

Supreme Court No. S _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SCOTT DOUGLAS ORA, individually, and in his derivative capacity as trustee of the Leo Robin Trust, on behalf of the Leo Robin Trust

Plaintiff and Appellant,

v.

HOLLYWOOD CHAMBER OF COMMERCE, HOLLYWOOD CHAMBER'S BOARD OF DIRECTORS, HOLLYWOOD WALK OF FAME, WALK OF FAME COMMITTEE; and DOES 1 through 100 Inclusive,

Defendants and Respondents,

Court of Appeal
No. B321734

Superior Court
No. 21STCV23999

**APPEAL FROM THE SUPERIOR COURT OF
COUNTY OF LOS ANGELES**

The Honorable Judges

Bruce G. Iwasaki, Upinder S. Kalra and John P. Doyle

PETITION FOR REVIEW

PETITION FOR REVIEW AFTER THE UNPUBLISHED DECISION AFFIRMING THE JUDGMENT OF DISMISSAL AND THE ORDER DENYING THE PETITION FOR REHEARING OF THE COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION TWO

SCOTT DOUGLAS ORA, In Propria Persona
4735 Sepulveda Blvd. Apt. 460
Sherman Oaks, CA. 91403
Phone Number: (818)618-2572
Email: sdo007@aol.com

COPYRIGHT NOTICE

Copyright © 2023 Scott Douglas Ora. All Rights Reserved. Copyright claimed in the contents of the entire brief, exclusive of the text from statutes, regulations, case law, correspondence and websites of the Hollywood Chamber of Commerce and Hollywood Walk of Fame, articles (including photographs) by the Los Angeles Times and Variety, and any excerpts quoted therefrom within this brief.

TABLE OF CONTENTS

TABLE OF CONTENTS ii

STATEMENT OF AUTHORITIES v

PETITION FOR REVIEW 1

ISSUES PRESENTED FOR REVIEW 1

I. WHY REVIEW IS NECESSARY 1

 A. This Case Has Far-Reaching Consequences Beyond The Individual Case With Statewide And Nationwide Historical And Cultural Significance..... 1

 B. This Case Presents Issues Of Perilous Impression And Consequences With Substantial Impact On All Parties And Their Cases And The Entire Judicial System 3

 C. The Supreme Court Has Broad Discretion In Determining Whether To Grant Review That Apply To This Case Where The Stakes Are Extremely High For A Decision That Impacts Historical And Cultural Interests 5

II. STATEMENT OF THE CASE..... 6

 A. What Happened In The Trial Court..... 6

 B. What Happened In The Court Of Appeal..... 9

III. STATEMENT OF FACTS..... 12

IV. ARGUMENT 15

 A. This Court Should Grant Review To Provide A Framework On What Criteria And Record The Courts Should Follow In Determining To Disregard Allegations To Provide Equal Application Of The Law 15

 1. Additional Context..... 15

2. The Court Of Appeal Has Arbitrarily And Conclusory Made A Determination That Appellant's Allegations Conflict With Exhibits	17
3. It Is Not The Court Of Appeal's Role To Construct Theories Or Arguments But To Consider Only Those Theories Advanced In The Appellant's Briefs	19
 B. This Court Should Grant Review In This Case To Provide Instructions When The Factfinder Is The Court Of Appeal On How To Assess Whether An Appellant Has Met The "Clear And Convincing" Burden Of Proof Standard To Determine Whether The Plaintiff Has Stated A Cause Of Action Under Any Possible Legal Theory.....	21
1. Additional Context.....	21
2. The Hollywood Chamber Waived The Conditions Precedent When It Intentionally Relinquished A Right Under Well-Established California Case Law	22
3. The Question Before The Court Of Appeal Was Whether The Record As A Whole Contains Substantial Evidence From Which A Reasonable Factfinder Could Have Found It Highly Probable Based On The "Clear And Convincing" Standard That The Hollywood Chamber Waived The Conditions Precedent.....	26
 C. This Court Should Grant Review In This Case To Provide Guidance On How To Decide Whether The Court Or A Jury Should Assess Intentional Relinquishment To Determine If The Hollywood Chamber Waived The Conditions Precedent	29
1. Additional Context.....	29
2. The Hollywood Chamber's Waiver Of The Conditions Precedent Is A Matter Of Law Or, If There Are Disputed Facts, Then Waiver Is Ordinarily A Question For The Trier Of Fact	29
 V. CONCLUSION	30

