No.: 23–6676

IN THE

SUPREME COURT OF THE UNITED STATES

PIETRO PASQUALE ANTONIO SGROMO
(a/k/a PETER ANTHONY SGROMO) — PETITIONER

vs.

BESTWAY INFLATABLES & MATERIALS CORP.,
BESTWAY(HONG KONG) INTERNATIONAL LTD.,
BESTWAY (USA), INC.,
EUREKA INVENTIONS LLC,
LEONARD GREGORY SCOTT. — RESPONDENT(S)

PETITION FOR RE-HEARING BEFORE FULL NINE–MEMBER COURT

Pietro Pasquale Antonio Sgromo
(a/k/a Peter Anthony Sgromo)
Petitioner– *Pro per*
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Pursuant to Rule 44 of this Court, Appellant, Pietro Pasquale Antonio Sgromo (a/k/a Peter Anthony Sgromo), hereby respectfully petitions for re-hearing of this case before a full Nine–Member Court. Rule 44 expressly states that "[a]ny petition for the rehearing of an order denying a petition for a writ of certiorari . . . shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented."

But most importantly, denying certiorari means that the Petitioner would not receive a review of the Trial Court's decision– a right afforded to him under the Arizona Constitution.

INTERVENING JURISPRUDENCE— *TRUMP V. ANDERSON* CONFIRMS ONLY CONGRESS *NOT* THE COURT HAS POWER TO AMEND THE 14TH AMENDMENT DUE PROCESS RULE

Trump v. Anderson, No. 23-719, (Mar. 4, 2024), decided after the present case, is intervening jurisprudence. In that case, this Court ruled that "[p]roposed by Congress in 1866 and ratified by the States in 1868, the Fourteenth Amendment "expand[ed] federal power at the expense of state autonomy" and thus "fundamentally altered the balance of state and federal power struck by the Constitution." [citations]. Section 1 of the Amendment, for instance, bars the States from "depriv[ing] any person of life, liberty, or property, without due process of law" or "deny[ing] to any person . . . the equal protection of the laws." And §5 confers on Congress "power to enforce" those prohibitions, along with the other provisions of the Amendment, "by appropriate legislation."" *Ibid.,* at *4.

In the present case, Arizona lawmakers enacted Ariz. R. Evid. 201 - Rule 201(e) - Judicial Notice of Adjudicative Facts ("Rule 201"), which expressly states:

> "**Opportunity to Be Heard.** On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard." *Id.*

In the present case, immediately upon Respondents' request the Trial Court take judicial notice of the NorCal Dist. Court Order, the Petitioner requested an evidentiary hearing but the Court ignored the motion. Appx.9. When the Trial Court took judicial nonetheless without notifying the Petitioner it would he again requested an evidentiary hearing— but again his petition was ignored. *Ibid.* It is therefore established the Petitioner has never been granted his constitutional right to be heard and on this alone

certiorari should be granted. *In Re Marriage Of Contreras And Bourke*, Ariz: Court of Appeals, 2nd Div. 2024, at ¶7 ("the `fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.'" Courts "review the alleged violation of such rights *de novo*, but [ ] review the decision whether to grant an evidentiary hearing for an abuse of discretion.").

INTERVENING JURISPRUDENCE— *FIBROGEN INC. V. HANGZHOU ANDAO PHARMACEUTICAL LTD.* – AN INVALID CONTRACT CANNOT SUPPORT A PATENT OWNERSHIP CLAIM

In *Fibrogen, Inc. V. Hangzhou Andao Pharmaceutical Ltd.*, Dist. Court, ND California 2024, FibroGen sought a declaration that it is "the true and lawful owner of the entire right, title, and interest in and to the Kind Patents." Like the present case, to be entitled to such a declaration, FibroGen needed to "produce a written instrument documenting the transfer of proprietary rights in the patents." FibroGen contended that the assignment provision in Liu's Confidentiality Agreement is such a written instrument. However, because the Court found that the assignment provision in the Agreement invalid, the contract could not support a patent ownership claim. FibroGen has offered nothing else. Accordingly, FibroGen had not alleged that it is entitled to the declaration it sought and the Court "DISMISSE[D] without leave to amend." *Ibid.*, at 2C. *FibroGen* is not only intervening jurisprudence but instructive in the present case.

