

No. 23-766

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In the  
Supreme Court of the United States

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SCOTT DOUGLAS ORA, INDIVIDUALLY, AND IN HIS  
DERIVATIVE CAPACITY AS TRUSTEE OF THE LEO ROBIN  
TRUST, ON BEHALF OF THE LEO ROBIN TRUST,

*Petitioner,*

v.

HOLLYWOOD CHAMBER OF COMMERCE,  
HOLLYWOOD CHAMBER'S BOARD OF DIRECTORS,  
HOLLYWOOD WALK OF FAME AND  
WALK OF FAME COMMITTEE,

*Respondents.*

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On Petition for a Writ of Certiorari to the  
Court of Appeals of the State of California for the  
Second Appellate District, Division Two

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**PETITION FOR A WRIT OF CERTIORARI**

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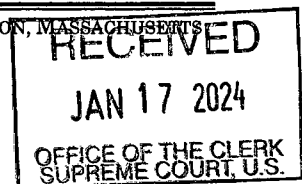
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## QUESTIONS PRESENTED

Plaintiff has tried all possible means ever since his discovery on July 6, 2017 of lyricist Leo Robin's star to confer with the Hollywood Chamber of Commerce to install the star awarded to Robin on the Hollywood Walk of Fame. In the end, the Hollywood Chamber ultimately failed do the right thing by not fulfilling its obligation to install the star on the Hollywood Walk of Fame in accordance with the binding written contract. During the trial court proceedings the Plaintiff repeatedly argued the waiver of performance of conditions precedent by the Hollywood Chamber. The waiver issue was never fleshed out earlier because the trial court and the Hollywood Chamber failed to acknowledge, overlooked and/or avoided this salient legal argument. The Court of Appeal who generally reviews what has occurred during the trial court has ruled strictly on the Appellant's argument regarding the waiver by the Hollywood Chamber of the conditions precedent.

### The Questions Presented Are:

1. In this case of perilously profound impression, did the Court of Appeal violate the due process rights of Appellant when it arbitrarily disregarded allegations by the Appellant without a hearing at the eleventh hour based on its contention that those allegations characterize his correspondence with the Hollywood Chamber in a manner that conflicts with the actual text of that correspondence provided in the exhibits to determine that the Hollywood Chamber did not waive performance of the conditions precedent?

2a. Where the Court of Appeal simultaneously served as the factfinder and the reviewing court, did the Court of Appeal violate the due process rights of Appellant in determining that the Appellant did not meet the burden of proof "clear and convincing" evidence standard to prove the Hollywood Chamber waived performance of the conditions precedent for the star awarded to Robin?

2b. (In a related question) Did the Court of Appeal violate the sacred right to a trial by jury and the due process rights of Appellant when it made the decision on whether the Hollywood Chamber waived performance of the conditions precedent and thereby precluding a jury to make this determination?

## **PARTIES TO THE PROCEEDINGS**

### **Petitioner and Plaintiff-Appellant below**

- Scott Douglas Ora, individually, and in his derivative capacity as trustee of the Leo Robin Trust, on behalf of the Leo Robin Trust

### **Respondents and Defendants-Appellees below**

- Hollywood Chamber of Commerce
- Hollywood Chamber's Board of Directors
- Hollywood Walk of Fame
- Walk of Fame Committee

**LIST OF PROCEEDINGS**

Supreme Court of the State of California

No. S281761

Scott Douglas Ora, *Plaintiff and Appellant*, v.  
Hollywood Chamber of Commerce, *Defendant and  
Respondent*

Date of Final Order: October 18, 2023

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Court of Appeal of the State of California

No. B321734

Scott Douglas Ora, *Plaintiff and Appellant*, v.  
Hollywood Chamber of Commerce, *Defendant and  
Respondent*

Date of Final Opinion: August 1, 2023

Date of Rehearing Denial: August 22, 2023

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Superior Court of the State of California for the  
County of Los Angeles

No. 21STCV23999

Scott Douglas Ora, *Plaintiff and Appellant*, v.  
Hollywood Chamber of Commerce, *Defendant and  
Respondent*

Date of Final Order: May 17, 2022

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## PETITION FOR A WRIT OF CERTIORARI

To the Honorable Justices of the Supreme Court  
of the United States



### OPINIONS BELOW

The opinion of the Court of Appeal of the state of California, second appellate district, division two, that affirmed the judgment of dismissal (App., *infra*, 1a-13a) is unpublished.

The opinion of the superior court of the state of California for the county of Los Angeles that sustained the Respondents' demurrer without leave to amend and ordered dismissal of the case (App.17a-28a) is unpublished. (4 CT 1025, 1032.)



### JURISDICTION

In aid of this Court's appellate jurisdiction invoked under 28 U.S.C. § 1257(a), this court has jurisdiction to act pursuant to Rule 10(c) of the Court Rules where the appellate court has decided important federal questions "in a way that conflicts with relevant decisions of this Court" "on the ground[s] of its being repugnant to the [rights claimed under the] Constitution" 28 U.S.C. § 1257(a).

The superior court of the state of California for the county of Los Angeles decision on May 17, 2022

sustained the Respondents' demurrer without leave to amend and ordered dismissal. The Court of Appeal of the state of California decision on August 1, 2023 affirmed the judgment of dismissal decision. The order on August 22, 2023 by the California Court of Appeal denied the petition for rehearing (App., *infra*, 15a-16a). The order on October 18, 2023 by the Supreme Court of the state of California denied the petition for review (App.14a). This petition is timely filed within 90 days from the date of the California Supreme Court's order denying discretionary review pursuant to Supreme Court Rule 13.1.



## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **CONSTITUTION PROVISIONS**

#### **United States Constitution, Amendment V:**

No person shall . . . be deprived of life, liberty, or property, without due process of law . . .

#### **United States Constitution, Amendment VII:**

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

#### **United States Constitution, Amendment XIV:**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof,

are citizens of the United States and of 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.

#### STATUTORY PROVISIONS

Pertinent provisions and background of the bill that created the U.S. Department of the Interior, (March 3, 1849) 43 U.S.C. § 1451; the Organic Act, (August 25, 1916) U.S.C. §§ 1-4, to establish the National Park Service within the Interior Department; and the National Historic Preservation Act, (October 15, 1966) Public L. No. 89-665 and codified in title 16 of the United States Code, authorized the National Park Service bureau to maintain a comprehensive National Register of Historic Places, are reproduced in the appendices to this petition (App., *infra*, 102a-133a).



