No. 24-_____

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

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

Page

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

Page

TABLE OF CONTENTS – Continued

Page

OPINIONS AND ORDERS PURSUANT TO SUP. CT. R. 14.1 (i)(i)

The Appendix Table of Contents is prepared in "the form of a petition for a writ of certiorari prescribed by Rule 14" pursuant to Sup. Ct. R. 20.2.

TABLE OF CONTENTS – Continued

Page

TABLE OF CONTENTS – Continued

Page

TABLE OF CONTENTS – Continued

Page

OTHER MATERIAL ESSENTIAL TO UNDERSTAND THE PETITION PURSUANT TO SUP. CT. R. 14.1 (i)(vi)

TABLE OF CONTENTS – Continued

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

CONSTITUTIONAL PROVISIONS

STATUTES

TABLE OF AUTHORITIES – Continued

Page

JUDICIAL RULES

TABLE OF AUTHORITIES – Continued

Page

MISCELLANEOUS

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 Robin[1], that neither

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[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 Fame[2] 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-

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[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

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[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 it 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

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[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 Schlagenhauf 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

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[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-demurer 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

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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.*

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[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.

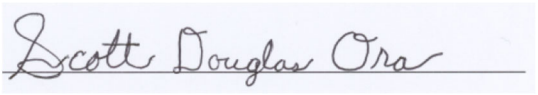
Absent intervention by the Court, the errors made by the Court Of Appeal are in direct violation of the rule of law, and preclude further resolution of this case in the trial court. Therefore, Petitioner has no recourse in any other court. *In re Sanford Fork & Tool*

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,



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August 28, 2024

APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS PURSUANT TO SUP. CT. R. 14.1 (i)(i)

The Appendix Table of Contents is prepared in "the form of a petition for a writ of certiorari prescribed by Rule 14" pursuant to Sup. Ct. R. 20.2.

APPENDIX TABLE OF CONTENTS (Cont.)

PETITIONS FILED BY APPELLANT REQUIRED BY SUBPARAGRAPH 1(g)(i) PURSUANT TO SUP. CT. R. 14.1 (i)(v)

STATUTORY PROVISIONS INVOLVED REQUIRED BY SUBPARAGRAPH 1(f) PURSUANT TO SUP. CT. R. 14.1 (i)(v)

APPENDIX TABLE OF CONTENTS (Cont.)

APPENDIX TABLE OF CONTENTS (Cont.)

OTHER MATERIAL ESSENTIAL TO UNDERSTAND THE PETITION PURSUANT TO SUP. CT. R. 14.1 (i)(vi)

APPENDIX TABLE OF CONTENTS (Cont.)

APPENDIX A:
DECISION OF COURT OF APPEAL OF THE STATE OF CALIFORNIA ON AUGUST 1, 2023 AFFIRMED THE JUDGMENT OF DISMISSAL (CASE NO. B321734, *ORA V. HOLLYWOOD CHAMBER OF COMMERCE*)

Filed 8/1/2023

Not to Be Published in the Official Reports

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT DIVISION TWO

SCOTT DOUGLAS ORA,

Plaintiff and Appellant,

v.

HOLLYWOOD CHAMBER OF COMMERCE,

Defendant and Respondent.

B321734

(Los Angeles County Super. Ct. No. 21STCV23999)

Appeal from a judgment of the Superior Court of Los Angeles County, Bruce G. Iwasaki, Judge. Affirmed.

Before: ASHMANN-GERST, Acting P.J., CHAVEZ, HOFFSTADT, Judges.

Plaintiff and appellant Scott Douglas Ora (Ora) appeals from a judgment of dismissal entered after the trial court sustained the demurrer of defendant and respondent Hollywood Chamber of Commerce (the Chamber of Commerce) to Ora's first amended complaint (FAC) without leave to amend.

We affirm.

FACTS[1] AND PROCEDURAL BACKGROUND

I. The Star Mishap

The Chamber of Commerce administers Hollywood's "Walk of Fame," a network of sidewalks along Hollywood Boulevard and Vine Street embedded with decorative stars honoring notable persons in the entertainment industry. To receive a star, a person must be nominated via written application. Each year, the Chamber of Commerce awards stars to a handful of these applicants.

Once an application is approved, the Chamber of Commerce sends an award notification letter informing the honoree that he must set a date for the dedication ceremony within a certain timeframe and pay a sponsorship fee. If these conditions are not met within a specified timeframe, the award expires and the honoree must resubmit his application.

In 1988, Academy-Award-winning songwriter and lyricist Leo Robin (Robin) was nominated by his wife

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[1] "Because this matter comes to us 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.)

to receive a posthumous star. The nomination was co-sponsored by veteran actor and performer Bob Hope (Hope).

In June 1990, the Chamber of Commerce sent Robin's wife an award notification letter informing her that Robin had been selected to receive a star. At that time, the period for scheduling a ceremony was five years and the sponsorship fee was $4,000.

Unfortunately, Robin's wife passed away before the letter arrived. The unopened letter was returned to the sender and placed in the Chamber of Commerce's files. Per the Chamber of Commerce's practices at the time, no further attempts were made to notify Hope or Robin's surviving relatives. And because no one responded to the letter, Robin's star was never installed.

II. Ora's Campaign to Reinstate Robin's Star

In 2017, Ora, Robin's grandson and trustee of the Leo Robin Trust, first discovered that Robin had been awarded a star and confirmed that the star was never claimed.

Ora immediately wrote a letter to Ana Martinez (Martinez), then the Vice President of Media Relations for the Chamber of Commerce, "request[ing] that the Walk of Fame Committee reinstate the award to [Robin] of the posthumous star." Ora initially said that he would "not [want] to have too much fanfare in connection with the [dedication] ceremony."

In July 2018, Martinez told Ora that she "d[id]n't know [if] that [reinstatement] will happen as [the star] has to be sponsored and you said you didn't want to have a ceremony or the fanfare that comes with the event which is why we do this."

A few days later, before the Chamber of Commerce had communicated any decision about the potential reinstatement, Ora wrote a second letter informing Martinez that he now wanted to have a star-studded dedication ceremony that he hoped would be "a grand celebration" with an "exceptional turnout." Martinez responded: "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."