In the present case, the District Court relied on what it egregiously decided to be assignment clauses in the two license agreements that were before it as tantamount to a patent assignment agreement. See generally Appx.7. However, the "the '440 License Agreement and the Water Slide License Agreement" which the District Court egregiously ruled were the "salient issues" (Id., at III) simply do not exist because they were rescinded by all the parties. See Appx.23, §§11(a)(b); see also Appx.24, §§8(a)(b); Cal. Civ. Code, § 1688 ("[a] contract is extinguished by its rescission."); *Lemle v. Barry*, 181 Cal. 1, 5 (Cal. 1919)"([w]hen a contract is rescinded, it ceases to exist. If the action to rescind or an action based on an alleged rescission or abandonment is successful, the contract is forever ended and *its covenants cannot thereafter be enforced by any action.*") [emphasis added]. Therefore it is irrelevant that the Court did not have jurisdiction over the Petitioner because service of process was defective; as it is irrelevant that the Petitioner was not a party to the agreements (Appx.20, §23(c)) ("[t]his Agreement embodies the entire understanding of Eureka and LICENSEE and supersedes all previous communications,

representations, or understanding, either oral or written, between EUREKA and LICENSEE relating to this Agreement"). *Mountain Air Enterprises, LLC v. Sundowner Towers, LLC,* 3 Cal.5th 744, 220 Cal. Rptr. 3d 650, 398 P.3d 556 (Cal. 2017) (noting that an agreement "contained an integration clause, making it the parties' sole binding agreement in this transaction.").

THE ARIZONA CONSTITUTION GUARANTEES PETITIONER THE "RIGHT TO APPEAL IN ALL CASES."

The Arizona Constitution, art. 2, §24, guarantees a defendant "the right to appeal in all cases." A.R.S. §13-4031; see also *State v. Shattuck,* 684 P. 2d 154 – Ariz: Supreme Court 1984. follow fundamental principles of statutory construction, the cornerstone of which is the rule that the best and most reliable index of a statute's meaning is its language and, when the language is clear and unequivocal, it is determinative of the statute's construction. *Juvenile Appeal* 74802–2, 164 Ariz. 25, 33, 790 P.2d 723, 731 (1990); *State v. Sweet*, 143 Ariz. 266, 269, 693 P.2d 921, 924 (1985).

Absent a statutory definition, courts generally give words their ordinary meaning and may look to dictionary definitions. *In Re Drummond*, Ariz: Supreme Court 2024, at ¶7. The Merriam–Webster Dictionary defines "all" in relevant part as:

> "1a: the whole amount, quantity, or extent of needed . . . b: as much as possible . . . 2: every member or individual component of . . . 3: the whole number or sum of . . . 4: EVERY all manner of . . . 5: any whatever beyond all doubt 6: nothing but : ONLY . . ."

There is no ambiguity in the language of A.R.S. §13-4031. It expressly states "the right to appeal in *all* cases." [emphasis added] *Ibid.* The Appeals Court was required to give effect to that language and may not employ other rules of construction to interpret the provision. *Ibid.* That is, the Appeals Court of Arizona Division 1 had no "discretion to exercise" when it "decline[d] to accept jurisdiction over this special action" because "the right to appeal in all cases" means just that— a Petition for Special Action falls under the definition of "all cases." Appx.1; see also *Balestrieri v. Hartford Accident & Indem. Ins. Co.,* 112 Ariz. 160, 163, 540 P.2d 126, 129 (1975); *Board of Accountancy v. Keebler*, 115 Ariz. 239, 240, 564 P.2d 928, 929 (App. 1977).