#### STATEMENT OF THE CASE

##### A. Factual Background

The Petitioner will state the facts of which he is certain based on his verified First Amended Complaint (FAC). It was a fortuitous search on the internet on July 6, 2017 that led Ora to something about his

grandfather, the songwriter Leo Robin<sup>1</sup>, that neither his family nor he knew anything about that happened more than 33 years ago—Robin was awarded a posthumous star (“Robin’s ☼”) on the Walk of Fame<sup>2</sup>

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<sup>1</sup> *Variety* . . . released on September 30, 2019 the feature news story, *Thanks for the Memory: How Leo Robin Helped Usher In the Golden Age of Song in Film*, by pop culture critic Roy Trakin. The piece opens up with “The centerpiece of Scott Ora’s . . . apartment is the 1939 Oscar his step-grandfather, the late lyricist Leo Robin, was presented for co-writing “Thanks for the Memory.” . . . the trophy sits proudly on the piano where Robin worked on some of his biggest hits. . . . Leo’s tune . . . soon became Hope’s theme song . . . Over the course of 20 years, from 1934 (when the best original song category was introduced and he was nominated for “Love in Bloom”) through 1954, Robin, a member of the Songwriters Hall of Fame who died in 1984 at the age of 84, earned 10 Oscar nominations (two in 1949 alone). His impressive catalog includes signature tunes for Maurice Chevalier (“Louise”), Jeanette McDonald (“Beyond the Blue Horizon”), Bing Crosby (“Please,” “Zing a Little Zong”), Dorothy Lamour (“Moonlight and Shadows”), Jack Benny (“Love in Bloom”), Eddie Fisher (“One Hour With You”), Carmen Miranda (“Lady in the Tutti Frutti Hat”) and Marilyn Monroe (“Diamonds Are a Girl’s Best Friend”). His songs have been covered by Bing Crosby and Elvis Presley (“Blue Hawaii”), Perry Como, James Brown and Billy Eckstine (“Prisoner of Love”) as well as Frank Sinatra (“For Every Man There’s a Woman,” “Thanks for the Memory”). “My Ideal,” . . . is now a jazz standard with interpretations by Margaret Whiting, Chet Baker, Thelonious Monk, Coleman Hawkins, Art Tatum, Dinah Washington, Sarah Vaughn and Tony Bennett, while “Easy Living” because (sic) a regular in the sets of Billie Holiday and Ella Fitzgerald.” (3 CT 731-732.)

<sup>2</sup> The Walk of Fame is a National Historic Landmark, which comprises of 2,768 five-pointed terrazzo and brass stars embedded in the sidewalks along 15 blocks of Hollywood Boulevard and three blocks of Vine Street in Hollywood, California. The stars are permanent public monuments to achievement in the entertainment industry, bearing the names of a mix of musicians, actors, directors, producers, musical and theatrical groups, fictional

in 1990. Stunned, he called the Walk of Fame and they said it was true and he learned that in 1988 both his grandmother, Cherie Robin, and actor Bob Hope sponsored Robin for a star, but sadly his grandmother passed away on May 28, 1989 more than one year before an acceptance letter signed by Johnny Grant, Chairman of the 1990 Walk of Fame Committee, was sent out on June 18, 1990 to Mrs. Robin announcing this award, and Bob Hope was never notified. They informed him nothing like this had ever happened before where a letter was left unanswered and the star was never placed on the Walk of Fame, but unfortunately now in his attempt to see that Robin gets his star, the Hollywood Chamber has failed to honor its contractual obligation. (3 CT 732.)

On July 11, 2017, Ora emailed Ms. Martinez, VP Media Relations and Producer of the Walk of Fame, as she'd requested, the letter explaining what had happened and requesting that Leo's 1990 posthumous star be placed on the Walk of Fame (along with the official documents Ora received from Hillside Memorial Park on July 6, 2017 to verify the date of his grandmother's demise, proving she was no longer living when the acceptance letter was mailed to her) so she could forward it all to the Walk of Fame Committee. (3 CT 734.) Ora sent correspondence from July 6, 2017 thru July 10, 2018 to follow-up with the Hollywood Chamber including emails, phone calls and letters but all of it was ignored and unanswered with no responses for slightly more than a year. (3 CT 735-736.)

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characters, sports entertainers and others. The Walk of Fame is administered by the Hollywood Chamber and maintained by the self-financing Hollywood Historic Trust. (3 CT 729-730.)



On July 17, 2018, Ms. Martinez sent Ora an email where she stipulated, "From what I gather you are now willing to have the star dedication happen with a ceremony?? There is the sponsorship fee involved of [\$]40,000.00. Please let me know when you would like to do the ceremony and once you give me a date we can move forward. I do have to get it re-instated by the Chair. Please let me know if you do want to move forward." (3 CT 736.)

On July 19, 2018, in an overnight envelope, Ora sent Ms. Martinez the date he selected in 2019 for Leo's star ceremony, April 6th, his birthday, along with a check for \$4,000, the fee that his grandmother and Bob Hope, the co-sponsors, had agreed to pay when they first filled out the application back in 1988. (3 CT 736.)

On July 23, 2018, Ms. Martinez sent Ora's letter to her back to him along with the check he'd made payable to the Hollywood Historic Trust for \$4,000 and wrote, "Dear Mr. Ora, I received your check for \$4,000 which [I] am sending back to you. The approval of Mr. Robins star lapsed many years ago. It would need to be reinstated by the Walk of Fame Committee, which will next meet in June 2019. It is very likely the committee would require that the fee be raised to the current approved level. I am happy to present this to the committee for their consideration, but we are unable to accept or hold the check which you have sent. The application is at [www.walkoffame.com](http://www.walkoffame.com). (3 CT 737.)

On May 23, 2019, Ashley Lee from the *Los Angeles Times* (*LA Times*) first breaks news on the giant newspaper's website about the grandson's serendipitous discovery on July 6, 2017 of Robin's ♣

in her investigated story, *Leo Robin never got his Walk of Fame star. Now his grandson is fighting for it.* Ms. Lee reported, “The envelope was returned to its sender and has since remained in the Chamber of Commerce’s records” and also tweeted at that time, “at first I didn’t believe that Leo Robin’s star had really slipped through the cracks” with a photo of that acceptance letter and the envelope stamped “Return to Sender.” (3 CT 738-739.)

