court may next dismiss order the then-consolidated appeals under disentitlement." (B) Does combined consolidation with, thereafter, immediate dismissal after consolidation otherwise violate due process or other element of fair administration of justice, where by law the grounds for consolidation are different from the grounds for disentitlement?	(1)
8	(A) Can the COA consolidate and dismiss under disentitlement, or any other grounds, appeals filed that were proceeding for over a half a year in the COA, or did the party that filed a motion for the consolidation and dismissal, who waited for that long time, <i>wave</i> any right to such a motion? (B) Did the COA err by not addressing my assertion and argument on this waiver? As seen in	(1)

	<p>the Order, the COA addressed <i>none</i> of the assertions and arguments I presented, and the COA did the same in the Order on Rehearing.</p>	
<p>9</p>	<p>(A) Can the COA take any action for a court-appointed receiver in the subject Superior Court action, where the sole named plaintiff (Arnold Leong) in whose name the receiver was appointed for his alleged interests, <i>abandoned, and is a fugitive from</i>, the action -- starting years earlier and never returning to prosecute his case or to respond to counter challenges by the defendant, Havens (the Petitioner here)? The abandonment included seeking and getting the order appointing the receiver, here in mid 2021. (That was by attorneys using Leong's name that under California law were terminated upon Leong's legal incapacitation.) <u>On the above</u>: The Superior Court records are clear that this sole plaintiff, Arnold Leong, has been alleged as legally incapacitated from early 2019 and at all times thereafter, and under California law, his attorneys after the incapacitated were automatically disqualified, and no guardian ad litem ("GAL") for Leong appeared in the Superior Court action to act for Leong via counsel for the GAL, including to file required GAL reports? Also, FCC records are</p>	

	<p>clear that Leong assigned his alleged valid material interests in the Superior Court action to his sister, Cheryl Choy, arranged by the attorney for Susan Uecker, the receiver, Brian Weimer at Sheppard Mullin in Washington DC. Choy has not appeared as the assignee of Leong in the Superior Court action.</p> <p>(B) Due to the above, has the Superior Court and its 'officer', the receiver, taken over and prosecuted for Leong, the case in his name, and opposing the counter actions of Havens (see above) in violation of the requirement that a court of law, and its judicial and other officers, cannot act partially to favor one party over another, and to bar the attempts by the non-favored party to a defense and to counter actions?</p> <p>(C) Is a receiver appointed by a California state court a party in interest with legal standing to submit dispositive motions and other filings in a COA appeal (or writ) action? Here, the motion for consolidation and disentitlement was by the receiver, and was not jointed in by the sole plaintiff (apparently since he could not do so-- see above).</p>	
10	<p>Are any of the numbered reasons in my Request for Clarification of the Order on Rehearing (App. E D) <u>or Rehearing Motion (App. D)</u></p>	

	sufficient grounds for review by this Supreme Court (some are not otherwise in this Chart of Issues Presented)?	
C	FEDERAL AND CALIFORNIA-LAW ISSUES	--
1	<p>(A) Did the proceedings leading to and including the Order violate due process of law, due to apparent lack of required objectivity and impartially of the judge involved in the Order (or the J judges in the Order on Rehearing that is made apparent by Issues in Part A Part B above, which cause disqualification of the judge or judges?</p> <p>(B) Considering the Issues in Part A Part B above: As a matter of law, is a judge who dismisses, or are judges who dismiss, a case -- here my pending COA appeals -- solely on grounds <i>not</i> explained, with <i>no</i> statement of facts found, and <i>no</i> analysis of and conclusions of law with legal authorities are stated, and <i>no</i> reference to any substance of appellant's briefs and filings at issue, disqualified as demonstrating, as least apparent, if not also actual, lack of objectivity and impartially required of judges, under due process of law?</p>	(1)

[Go to next page]

3.
NECESSITY FOR REVIEW

The Issues Presented and grounds calling for the necessity for review are in the Chart above. By review of those, along with the Order (Appendix A) and the Order on Reconsideration (Appendix B) and the other Appendixes listed in Section 1 above (more fully in the list after the Conclusion below), the necessity for review is shown. The following Sections further show this necessity.

