

In the
Supreme Court of the United States

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

Petitioner.

**On Petition for an Extraordinary Writ of Mandamus
to the Court of Appeals of the State of California
for the Second Appellate District, Division Two**

**PETITION FOR AN
EXTRAORDINARY WRIT OF MANDAMUS**

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QUESTIONS PRESENTED

Ever since the Plaintiff discovered on July 6, 2017 that lyricist Leo Robin had been awarded a star by the Hollywood Chamber of Commerce which it subsequently refused to install, he has tried all possible means to confer with the Hollywood Chamber 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:

The question presented is whether a writ of mandamus should issue directing the Court of Appeal to remand the case to the trial court without delay to rectify these two errors made by the Court of Appeal.

1. 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. Did the Court of Appeal violate the due process rights of Appellant when it simultaneously served as the factfinder and the reviewing court 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 err when it violated the sacred right to a trial by jury and the due process rights of Appellant as 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 United States

No. 23-766

Scott Douglas Ora, *Petitioner*, v. Hollywood Chamber of Commerce, *Respondent*

Date of Final Order: March 18, 2024

Date of Rehearing Denial: April 29, 2024

Date of letter declining receipt of the Second Petition for Rehearing: May 30, 2024

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

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

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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RELIEF SOUGHT

Petitioner seeks the issuance of a Writ of Mandamus directed to the California Court of Appeals, Second Appellate District, Division Two ordering that this case be remanded to Los Angeles Superior Court to make a finding that the Hollywood Chamber of Commerce waived conditions precedent, and placing the case on the docket for a trial by jury. As detailed infra. at p.35, the Petitioner has exhausted inferior courts and turns to the U.S. Supreme Court for Mandamus relief.



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.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, the jurisdiction of this Court is invoked under 28 U.S.C. § 1651.

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.15a-16a). The order on October 18, 2023 by the Supreme Court of the state of California denied the petition for review. (Case no. S281761, *Ora v. Hollywood Chamber of Commerce*) (App.14a).

The order by the Supreme Court of the United States on March 18, 2024 denied the Petition for Writ of Certiorari. (No. 23-766, *Scott Douglas Ora, Petitioner v. Hollywood Chamber of Commerce*) The Order by the Supreme Court on April 29, 2024 denied the Petition for Rehearing. The letter from the Supreme Court of the United States was sent to Petitioner on May 30, 2024 accompanying the returned Second Petition for Rehearing stating "Pursuant to Rule 44.4 consecutive petitions for rehearing will not be received." (Appendix R) This petition is timely filed soon after the date of the letter from the Supreme Court of the United States declining receipt of the Second Petition for Rehearing.



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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.

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 appendix to this petition (App.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 Robin¹, that neither

¹ 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.)

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 Fame² 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 grand-

² The Walk of Fame is a National Historic Landmark, which comprises of 2,786 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 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.)

mother'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.)

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. (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 2,786 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.)

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.³ 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

³ 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.)

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).

3. Proceedings in the Supreme Court of the State of California

The Petition for Review was filed in the Supreme Court of the State of California on September 7, 2023. The Supreme Court denied the Petition for Review on October 18, 2023. (App.14a).

4. Proceedings in the Supreme Court of the United States

Petitioner filed on January 11, 2024 the Writ of Certiorari in the Supreme Court of the United States. The order by the Supreme Court on March 18, 2024 denied the Petition for Writ of Certiorari. The Petition for Rehearing was filed on April 4, 2024. The Order by the Supreme Court on April 29, 2024 denied the Petition for Rehearing. The Second Petition for Rehearing was filed on May 23, 2024 in the Supreme Court. (Appendix Q). The letter from the Supreme Court was sent to Petitioner on May 30, 2024 accompanying the returned Second Petition for Rehearing stating "Pursuant to Rule 44.4 consecutive petitions for rehearing will not be received." (Appendix R)

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

Given that a Writ of Mandamus for 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.

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. INTRODUCTION

“We the people” live today in an upside down world where the Petitioner had no idea of the injustice he would face from institutions including the Hollywood Chamber and the California courts. It was like a lamb to the slaughter the moment Ora discovered the star awarded to Robin. The Hollywood Chamber slaughtered Ora for several years prior to the litigation.