The Appellate Court violated the statute when it "the Court of Appeals, in the exercise of its discretion, decline[d] to accept jurisdiction over this special action" (Appx.2) as did the Supreme Court of Arizona when it "ORDERED: Petition for Review of August 4, 2023 Order From the Arizona Court of Appeals Div. 1 = DENIED." (Appx.1). Therefore, in denying certiorari the Order to which the Petitioner seeks review would stand and the Court would be making "new law" that would be in conflict with law–makers intentions. *Dep't. of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz,* No. 22-846, at *14 (Feb. 8, 2024) ("[p]roper respect for Congress cautions courts against lightly assuming that any of the statutory terms it has chosen to employ are "superfluous" or "void" of significance."); see also *Pulsifer v. United States,* No. 22-340, at *64 (Mar. 15, 2024) ("[o]ur role is a more modest one: "when the statute's language is plain" and "the disposition required by the text is not absurd," "the sole function of the courts . . . is to enforce it according to its terms." Id., at 6 (internal quotation marks omitted). Because that is undoubtedly the case here, we must apply the safety valve as written."); *Hamilton v. Arizona Board of Executive Clemency*, Ariz: Court of Appeals, 1st Div. 2024, at ¶9 ("[w]e review the superior court's denial of special action relief for an abuse of discretion.").

APPELLATE COURTS MUST REVIEW THE APPLICATION OF ISSUE AND CLAIM PRECLUSION *DE NOVO*

Intervening jurisprudence confirms that the "[a]pplication of issue preclusion is an issue of law, which [Courts] review *de novo*." *Krivulka v. Lerner,* 1 CA-CV 22-0566, 4 (Ariz. Ct. App. Apr. 11, 2024); see also *Krivulka v. Lerner*, 1 CA-CV 22-0566, 4 (Ariz. Ct. App. Apr. 11, 2024) ("we accept the complaint's factual allegations as true but review the court's conclusions of law *de novo*."). Claim Preclusion is a question of law reviewed *de novo. Phoenix Newspapers, Inc. v. Dep't of Corr., State of Ariz.,* 188 Ariz. 237, 240 (App. 1997).

In the present, as outlined above, the trial court without a hearing required by statute egregiously determined "that the claims raised in the Plaintiff's Complaint are barred on the principles of issue preclusion, claim preclusion, and a standing Order from the Federal District Court for the Northern District of California enjoining Plaintiff from filing this action . . ." Appx.3; see also Ariz. R. Evid. 201 – Rule 201(e) – Judicial Notice of Adjudicative Facts ("Rule 201") ("Opportunity to Be Heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be

heard."). The Appellate Court violated this tenet when it "the Court of Appeals, in the exercise of its discretion, decline[d] to accept jurisdiction over this special action" (Appx.2) as did the Supreme Court of Arizona when it "ORDERED: Petition for Review of August 4, 2023 Order From the Arizona Court of Appeals Div. 1 = DENIED." (Appx.1); see also Arizona Rules of Civil Appellate Procedure, Rule 8 ("[f]iling the Notice of Appeal. An appeal or cross-appeal permitted by law from a superior court to an appellate court shall be taken by filing a notice of appeal with the clerk of the superior court within the time allowed by Rule 9") *Id.*, §8(a). By denying certiorari this Court violates this tenet also.

Had the Appellate Courts properly reviewed the application of issue and claim preclusion *de novo*, it would have found the application of the doctrines an impossibility. The NorCal Dist. Court Actions were based on "the '440 License Agreement and the Water Slide License Agreement" (the "Subject Licenses"). See generally Appx.7. Separate to these agreements Petitioner had been negotiating six additional products to the '440 Patent and the Water Slide– the Option Products. Those additional products are outlined in detail in the presentation Petitioner made to Bestway and can be found at Appx.22. However, negotiations went sour and Petitioner simply walked away when Bestway presented a 'low-ball' counter–offer to Petitioner's last proposal. Bestway falsely believed that Eureka had a title an interest in those Option Products and stopped paying royalties under the Subject Licenses. Eureka filed suit. Bestway filed a counter–action for breach of contract demanding Eureka offer it the Option Products. But the Subject Licenses are clear— "[d]uring the term of th[e] agreement or the term of the current License Agreement . . . Licensor shall offer Licensee FIRST RIGHT OF REFUSAL for any of Licensor's inventions which fall under Licensee's business . . ." Appx.21, §8. Quite simply, the Option Products were not the inventions of Eureka – the Licensor. But Eureka defaulted on the counter–claim and rather than file a motion to dismiss Bestway's counter–claim for failure to state a claim, Eureka and its sole managing member had a better idea – falsely accuse the Petitioner of domestic violence and make a move for ownership of the Option Products. But that didn't work and in the settlement negotiations Eureka and Scott rescinded the two license agreements it had with Bestway altogether. Appx.23, §§11(a)(b). Bestway came aware that Eureka had no title or interest rights in *any* of the intellectual property rights and entered into a separate settlement agreement with Petitioner (who had threatened to intervene in the action) along with license agreements for the six (6) Option Products (Appx.24–30). It is these agreements that the current action is based and *not* the agreements that were already before the NorCal Dist. Court.