CERTIFICATION OF WORD COUNT.....	31
APPENDIX A: PROPOSED AMENDMENTS REGARDING THE DEFENDANTS WAIVED PERFORMANCE OF THE CONDITIONS PRECEDENT	32
APPENDIX B: PROPOSED AMENDMENTS REGARDING THE DEFENDANTS WAIVER'S IMPACT ON THE STATUTE OF LIMITATIONS.....	34
APPENDIX C: HOLLYWOOD WALK OF FAME NOMINATION SELECTION	36
APPENDIX D: OPINION OF COURT OF APPEAL	42
APPENDIX E: ORDER OF COURT OF APPEAL RE: PETITION FOR REHEARING	55
PROOF OF SERVICE.....	56

STATEMENT OF AUTHORITIES

Cases

<i>A.B.C. Distrib. Co. v. Distillers Distrib. Corp.</i> (1957) 154 Cal.App.2d 175, 187	23
<i>Aubry v. Tri-City Hospital Dist.</i> (1992) 2 Cal. 4th 962, 967	20
<i>Blank v. Kirwan</i> (1985) 39 Cal.3d 311, 318	21
<i>City of Ukiah v. Fones</i> (1966) 64 Cal.2d 104, 107-108	28
<i>Conservatorship of O.B.</i> (2020) 9 Cal.5th 989, 1012	26, 28
<i>Cooper v. Leslie Salt Co.</i> (1969) 70 Cal.2d 627, 636	21
<i>Del E. Webb Corp. v. Structural Materials Co.,</i> (1981) 123 Cal. App. 3d 593, 604	19
<i>Dey v. Continental Central Credit</i> (2008) 170 Cal.App.4th 721, 731	21
<i>DRG/Beverly Hills, Ltd. v. Chopstix Dim Sum Cafe & Takeout III, Ltd.</i> (1994) 30 Cal.App.4th 54, 61	29
<i>DuBeck v. California Physicians' Service</i> (2015) 234 Cal.App.4th 1254, 1265	29
<i>Galdjie v. Darwish</i> (2003) 113 Cal.App.4th 1331, 1339	23, 26
<i>Goodman v. Kennedy</i> (1976) 18 Cal.3d 335, 349	22
<i>Hill v. City of Santa Barbara</i> (1961) 196 Cal. App. 2d 580, 586	18
<i>Holland v. Morse Diesel International, Inc.</i> (2001) 86 Cal.App.4th 1443	16, 17, 19
<i>Levi v. O'Connell</i> (2006) 144 Cal.App.4th 700, 705	17
<i>Mead v. Sanwa Bank California</i> (1998) 61 Cal.App.4th 561, 567-568	18, 20

<i>People v. Stanley</i> (1995) 10 Cal. 4th 764, 793	20
<i>Roesch v. De Mota</i> (1944) 24 Cal.2d 563, 572	23, 25
<i>Roseleaf Corp. v. Radis</i> (1953) 122 Cal.App.2d 196, 206.....	23
<i>Stephens & Stephens XII, LLC v. Fireman’s Fund Ins. Co.</i> (2014) 231 Cal.App.4th 1131, 1148.....	23, 25
<i>Stevenson v. Superior Court</i> (1997) 16 Cal.4th 880, 885	16
<i>Wind Dancer Production Group v. Walt Disney Pictures</i> (2017) 10 Cal.App.5th 56, 78.....	23, 25

Statutes

California Code of Civil Procedure Section 1008(a).....	8
---	---

Other Authorities

2 Witkin, California Procedure, Pleading, section 200, page 1178 .	18
--	----

Rules

California Rules of Court, Rules 8.204(c) and 8.504(d)(1).....	31
--	----

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SCOTT DOUGLAS ORA, individually, and in his derivative capacity as trustee of the Leo Robin Trust, on behalf of the Leo Robin Trust

Plaintiff and Appellant,

v.