During the trial proceedings, the slaughter continued by Judges throwing everything they could against

the Plaintiff. After giving up on a larger list, the trial court focused on three issues concerning the breach of contract claim, the statute of limitations and standing. In contrast, the court gifted to the Defendants “excusable neglect” when they were in default after failing to timely respond to the Complaint. And when the Plaintiff during oral argument defended his position with the waiver argument, Judge Iwasaki had the audacity to say, “I don’t recall.”

Then the slaughter continued in the Court of Appeal. After stripping out the issues regarding contract, the statute of limitations and standing, the court solely focused on the waiver by the Hollywood Chamber of the conditions precedent. In essence, the Court of Appeal has affirmed the trial court’s judgment on nothing that the trial court made any determination.

There are critical constitutional errors in the Court of Appeal’s decision which have resulted in an erroneous decision. The correction of the errors with a Writ of Mandamus would lead to the reversal of the superior court’s decision in its entirety.

The Court may “issue all writs necessary or appropriate in the aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). The “[i]ssuance by the Court of an extraordinary writ . . . is not a matter of right, but of discretion sparingly exercised.” Sup. Ct. R. 20.1; see also 28 U.S.C. § 1651. “[T]he petition must show that the writ will be in aid of the Court’s appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court’s discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.” *Id.*

In *Cheney v. United States District Court for the District of Columbia*, 542 U.S. 367, 380-81 (2004), this Court further explained that before a mandamus may issue, a party must establish that (1) “no other adequate means [exist] to attain the relief he desires,” (2) the party’s right to issuance of the writ is “clear and indisputable,” and (3) “even if the first two prerequisites have been met,” the Court, “in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.” (quotation marks omitted); see also *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (discussing *Cheney* factors).

Mandamus is reserved for “exceptional circumstances amounting to a judicial ‘usurpation of power.’” *Cheney*, 542 U.S. at 380 (citation omitted). Only “a judicial usurpation of power,” *Will v. United States*, 389 U.S. 90, 95 (1967), or a “clear abuse of discretion,” *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 383 (1953), “will justify the invocation of this extraordinary remedy.” *Will*, 389 U.S. at 95.

Exceptional circumstances are present here where the Court of Appeal excerpted “a judicial usurpation of power” and a “clear abuse of discretion.” The waiver issue is the province of the trial court and it was a “judicial usurpation of power” by the Court of Appeal to take and seize this from the trial court.

Additionally, “Mandamus is an extraordinary remedy, which should only be used in exceptional circumstances of peculiar emergency or public importance.” *LaBuy v. Howes Leather Co.*, 352 U.S. 249 (1957).

Exceptional circumstances exist here where this case is of “public importance.” Given that the Walk of Fame is a National Historic Landmark, this case has

far-reaching consequences beyond the individual case with statewide and nationwide historical and cultural significance.

Petitioner far exceeds the standard for the extraordinary relief he seeks. This Honorable Court has jurisdiction to act in the exceptional circumstances of this case to rectify the errors made by the Court of Appeal. Mandamus is the right vehicle for an ordinary person deserving the same due process rights as the rich and powerful. This petition should be granted

II. A WRIT OF MANDAMUS IS WARRANTED GIVEN THE EXCEPTIONAL CIRCUMSTANCES OF PUBLIC IMPORTANCE OF THIS CASE

A. The Application of the Trifactor Balancing Analysis from Judge Friendly's "Some Kind of Hearing" Makes This a Compelling Case Worthy of Mandamus

Mandamus is an extraordinary remedy, which should only be used in exceptional circumstances of peculiar emergency or public importance. *LaBuy v. Howes Leather Co.*, 352 U.S. 249 (1957); *United States v. McGarr*, 461 F.2d 1 (7th Cir. 1972).

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 Hearing", 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 Hearing*, 123 U. Pa. L. Rev. 1267, 1277-87 (1975).

The application of the trifactor balancing analysis makes this a compelling case worthy of mandamus. 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.22-23, 32. The private and public interests are presented below.

B. The Supreme Court Has Broad Discretion to Determine Whether to Grant Mandamus to This High-Stakes Case of Public Importance 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 1985.⁴

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

⁴ 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).

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 mandamus to this high-stakes case 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.