On August 11, 2020, radio personality Ellen K, Chair of the Walk of Fame Committee responded in a phone call to Ora’s open letter press release he wrote to her earlier that day and he learned that she was never consulted on Robin’s ☹. On August 17, 2020, Ora wrote to Ellen K, “On July 6, 2017, after I spoke with Ana Martinez, I followed her instructions and drafted a letter addressed to the Walk of Fame Committee, explaining what had happened and requesting that Leo’s 1990 posthumous star be placed on the Hollywood Walk of Fame. On July 11, 2017, I emailed Ms. Martinez, as she’d requested, the letter to forward to the Committee, of which you were a member at the time. . . . Based on our conversation, I understand you never received a copy of the letter I sent to the Committee so I am now providing you a copy of this correspondence.” (3 CT 741-742.)

Throughout the past sixty years, the Hollywood Chamber has successfully kept track of 2,768 honorees (2,696, as of the date of filing the Compl.) and has seen to it that each and every one of them received a star, which was then successfully installed on the Walk of Fame—except for Robin. (3 CT 732.)

## **B. Procedural Background**

### **1. Proceedings in the Trial Court**

Plaintiff, individually, and in his derivative capacity as trustee of the Leo Robin Trust, on behalf of the Leo Robin Trust filed a verified complaint on June 29, 2021 against the Hollywood Chamber of Commerce, Hollywood Chamber's Board Of Directors, Hollywood Walk of Fame, Walk of Fame Committee (collectively Hollywood Chamber) for breach of contract, negligence and permanent injunctive relief to install the star on the Hollywood Walk of Fame awarded to Robin more than 33 years ago. (1 CT 36-37.)

After the Hollywood Chamber failed to respond to the Complaint, Plaintiff filed a request for entry of default (1 CT 216.) and the superior court entered a default on the Hollywood Chamber on September 20, 2021. (1 CT 226.) Following default, the Hollywood Chamber filed a motion to quash service of summons and set aside entry of default (2 CT 370.) where the court ruling on December 10, 2021, presided by Honorable Judge John P. Doyle, found excusable neglect and the motions to set aside default was granted and quash service of summons was denied. (2 CT 585.)

Then the Hollywood Chamber filed on January 10, 2022 a demurrer to the Complaint with a motion to strike. (3 CT 621, 633.) Ora filed on February 2, 2022 an opposition to the demurrer and motion to strike (3 CT 661, 690.) accompanied by a Declaration of Scott Douglas Ora pursuant to California Code of Civil Procedure Section 377.32 (3 CT 645.) which allows Ora to commence this action as the successor in interest to his grandmother. The court ruling on February 16,

2022, presided by temporary Honorable Judge Upinder S. Kalra (following retirement of Judge John P. Doyle), focused on three issues concerning the breach of contract claim and sustained the Hollywood Chamber's demurrer with leave to amend. (3 CT 720.)

Next, Plaintiff filed a verified FAC on March 17, 2022 strictly making changes to the first cause of action for breach of contract to cure the three defects. (3 CT 727.) Then, again the Hollywood Chamber filed on April 18, 2022 a demurrer with motion to strike the FAC (4 CT 904, 917.) and Plaintiff filed on May 3, 2022 an opposition to the demurrer and motion to strike (4 CT 929, 961.) where the court ruling on May 17, 2022, presided by Honorable Judge Bruce G. Iwasaki, sustained the Hollywood Chamber's demurrer without leave to amend and ordered dismissal of the case (App.17a-28a). (4 CT 1025, 1032.)

Simultaneous with the demurrer, the Hollywood Chamber filed on May 11, 2022 a motion for sanctions for frivolous claims against Ora (4 CT 995.) and Ora filed on May 23, 2022 an opposition to the motion for sanctions (4 CT 1035.) where the court's ruling on June 6, 2022 denied the motion for sanctions. (5 CT 1449.) Also on June 6, 2022, the court ordered dismissal of the case and judgment thereon. (5 CT 1456.)

Next, Plaintiff filed on June 7, 2022 an ex parte application to move the court for a motion for reconsideration of the ruling that sustained Defendants' demurrer pursuant to California Code of Civil Procedure Section 1008(a) for reconsideration of the order dated May 17, 2022. (5 CT 1459.) The Plaintiff's motion sought an order of modification to allow Plaintiff with leave to amend. The court denied the motion for reconsideration the same day on June 7, 2022. (6 CT 1580.)

The Plaintiff repeatedly contended the waiver of performance of conditions precedent by the Hollywood Chamber including by pleading a factual foundation to support the waiver in the Complaint and again in the FAC, then again in the argument in the opposition to the second demurrer and yet again in the motion for reconsideration.

## **2. Proceedings in the Court of Appeal**

This was an appeal from a judgment of dismissal after the trial court sustained a demurrer without leave to amend. Appellant contends that the trial court erred in doing so. The trial court found the complaint was barred by the applicable statutes of limitation because Plaintiff failed to show performance of the conditions precedent. At the heart of the matter is the issue of whether Respondent waived performance of the conditions precedent. On appeal, Appellant sought to vacate the judgment and reinstate the causes of action and, if necessary, he requests leave to amend and said how he might amend the complaint to cure its defects.

On March 1, 2023, Appellant filed an opening brief in the Court of Appeal. On April 4, 2023, the Respondent's brief was filed. On April 20, 2023, the Appellant's reply brief was filed. On July 20, 2023, oral argument took place (App.29a-36a). The Court of Appeal's decision on August 1, 2023 affirmed the judgment of dismissal (App.1a-13a).

Appellant has long argued that there is a contract, the Robin ☉ Contract, between Mrs. Robin and actor Bob Hope with the Hollywood Chamber and that the Appellant has standing and there is no statute of limitations to bar the causes of action. In reaching the

decision, the Court of Appeal found it unnecessary to address these issues.

The Court of Appeal who generally reviews what has occurred during the trial court has attempted to analyze the Appellant's argument regarding the waiver by the Hollywood Chamber of the conditions precedent.<sup>3</sup> The waiver issue was never fleshed out earlier because the trial court failed to acknowledge, overlooked and /or avoided this salient legal argument. The Respondent finally had broken its silence on the waiver issue in its response brief with a terse two sentence statement with no analysis of the facts and no authorities or cases cited to support their conclusion.

### **3. The Statement for Review of a State-Court Judgment Pursuant to Supreme Court Rule 14.1(g)**

Given that a review of a state-court judgment is sought, this statement regarding the proceedings is provided pursuant to Supreme Court Rule 14.1(g). A claim of lack of due process, when first known, was raised as early as possible by Appellant in the Petition for Rehearing and Petition for Review to allow for an appropriate cure.