4.
STATEMENT OF THE CASE AND FACTS

1. The subject Appeals, listed on the caption page above, are from orders s of the Superior Court below.

2. The se Superior Court case below consists of two different receivership actions. (1) The first, a receivership *pendente lite*, commenced in Nov.2015 and was terminated in June 2021. (2) The second, a receivership in aid of an alleged judgment (based on an alleged valid arbitration, the alleged "lite" in the receivership pendent lite), commenced in June 2021, on motions filed earlier during a related bankruptcy and against its "automatic stay".

3. I am the active defendant in both of the receivership actions.

(1) The Receiver and the Superior Court at all times withhold from me funds I am due, needed to pay for legal counsel and for major health problem needs, to disable me from effective legal defense, and attempts at

counter claims, and to pay taxes due on pass-through profits earned by the receivership legal entities.

(2) The Receiver and the Superior Court prevented the other defendants, legal entities holding FCC licenses, from being able to put on any defense with legal counsel needed, by injunctions and by keeping and using their own cash to pay the bills of the Receiver and her attorneys and agents, and where the Plaintiff pays nothing for his two receiverships.

(3) The Receiver acts against these legal entities under the controlling FCC law, and due to that, the FCC has terminated most all of the material assets of controlled by the two receiverships, certain FCC licenses for interstate communications virtually none of which, by FCC licensing determinations, have a situs or allow operations within the State of California n.

4. My appeals of Orders of the Superior court, granting motions by the Receiver for Leong, or by Leong, each of which are jointly devised and pursued, in privy and secret from me, and sometimes not lawfully served on me, have all been subject to dismissals under the California "disentitlement doctrine" before I submitted any opening appeal briefs, from years 2019 to this day as described herein. This doctrine is applied as if to me, a party, subject to a California Superior Court order that may be interpreted to disable, even any attempts at pursuing rights and remedies under in Federal Courts,

and before federal agencies, and in other States' courts, to seek relief from what are violations of the laws of these other forums, by the California Superior Court and its Receiver, that has had devastating results, shown in FCC orders and opinions, that terminated of most all of the assets involved, thousands of FCC licenses, and ruined the goodwill and reputation of the legal entities involved and myself.

5. The Superior Court and its receiver have also enjoined me from seeking income in my sole career, by certain new FCC license applications, and from use of an FCC unique license issued to me, on the basis that they believe it may in an unexplained way, contrary to FCC rules, cause "interference" with the Receiver's attempt to market and sell off license she did not already use. My applications and the license grant were fully within FCC law, and the Superior Court and the Receiver did not present anything to the contrary and did not take the sole action they could have taken under FCC law-- to apply to the FCC to oppose my applications and the license grant.

7. For further background, on summary basis and in more extensive text, with exhibits see (1) my petition for a writ of mandate in the COA, No. A164598, denied on 3-2-2022 in an Order with no explanation and (2) my related Request for Sua s Sponte action filed electronically with the Superior Court in the case below on 4-4-2022.

5.
ARGUMENT

Initial Note. It is more efficient to review my arguments in my motion and pleadings, App C and D, than to restate those here. Thus I request those be reviewed for the main content of this Augment section. The above chart also shows arguments, by taking the questions as assertions of law.

A. EACH OF THE FEDERAL ISSUES CALL FOR REVIEW

1. First, the Federal Issues in the above Chart, with their description, reviewed with the Order (App A), Order on Reconsideration (App B), the 2019 Order referenced in App A and App B), and the other Appendixes, well described in the List of Appendixes below, demonstrate the principal arguments, since these cite to the principles of law involved, including federal law and federal courts (and FCC) supremacy and preemption, due process of law, fair notice and hearing opportunity under due process, under the 5th Amendment, FCC decisions finding "disinterment" of the most extreme kind, against the Superior Court's receiver, the office of that court and agent of the plaintiff Leong, that imposed and carried out the FCC ultimate "death sentence" on the FCC licenses the Receiver represented she would protect (see List of Appendixes, App. F.