III. MANDAMUS IS WARRANTED GIVEN THE USURPATION OF JUDICIAL POWER BY THE COURT OF APPEAL IN THIS CASE

A. The Court of Appeal's Usurpation of Judicial Power Has Dared the Higher Courts When It Arbitrarily Disregarded Allegations of Appellant Without a Hearing

Because the Court of Appeal is acting in conspicuous violation of exercising its discretion, a writ of mandamus from this Court is the appropriate vehicle to rectify the error. Mandamus may be appropriately issued to confine an inferior court to a lawful exercise of prescribed jurisdiction, or when there is an usurpation of judicial power. *See Schlaginhauf v. Holder*, 379 U.S. 104 (1964).

This Court's intervention is particularly necessary because of the exceptional circumstances in this case

where there is an usurpation of judicial power and clear abuse of discretion. The Court of Appeals usurpation of judicial power has dared the higher courts because there is no fear of accountability or consequences.

The California courts circled the wagons around their elitist-municipal-brethren Hollywood Chamber and trampled the due process rights of the Appellant. The Petitioner is up against the largest law firm in California—the California courts, the proxy attorney for the Respondent. The California courts have been carrying the water for the Hollywood Chamber.

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. These violations of due process rights are extremely troubling given the high-stakes. The decision by the Court of Appeal is a travesty of justice.

In the Court of Appeal’s own words, it set forth the legal standard: “Our Supreme Court has set forth the standard of review for ruling on a demurrer dismissal as follows: ‘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. [Citations.] . . .’” (*Payne v. National Collection Systems, Inc.* (2001) 91 Cal.App.4th 1037, 1043–1044.)

The bedrock legal standard is that “The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded.” The Court of Appeal fobbed off this legal standard by disregarding allegations of the Appellant. The waiver issue had become the firewall of the Court of Appeal after giving up on the contract issues relied upon by the trial court and Hollywood Chamber.

The only way the Court of Appeal had to champion its cause and win the waiver issue was to flagrantly torpedo the Petitioner’s proven factual allegations without a hearing at the eleventh hour; but the court did indeed lose its way. In *Armstrong v. Manzo*, 380 U.S. 545 (1965), after the Supreme Court of Texas refused an application for writ of error, 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. Petitioner was never allowed the opportunity to be heard—truly anathema to the rule of law.

Given the magnitude of the constitutional questions presented in this high-stakes case, this case has received extraordinary neglectful treatment and for no good reason. Allowing the Court of Appeal to flout its usurpation of judicial power and clear abuse of discretion and derail indefinitely the timely resolution of the merits of this case by the trial court would encourage the court to continue its rogue way and compound the ongoing harm to Petitioner.

B. The Court of Appeal’s Usurpation of Judicial Power Has Double-Dared the Higher Courts When It Inappropriately Made a Determination on Whether the Appellant Has Met the “Clear and Convincing” Burden of Proof Standard

During the trial court proceedings, Plaintiff repeatedly contended the absolute and ironclad waiver of performance of conditions precedent by the Hollywood Chamber. The Plaintiff pleaded a factual foundation to support the waiver in the Complaint and again in the FAC. Then Plaintiff argued the waiver in the argument in the opposition to the second demurrer and yet again in the motion for reconsideration.

The waiver issue was never fleshed out earlier because the trial court failed to acknowledge, overlooked and/or avoided this salient legal argument. The Hollywood Chamber ducked the waiver issue until its response in the Court of Appeal with a terse two sentence statement with no analysis of the facts and no authorities cited to support its conclusion.

Whether or not the Hollywood Chamber waived performance of the conditions precedent for the star awarded to Robin is a factual determination. Yet, the Court of Appeal interjected itself in a “judicial usurpation of power” to seize and take control of this determination of the waiver from the trial court.

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

[[l]ogic, 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.

The Court of Appeal thwarted the stated objective “for a heightened standard of proof that applied in the trial court.” The risk of an erroneous deprivation of Appellant’s rights in the proceeding was heightened because the procedures employed by the Court of Appeal were such that it simultaneously served as the factfinder and the reviewing court.

The Court of Appeal frustrated the purpose stated in *Goldberg v. Kelly*, 397 U.S. 254 (1970): “[t]he extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be ‘condemned to suffer grievous loss.’” The Appellant’s inalienable Fifth, Seventh and Fourteenth Amendment rights were erroneously deprived.