Ora sent Martinez a letter selecting a date for the ceremony and enclosed a check for $4,000. Ora acknowledged that the sponsorship fee had increased tenfold since Robin was awarded a star, but believed that "it would only be logical for the sponsor of [Robin] to pay the same amount" as the other honorees selected in 1990.

Martinez promptly returned Ora's check. She explained that because "[t]he approval of Mr. Robin's star lapsed many years ago . . . [i]t would need to be reinstated by the Walk of Fame Committee," which would "very likely . . . require that the fee be raised to the current approved level." Accordingly, the Chamber of Commerce could not accept Ora's check.

When Ora objected to the Chamber of Commerce's position, Martinez told him that "[i]t shouldn't be a problem to reinstate[,] but the fee is $40,000. Prices have gone up."

In September 2018, Leon Gubler (Gubler), then the President and Chief Executive Officer of the Chamber of Commerce, informed Ora that "[a]s

[Martinez] has explained to you, we have existing protocols that must be followed to reinstate star approval." Per those protocols, Gubler said that Ora's "request[ ] [for] the fee to be reduced to $4,000 . . . is not possible. The committee will never approve the reinstatement unless there is a sponsorship in place to pay the fee at the current rate."

Ora persisted in his attempts to get the star installed at the 1990 rate for the next three years. Robin's star was never reinstated.

III. The Lawsuit

Unable to reach an agreement with the Chamber of Commerce, Ora's journey to a star culminated in this lawsuit. On June 29, 2021, he filed his original complaint, suing the Chamber of Commerce for breach of contract and negligence.[2]

Ora alleged that the Chamber of Commerce entered into a contractual agreement to install the star by sending the 1990 award notification letter, and that it violated that agreement by not installing the star despite Ora "d[oing] everything in his power to fulfill performance of the Robin [Star] Contract . . . within two years of [his] discovery of Robin's star" in 2017. He also argued that this breach constituted negligence, and that the Chamber of Commerce compounded this negligence by failing to (1) ensure that Robin's family or Hope were notified of the star

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[2] Ora's complaint also (1) improperly attempted to sue several subsidiary entities, including the Hollywood Walk of Fame itself, and (2) contained a third cause of action for injunctive relief, which, as noted by the trial court, was "actually a request for a type of remedy . . . for the alleged breach of contract."

award in 1990 and (2) follow through on its promise to consider reinstatement of Robin's star at successive Walk of Fame Committee meetings from 2019 through 2021.

The Chamber of Commerce demurred to Ora's complaint, alleging, inter alia, that the complaint was time-barred, that Ora lacked standing, and that no contract existed between the parties. Ora filed an opposition to the demurrer, and the Chamber of Commerce filed a reply supporting it. On February 16, 2022, the trial court granted the demurrer with leave to amend.

On March 17, 2022, Ora filed the FAC. The causes of action in the FAC are substantially similar to those in the original complaint.[3] Again, the Chamber of Commerce demurred, and the parties filed papers opposing and supporting the demurrer.

On May 17, 2022, the trial court sustained the Chamber of Commerce's second demurrer without leave to amend. With respect to Ora's claim for breach of contract, the trial court determined that no contract was entered into, construing the Chamber of Commerce's 1990 award notification letter as an offer which was not timely accepted. Alternatively, the trial court found that, assuming a contract did exist,

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[3] The only substantive amendments in the FAC are the following additions: (1) the allegation that by "plac[ing] the award letter in its files and always ke[eping] it a secret from . . . Hope," the Chamber of Commerce "obstruct[ed]" Hope from "schedul[ing] . . . Robin's ceremony and . . . pa[ying] for Robin's [star]"; (2) the argument that the Chamber of Commerce's acts, including their "obstruction" of Hope's ability to timely fulfill the agreement, violated the implied duty of good faith and fair dealing; and (3) an exhibit containing information about Hope's stars.

its conditions precedent—namely the timely scheduling of a star ceremony and payment of a sponsorship fee—were not performed until 13 years after the contractual period of limitations expired. Under either theory, the trial court held that there was no viable claim for breach of contract. The trial court also sustained the demurrer as to Ora's negligence cause of action, which it found to be derivative of his contractual claim.

A judgment of dismissal was entered, and this timely appeal ensued.

DISCUSSION

I. Standard of Review

"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.] The court does not, however, assume the truth of contentions, deductions or conclusions of law. [Citation.] The judgment must be affirmed "if any one of the several grounds of demurrer is well taken. [Citations.]" [Citation.] However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment. [Citation.]'

[Citations.]" (*Payne v. National Collection Systems, Inc.* (2001) 91 Cal.App.4th 1037, 1043–1044.)

II. Analysis

On appeal, Ora admits that his negligence claims "are dependent on the gravamen breach of contract claim." Therefore, we need only determine whether the trial court properly sustained the demurrer without leave to amend with respect to Ora's breach of contract claim. We conclude that it did.

To withstand demurrer on a cause of action for breach of contract, a plaintiff must plead, among other things, "the existence of a contract [and] his or her performance of the contract or excuse for non-performance." (*Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 307.) Ora's breach of contract claim fails to clear this threshold.

The parties dispute whether and how a contract was formed between them.[4] Ora insists that the 1988 nomination application constituted an offer to sponsor Robin's star per the Chamber of Commerce's policies, and that the Chamber of Commerce accepted that offer without qualifications by sending the 1990 award notification letter. The Chamber of Commerce contends that the award notification letter constituted an offer to award the star, and that since the offer was

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[4] The Chamber of Commerce also disputes whether Ora has standing to enforce any purported agreement between it and the original sponsors of Robin's star. 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.

never accepted, no contract ever formed. Assuming, arguendo, that Ora's theory of the contract is correct, he still cannot establish performance of the contract's conditions precedent or a viable excuse for non-performance.[5]

As relevant here, "a condition precedent is . . . an act of a party that must be performed . . . before a contractual right accrues or the contractual duty arises." (*Platt Pacific, Inc. v. Andelson* (1993) 6 Cal.4th 307, 313.) "Generally, a party's failure to perform a condition precedent will preclude an action for breach of contract." (*Richman v. Hartley* (2014) 224 Cal.App. 4th 1182, 1192.)