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<sup>3</sup> The conditions precedent stated in the Hollywood Walk of Fame Nomination for 2019 Selection (App.134a-148a) "... which is attached as Exhibit 18 to FAC, has virtually the same terms as they were back in 1990 when Robin was awarded a star except as noted earlier in allegation no. 15, "The cost of a star is \$50,000 (as of 2020) ... Back in the year 1990, the cost was \$4,000" and in allegation no. 16, "The recipient has up to two years to schedule their ceremony. ... Back in 1990, the recipient has up to five years to schedule their ceremony." Fn. no. 11 on p. 18 of FAC (3 CT 744.)

Appellant filed on August 15, 2023 a Petition for Rehearing in the Court of Appeal (App.37a-67a) after it affirmed the judgment of dismissal. The Court of Appeal issued an order on August 22, 2023 denying the petition (App.15a-16a).

The Petition for Rehearing demonstrates that the federal questions were “timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari” Sup. Ct. R. 14.1(g) Specifically, the Appellant argued in several of the grounds the federal questions: in the introduction and first ground, “During oral argument, the Court of Appeal’s kept most of the grounds for its decision close to the vest leaving the Appellant in the dark. It would be an injustice for Ora, the Petitioner and Appellant, not be given an opportunity to argue and address the grounds of the Court of Appeal’s decision.” Pet. Rehear. p. 7; in the ninth ground, “The Appellant has demonstrated in his briefs and herein that his allegations are consistent to a fault with the actual text of the correspondence in the FAC.” Pet. Rehear. p. 20; in the fourteenth ground, “the Court of Appeal’s decision is based upon a material mistake of law because waiver is ordinarily a question for the trier of fact. . . . It certainly should not be decided by the Court to make this determination if there are disputed facts and different reasonable inferences may be drawn.” Pet. Rehear. p. 26.

Appellant filed on September 7, 2023 a Petition for Review in the California Supreme Court (App.68a-101a). The California Supreme Court issued an order on October 18, 2023 denying the petition (App.14a).

The Petition for Review demonstrates that the federal questions were “timely and properly raised.”

Sup. Ct. R. 14.1(g) Specifically, Fn. no. 3 stated the federal questions: "Appellant desires to preserve relief provided in Federal Court, if necessary, under due process of law, under the Fifth and Fourteenth Amendments, for procedural due process and substantive due process, based on the fundamental principle of fairness in the courts to follow the laws to provide equal application of the law. The contents of the entire petition herein provides support for these claims." Pet. Rev. p. 4. In particular, the petition stated, "The Court of Appeal has gone rogue with no hearing by tossing out proven facts of the Appellant on an issue never considered by the trial court and is out of step with the vast majority of the courts. The judicial system demands equal application of the law." Pet. Rev. p. 4.





## REASONS FOR GRANTING THE PETITION

### I. THIS CASE HAS FAR-REACHING CONSEQUENCES BEYOND THE INDIVIDUAL CASE WITH STATEWIDE AND NATIONWIDE HISTORICAL AND CULTURAL SIGNIFICANCE

#### A. The Trifactor Balancing Analysis from Judge Friendly's "Some Kind of Heating" Makes this Case Worthy of Certiorari

The parameters of protection under the Fourteenth Amendment vary depending on the results of a trifactor balancing analysis from Judge Friendly's "Some Kind of Heating", a framework generally used by appellate courts, which considers the following factors: the weight or importance of the (1) private and (2) public or governmental interests at stake, along with (3) the risk of an erroneous deprivation of protected interests through the procedures actually utilized and the probable value of added or substitute procedural safeguards. Henry J. Friendly, *Some Kind of Heating*, 123 U. Pa. L. Rev. 1267, 1277-87 (1975).

The application of the trifactor balancing analysis makes this a compelling case worthy of certiorari. The balancing analysis to determine the type of process due in the initial adjudication would at a minimum mandate for the Appellant the opportunity to be heard. The risk of an erroneous deprivation of protected interests through the procedures actually utilized is a low bar to meet given the Appellant was precluded any opportunity to be heard. The rationale for the probable value of added or substitute procedural

safeguards is demonstrated *infra*, pp.26-27, 32-33. The private and public interests are presented below.

**B. The Supreme Court Has Broad Discretion to Determine Whether to Grant Review to This Case Where There Are High-Stakes for a Decision Which Impacts National Historical and Cultural Interests**

The history of how the Hollywood Walk of Fame became a National Historic Landmark will aid in understanding the legal consequences herein this petition. It started 175 years ago in 1849 when the U.S. Department of the Interior was created to take charge of the Nation's internal affairs for the internal development of the Nation. (43 U.S.C. § 1451) This would eventually lead in 1916 to the National Park Service being created within the Interior Department to promote and regulate the use of the Federal areas known as national parks and monuments. (16 U.S.C. §§ 1-4) Then in 1966, the National Park Service was authorized to maintain a comprehensive National Register of Historic Places. (Public L. No. 89-665) Finally, the Hollywood Walk of Fame was designated a City landmark in Los Angeles by the Cultural Heritage Commission in 1978 (App.112a-113a) and a National Historic Landmark on the National Register of Historic Places in 1985.<sup>4</sup>

This case has far-reaching consequences beyond the individual case with statewide and nationwide

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<sup>4</sup> The National Register of Historic Places Inventory—Nomination Form was submitted on March 6, 1985 and the National Park Service designated the Hollywood Walk of Fame as a National Historic Landmark on April 4, 1985 (App.102a-111a).

historical and cultural significance. In a statement by the Hollywood Chamber released on September 25, 2018, it said, “The Hollywood Walk of Fame is a historical record of entertainment figures past and present. Once installed, the stars become part of the historic fabric of the Walk of Fame, a ‘designated historic cultural landmark,’ and are intended to be permanent.” Moreover, Phoebe Reilly from Vulture reported the Hollywood Chamber President and CEO Leron Gubler firmly espousing this policy, “Once a star goes in, it’s there forever.” He then said, “We view it as part of history, and we don’t erase history.”

Given that the Walk of Fame is a National Historic Landmark, this action results in the enforcement of an important right affecting the public interest and a significant benefit conferred on the general public. Ms. Lee, from the LA Times, in her 2019 story, reported on the significant benefit of a star is to the public, “It’s the only award that a celebrity can truly share with their fans,” Ana Martinez, the Chamber’s longtime vice president of media relations and Walk of Fame producer, told The Times. “The Oscar, the Tony, the Emmy, the Grammy, they’re all on someone’s mantle or wherever. But the star is for the public—they can touch it, sit next to it, even lay next to it. And if they can go to the ceremony, they’ve hit the jackpot.”