HOLLYWOOD CHAMBER OF COMMERCE, HOLLYWOOD CHAMBER'S BOARD OF DIRECTORS, HOLLYWOOD WALK OF FAME, WALK OF FAME COMMITTEE; and DOES 1 through 100 Inclusive,

Defendants and Respondents,

Court of Appeal
No. B321734

Superior Court
No. 21STCV23999

**APPEAL FROM THE SUPERIOR COURT OF
COUNTY OF LOS ANGELES**

The Honorable Judges

Bruce G. Iwasaki, Upinder S. Kalra and John P. Doyle

PETITION FOR REVIEW

PETITION FOR REVIEW AFTER THE UNPUBLISHED DECISION AFFIRMING THE JUDGMENT OF DISMISSAL AND THE ORDER DENYING THE PETITION FOR REHEARING OF THE COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION TWO

SCOTT DOUGLAS ORA, In Propria Persona
4735 Sepulveda Blvd. Apt. 460
Sherman Oaks, CA. 91403
Phone Number: (818)618-2572
Email: sdo007@aol.com

COPYRIGHT NOTICE

Copyright © 2023 Scott Douglas Ora. All Rights Reserved. Copyright claimed in the contents of the entire brief, exclusive of the text from statutes, regulations, case law, correspondence and websites of the Hollywood Chamber of Commerce and Hollywood Walk of Fame, articles (including photographs) by the Los Angeles Times and Variety, and any excerpts quoted therefrom within this brief.

PETITION FOR REVIEW

*TO THE HONORABLE CHIEF JUSTICE PATRICIA GUERRERO AND
TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE STATE OF CALIFORNIA*

ISSUES PRESENTED FOR REVIEW

1. In this case of perilously profound impression, did the Court of Appeal correctly disregard allegations by the Appellant 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?

2. Was the Court of Appeal correct 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 lyricist Leo Robin on the Hollywood Walk of Fame?

I. WHY REVIEW IS NECESSARY

This case presents questions of law of perilously profound impression and consequences, of substantial impact on all parties and their cases, and of statewide and nationwide historical and cultural significance.

A. This Case Has Far-Reaching Consequences Beyond The Individual Case With Statewide And Nationwide Historical And Cultural Significance

This case has far-reaching consequences beyond the individual case with statewide and nationwide historical and cultural significance. In this unprecedented situation between Appellant and

the Hollywood Chamber of Commerce, Leo Robin¹ was awarded a star on the Hollywood Walk of Fame in 1990, but more than 33 years later, the star has yet to be installed.

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

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..." Roy Trakin continues his story with the many Robin songs adopted by the most celebrated Hollywood stars as their theme or signature tunes, "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.)

Fame, a 'designated historic cultural landmark²,' 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."

B. This Case Presents Issues Of Perilous 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

² The Walk of Fame is a National Historic Landmark, which comprises of 2,761 (as of this date) 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 (as of 2022) 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.)

cases and the entire judicial system. First, an important question of law is raised due to the Court of Appeal arbitrarily and conclusory disregarding allegations by the Appellant. 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 law³. 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. The decision by the Court of Appeal is a travesty of justice.

Second, another important question of law addressed in this petition this Court has 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 assessment[s] 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 "reaffirm[ing] that the interests involved are of special

³ 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.

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. These cases must be reviewed in the light most favorable to the judgment to determine whether it discloses substantial evidence from which a reasonable trier of fact could have found the judgment.

The California codes 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.

C. The Supreme Court Has Broad Discretion In Determining Whether To Grant Review That Apply To This Case Where The Stakes Are Extremely High For A Decision That Impacts Historical And Cultural Interests

The Supreme Court has broad discretion in determining whether to grant review that apply to this case where the stakes are extremely high for a decision that 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. As alleged, "Ora carries the torch of his grandfather's legacy..." (FAC ¶ 66) 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.