In the FAC, Ora states that the terms of the alleged contract required Robin's sponsors to schedule a ceremony within five years from the award of the star and to pay a set sponsorship fee "at time right after selection[.]" Ora alleges that if these conditions are not met, the award expires and "a new application must be submitted." Thus, as alleged, these terms are conditions precedent that must be performed within a contractually specified period to prevent the automatic revocation of the Chamber of Commerce's acceptance.

The award notification letter was sent to the address of Robin's sponsor in June 1990. Under Ora's theory of the contract, the conditions precedent needed to be performed by June 1995 to trigger the Chamber of Commerce's contractual obligations. Yet Ora admits that no one attempted to satisfy these conditions until

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[5] 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.

he mailed the Chamber of Commerce a letter containing a proposed date for the dedication ceremony and a $4,000 check in July 2018, more than 23 years after the contract expired.

Critically, the FAC does not plead a legally valid excuse for nonperformance of these conditions during the contractual period.[6] The FAC alleges that the Chamber of Commerce "unfairly interfere[d] with [Ora's] right . . . to receive the benefits of the contract" by keeping the returned, unopened award notification letter in its files. But we disagree that the simple act of retaining a letter returned to the offeree by the postal service constitutes "unfair interfere[nce]" with the offeror's contractual rights.

On appeal, Ora argues that the Chamber of Commerce waived performance of the conditions precedent by "continuing to deal with [him] after the dates specified in the contract." This argument fails both procedurally and substantively. Procedurally, the FAC did not specifically allege that the Chamber of Commerce waived the performance of these conditions. (*Hale v. Sharp Healthcare* (2010) 183 Cal. App.4th 1373, 1388 ["'[E]xcuses must be pleaded specifically.' [Citation.]"].)

Substantively, the exhibits attached to the FAC demonstrate that the Chamber of Commerce did not

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[6] The mere failure of an offeror to actually receive a mailed letter communicating acceptance is not a legally valid excuse for nonperformance under California law. (Civ. Code, § 1583 ["Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer"].)

waive performance of the conditions precedent.[7] Instead, its representatives consistently stated that Robin's star award had lapsed and would need to be reinstated according to the Walk of Fame Committee's policies, and that Ora would need to pay a sponsorship fee at contemporary rates. Tellingly, the Chamber of Commerce expressly rejected and returned the document with which Ora attempted to perform the lapsed conditions precedent—namely, his letter selecting a date for the ceremony and containing a $4,000 sponsorship fee. This conduct is not consistent with an intent to waive Ora's performance of conditions precedent. (*Southern Cal. Edison Co. v. Public Utilities Com.* (2000) 85 Cal.App.4th 1086, 1107 [""""Waiver always rests upon intent. Waiver is the intentional relinquishment of a known right after knowledge of the facts. [Citations.] 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.]""].)

Ora insists that "the silent acquiescence by the [trial] court and the [Chamber of Commerce] on [his] argument regarding the waiver . . . of the conditions precedent" means that his "argument must be granted deference." (Bolding omitted.) He does not support this proposition with citations to authority. (See

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[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 Internat., Inc.* (2001) 86 Cal.App.4th 1443, 1447.)

Cahill v. San Diego Gas & Electric Co. (2011) 194 Cal.App.4th 939, 956 ["'The absence of cogent legal argument or citation to authority allows this court to treat the contention as waived.' [Citations.]"].) And the cases Ora does cite to support finding waiver are inapposite. (*Galdjie v. Darwish* (2003) 113 Cal.App.4th 1331, 1339 [describing cases in which a party's "'tacit approval'" of alternate payment plans or express acceptance of untimely payments waived performance]; *Wind Dancer Production Group v. Walt Disney Pictures* (2017) 10 Cal.App.5th 56, 78–81 [a party that approves sporadic tolling agreements during a contractual period of limitations may waive the right to enforce the original period of limitations].)

In brief, the demurrer was properly sustained as to Ora's breach of contract claim because the conditions that triggered the Chamber of Commerce's alleged contractual duty were never performed. Moreover, because amendment cannot cure this defect, the demurrer was properly sustained without leave to amend.[8]

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[8] Ora argues that the trial court abused its discretion by sustaining the demurrer without leave to amend, as he maintains that amendment could have cured the FAC. This contention is not borne out by the minimal alterations he proposes on appeal, which would not have any substantive impact on the fatal defects in the FAC. (*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"].)

DISPOSITION

The judgment of dismissal is affirmed. The Chamber of Commerce is entitled to costs on appeal.

NOT TO BE PUBLISHED
IN THE OFFICIAL REPORTS.

Ashmann-Gerst, Acting P.J.

We Concur:

Chavez, J.

Hoffstadt, J.

APPENDIX B:
THE ORDER BY THE SUPREME COURT OF THE STATE OF CALIFORNIA ON OCTOBER 18, 2023 DENIED THE PETITION FOR REVIEW (CASE NO. S281761, *ORA v. HOLLYWOOD CHAMBER OF COMMERCE*)

IN THE SUPREME COURT OF CALIFORNIA

EN BANC

SCOTT DOUGLAS ORA,

Plaintiff and Appellant,

v.

HOLLYWOOD CHAMBER OF COMMERCE,

Defendant and Respondent.

No: S281761

Court of Appeal, Second Appellate District, Division Two - No. B321734

Before: GUERRERO, Chief Justice.

The petition for review is denied.

Corrigan, J ., was absent and did not participate.

/s/ Guerrero
Chief Justice

APPENDIX C:
THE ORDER BY THE CALIFORNIA COURT OF APPEAL ON AUGUST 22, 2023 DENIED THE PETITION FOR REHEARING (CASE NO. B321734, *ORA v. HOLLYWOOD CHAMBER OF COMMERCE*)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT DIVISION 2

SCOTT DOUGLAS ORA,

Plaintiff and Appellant,

v.

HOLLYWOOD CHAMBER OF COMMERCE,

Defendant and Respondent.