The Supreme Court has broad discretion to determine whether to grant review to this case where there are high-stakes for a decision which impacts historical and cultural interests. The Appellant is the sole survivor with contractual rights to protect the rights of decedents, Bob Hope, Leo Robin and his wife Mrs. Robin, and at the same time, to protect the statewide and nationwide historical and cultural interests. In the

normal course of events, upon receiving notice of the award, Mrs. Robin would have been elated and immediately would have set the ceremony date. Unfortunately, this did not happen. Mrs. Robin did everything right except live long enough.

**II. THE COURT OF APPEAL'S DECISION CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT THAT IS REPUGNANT TO THE CONSTITUTION AND EGREGIOUSLY VIOLATED APPELLANT'S DUE PROCESS RIGHTS BECAUSE IT ARBITRARILY DISREGARDED ALLEGATIONS OF APPELLANT WITHOUT A HEARING**

**A. This Case Presents an Issue of Perilously Profound Impression and Consequences with Substantial Impact on All Parties and Their Cases and the Entire Judicial System**

This case presents an issue of perilously profound impression and consequences with substantial impact on all parties and their cases and the entire judicial system. An important Federal question of law is raised due to the Court of Appeal arbitrarily disregarding allegations of the Appellant. The Court of Appeal tossed out proven facts of the Appellant without a hearing at the eleventh hour on an issue never considered by the trial court "in a way that conflicts with relevant decisions of this Court." (Sup. Ct. R. 10(c)) It does not take much imagination to foresee the severe consequences of this type of reasoning, not only for this case, but for all cases and, in fact, for all parties in their pleadings. Any court could strike any allegation on a whim.

The California courts circled the wagons around their elitist-municipal-brethren Hollywood Chamber and trampled the due process rights of the Appellant. These violations of due process rights are extremely troubling given the high-stakes. The judicial system demands “equal protection of the laws.” “We the people” don’t expect this irrational judicial function in this majestic country with a constitutional government. The Court of Appeal knew better than to overstep its judicial role; it flagrantly torpedoed the Appellant’s proven factual allegations and his constitutionally guaranteed rights. The decision by the Court of Appeal is “repugnant to the [rights claimed under the] Constitution” (28 U.S.C. § 1257(a)) and a travesty of justice.

### **B. A Fundamental Requirement of Due Process Is “the Opportunity to Be Heard”**

Justice Brennan believed that the “federal courts have been delegated a special responsibility for the definition and enforcement of the guarantees of the Bill of Rights and the Fourteenth Amendment” and that these vital guarantees “are ineffectual when the will and power to enforce them is lacking.”<sup>5</sup>

Given the roots of due process in the U.S. Constitution and the essential role it plays in the efficacy of our judicial system, the Appellant is vigorously asserting several claims of due process violations herein

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<sup>5</sup> William J. Brennan, Jr., WHY HAVE A BILL OF RIGHTS?, 26 Val. U. L. Rev. 1 (1991) (Brennan rejected judicial restraint because he believed that it thwarted effective performance of the Court’s constitutional role. Judicial abnegation, in the Brennan view, meant all too often judicial abdication of the duty to enforce constitutional guarantees.

this petition. A violation of due process essentially means that a person has been deprived “of life, liberty, or property, without due process of law” under the Fourteenth Amendment. The constitutionally protected property interest in the Robin Ⓢ Contract is at stake in this case; contracts are recognized as property due to society’s growing economic reliance. Laurence Tribe, *American Constitutional Law* 685 (2d. ed) (1988). The Robin Ⓢ Contract involves personal property of everyday items under California law—money and installment of a terrazzo-and-brass star with an intangible element. The Court of Appeal violated the due process rights of the Appellant by arbitrarily disregarding allegations of the Appellant.

In *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965), after the Supreme Court of Texas refused an application for writ of error<sup>6</sup>, the U.S. Supreme Court held:

“A fundamental requirement of due process is “the opportunity to be heard.” *Grannis v. Ordean*, 234 U.S. 385, 394. It is an opportunity which must be granted at a meaningful time and in a meaningful manner. The trial court could have fully accorded this right to the petitioner only by granting his motion to set aside the decree. . . . Only that would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place. His motion should have been granted.”

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<sup>6</sup> The procedural pathway in the instant case is similar where the California Supreme Court denied the Petition for Review.

*In Rucker v. WCAB*, (2000) 82 Cal.App.4th 151, the court ruled:

“The Board ‘is bound by the due process clause of the 14th Amendment of the US Constitution to give the parties before it a fair and open hearing.’ The right to such a hearing is one of ‘the rudiments of fair play’ . . . assured to every litigant by the 14th Amendment as a minimal requirement. . . .’ All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense.”

*Kaiser Co. v. Industrial Acc. Com.* (1952) 109 Cal.App. 2d 54, 58.

In *Morgan v. United States*, 298 U.S. 468 (1936), on appeal the court’s rationale provided:

“we met at the threshold of the controversy the contention that the plaintiffs had not been accorded the hearing which the statute made a prerequisite to a valid order. The District Court had struck from plaintiffs’ bills the allegations that the Secretary had made the order without having heard or read the evidence and without having heard or considered the arguments submitted, and that his sole information . . . was derived from consultation with employees in the Department of Agriculture. We held that it was error to strike these allegations, . . . defendant should be required to

answer them, and . . . the question whether plaintiffs had a proper hearing should be determined.”

The aforementioned cases, whether it’s an administrative case like *Rucker* or a civil case like *Armstrong*, demonstrate its customary practice for a hearing to determine facts. Like in *Morgan* where the court ruled it was error to strike allegations without a hearing, the same would hold true here where the court disregarded allegations without Appellant the opportunity to be heard. “A fundamental requirement of due process is “the opportunity to be heard,” *Armstrong* declared.

### **C. The Court of Appeal Violated Appellant’s Due Process Rights by Precluding Appellant the Opportunity to Be Heard**

In the aftermath of the Court of Appeal’s decision emerges a new issue that was unforeseeable and not addressed in the Appellant’s brief and eclipses the waiver issue because of its direct impact on the waiver issue. In the court’s analysis, the court explains its theory as follows: “Substantively, the exhibits attached to the FAC demonstrate that the Chamber of Commerce did not waive performance of the conditions precedent.” (Ct. App. Dec., p. 11.) Then, the court further explains in Fn. no. 7:

“To the extent that Ora’s allegations characterize his correspondence with the Chamber of Commerce in a manner that conflicts with the actual text of that correspondence, we disregard those allegations. While we generally must take all facts alleged in the FAC as true, “[i]f facts appearing in the exhibits contradict those alleged, the facts in the



exhibits take precedence. [(*Holland v. Morse Diesel International, Inc.* (2001) 86 Cal.App. 4th 1443, 1447.)]”