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). Further, Appellant should succeed as matter of law under *DuBeck v. California Physicians’ Service* (2015) 234 Cal.App.4th 1254, 1265, which held “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.”⁵

In a scenario where there are disputed facts, 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 (*Infra* at 33)

Petitioner met the “clear and convincing” standard to prove the waiver by the Hollywood Chamber. “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.” *Mathews v. Eldridge* 424 U.S. 319 (1976). Because the role of the Court of Appeal is one of review of the trial court’s finding, it demonstrably violated the due process rights of Appellant by simultaneously serving as the factfinder and the reviewing court (*Infra* at 32-33)

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. “Once it is determined

⁵ The Appellant demonstrated an incontrovertible waiver of the conditions precedent for Robin’s star by the Hollywood Chamber in the Court of Appeal and would succeed upon remand to the trial court. The analysis herein is limited to the constitutional issues involved; for a full discussion of the waiver issue, see the Cert. at pp. 28-31. Further, 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” (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349; *Cooper v. Leslie Salt Co.* (1969) 70 Cal.2d 627, 636.) along with proposed amendments for addressing nonperformance of the contract which are provided herein this petition.

that due process applies, the question remains what process is due. It has been said so often . . . that due process is flexible and calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471 (1972). (*Infra* at 33) 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.

IV. The Petitioner’s Right to Issuance of a Writ Is Clear and Indisputable

Petitioner’s right to issuance of the writ is “clear and indisputable” based on usages and principles of law.” 28 U.S.C. § 1651(a). Petitioner is entitled to a writ directing the Court of Appeal to relinquish jurisdiction over this case and remand it to the trial court.

Unjustifiably, in contravention to the rule of law, the Court of Appeal sustained the trial court’s decision, precluding this case from proceeding past the motion-to-demurser stage. Petitioner has a clear and indisputable right to mandamus relief, as evidenced by the Court of Appeal’s errors in its opinion which resulted in an erroneous decision. An analysis of the Court of Appeal’s two determinative errors with the application of the law to the constitutional issues follows.

Therefore, Petitioner meets the high threshold for a writ of mandamus ordering the Court of Appeal to remand it to the trial court for further proceedings consistent with this Court’s ruling and confine its actions to the limits prescribed by this Court’s mandate.

A. The Court of Appeal’s First Dispositive Error: It Egregiously Violated Appellant’s Due Process Rights When It Arbitrarily Disregarded Allegations of Appellant Without a Hearing

1. A Fundamental Requirement of Due Process Is “the Opportunity to Be Heard”

The Court of Appeal’s first dispositive error is that it tossed out proven facts of the Appellant without a hearing at the eleventh hour on an issue never considered by the trial court. 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.

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.”⁶

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 this

⁶ 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.

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, 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 (1914). 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 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.

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:

[w]e 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, . . . 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.

2. The Court of Appeal Erred 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. 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. 7) There are no other claims by the Court of Appeal regarding the allegations in its decision.

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; *Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 885.)

The application of these legal standards by the courts will demonstrate how deliberatively they acted in analyzing the allegations. In *Holland v. Morse Diesel International, Inc.* (2001) 86 Cal.App.4th 1443, 1447, the court *did* take notice of exhibits attached to the complaints to conclude that the complaints establish Holland's status as a contractor. 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. (See discussion in Cert. at pp. 23-24)

The takeaway is that the courts in the aforesaid 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 rendered allegations of the Plaintiff as not truthful predicated upon construction of a flawed theory. This theory is totally untenable with no merit nor details as to which allegations or exhibits or any analysis to arrive at its conclusion. 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.

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.

Most importantly, Appellant was never allowed the opportunity to be heard—truly anathema to the rule of law. Therefore, the Court of Appeal erred by egregiously violating Appellant's due process rights when it arbitrarily disregarded allegations of Appellant at the eleventh hour without a hearing precluding the Appellant the opportunity to be heard.

B. The Court of Appeal’s Second Dispositive Error: It Egregiously Violated Appellant’s Due Process Rights and Scared Right to a Jury Trial When It Inappropriately Made a Determination on Whether the Appellant Has Met the “Clear and Convincing” Burden of Proof Standard

1. The Court of Appeal Erred Because It Simultaneously Served as the Factfinder and the Reviewing Court to Determine Whether the Appellant Has Met the “Clear and Convincing” Burden of Proof Standard

The fundamental question is who is the appropriate person(s) to determine whether the Appellant has met the “clear and convincing” burden of proof standard. The Court of Appeal’s second dispositive error is that it simultaneously served as the factfinder and the reviewing court to make a determination as the factfinder whether or not the “clear and convincing” standard was met.