B321734

Los Angeles County Super. Ct. No. 21STCV23999

Before: ASHMANN-GERST, Acting P.J., CHAVEZ, HOFFSTADT, Judges.

THE COURT:

Petition for rehearing is denied.

/s/ Ashmann-Gerst
Ashmann-Gerst, Acting P.J.

/s/ Chavez
Chavez, J.

/s/ Hoffstadt
Hoffstadt, J.

APPENDIX D:
DECISION OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES ON MAY 17, 2022 SUSTAINED THE DEMURRER IN ITS ENTIRETY, WITHOUT LEAVE TO AMEND (CASE NO. 21STCV23999, *SCOTT DOUGLAS ORA V. HOLLYWOOD CHAMBER OF COMMERCE, ET AL.*)

THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
DEPARTMENT 58

SCOTT DOUGLAS ORA,

v.

HOLLYWOOD CHAMBER OF COMMERCE, ET AL.

Case Number: 21STCV23999

Before: Judge Bruce G. IWASAKI

Hearing Date: May 17, 2022

Case Name:
Scott Douglas Ora v. Hollywood Chamber of Commerce, et al.

Case No.: 21STCV23999

Matter: Demurrer with Motion to Strike

Calendar No: 15

Moving Party:

Defendant Hollywood Chamber of Commerce

Responding Party:

Plaintiff Scott Douglas Ora

Tentative Ruling:

The demurrer is sustained in its entirety, without leave to amend.

BACKGROUND:

Plaintiff Scott Douglas Ora filed a First Amended Complaint (FAC) against the Hollywood Chamber of Commerce (Chamber), Hollywood Chamber's Board of Directors, the Hollywood Walk of Fame, and the Walk of Fame Committee alleging breach of contract and negligence. Plaintiff also seeks injunctive relief.

The lawsuit concerns the award of a posthumous star on the Hollywood Walk of Fame that was allegedly offered to Plaintiff's grandfather. The FAC alleged that in 1988, Plaintiff's grandmother and actor Bob Hope (collectively, "Sponsors") submitted a Nomination Application to the Walk of Fame Committee to sponsor Plaintiff's grandfather, Leo Robin, for a star. (FAC, ¶¶ 20, 54, 68.) On June 28, 1990, Johnny Grant, then Chairman of the Committee, sent an acceptance letter of the nomination. (*Id.* at ¶ 60.) However, two conditions had to be met at the time: (1) a fee of $4,000 must be paid and (2) the recipient must schedule the ceremony within five-years; if not, a new application must be submitted. (*Id.* at ¶¶ 15-16, 56.)

Plaintiff's grandmother died in May 1989; Bob Hope died in July 2003. (FAC, ¶¶ 57, 64.) The acceptance letter from Mr. Grant was reportedly "returned to sender." (*Id.* at ¶ 62.)

Plaintiff alleged that he discovered the award of a posthumous star for his grandfather in July 2017. (FAC, ¶ 20.) In July 2018, he mailed a check of $4,000 to pay for the star under the terms in 1990, but which was rejected as a new application had to be submitted with the updated fee. (*Id*. at ¶¶ 36-37, 41.) The FAC alleged that a contract was formed after Mr. Grant sent a letter of acceptance to Plaintiff's Grandmother and Bob Hope in June 1990. (FAC, ¶ 69.)

This Court previously sustained a demurrer by Defendant Hollywood Chamber of Commerce as to all causes of action on February 22, 2022. The FAC was filed in March.

Defendant filed another demurrer and motion to strike in April 2022, making similar contentions as in its earlier demurrer – that there was no contract between the sponsors and the Chamber, any breach of contract claim is time-barred and uncertain due to Plaintiff's standing, and the Chamber did not owe Plaintiff a duty of care.

LEGAL STANDARD

A demurrer for sufficiency tests whether the complaint states a cause of action. (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.) When considering demurrers, courts read the allegations liberally and in context. The defects must be apparent on the face of the pleading or via proper judicial notice. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) A demurrer tests the pleadings alone and not the evidence or other extrinsic matters. Therefore, it lies only where the defects appear on the face of the pleading or are judicially noticed. (Code Civ. Proc., §§ 430.30, 430.70.) At the pleading stage, a plaintiff

need only allege ultimate facts sufficient to apprise the defendant of the factual basis for the claim against him. (*Semole v. Sansoucie* (1972) 28 Cal. App. 3d 714, 721.) A "demurrer does not, however, admit contentions, deductions or conclusions of fact or law alleged in the pleading, or the construction of instruments pleaded, or facts impossible in law." (*S. Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732 [internal citations omitted].)

DISCUSSION

Breach of Contract

Defendant argues that Plaintiff's grandmother's nomination "offer" was revoked upon her death, that it did not constitute an offer, that the letter from Mr. Grant was not an "acceptance," that the FAC fails to allege performance by the grandmother, there is no privity between Plaintiff and the Sponsors, and the claim is time-barred. In addition, Defendant asserts that Plaintiff lacks standing because he was not a party to any contract.

Plaintiff contends that the acceptance letter by Mr. Grant created a binding contract. He argues that the death of his grandmother did not revoke the offer because Bob Hope was still alive at that time as a co-Sponsor. Plaintiff primarily cites to law review articles for the proposition that the death of an offeror does not terminate the offer. He also argues that Defendant breached the contract by not re-sending the acceptance letter to Bob Hope.

A breach of contract requires sufficient facts to establish: (1) existence of a contract between the

parties; (2) plaintiff's performance or excuse for non-performance; (3) defendant's breach; and (4) damages to plaintiff from the breach. (*Wall Street Network, Ltd. v. New York Times Co.* (2008) 164 Cal.App.4th 1171, 1178.)

"An essential element of any contract is the consent of the parties, or mutual assent. [Citations.] Mutual assent usually is manifested by an offer communicated to the offeree and an acceptance communicated to the offeror. [Citations.] ""An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it."' [Citations.]' [Citation.] The determination of whether a particular communication constitutes an operative offer, rather than an inoperative step in the preliminary negotiation of a contract, depends upon all the surrounding circumstances. [Citation.] The objective manifestation of the party's assent ordinarily controls, and the pertinent inquiry is whether the individual to whom the communication was made had reason to believe that it was intended as an offer." (*Donovan v. Rrl Corp*. (2001) 26 Cal.4th 261, 270-271.)