(Ct. App. Dec., p. 11, FN no. 7.) There are no other claims by the Court of Appeal regarding the allegations in its decision.

The Court of Appeal’s preposterous theory doesn’t hold water. The Appellant has demonstrated in his briefs and herein that his allegations are consistent to a fault with the actual text of the correspondence in the FAC. The Appellant has put forth a reasonable interpretation of the FAC to show that the Hollywood Chamber waived the conditions precedent. Therefore, it would be inappropriate to disregard these allegations since they are indeed true. “Because this matter comes to . . . [the Court] on demurrer, we take the facts from plaintiff’s [FAC], the allegations of which are deemed true for the limited purpose of determining whether plaintiff has stated a viable cause of action.” (*Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 885.)

California, being a fact-pleading state, following the Defendants filing the demurrer, they would have to accept the complaint’s allegations at face value. “On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. The court does not, however, assume the truth of contentions, deductions or conclusions of law.” *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.

The corollary legal standard provides that “While we generally must take all facts alleged in the FAC as true, ‘[i]f facts appearing in the exhibits contradict those alleged, the facts in the exhibits take precedence.” (*Holland v. Morse Diesel International, Inc.* (2001) 86 Cal.App.4th 1443, 1447.) The Defendants in their demurrers nor the trial court in their decisions identified any allegations not entitled to an assumption of truth.

The application of this legal standard by the courts will demonstrate how deliberatively they acted in analyzing the allegations. In *Holland v. Morse Diesel International, Inc.*, the court *did* take notice of exhibits attached to the complaints to conclude that the complaints establish Holland’s status as a contractor:

“The earlier complaints clearly establish that Holland was a subcontractor. The original complaint alleged that Holland contracted “to perform a certain specified portion of the original contract” between MDI and the university, an unmistakable description of a subcontract. The contract attached as an exhibit to this complaint confirms that Holland agreed to perform clean-up services for a fixed price, not on an hourly basis. In the first amended complaint, Holland alleged that he had “performed his work for Defendant MDI in a completely satisfactory manner.” This claim is inconsistent with the contention that he merely provided laborers for MDI’s use.”

In *Hill v. City of Santa Barbara* (1961) 196 Cal.App.2d 580, 586, the court went to great lengths to show the inconsistent allegations:

“The difficulty with plaintiff’s position is that neither the deed nor the City Council’s resolution of acceptance of the deed (see footnotes 2 and 3) contains any condition or restriction limiting the use of the property. Exhibit “A” attached to the complaint contained a copy of the deed and a copy of the City Council’s resolution. Plaintiff’s allegations set forth in Paragraph VI of the complaint are inconsistent with the recitals contained in Exhibit “A” and the rule relating to the effect of recitals inconsistent with allegations is set forth in 2 Witkin, California Procedure, Pleading, section 200, page 1178, . . .”

The takeaway is that the courts in the aforementioned cases detailed chapter and verse the contradictions between the allegations and the exhibits. Further, the courts were reviewing the trial courts, as the factfinders, which made a determination on the facts including an evaluation of the allegations and exhibits.

In stark contrast, here there is no deliberation or hearing by the Court of Appeal as the factfinder. The Court of Appeal has constructed a flawed theory and rendered allegations of the Plaintiff as not truthful. This theory is totally untenable with no merit nor details as to which allegations or exhibits or any analysis to arrive at its conclusion—no nothin’. The Defendants and trial court had the opportunity for identifying the allegations not entitled to an assumption of truth, but they failed to identify any allegations.

Most importantly, Appellant was never allowed the opportunity to be heard—truly anathema to the rule of law. Therefore, the Court of Appeal violated the due process rights of Appellant by precluding the

Appellant the opportunity to be heard when the Court of Appeal arbitrarily disregarded allegations at the eleventh hour.

**III. THE COURT OF APPEAL'S DECISION CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT THAT IS REPUGNANT TO THE CONSTITUTION AND EGREGIOUSLY VIOLATED APPELLANT'S DUE PROCESS RIGHTS BECAUSE WHEN THE FACTFINDER IS THE COURT OF APPEAL, IT CAN'T CONCOMITANTLY REVIEW TO DETERMINE WHETHER AN APPELLANT HAS MET THE "CLEAR AND CONVINCING" BURDEN OF PROOF STANDARD**

**A. This Case Presents a Significant Federal Issue That Has a Wide-Ranging Impact on a Great Many Areas of Litigation Practice**

Another important question of law addressed in this petition appellate courts have recognized has a wide-ranging impact on a great many areas of litigation practice. In this case, a determination must be made whether Appellant can prove the Hollywood Chamber waived performance of the conditions precedent for the star awarded to lyricist Leo Robin on the Hollywood Walk of Fame by the "clear and convincing" evidence standard.

Standards of proof reflect fundamental assessments of the comparative social costs of erroneous actual determinations. The "clear and convincing" standard is used when particularly important individual interests or rights are at stake. Courts of appeal have a role in reaffirming that the interests involved are of special importance, that their deprivation requires a greater burden to be surmounted, and that the judicial system operates in a coordinated fashion

to ensure as much. The heightened review furthers legislative policy.

Appellate courts review the sufficiency of evidence to satisfy a heightened standard of proof for clear and convincing standard in a major portion of their workload. The states codes including California and standard jury instructions frequently require proof by clear and convincing evidence where the social costs of an erroneous determination are high. The “clear and convincing” evidence standard will reach most areas of litigation practice including elder abuse and dependent adult protection act, restraining orders, contract, dependency, property and probate.

Finally, in the area of contract law, findings of intentional relinquishment are necessary to establish any waiver including waiver of a condition precedent and waiver of insurer’s right to deny coverage.