2. See *Lazaridis v. Soc. Sec. Admin.*, 856 F. Supp. 2d 93 (D.D.C. 2012), as the US DOJ writes (in App. H hereto) (underlying added):

Holding: Denying defendant's motion to dismiss plaintiff's FOIA claim on the basis of the fugitive disentitlement doctrine. The court denies "SSA's motion to dismiss [plaintiff's] FOIA claim based solely on the fugitive disentitlement doctrine." The court notes that in connection with a separate FOIA action brought by plaintiff against DOJ, "[t]his Court previously determined that the Department of Justice had failed to establish 'the requisite connection between [plaintiff's] fugitive status and [the FOIA] proceedings,' . . . and it finds no reason to depart from that finding here."

The same analysis and holding applies to my actions before the FCC, which is like the Soc. Sec. Admin. a federal agency, whether in an FOIA or other proceeding before the agency.

3. Regarding FCC disentitlement, see in the DC Cir Court decision on the below matter (*cite at end*) (underlining added):

B. Inadequacy of Notice to SNR and Northstar that the FCC Would Deny an Opportunity to Cure

It is a basic principle of administrative law that an agency cannot sanction an individual for violating the agency's rules unless the individual had "fair notice" of those rules. *Gen. Elec.* , 53 F.3d at 1328 ; *see also, e.g.* , *Howmet Corp. v. EPA* , 614 F.3d 544, 553 (D.C. Cir. 2010) ; *Trinity Broad. of Fla., Inc. v. FCC* , 211 F.3d 618, 628 (D.C. Cir. 2000). Notice is fair if it allows regulated parties to "identify, with ascertainable certainty, the standards with which the agency expects [them] to conform." *Trinity* , 211 F.3d at 628 ; *accord Otis Elevator Co. v. Sec'y of Labor* , 762 F.3d 116, 125 (D.C. Cir. 2014).

The petitioners argue that, even if the FCC reasonably applied its precedents regarding *de facto* control, those precedents did not give them fair notice that their arrangements with DISH might be found to (a) manifest *de facto* control disentitling them to the designated-entity status that qualifies very small businesses for bidding credits, or (b) show such a degree of *de facto* control that the FCC would deny them an opportunity to seek to negotiate

any cure. We hold that notice was sufficiently clear as to the first proposition but not the second. Petitioners' arguments and the legal sources upon which they rest are both more readily distinguished and less authoritative on the control question than on the opportunity for cure. The foreseeable adequacy of the legal and factual grounds for the Commission's determination that *these* arrangements manifest DISH's *de facto* control over petitioners did not also make clear that such a control determination and its consequent penalties would be non-negotiable. Indeed, the very point of an opportunity to cure is to give some cushion to firms that must plan under uncertainty. Although it could well elect to do so, the FCC did not make clear that it would withdraw an opportunity to seek a cure in every instance in which the uncertainty applicants face is not so serious as to itself invalidate the Commission's control holding for lack of notice.

The FCC reasonably applied its rules regarding *de facto* control, but the petitioners are right that there was considerable uncertainty at the time of Auction 97 about the degree of control those rules would tolerate. The Commission has emphasized the flexibility of the *de facto* control test, which must account for "economic realities." *See FCC Op.* , 30 F.C.C. Rcd. at 8889-90. One of those economic realities is that wireless spectrum licenses are expensive, and small companies often need to obtain hundreds of millions of dollars in loans to enable them to participate in spectrum auctions. When an investor like DISH stakes such a large investment on new, small businesses, it often demands extensive protections—including the right to supervise the small businesses closely. The FCC's Wireless Bureau has in the past tolerated extensive supervision without either the Bureau or the Commission finding the *de jure* or *de facto* control that makes an investor's revenues attributable to the would-be designated entity. On these facts, for all the reasons set forth above, petitioners should reasonably have anticipated that the FCC might find them to be under DISH's *de facto* control. But they lacked reasonable notice that, in the event it found *de facto* control, the Commission would deny them an opportunity to cure. ["disentitling", as written above].