However, "'[p]reliminary negotiations or an agreement for future negotiations are not the functional equivalent of a valid, subsisting agreement. "A manifestation of willingness to enter into a bargain is not an offer if the person to whom it is addressed knows or has reason to know that the person making it does not intend to conclude a bargain until he has made a further manifestation of assent."'" (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1389.)

Plaintiff's entire argument relies upon the theory that the letter submitted by the Sponsors constituted an offer in the first instance. The Court disagrees with that notion. Plaintiff acknowledges that Defendant receives an average of two hundred nomination applications per year. (FAC, ¶ 13.) The decision to approve a nominee is "entirely within the Chamber's discretion." (FAC, Ex. 18.)[1] The nomination does not constitute the "manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." (*City of Moorpark v. Moorpark Unified School Dist.* (1991) 54 Cal.3d 921, 930.) This is especially true given that there are conditions precedent to receiving the star. (See Rest.2d Contracts, § 26 ["A manifestation of willingness to enter into a bargain is not an offer if the person to whom it is addressed knows or has reason to know that the person making it does not intend to conclude a bargain until he has made a further manifestation of assent."].) Plaintiff admits that there is a $40,000 fee and that a ceremony be held on an agreed upon date and time. (FAC, ¶ 56.) Thus, the Court views the nomination as a "'mere invitation to others to make offers,'" rather than constituting an offer itself. (*City of Moorpark*, *supra*, 54 Cal.3d at p. 931.)

Instead, the letter from Mr. Grant appears to be the initial offer itself because the Chamber has accepted the nomination and expressed willingness to

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1 Plaintiff only provides the nomination form for 2019 candidates. Presumably, the form in 1988 contained similar language.

grant the star, contingent upon the fee being paid and scheduling of the ceremony.

Since the Court finds that the acceptance letter constituted an offer to the Sponsors, the FAC fails to indicate that there was acceptance by the Sponsors. (Civ. Code § 1585.) Thus, the FAC has not sufficiently pled the existence of a contract.

Furthermore, Plaintiff has failed to address the statute of limitations issue that was previously mentioned by the Court: "Plaintiff states that because he only discovered the acceptance in 2017, California's discovery rule should delay tolling of the statute of limitations until his cause of action was discovered. However, no such rule exists delaying Plaintiff's need to perform on their obligations under the contract." Accordingly, even if there was a contract, it would be time-barred by the statute of limitations of four years. (Code Civ. Proc., § 337, subd. (a).) Plaintiff still provides no authority that would exempt him from the statute of limitations.

Plaintiff's reliance on Bob Hope being alive from 1988 through 2003 as a co-sponsor creates another flaw in his reasoning. He has no privity, standing, or any other sort of relationship with Bob Hope.

> Even assuming there is a contract, Plaintiff has not sufficiently pled performance or excuse for nonperformance.

A condition precedent is an event that must be performed before some right accrues or some act must be performed. (Civ. Code, §§ 1434, 1436.) Plaintiff has the burden to show that the condition precedent has occurred. (*Consolidated World Investments, Inc. v. Lido Preferred Ltd.* (1992) 9 Cal.App.4th 373, 380;

Richman v. Hartley (2014) 224 Cal.4th 1182, 1182 ["a party's failure to perform a condition precedent will preclude an action for breach of contract."].)

Again, even if the Court were to accept that the 1988 letter constituted an offer, the FAC concedes that there were two condition precedents that must be met before the Chamber had any obligation to install the star: payment of the fee and scheduling of the ceremony. (FAC, ¶ 56.) Plaintiff has failed to allege that he performed either of these conditions in a timely manner. He attempts to argue that he submitted the $4,000 belatedly to the Chamber in July 2018; however, as his own FAC concedes, the recipient must schedule the ceremony within two years. Otherwise, it will expire, and a new application must be submitted. (FAC, ¶ 16.)

This Court previously noted that Plaintiff himself alleged breach by the Sponsors, or, at the least, a failure to perform:

> "However, the complaint further states that Defendants' purported acceptance in 1990 came with the following two conditions: 1) The recipient pay $4,000 dollars, and 2) that an award ceremony be scheduled by the recipient within five years of the award, or the application must be resubmitted. (Complaint p. 4.) Plaintiff alleges that he completed said requirement in 2018. As Plaintiff alleges that he completed his end of the bargain 13 years after the deadline of 1995 (five years after the award was granted), it was in fact Plaintiff that breached the contract per their complaint. Plaintiff's remedy is also luckily included in the terms

> of his complaint: resubmit an application. As Defendants correctly point out, Defendants' acceptance was conditioned on payment and scheduling of a ceremony. A lack of performance on those requirements excuses a lack of performance by Defendants."

While Plaintiff seemingly tries to argue that the Defendant first breached the agreement by "placing the acceptance letter in its files where it has since remained in the Hollywood Chamber's records ever since and made no attempt to send it," this does not constitute an excuse for nonperformance of the conditions precedent for the contract to take effect initially. In addition, this argument would suggest that the Sponsors never accepted the offer to begin with, which undermines the existence of any contract at all. In other words, there are two theories here: (1) the nomination was an offer, which was accepted by Mr. Grant, with the two conditions precedent, or (2) Mr. Grant's letter constituted an offer, to which there was no acceptance. Under the former theory, which is what the FAC asserts, Plaintiff has failed to show performance of the two conditions precedent. Under the latter theory, there is no contract at all.

The Court concludes that there is no likelihood that Plaintiff can amend the complaint once again to state a cause of action. There is no contract; the suit is late; Plaintiff lacks standing. Plaintiff's breach of contract claim has failed to allege a claim on which the Court can grant relief, and the Demurrer is sustained without leave to amend.