### **B. Due Process Is Flexible and Calls for Such Procedural Protections as the Particular Situation Demands**

State legislatures have the authority to establish presumptions and rules respecting the burden of proof in litigation. However, the Supreme Court has held that the Due Process Clause forbids the deprivation of liberty or property upon application of a standard of proof too lax to ensure reasonably accurate fact-finding. The Court has opined that “[t]he function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of fact-finding, is to ‘instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.’” With respect to presumptions, the

Court has held that a presumption does not violate the Due Process Clause as long as it is not unreasonable and is not conclusive. A statute creating a presumption that is entirely arbitrary and operates to deny a fair opportunity to rebut it or to present facts pertinent to a defense is void.

No State shall 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 under the Fourteenth Amendment, Section 1: Procedural due process imposes constraints on court decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.

"Once it is determined that due process applies, the question remains what process is due. It has been said so often by this Court and others as not to require citation of authority that due process is flexible and calls for such procedural protections as the particular situation demands."

*Morrissey v. Brewer*, 408 U.S. 471 (1972).

Like in *Morrissey v. Brewer* which deals with the "clear and convincing" burden of proof standard, the instant case "calls for such procedural protections as the particular situation demands."

### **C. The Hollywood Chamber Waived the Conditions Precedent When It Intentionally Relinquished a Right Under Well-Established California Case Law**

There is a string of cases that provide guidance on the waiver by a party of performance for the conditions precedent of a contract. It's universal based on well-established case law that "Waiver is the intentional relinquishment of a known right after knowledge of the facts." *Roesch v. De Mota* (1944) 24 Cal.2d 563, 572; *A.B.C. Distrib. Co. v. Distillers Distrib. Corp.* (1957) 154 Cal.App.2d 175, 187 Like any other contractual terms, timeliness provisions are subject to waiver by the party for whose benefit they are made. (*Galdjie v. Darwish* (2003) 113 Cal.App.4th 1331, 1339; *Wind Dancer Production Group v. Walt Disney Pictures* (2017) 10 Cal.App.5th 56, 78.)

"The waiver may be either express, based on the words of the waiving party, or implied, based on conduct indicating an intent to relinquish the right." (*Stephens & Stephens XII, LLC v. Fireman's Fund Ins. Co.* (2014) 231 Cal.App.4th 1131, 1148.) Thus, "California courts will find waiver when a party intentionally relinquishes a right or when that party's acts are so inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished." (*Wind Dancer Production Group v. Walt Disney Pictures*, (2017) 10 Cal.App.5th 56, 78.)

In *Wind Dancer Production Group v. Walt Disney Pictures* (2017) 10 Cal.App.5th 56, 78, the creators and producers of the hit television show Home Improvement, sued Disney for underpaying their profit participation. An "incontestability" clause required a

participant to object in specific detail to any statement within 24 months after the date sent, and to initiate a legal action within six months after the expiration of that 24-month period. Disney obtained summary judgment on the basis of the “incontestability clause” in its contract with plaintiffs that Disney claimed and the trial court found absolutely barred claims filed more than two years after Disney sent a profit participation statement. This, despite the plaintiffs’ factual showing that it was impossible for them to determine whether they had a claim within the two-year incontestability period under a particular participation statement without conducting an audit and that Disney routinely delayed audits for many months or even years. The court of appeal reversed and held that writers and producers raised triable issues of fact as to whether Disney waived or was estopped from asserting a contractual limitations period due to the incontestability clause as a defense to breach of contract claims.

A common theme of these cases dealing with a waiver is the relinquishment of a right. The words and conduct of the parties following a first breach scenario will determine whether a first breach defense has been waived. The Hollywood Chamber was first to breach but also waived its right to take advantage of a defense that the sponsors committed a first breach. The waiver by the Hollywood Chamber is based on its words and conduct.

Applying the rules from the line of cases to the instant case, the Hollywood Chamber’s express words and conduct gave up its right to require the conditions precedent before having to perform on the Robin ♣ Contract. The Plaintiff alleges in the FAC the relinquishment of the conditions precedent by the



Hollywood Chamber in allegation no. 72, as follows: On July 17, 2018, Ms. Martinez sent Ora an email where she stipulated:

“From what I gather you are now willing to have the star dedication happen with a ceremony?? There is the sponsorship fee involved of [\$]40,000.00. Please let me know when you would like to do the ceremony and once you give me a date we can move forward. I do have to get it re-instated by the Chair. Please let me know if you do want to move forward.”

(3 CT 749.)

The case here has important similarities to *Wind Dancer Production Group v. Walt Disney Pictures*. Here, the sponsors were required to perform the conditions precedent on the Robin ☉ Contract within five years after the origin of the contract. However, the Hollywood Chamber waived the conditions precedent which had a contractual limitations period by expressly stating that Ora could move forward to schedule the ceremony for installment of the star, an intention not to enforce the contractual limitations period.

Appellant has demonstrated that the Hollywood Chamber’s “Waiver is the intentional relinquishment of a known right after knowledge of the facts.” (*Roesch v. De Mota* (1944) 24 Cal.2d 563, 572) The Appellant has also showed the Hollywood Chamber’s “. . . waiver . . . [is by] express, based on the words of the waiving party, or implied, based on conduct indicating an intent to relinquish the right.” (*Stephens & Stephens XII, LLC v. Fireman’s Fund Ins. Co.* (2014) 231

Cal.App.4th 1131, 1148) The Defendants waived performance of the conditions precedent with waiver of the time provisions by continuing to deal with Plaintiff after the dates specified in the contract. (*Galdjie v. Darwish* (2003) 113 Cal.App.4th 1331, 1339.)

**D. The Plaintiff Proposed Amendments for Addressing Nonperformance of the Contract to Meet His Burden “In What Manner He Can Amend His Complaint and How That Amendment Will Change the Legal Effect of His Pleading”**

When a demurrer is sustained without leave to amend, “we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) “The burden of proving such reasonable possibility is squarely on the plaintiff.” (*Ibid.*) “Plaintiff must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading.” (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349; *Cooper v. Leslie Salt Co.* (1969) 70 Cal.2d 627, 636.) “[A] showing need not be made in the trial court so long as it is made to the reviewing court.” (*Dey v. Continental Central Credit* (2008) 170 Cal.App.4th 721, 731.)

The Appellant’s briefs extensively demonstrated “in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading.” Further, Appellant proposed amendments for addressing nonperformance of the contract. The foundation of a waiver of conditions precedent was already

made with allegations set forth in the FAC. Appellant proposed an amendment to elaborate further regarding the Defendants waived performance of the conditions precedent (App.149a-150a) and also proposed an amendment regarding the waiver's impact on the statute of limitations to explain how that amendment will change the legal effect of his pleading which also included the effect on the contractual period (App.151a-152a).