SNR Wireless Licenseco, LLC v. Fed. Comm'n's Comm'n, 868 F.3d 1021, 1043-44 (D.C. Cir. 2017)

B. EACH OF THE CALIFORNIA ISSUES CALL FOR REVIEW

See Initial Note in this Augment section above. Also, the text of 'A' immediately above applies.

C. THE COMBINED FED. AND CAL. ISSUES CALL FOR REVIEW

See Initial Note in this Augment section above. Also, the text of 'A' immediately above applies.

6.
CONCLUSION

The Petition should be granted for reasons above.

Respectfully submitted,

/s/_____.

Warren Havens

CERTIFICATION OF WORD COUNT AND TYPEFACE

I certify in accordance with California Rules of Court, 8.504(d) and 8.508(b)(2) that this Petition brief contains [4,059 ~~5,310~~] in countable words as calculated by the Microsoft Word software in which it was written, and that the text is in Century Schoolbook typeface in 13 points.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ _____
Warren Havens
March 6, 2022

APPENDIXES

See Section 1 above for a List of Appendixes. I include the same below.

The Appendixes are attached next below.

LIST OF APPENDIXES

Note. (1) Appendixes A and B are required and are attached below. Appendix C may be required since it is referenced in the Order and Order on Rehearing. I thus also attach it below.

(2) I may later submit, with instructions of the Clerk of this Court, or under a motion to permit, Appendixes D through H. I list them below, and state these as "Appendixes" by reference. In this regard: (a) Appendixes D and E are accessible by this Court via the Court's internal electronic files of COA actions). (b) Appendix F is identified by the FCC designation and can be found by normal legal research methods (or by "Googling"). (c) Internet URL links to Appendixes G and H are given below and are also found in the public electronic case records of the FCC (App. G) and the DOJ (App. H).

REQUIRED

APPENDIX A The 2-4-2022 COA Order.

APPENDIX B The 3-1-2022 COA Order on Rehearing.

POSSIBLY REQUIRED

APPENDIX C The 2019 COA Order referenced in the 2-4-2022 Order.

OTHER

APPENDIX D Havens's Motion for Rehearing, denied in full, with no reasons given, in the 3-1-2022 Order on Rehearing. (Providing this makes shorter the Argument section above, by reference.)

APPENDIX E Havens's (my) Motion for Clarification of the Order on Rehearing, asking for a decision thereupon by 3-4-2022, which was not responded to. (Providing this makes shorter the Argument section above, by reference.)

APPENDIX F An Order and opinion of the Federal Communications Commission ("FCC")* that the Superior Court's Receiver (Susan Uecker) is not entitled under FCC law, to any relief in her appeals to the FCC, rejecting her arguments under the California receivership court's authority and receivership law. This is a form of federal-agency disentitlement. The Receiver evaded and was a "fugitive" from the most central FCC law, in its enabling Act and statutes, under the Communications Act of 1934, as amended, and under the FCC rules and polices under the Communications Act.

* Order (with opinion) of the FCC, "DA 17-1124," In the Matter of... Skybridge Spectrum Foundation, Telesaurus Holdings GB, LLC..." in FCC docket WT Docket No. 16-385, released November 20, 2017. See End Note below.

APPENDIX G FCC NOTICE OF VIOLATION to Susan Uecker, In the Matter of Susan L. Uecker, Receiver. Licensee of Radio Station KTRB (AM), Facility ID # 66246. File No. EB-11-SF-0182. NOV No. V201232960011. Dec. 21, 2011. Copy at the FCC website at: <https://www.fcc.gov/document/susan-l-uecker-receiver-ktrbam-san-francisco-ca>

APPENDIX H A US D.O.J. online article on disentitlement. Copy at the DOJ website at:

END NOTE

(This includes argument, and is thus referenced as such above.)