Negligence

To plead a cause of action for negligence, one must allege (1) a legal duty owed to plaintiffs to use due care; (2) breach of duty; (3) causation; and (4) damage to plaintiff. (*County of Santa Clara v. Atlantic Richfield Co.* (2006) 137 Cal. App. 4th 292, 318.)

Plaintiff did not amend his complaint to address the Court's prior concerns:

> "Plaintiff further alleges that Defendants acted negligently in not attempting to re-send the letter informing Plaintiff's grandmother of the award in 1990. (Complaint p. 23-25.) Negligence claims require a special relationship between the parties in which a duty is owed to the injured party. (*Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 398.) Plaintiff alleges that a duty was created by the formation of the contract. (Complaint p. 23-25.) However, as discussed above, no such contract was formed, meaning that Plaintiff has alleged no duty for Defendants to violate."

Plaintiff has still not shown the existence of a contract and even if he has, there are insufficient facts to demonstrate performance of the conditions precedent. That is, there is no duty, because there was no contract. Plaintiff's declaration under Code of Civil Procedure section 377.30 that the cause of action survives his grandmother does not assist him when no contract existed between the Sponsors and the Chamber.

Plaintiff's recitation of the implied promise of good faith and fair dealing does not resolve this issue. The duty of good faith and fair dealing presupposes

the existence of a contract to begin with, which Plaintiff has failed to plead here given the lack of performance.

Finally, Plaintiff appears to argue that the Chamber owed him a duty of care. (FAC, ¶ 85.) However, he again alleges this duty in the context of the contract, stating that Defendant "breached its duty of care to assist Ora several times when he attempted to engage with it regarding Robin's star." (*Id*. at ¶ 86.) Thus, because Plaintiff has not alleged that Defendant violated a duty that arose separate from the alleged contract, the cause of action for negligence has not been sufficiently pled. (*Erlich v. Menezes* (1999) 21 Cal.4th 543, 554 ["If every negligent breach of a contract gives rise to tort damages the limitation would be meaningless, as would the statutory distinction between tort and contract remedies."].) Moreover, Plaintiff has failed to articulate how this defect can be corrected. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.)

Accordingly, the demurrer to the cause of action for negligence is sustained without leave to amend.

Motion to Strike

Because the Court has sustained Defendant's Demurrer without leave to amend in its entirety, the motion to strike is denied as moot.

CONCLUSION

The Court sustains the demurrer without leave to amend. Defendant is ordered to give notice of this ruling.

[1] Plaintiff only provides the nomination form for 2019 candidates. Presumably, the form in 1988 contained similar language.

APPENDIX E:
A TRANSCRIPT OF THE ORAL ARGUMENT IN THE COURT OF APPEAL ON JULY 20, 2023 (CASE NO. B321734, *ORA v. HOLLYWOOD CHAMBER OF COMMERCE*)

IN THE COURT OF APPEALS OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION 2

SCOTT DOUGLAS ORA,

Plaintiff and Appellant,

v.

HOLLYWOOD CHAMBER OF COMMERCE,

Defendant and Respondent.

No. B321734

Before: The Honorable Victoria CHAVEZ, Associate Justice, Brian HOFFSTADT, Associate Justice, Judith Meisels ASHMANN-GERST, Associate Justice, Lui ELWOOD, Administrative Presiding Judge.

JUSTICE: The first case is Ora versus Hollywood Chamber of Commerce. Justice Ashmann-Gerst, do you have any preliminary statements you wish to make or questions?

JUSTICE ASHMANN-GERST: Is Mr. Ora on? He's on the phone?

JUSTICE: Yeah.

JUSTICE ASHMANN-GERST: I see you now. Thank you.

I would just very briefly say the problem that we see is that the—there was an offer that was never accepted. It was merely an offer in August, and we know it wasn't accepted. We know that the family didn't know about it. And that apparently the Chamber has heard—has offered to let you proceed at your current—at the current rate, so that's what I'd like to say at this time.

So Mr. Ora, it's your opportunity.

MR. ORA: Good morning, Justices. May it please the Court. Given what has just been shared with me, I'm going to pivot because it seems like that I now know what the concerns of the court are. And that appears to be that contract issue. So the major issues now are the contract and the what I consider there was a waiver.

I believe that there was an offer based on the application, and that it was accepted by the Hollywood Chamber when they accepted (inaudible). And they mirror each other—

JUSTICE ASHMANN-GERST: Justice Hoffstadt has a question, Mr. Ora.

JUSTICE HOFFSTADT: I'm going to just ask Mr. Ora, assume that I agree with you that there was an offer and acceptance, to me, the contract does still seem to say (inaudible) conditions precedent,

that basically you're entitled to have (inaudible) if you pay the fee and you have the ceremony within five years.

And those conditions that were originally part of that offer, part of that contract were made in 1990, and so there was no payment in the next five years, no ceremony in the next five years. Isn't there a failure of the conditions precedent even if we assume that there was a contract?

MR. ORA: Good question. And I put forth in the briefings that there was a waiver. When I had a conversation a year after I sent a letter to the Walk of Fame Committee, which I was asked to do by the Hollywood Chamber, after I discovered it on July 6th of 2018.

After I sent that letter, I followed up for a year with phone calls, emails. On July 17th of 2018, I finally got a response from Ana Martinez, who's with the Hollywood Walk of Fame. We had a conversation, and they said—they showed a willingness to proceed. They said, just give us the ceremony date, and once you give us the ceremony date, we can proceed forward. I gave them the ceremony date, and then they pulled out.

But when they said, send us a ceremony date, and I have documentation, that is a waiver, and it's a waiver under—it's Mosta Modez (phonetic), a 1944 case. In Mosta Modez, the standard was set that we still live with today that if a party relinquishes a right intentionally, will that consider right knowing all the facts, that is a waiver.

And the way you would look at to determine a waiver would be to look at the words used or the

conduct under Stephens & Stephens XII, LLC versus Fireman's Fund Insurance Company. And I believe that I set forth under the standards, under City of Ukiah, clear and convincing evidence that there was a waiver—not only is there a waiver, but only one conclusion can be drawn. There were no disputed facts and only one conclusion can be drawn.

Yes, Justice?