The Appellant absolutely met his burden based on the standard established in *Goodman v. Kennedy*. The court abused its discretion by sustaining the demurrer without leave to amend because the proposed amendments would have 100% cured the defect.

**E. The Court of Appeal Violated the Due Process Rights of the Appellant by Simultaneously Serving as the Factfinder and the Reviewing Court and Should Have Remanded the Case Back to the Trial Court with Instructions to Make a Determination as the Factfinder Whether or Not the "Clear and Convincing" Standard Was Met**

In *Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1012, the court held:

"logic, policy, and precedent require the appellate court to account for the heightened standard of proof. Logically, whether evidence is "of ponderable legal significance" cannot be properly evaluated without accounting for a heightened standard of proof that applied in the trial court. The standard of review must consider whether the evidence reasonably could have led to a finding made with

the specific degree of confidence that the standard of proof requires. . . . This standard must have some relevance on appeal if review of the sufficiency of the evidence is to be meaningful.”

It appears that the Court of Appeal in the instant case ignored the ruling in *Conservatorship of O.B.* The Court of Appeal thwarted the stated objective “for a heightened standard of proof that applied in the trial court.” What’s clear from the landmark case *Conservatorship of O.B.* is the role of the Court of Appeal is one of review of the trial court’s finding. Thus, the Court of Appeal demonstrably violated the due process rights of the Appellant by simultaneously serving as the factfinder and the reviewing court.

This begs the question on how should’ve the Court of Appeal proceeded since there was never any finding by the trial court on the waiver of the conditions precedent by the Hollywood Chamber. Like in *Morrissey v. Brewer*, the instant case “calls for such procedural protections as the particular situation demands.” The Court of Appeal should have remanded the case back to the trial court with instructions to make a determination as the factfinder whether or not the Plaintiff met the “clear and convincing” standard.

Further, Appellant should have prevailed because he met the burden of proof standard that there was a “waiver of a right . . . by clear and convincing evidence.” (*City of Ukiah v. Fones* (1966) 64 Cal.2d 104, 107-108).

**IV. THE COURT OF APPEAL'S DECISION CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT THAT IS REPUGNANT TO THE CONSTITUTION AND EGREGIOUSLY VIOLATED APPELLANT'S RIGHT TO A JURY TRIAL AND DUE PROCESS RIGHTS BECAUSE A JURY IS THE TRIER OF FACT, NOT THE COURT OF APPEAL, TO DETERMINE IF THE HOLLYWOOD CHAMBER WAIVED THE CONDITIONS PRECEDENT**

**A. This Case Presents an Important Federal Question on the Appellant's Right of Trial by Jury**

The final important Federal question in this case is the Appellant's sacred right of trial by jury. The Plaintiff demanded a trial by jury in his complaint.<sup>7</sup> As a result, it would be up to a jury as the trier of fact, not the Court of Appeal, to determine if the Hollywood Chamber waived the conditions precedent.

"Waiver is ordinarily a question for the trier of fact; [h]owever, where there are no disputed facts and only one reasonable inference may be drawn, the issue can be determined as a matter of law." (*DuBeck v. California Physicians' Service* (2015) 234 Cal.App.4th 1254, 1265.)

"The trial court correctly instructed the jury that the waiver of a known right must be shown by clear and convincing proof." (*DRG/Beverly Hills, Ltd. v. Chopstix Dim Sum Cafe & Takeout III, Ltd.*, (1994) 30 Cal.App.4th 54, 61.)

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<sup>7</sup> The caption page along with the prayer for relief of the Complaint and FAC shows the Plaintiff demanded a jury trial (App.153a-160a).

**B. A Federal Court Enforcing a State-Created Right Will Follow Its Own Rules with Regard to the Allocation of Functions Between Judge and Jury, a Rule the Court Based on the “Interests” of the Federal Court System, Eschewing Reliance on the Seventh Amendment but Noting Its Influence**

Traditionally, the Supreme Court has treated the Seventh Amendment as preserving the right of trial by jury in civil cases as it “existed under the English common law when the amendment was adopted.” *Baltimore & Carolina Line v. Redman*, 295 U.S. 654, 657 (1913); *Parsons v. Bedford*, 28 U.S. (3 Pet.) 433, 446–48 (1830). The Seventh Amendment governs only courts which sit under the authority of the United States . . . and does not apply generally to state courts. Ordinarily, a Federal court enforcing a state-created right will follow its own rules with regard to the allocation of functions between judge and jury, a rule the Court based on the “interests” of the federal court system, eschewing reliance on the Seventh Amendment but noting its influence. *Byrd v. Blue Ridge Rural Elec. Coop.*, 356 U.S. 525 (1958) (citing *Herron v. Southern Pacific Co.*, 283 U.S. 91 (1931)).

**C. The Court of Appeal Violated the Seventh Amendment Right to a Trial By Jury and the Due Process Rights of Appellant By Taking Away His Sacred Right to a Trial By Jury**

The Appellant should succeed as matter of law under *DuBeck v. California Physicians’ Service*, “Waiver is ordinarily a question for the trier of fact;

‘[h]owever, where there are no disputed facts and only one reasonable inference may be drawn, the issue can be determined as a matter of law.’”

If there are disputed facts and different reasonable inferences may be drawn, then a jury is the trier of fact, not the Court of Appeal. In this scenario, it would have been up to a jury to make a determination whether the Appellant met the burden of proof “clear and convincing” evidence standard to prove the Hollywood Chamber waived performance of the conditions precedent for the star awarded to Robin.

The Seventh Amendment requires “A Federal court enforcing a state-created right will follow its own rules with regard to the allocation of functions between judge and jury, a rule the court based on the “interests” of the Federal court system, eschewing reliance on the Seventh Amendment but noting its influence” according to *Byrd v. Blue Ridge Rural Elec. Coop.* This means that the California rules should be followed “with regard to the allocation of functions between judge and jury.” Therefore, the Court of Appeal egregiously violated the Seventh Amendment right to a trial by jury and the due process rights of appellant by taking away his right to a trial by jury.



## CONCLUSION

For the foregoing reasons, Petitioner respectfully urges this Honorable Court to grant this petition for writ of certiorari to protect the statewide and nationwide historical and cultural interests. The Court of Appeal's decision in multiple instances (any one by itself may be grounds for reversal) has egregiously violated Appellant's due process rights and right to a jury trial.

Respectfully submitted,

A handwritten signature in cursive script that reads "Scott Douglas Ora". The signature is written over a horizontal line.

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