The Appellant wants to honor the wishes of his grandmother, Mrs. Robin, to pay tribute her husband's legacy with a star on the Hollywood Walk of Fame. Although it is unfortunate that she or actor Bob Hope, as the sponsors, cannot be at the ceremony, it will allow anyone and everyone who gazes at that star to give "Thanks for the Memory." This would be a wonderful tribute to a legend who made great contributions to the music and motion picture industries from the dawning of sound onward and whose enduring lyrics have become part of the fabric of American culture.

II. STATEMENT OF THE CASE

A. What Happened 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.) Judge John P. Doyle presided over the early court hearings until his retirement.

After the Hollywood Chamber failed to respond to the Complaint, Ora 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 formation and performance of the contract and sustained the Hollywood Chamber's demurrer with leave to amend. (3 CT 720.)

Next, Plaintiff filed a verified First Amended Complaint (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 Ora 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. (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, the Plaintiff filed on June 7, 2022 an ex parte application to move the court for a motion for reconsideration of the ruling that sustained the 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 for reconsideration 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.)

In the respective rulings, neither found that the causes of action were barred by the statutory of limitations (SOL) determined by the statutory limitation period because it recognized California's "delayed-discovery rule" provides for a longer SOL in special cases like here where the Plaintiff discovered the action later on after the contract was formed.

However, the court did rule that the causes of action were barred by the SOL determined by the contractual limitation period based on, purportedly, the Plaintiff failed to show performance of the two conditions precedent.

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 but the court failed to acknowledge, overlooked and /or avoided this salient legal argument.

B. What Happened 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 the Plaintiff failed to show performance of the conditions precedent. At the heart of the matter is the issue whether the Respondent waived performance of the conditions precedent. On appeal, the Appellant is seeking 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. The Court of Appeal's decision on August 1, 2023 affirmed the judgment of dismissal.

The 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. With regard to the contract issue, the Court stated that "Because we resolve the appeal on


these grounds, we need not address the parties' arguments about issues of contract formation or the statute of limitations applicable to breach of contract claims. (Ct. App. Dec., p. 8, FN no. 5). With regard to standing, the Court said "We agree with Ora that, at minimum, he has standing in his representative capacity to pursue a colorable claim regarding reinstatement of the star. Indeed, in 2020, the Chamber of Commerce publicly admitted that it would need to work with "someone representing [Robin's] estate" to reinstate the star." (Ct. App. Dec., p. 8, FN no. 4)

After stripping out the issues regarding contract, the statute of limitations and standing and primarily focusing 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.

The Court of Appeal who generally reviews what has occurred during the trial court has made serious efforts to analyze the Appellant's argument regarding the waiver by the Hollywood Chamber of the conditions precedent⁴. The issue of the waiver was never fleshed out earlier because the trial court failed to acknowledge, overlooked and /or avoided this salient legal

⁴ The conditions precedent are contained in Appendix C which was originally included in the FAC as Exhibit 18. As stated in Fn. no. 11 on p. 18 of FAC, "the Hollywood Walk of Fame Nomination for 2019 Selection, 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." (3 CT 744.)

argument. The Respondent finally had broken its silence on the waiver by the Hollywood Chamber of the conditions precedent 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.

Finally, the Appellant filed on August 15, 2023 a petition for rehearing by the Court of Appeal after it affirmed the judgment of dismissal. There is a central error that is running through most of the grounds for rehearing which follows. The Court of Appeal's decision contains a material misinterpretation of the Robin  Contract covered in the Fifth Grounds on pp.14-15. What results is the Court of Appeal's decision contains an unfounded contention regarding that the Robin's star award had lapsed in the Sixth Grounds on pp.16-18 and contains a baseless contention regarding that the Hollywood Chamber did not waive performance of the conditions precedent in the Ninth Grounds on pp. 20-21. This further results in the Court of Appeal's decision containing many other mistakes. As a result, there were critical mistakes in the Court of Appeal's decision so the Appellant requested for rehearing in the court and asking the court to correct its mistakes.