The Court of Appeal thwarted the stated objective “for a heightened standard of proof that applied in the trial court.” *Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1012. 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. (See discussion *supra* at pp. 22-23) Thus, the Court of Appeal erred by egregiously violating Appellant’s due process rights when it simultaneously served as the factfinder and the reviewing court to make a determination as the factfinder whether or not the “clear and convincing” standard was met.

2. The Court of Appeal Erred by Taking Away Appellant’s Scared Right to a Jury Trial Because a Jury Is the Trier of Fact, Not the Court of Appeal, to Determine Whether the Appellant Has Met the “Clear and Convincing” Burden of Proof Standard

The Court of Appeal’s second dispositive error is that it also violated the Appellant’s scared right of trial by jury. The Plaintiff demanded a trial by jury in his complaint.⁷ 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.

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.*

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

Southern Pacific Co., 283 U.S. 91 (1931)). This means that the California rules should be followed “with regard to the allocation of functions between judge and jury.”

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, to determine whether the Appellant has met the “clear and convincing” burden of proof standard to prove the Hollywood Chamber waived performance of the conditions precedent for the star awarded to Robin. It would be up to the trier of fact to consider all of the facts including that Reeves and The Four Seasons were recently granted waivers for their stars by the Hollywood Chamber. Moreover, the pattern of granting waivers for stars by the Hollywood Chamber is relevant context for the trier of fact to consider. (See discussion in First and Second Pets. for rehearing at pp. 6-10, 2-7, respectively)

The waiver of performance of conditions precedent for Robin’s star by the Hollywood Chamber has a striking resemblance to that with the waiver of performance of conditions precedent for The Four Seasons’ star by the Hollywood Chamber. The time would have lapsed to schedule the ceremonies or make payments but for the waivers which allowed for Robin and The Four Seasons to receive their stars 27 years after discovery and 26 years ago, respectively. This waiver to The Four Seasons is truly an uncanny resemblance to the waiver given to Robin. This is not a criticism of the Hollywood Chamber granting waivers where it feels fit but an abomination that the waiver granted to Robin was not honored.

Therefore, the Court of Appeal erred by egregiously violating 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.

V. NO OTHER ADEQUATE MEANS TO OBTAIN RELIEF EXIST

The Petitioner has pursued all means possible to obtain relief ever since the Court of Appeal's errant decision on August 1, 2023 affirmed the judgment of dismissal (App.1a-13a). The Petitioner has made the rounds in the California courts with the Petition for Rehearing filed in the Court of Appeal on August 15, 2023 and then the Petition for Review filing in the Supreme Court of the State of California on September 7, 2023. (App.38a-101a).

Afterwards, the Petitioner's only pathway was to go to the Supreme Court of the United States and filed on January 11, 2024 the Writ of Certiorari in the Supreme Court. (No. 23-766, *Scott Douglas Ora, Petitioner v. Hollywood Chamber of Commerce*) Then the Petition for Rehearing was filed on April 4, 2024. Next, the Petitioner went the extra mile and filed on May 23, 2024 the Second Petition for Rehearing. (Appendix Q)

The Petitioner has exhausted all means possible to obtain relief through the courts in all ways. Therefore, Petitioner has no recourse in any other court. Because no other adequate means exist to obtain requested relief, Petitioner now has brought the mandamus herein to obtain relief.

Absent intervention by the Court, the errors made by the Court Of Appeal are in direct violation of the rule of law, and preclude further resolution of this case in the trial court. Therefore, Petitioner has no recourse in any other court. *In re Sanford Fork & Tool*

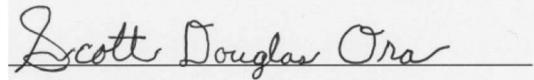
Co., 160 U.S. 247, 255 (1895); *Will v. United States*, 389 U.S. 90, 95 (1967)



CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Honorable Court to issue a writ of mandamus directing the Court of Appeal to relinquish jurisdiction over this case and remand it to the trial court for further proceedings consistent with this Court's ruling and confine its actions to the limits prescribed by this Court's mandate.

Respectfully submitted,

A handwritten signature in black ink that reads "Scott Douglas Ora".

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