Had the Trial Court conducted an evidentiary hearing as required by statute then it would have acutely realized that issue and claim preclusion was an impossibility. In fact, had the Appellate Court followed the Arizona Constitution it would have corrected the egregious conclusion of law of the Trial Court— but it did not.

THE PETITIONER HAS NO OTHER ADEQUATE REMEDY AT LAW

Petitioner has no other adequate remedy at law because the Order (see Appx.3) is not compliant with 16 A.R.S. Rules of Civil Procedure, Rule 54 ("Rule 54") and therefore not final; not appealable and remains an interlocutory Order.

The Judgment currently reads that "Defendants Bestway (USA) Inc., Bestway (Hong Kong) International Ltd., and Bestway Inflatables & Material Corp.'s (collectively, "Bestway"), prevailed against Plaintiff P.P.A. Sgromo's ("Plaintiff') in all respects in this matter . . . [and] that no further matters remain pending in this case and this is final judgment pursuant to Arizona Rule of Civil Procedure 54(c)." *Ibid.* Rule 54(c) entitled "Judgment as to All Claims and Parties" expressly states: "[a] judgment as to all claims and parties is not final unless the judgment recites that no further matters remain pending and that the judgment is entered under Rule 54(c)." Id.

There are at least two (2) reasons why the Judgment is not compliant with Rule 54(c). Firstly, there are two other Defendants in this action the Judgment fails to address— Leonard Gregory Scott ("Scott") and Eureka Inventions LLC ("Eureka"). Therefore this is not a 'Judgment as to All Claims and Parties' as the rule requires. Secondly, the Petition for Default Judgment against Scott and Eureka remains pending before the Court and has not been adjudicated. See Case No.: 23–6675.

As per the jurisprudence, "entry of [Rule 54] judgment does not involve discretion on the part of the superior court." *Madrid v. Avalon Care Center-Chandler, L.L.C.,* 236 Ariz. 221, 223–24 (Ariz. Ct. App. 2014) citing Ariz. R. Civ.App. P. (ARCAP) 9.1; ARCAP 3(b). A statement that a judgment is final pursuant to Rule 54(c) when, in fact, claims remain pending does not make a judgment final and appealable. *Madrid*, at 224.

CONCLUSION

The Petition for Certiorari should be GRANTED.

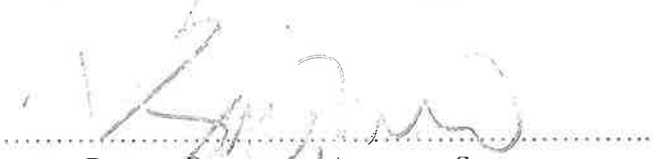
Submitted this 28th day of May, 2024,

P.P.A. Sgromo. Petitioner— *Pro per*

CERTIFICATE OF COUNSEL

I HEREBY CERTIFY THAT THIS PETITION FOR REHEARING IS PRESENTED IN GOOD FAITH AND NOT FOR DELAY.

I ALSO CERTIFY THAT THE GROUNDS ARE LIMITED TO INTERVENING CIRCUMSTANCES OF SUBSTANTIAL OR CONTROLLING EFFECT OR TO OTHER SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED



PIETRO PASQUALE ANTONIO SGROMO
(A/K/A PETER ANTHONY SGROMO)
PETITIONER– *PER PRO*