The Appellant believes that these mistakes have resulted in an erroneous decision by the Court of Appeal and that correcting the errors would've lead to the reversal of the superior court's decision in its entirety. The Court of Appeal issued an order on August 22, 2023 to deny the petition for rehearing.

During oral argument, the Court of Appeal kept most of the grounds for its decision close to the vest leaving the Appellant in the dark. Given that the Court of Appeal disregarded unspecified allegations of Appellant in the FAC even those relied on by the trial

court, it was an injustice for Appellant to have not been given an opportunity to argue and address the grounds of the Court of Appeal's decision.

III. STATEMENT OF FACTS

The Appellant will state the facts of which he is certain based on his verified 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, that neither his family nor he knew anything about that happened more than 33 years ago -- Robin was awarded a posthumous star on the Walk of Fame ("Robin's ⚡") 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 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.)

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.)

Ora has tried all possible means ever since his discovery on July 6, 2017 of Robin's 🌟 to confer with the Hollywood Chamber to install Robin's 🌟. (3 CT 759.) In the end, the Hollywood Chamber ultimately failed to do the right thing by not fulfilling its obligation to install the star awarded to Robin on the Walk of Fame in accordance

with the binding written contract (aka. Robin ✪ Contract). (3 CT 748.) Throughout the past sixty years, the Hollywood Chamber has successfully kept track of 2,761 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.)

IV. ARGUMENT

A. This Court Should Grant Review To Provide A Framework On What Criteria And Record The Courts Should Follow In Determining To Disregard Allegations To Provide Equal Application Of The Law

1. Additional Context

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. The Appellant presented in the ninth grounds of the Petition for Rehearing that the Court of Appeal's decision contains a material misstatement of fact and baseless contention regarding that the Hollywood Chamber did not waive performance of the conditions precedent. In the court's analysis, the court relies on this material misstatement of fact and unfounded contention, 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 makes a material misstatement of fact and unfounded contention in Fn. no. 7, as follows: "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.)

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 Robin ⚡ Contract in the Fifth Grounds (pp. 14-15) and a reasonable interpretation of the FAC to show that Robin's star award had not lapsed in the Sixth Grounds. (pp. 16-18.) 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. [Citation]." (*Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 885.)

The Court of Appeal's theory doesn't hold water. The theory is chock-full of contentions, deductions, or conclusions of law or fact. The Court of Appeal's theory is driven by the groundless contentions that "Substantively, the exhibits attached to the FAC demonstrate that the Chamber of Commerce did not waive performance of the conditions precedent" and "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." There are no other claims by the Court of Appeal regarding the allegations in its decision.

The general legal standard provides that "the appellate court, however, will not assume the truth of contentions, deductions, or

conclusions of law or fact." (*Levi v. O'Connell* (2006) 144 Cal.App.4th 700, 705.) The ancillary 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.

2. The Court Of Appeal Has Arbitrarily And Conclusory Made A Determination That Appellant's Allegations Conflict With Exhibits

The application of this legal standard by several courts will demonstrate how deliberate they are 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, as follows: "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. The first amended complaint further alleges that MDI breached Holland's contract but "did not breach the contracts of white subcontracts [sic] and paid white subcontractors

the prevailing wage.” Such an allegation as part of a discrimination complaint is tantamount to an assertion that Holland too was a subcontractor.”

In *Mead v. Sanwa Bank California* (1998) 61 Cal.App.4th 561, 567-568, the court provided substantial documentation to make its determination that the Meads have pleaded sufficient fact to support their allegation that they are sureties, as follows: "Pointing out that the Meads are identified as trustors in the deed of trust appended to the complaint, Sanwa argues that those "specific averments in the Deed of Trust" must control over any "contrary" allegations in the text of the complaint that the Meads are sureties. It is mistaken. Because sureties include those who hypothecate their property as security for the debt of another..., the allegation in the text that they are sureties is not inconsistent with the allegation in the deed of trust that they are trustors."