This FCC Order included:

[par. 34:] ...We reject the argument that the receivership and its attendant duties constitute a unique or unusual circumstance resulting in failure to meet the construction requirements such that relief might be warranted, and therefore find that Skybridge and Telesaurus have failed to meet the standard for either Section 1.925 or 1.3 of the Commission's rules and deny the Skybridge/Telesaurus Request [by the Receiver Susan Uecker].

[par. 39:] ACCORDINGLY, pursuant to Section 1.946(c) of the Commission's rules, 47 C.F.R. § 1.946(c), the ... Skybridge Spectrum Foundation, and Telesaurus Holdings GB, LLC licenses set forth in Appendix A automatically terminated as of September 4, 2016.

The Receiver formally represented to the FCC in her written application to take a transfer of control over the licenses, that her duty as receiver was to operate the licenses so that they would not be terminated by the FCC, which means to "meet the construction requirements" which are the minimum standard for initial construction-operation of the licenses, so that these licenses would not be found by the FCC as "automatically terminated" for the "failure to meet the construction requirements."

The above is the FCC equivalent of a death sentence by self-strangulation-the most severe form of FCC "disentitlement" to any relief before the FCC when the person controlling licenses abandons the most basic duties to "construct" under the minimum standard, to commence operations, using the subject licenses.

The COA believes that my attempt to avert this disaster that the Receiver, plaintiff Leong and the Superior Court designed, crated and carried out, in the most extreme violation of FCC law, allows them to disentitle me, permanently, from appeals in the COA of those disastrous actions, and additional ones of the same kind. But federal law pre-empts and is supreme over the alleged California law and California court actions.

APPENDIX A
THE ORDER

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

ARNOLD LEONG,
Plaintiff and Respondent,

v.

WARREN HAVENS, et al.,
Defendants and Appellants;

SUSAN UECKER,
Respondent.

A163175 /A163815 /A164342

(Alameda County
Super. Ct. No. 2002070640)

BY THE COURT:

The Receiver's "motion to consolidate and dismiss appeals under the disentitlement doctrine," filed on January 14, 2022, is granted. Consolidation is appropriate because all three appeals involve the same underlying trial court action and the common issue of disentitlement. (See *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 165, fn. 3.) The Receiver has demonstrated appellant's continued willful noncompliance with the trial court's receivership orders. Therefore, for the reasons set forth in this court's prior opinion, *Leong v. Havens* (Oct. 23, 2019, A149113, et al.) [nonpub. opn.], dismissal pursuant to the disentitlement doctrine is warranted. (See *Gwartz v. Weilert* (2014) 231 Cal.App.4th 750, 757.)

Appellant's "motion to strike and . . . request under rule 8.54 for a hearing," filed on February 3, 2022, is denied.

Dated: 02/04/2022

Jackson, P.J., P.J.

APPENDIX B
THE ORDER ON REHEARING

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

ARNOLD LEONG,
Plaintiff and Respondent,

v.

WARREN HAVENS, et al.,
Defendants and Appellants;

SUSAN UECKER,
Respondent.

A163175 /A163815 /A164342

(Alameda County
Super. Ct. No. 2002070640)

BY THE COURT:*

IT IS ORDERED that the order filed on February 4, 2022, is modified to read as follows and the petition for rehearing is DENIED:

The Receiver's "motion to consolidate and dismiss appeals under the disentitlement doctrine," filed on January 14, 2022, is granted. Consolidation is appropriate because all three appeals involve the same underlying trial court action and the common issue of disentitlement. (See *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 165, fn. 3.) The Receiver has demonstrated appellant's continued willful noncompliance with the trial court's receivership orders. Therefore, for the reasons set forth in this court's prior opinion, *Leong v. Havens* (Oct. 23, 2019, A149113, et al.) [nonpub. opn.], dismissal pursuant to the disentitlement doctrine is warranted. (See *Gwartz v. Weilert* (2014) 231 Cal.App.4th 750, 757.)

Appellant's "motion to strike and . . . request under rule 8.54 for a hearing," filed on February 3, 2022, is denied.

* Before Jackson, P.J., Needham, J., and Burns, J.

The modification effects no change in the judgment.

Dated: 03/01/2022 Jackson, P.J., P.J.