JUSTICE HOFFSTADT: I guess my question is with a waiver, did you plead waiver at any point? I mean, I know that you—you know, you've outlined what you believe to be the facts according to waiver, but if it's—as you know, we're sort of constrained by the pleadings that define the scope of issues.

Did you plead waiver in the—in the operative first amended complaint, and if so, where in that complaint?

MR. ORA: In the complaint, I put the words and the conduct. In my briefing, I believe I should be given the opportunity to amend, if necessary, and I (inaudible). In appendix A, I have an amendment regarding additional verbiage that I would add to the existing allegation to clarify that this was a waiver. And in my demurrer, I put that there was a waiver, and the opposition—my opposition to the demurrer.

JUSTICE ASHMANN-GERST: Mr. Ora, isn't it true that they are willing to go forward again, and that the only dispute at this point is the cost, the amount that they're seeking?

MR. ORA: Not at this point, but that was the big sticking point at the time.

JUSTICE ASHMANN-GERST: Mm-hmm.

MR. ORA: At this point, there is no conversation.

JUSTICE ASHMANN-GERST: There's been no conversation about it?

MR. ORA: Not—not recently. Not for—not since I brought litigation.

JUSTICE ASHMANN-GERST: Okay. Maybe—

MR. ORA: But there was a conversation that—

JUSTICE ASHMANN-GERST: Maybe you should try again to speak with them. Maybe that would be useful. I don't know, but maybe it would be.

MR. ORA: Thank you for your recommendation, Your Honor.

JUSTICE ASHMANN-GERST: Okay.

JUSTICE HOFFSTADT: Is there anything further you want to add, Mr. Ora, to the—to your brief or to the discussion that we've had so far today?

MR. ORA: Yes. I'd like to just elaborate a little more about the contract issue.

Just one of the Justices, respectfully, I forget which one, knows that possibly there was an introduction, and the introduction does not make sense that was proposed by the Court. I don't know if that's a concern of the Court. If it's not, I won't address it.

But I think the key is I only have to define a reasonable interpretation, and I provided a

reasonable interpretation. And even the Court said there's two—there's two ways to look at this, either an acceptance and a—an offer or what they call the introduction theory. And so I provided a reasonable interpretation under Marzec versus California Public Employees Retirement System.

So I just want to add also, I also have not just an amendment A but an amendment B if there's a waiver. There's two statutory pair of periods is the—the big issue was the statute. And if there's a waiver, the statutory period is determined under —under a case called Wind Dancer versus Walt Disney Pictures. And in that case, which is very similar to the case—the instant case, they look at two statutory—at two limitation periods. One, statutory. One, contractual.

I filed the complaint under the statutory period when I discovered the start on July 6th, 2017, which could expire four years later, on July 6th, '21. I filed a complaint on June 29th; therefore, it was not delinquent with the waiver.

Under the contractual period, it would be based on when the Hollywood Walk of Fame backed out of the deal on July 19th of 2018; therefore, by looking at the contractual period, which the trial court wanted to do, it actually ends up lengthening the period a year later, ironically.

So the—I added an amendment—amendment and Appendix B, where I added—I already had discussed in my complaint the allegation regarding the statutory period. I added in amendment B the contractual period, just so that it would be complete, and I just wanted to add that.

Are there any other questions? I really would like to address any concerns you have. Was I able to address the—the—this issue of that condition-two conditions precedent and waiver, on how that would mean that there was not a—it was put forth that the sponsors didn't (inaudible), but that's not true with a waiver.

JUSTICE ASHMANN-GERST: Yeah. We understand your position. And also don't forget we did have your briefs that you submitted, so yes, we're very aware how you—how you frame the issues. We appreciate the work that you did on this.

MR. ORA: And with the waiver, I also have standing, because—

JUSTICE ASHMANN-GERST: We're not—we're not challenging—we're not discussing—we're not challenging that issue at this point. The standing is not—is not an issue that, you know, we need to deal with.

MR. ORA: Okay.

JUSTICE ASHMANN-GERST: So we don't have any more questions of you, so I think at this point we'll take a look at the case. We understand your position and we will carefully evaluate it. But thank you very much.

MR. ORA: Thank you very much. Please do take a look at the waiver that I addressed as I addressed it in the reply. It's pretty—

JUSTICE ASHMANN-GERST: We will.

MR. ORA: Thank you very much.

JUSTICE ASHMANN-GERST: Thank you. Yes.

MR. ORA: I appreciate it very much.

JUSTICE ASHMANN-GERST: All right. Ora versus Hollywood Chamber of Commerce is submitted.

Thank you.

(WHEREUPON, the proceedings concluded.)

APPENDIX F:
PETITION FOR REHEARING FILED IN THE COURT OF APPEAL ON AUGUST 15, 2023 (CASE NO. B321734, *ORA v. HOLLYWOOD CHAMBER OF COMMERCE*)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION TWO

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

Petitioner 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

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PETITION FOR REHEARING

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To The Honorable Administrative Presiding Justice And Associate Justices Of The Court Of Appeal For The Second Appellate District Of The State Of California

I. Introduction

This is a petition for rehearing by the Court of Appeal's after it affirmed the judgment of dismissal after the trial court sustained a demurrer without leave to amend. The grounds for seeking rehearing include that the Court of Appeal's decision contains 1) material omissions and misstatements of facts and 2) material misstatements of facts and unfounded contentions and 3) the decision is based upon a material mistake of law and 4) misinterpretation of the Robin✪ Contract. As a result, there are critical

mistakes in the Court of Appeal's decision so the Appellant respectfully requests for rehearing in the Court and asking the court to correct its mistakes.

The Appellant has long argued that there is a contract between Mrs. Robin and actor Bob hope and the Hollywood Chamber of commerce, the Robin✪ Contract, 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's 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) and 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's has affirmed the trial court's judgment on nothing that the trial court made any determination.

The Court of Appeal's 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 precedent. The issue of the waiver was never fleshed out earlier because the trial court failed to acknowledge, overlooked and /or avoided this salient legal argument. The Respondent finally had broken its silence on the waiver 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.