In *Hill v. City of Santa Barbara* (1961) 196 Cal. App. 2d 580, 586, the court went to great lengths to show that there was inconsistency in the allegations, as follows: "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. [9] 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

complaints and the exhibits. Further, the courts were reviewing the trial courts as the factfinders determination on the allegations.

In stark contrast, here there is no deliberation or hearing by the Court of Appeal as the factfinder about the allegations. The Court of Appeal makes unfounded contentions with no details as to which allegations or which exhibits or any analysis to arrive at its conclusion. And the trial court also made no determination. Most importantly, the Appellant was never allowed to respond to the Court of Appeal's arbitrary use of power - truly anathema to the rule of law.

The Court of Appeal's decision was improper under well-established pleading rules. California, being a fact-pleading state, following the Defendants filing the demurrer, they would have to accept the complaint's allegations at face value. "As a general rule in testing a pleading against a demurrer the facts alleged in the pleading are deemed to be true, however improbable they may be." (*Del E. Webb Corp. v. Structural Materials Co.*, (1981) 123 Cal. App. 3d 593, 604.) The Defendants and the 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 makes mere legal conclusions to render allegations of the Plaintiff are not truthful with no details as to which allegations or any analysis to arrive at its conclusion. Therefore, the Plaintiff stated a cause of action under any possible legal theory.

3. It Is Not The Court Of Appeal's Role To Construct Theories Or Arguments But To Consider Only Those Theories Advanced In The Appellant's Briefs

The opinion of *Holland v. Morse Diesel International, Inc.* cited the well-established standard *that* "If facts appearing in the exhibits contradict those alleged, the facts in the exhibits take precedence"

from *Mead v. Sanwa Bank California*. In *Mead v. Sanwa Bank California*, the court reasoned, "A complaint is sufficient if it alleges facts which state a cause of action under any possible legal theory. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal. 4th 962, 967.) However, because it is not a reviewing court's role to construct theories or arguments which would undermine the judgment (*People v. Stanley* (1995) 10 Cal. 4th 764, 793), we consider only those theories advanced in the appellant's briefs."

The Court of Appeal has manufactured an alternative theory to show there was no waiver to compete with the Appellant's theory that there is a waiver. The same principle that "it is not a reviewing court's role to construct theories or arguments" in *People v. Stanley* holds true in the instant case. It comes down to the rudimentary standard "a complaint is sufficient if it alleges facts which state a cause of action under any possible legal theory" in *Aubry v. Tri-City Hospital Dist.* Thus, the Court of Appeal erred because the Plaintiff stated a cause of action under any possible legal theory.

For the aforementioned reasons, it is incumbent for the Court to provide a framework on what criteria and record the courts should follow in determining to disregard allegations to provide equal application of the law.

B. This Court Should Grant Review In This Case To Provide Instructions When The Factfinder Is The Court Of Appeal On How To Assess Whether An Appellant Has Met The "Clear And Convincing" Burden Of Proof Standard To Determine Whether The Plaintiff Has Stated A Cause Of Action Under Any Possible Legal Theory

1. Additional Context

In the Court of Appeal's decision, it makes the argument that the Hollywood Chamber did not waive the conditions precedent, as follows: "The burden, moreover, is on the party claiming a waiver of a right to prove it by clear and convincing evidence that does not leave the matter to speculation, and "doubtful cases will be decided against a waiver." [Citations.]" (Ct. App. Dec., p. 11.)

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." (*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.)

Plaintiff proposed amendments for addressing nonperformance of the contract. 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." 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 which is provided in Appendix A.

The Appellant 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 which is provided in Appendix B.

The Appellant absolutely met his burden based on the standard established in *Goodman v. Kennedy* (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349 [it is the plaintiff's burden to show "in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading"].) to show "in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading." The court abused its discretion by sustaining the demurrer without leave to amend because the proposed amendments would have 100% cured the defect.

2. 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. "Ordinarily, a plaintiff cannot recover on a contract without alleging and proving performance or prevention or waiver of performance of conditions precedent and willingness and ability to perform

conditions concurrent.” (*Roseleaf Corp. v. Radis* (1953) 122 Cal.App.2d 196, 206 [264 P.2d 964].)


It's universal based on well-established case law: "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 under a particular participation statement without conducting an audit -- and that Disney routinely delayed audits for many months or even years, so that it was impossible for plaintiffs to discover a claim within the two-year incontestability period. 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. Applying these principles, 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, these words and conduct gave up the Hollywood Chamber's 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.

Further, the instant case has two different limitations periods like in *Wind Dancer Production Group* which held, "The time for filing suit also could be subject to two different limitations periods – one contractual and one statutory – depending upon the transactions underlying the claim." (*Wind Dancer Production Group v. Walt Disney Pictures* (2017) 10 Cal.App.5th 56, 78) The Appellant has showed the substantial similarities between *Wind Dancer Production Group* and his case. Appellant avers that *Wind Dancer Production Group v. Walt Disney Pictures* is solid legal authority to support his case.

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.)

3. The Question Before The Court Of Appeal Was Whether The Record As A Whole Contains Substantial Evidence From Which A Reasonable Factfinder Could Have Found It Highly Probable Based On The "Clear And Convincing" Standard That The Hollywood Chamber Waived The Conditions Precedent

In *Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1012, the court reasoned that "appellate courts must be mindful of the clear and convincing standard; but they do not simply apply it themselves. Instead, they ask whether a reasonable factfinder could have made the challenged finding with the confidence required by the clear and convincing standard. More technically, the appellate court must now review the record in the light most favorable to the judgment below to determine whether it discloses substantial evidence from which a reasonable trier of fact could have found it "highly probable" that the fact was true. As with all substantial evidence review, the court of appeal will defer to how the trier of fact may have evaluated credibility, resolved evidentiary conflicts, and drawn inferences.

Measured by the certainty each demands, the standard of proof known as clear and convincing evidence — which requires proof making the existence of a fact highly probable — falls between the "more likely than not" standard commonly referred to as a preponderance of the evidence and the more rigorous standard of proof beyond a reasonable doubt. We granted review in this case to clarify how an appellate court is to review the sufficiency of the

evidence associated with a finding made by the trier of fact pursuant to the clear and convincing standard.

We conclude that appellate review of the sufficiency of the evidence in support of a finding requiring clear and convincing proof must account for the level of confidence this standard demands. In a matter such as the one before us, when reviewing a finding that a fact has been proved by clear and convincing evidence, the question before the appellate court is whether the record as a whole contains substantial evidence from which a reasonable factfinder could have found it highly probable that the fact was true. Consistent with well-established principles governing review for sufficiency of the evidence, in making this assessment the appellate court must view the record in the light most favorable to the prevailing party below and give due deference to how the trier of fact may have evaluated the credibility of witnesses, resolved conflicts in the evidence, and drawn reasonable inferences from the evidence."

Chief Justice Tani Gorre Cantil-Sakauye wrote the opinion for a unanimous court. As she explained, "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, whether that standard of proof is preponderance of the evidence, clear and convincing evidence, or proof beyond a reasonable doubt. As CACI 201 instructs jurors, clear and convincing evidence "means the party must persuade you that it is highly probable that the fact is true."

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.* What's clear from landmark case *Conservatorship of O.B.* is the role of the Court of Appeal is one of review of the trial court's determination. This begs the question on how should the Court of Appeal proceeded since there was never any analysis by the trial court on the waiver of the conditions precedent by the Hollywood Chamber.

The Appellant believes that he 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). Alternatively, if there was a question on whether the appellant met the "clear and convincing" standard, then the Court of Appeal should have remanded the case back to the trial court with instructions to make a determination as the factfinder as to whether or not the Plaintiff met the "clear and convincing" standard.

This Court should grant review in this case to provide instructions on how to assess whether the Appellant has met the "clear and convincing evidence" burden of proof standard. In any case, the Appellant is certain that this Court could provide unsurpassable judicial wisdom.

C. This Court Should Grant Review In This Case To Provide Guidance On How To Decide Whether The Court Or A Jury Should Assess Intentional Relinquishment To Determine If The Hollywood Chamber Waived The Conditions Precedent

1. Additional Context

The Appellant presented in the fourteenth grounds of the Petition for Rehearing that 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. "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.)

2. The Hollywood Chamber's Waiver Of The Conditions Precedent Is A Matter Of Law Or, If There Are Disputed Facts, Then Waiver Is Ordinarily A Question For The Trier Of Fact

The Appellant has argued that "there are no disputed facts and only one reasonable inference may be drawn, the issue can be determined as a matter of law." However, if there are disputed facts, then 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.

V. CONCLUSION

For the foregoing reasons, Appellant respectfully urges this Honorable Court to grant review in this important case.

Executed in Sherman Oaks, California
DATED: August 31, 2023

Respectfully Submitted,

By: 

Scott Douglas Ora
In Pro Per

CERTIFICATION OF WORD COUNT

I hereby certify pursuant to California Rules of Court, Rules 8.204(c) and 8.504(d)(1), that the text of this Petition For Review contains 8,398 words, including footnotes but not including the cover, the tables of contents and authorities and the caption page.

This petition for review complies with the rule that limits a brief to 8,400 words. In making this certification, I prepared this document in Microsoft Word software and that this is the word count Microsoft Word generated for this document.

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

Executed in Sherman Oaks, California
DATED: August 31, 2023

By: 
Scott Douglas Ora
In Pro Per

APPENDICES

The following appendices appearing on pages 32 through 55 are duplicative of those herein the Petition For Writ Of Certiorari and therefore have been omitted:

APPENDIX A: PROPOSED AMENDMENTS REGARDING THE DEFENDANTS WAIVED PERFORMANCE OF THE CONDITIONS PRECEDENT
(The same as APPENDIX N of the Petition For Writ Of Certiorari)

APPENDIX B: PROPOSED AMENDMENTS REGARDING THE DEFENDANTS WAIVER'S IMPACT ON THE STATUTE OF LIMITATIONS
(The same as APPENDIX O of the Petition For Writ Of Certiorari)

APPENDIX C: HOLLYWOOD WALK OF FAME NOMINATION SELECTION
(The same as APPENDIX M of the Petition For Writ Of Certiorari)

APPENDIX D: DECISION OF COURT OF APPEAL OF THE STATE OF CALIFORNIA (August 1, 2023)
(The same as APPENDIX A of the Petition For Writ Of Certiorari)

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California and am over the age of eighteen years. I am not a party to the within action. My business address is 1000 Corporate Center Dr, Suite 100, Monterey Park, CA 91754.

On September 6, 2023 from Monterey Park, CA, I mailed a copy of the following document as entitled below:

PETITION FOR REVIEW

I served the document on all the interested parties below in the action by placing a true copy thereof in an envelope addressed as follows:

Clerk of the Court of Appeal Case No. B321734
Second Appellate District, Division Two
Ronald Reagan State Building
300 S. Spring Street 2nd Floor, North Tower
Los Angeles, CA 90013

Office of the Clerk Dept. 58 Case No. 21STCV23999
(Delivered for the attention of Honorable
Judge Bruce G. Iwasaki)
Los Angeles County Superior Court
Stanley Mosk Courthouse
111 N Hill Street Los Angeles CA 90012

State of California
Department of Justice
Office of the Attorney General
300 South Spring Street
Los Angeles, CA 90013

Dammann Reid Attorney for Respondents
Gordon Rees Scully Mansukhani, LLP
633 West Fifth Street, 52nd Floor
Los Angeles CA 90071

Brunet Violaine Attorney for Respondents
Gordon Rees Scully Mansukhani, LLP
633 West Fifth Street, 52nd Floor
Los Angeles CA 90071

I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

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

Executed in Monterey Park, California
DATED: September 6, 2023



Frank Gomez