Assuming the Court of Appeal's Court can decide on different grounds, even those not relied on by the trial court, the Appellant should be given an opportunity to argue and address the grounds. 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. This is why a petition for rehearing should be granted in this case.

There is a central error that is running through most of the grounds for rehearing which follow. The Court of Appeal's decision contains a material misinterpretation of the Robin✪ Contract covered in the Fifth Grounds *infra* 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 *infra* 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 *infra* on pp. 20-21. This further results in the Court of Appeal's

decision containing many other mistakes. The Appellant believes that these mistakes have resulted in an erroneous decision by the Court of Appeal and that correcting the errors would lead to the reversal of the superior court's decision it its entirety.

II. Grounds for Rehearing

A. The First Grounds: There is a defect in the appeals process because the Court of Appeal's has affirmed the trial court's judgment on nothing that the trial court made any determination

First, as aforementioned above, 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's has affirmed the trial court's judgment on nothing that the trial court made any determination.

The Court of Appeal's resolved the Appeal strictly on the grounds that Appellant cannot establish performance of the contract's conditions precedent or a viable excuse for nonperformance. (Ct. App. Dec., p. 8) Although the trial court put this forth, the trial court focused only on that the sponsors cannot establish performance of the contract's conditions precedent or a viable excuse for nonperformance.

The Court of Appeal's focus is making a determination for the first time that Appellant, himself, cannot establish performance of the contract's conditions precedent or a viable excuse for nonperformance. Therefore, there is a defect in the appeals process because the Court of Appeal's has affirmed the trial

court's judgment on nothing that the trial court made any determination.

Assuming the Court of Appeal's Court can decide on different grounds, even those not relied on by the trial court, the Appellant should be given an opportunity to argue or address the grounds. This is why a petition for rehearing should be granted in this case.

B. The Second Grounds: The Court of Appeal's decision contains a material omission and misstatement of fact regarding reinstatement of the star

Second, in the section Ora's Campaign to Reinstate Robin's Star, the Court of Appeal's decision contains a material omission and misstatement of fact with this statement: "In September 2018, Leon Gubler (Gubler), then the President and Chief Executive Officer of the Chamber of Commerce, informed Ora that '[a]s [Martinez] has explained to you, we have existing protocols that must be followed to reinstate star approval.' Per those protocols, Gubler said that Ora's 'request[] [for] the fee to be reduced to $4,000 . . . is not possible. The committee will never approve the reinstatement unless there is a sponsorship in place to pay the fee at the current rate.'" (Ct. App. Dec., p. 4) This quote of Gubler has a serious omission and taken out of context.[1]

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[1] This is the complete email on September 5, 2018 that Leron Gubler sent to Ora: "I'm responding to your latest inquiry to Ana Martinez, our Walk of Fame Producer. Ana has briefed me on your request to reinstate the approval of a star for Leo Robin. As Ana has explained to you, we have existing protocols that must be followed to reinstate star approval. The earliest this can be done is at next year's Walk of Fame Committee meeting in June

The omissions include "The earliest this can be done is at next year's Walk of Fame Committee meeting in June 2019. . . . There would be no purpose in our bringing this to the committee without that commitment. The application deadline for consideration by the committee is May 31, 2019, so you still have plenty of time to work on finding a sponsor. Please stay in touch with Ana, and advise her when you are able to find a sponsor. Then we would be happy to present it to the committee again."

When understood in its full context, this means that the Appellant would be required to resubmit a nomination application. A nomination application is required for the sponsorship as explained by Gubler which is more fully explained by Martinez in the Fifth Grounds *infra* on pp. 14-15. In other words, this is like the Appellant starting the nomination process all over again with no assurance of a star even with a sponsor.

The Court of Appeal's misunderstanding of the nomination process with the material omission and misstatement has resulted in the public having the

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2019. I understand that you are requesting the fee to be reduced to $4,000, which was the fee that was in place back in 1990, when Mr. Robin was first approved. Unfortunately, that is not possible. The committee will never approve the reinstatement unless there is a sponsorship in place to pay the fee at the current rate. There would be no purpose in our bringing this to the committee without that commitment. The application deadline for consideration by the committee is May 31, 2019, so you still have plenty of time to work on finding a sponsor. Please stay in touch with Ana, and advise her when you are able to find a sponsor. Then we would be happy to present it to the committee again. Best regards, Leron Gubler, President & CEO, Hollywood Chamber of Commerce" (Ora's Comp., p. 12, Alleg. no. 41)

wrong impression following the decision as evidenced by an article entitled *Court of Appeal: Offer to Install Lyricist on Hollywood Walk of Fame Lapsed* appearing on August 3, 2023 in the Los Angeles newspaper Metropolitan News-Enterprise with this false statement: "The man who wrote the lyrics to the Oscar-winning song, "Thanks for the Memory," sung by Bob Hope and Shirley Ross in the film, "The Big Broadcast of 1938," and came up with words to numerous other memorable tunes used in motion pictures and television, will have a star on the Hollywood Walk of Fame only if somebody comes up with $40,000, in light of a decision by the Court of Appeal for this district." (A copy of this article is attached to this petition as Appendix A.)

Nothing could be further from the truth especially in light of this errant decision by the Court because Robin would first have to be nominated and then awarded the star. Robin's nomination application would be resubmitted and considered at the annual meeting with over 200 applications with sponsors. There is no guaranty of a star even with a sponsor. What could possibly go wrong? Ask the 90% of nominees who are disappointed every year.

C. The Third Grounds: The Court of Appeal's decision contains a material omission and misstatement of fact by the title for section II as Ora's Campaign to Reinstate Robin's Star

Third, the Court of Appeal's decision contains a material omission and misstatement of fact by the title for section II as Ora's Campaign to Reinstate Robin's Star. (Ct. App. Dec., p. 3.) To describe it as

Ora's campaign is inappropriate because this is a pejorative term often used by sponsors to get a star and or raise money for a star. Ora made it known in an interview with the Los Angeles Times that he would not raise money for the star.

Rather, Ora attempted to confer with the Hollywood Chamber to install Robin's✪ and/or to honor its obligation to install Robin's✪. There's no reason to use a disparaging term to describe Ora's efforts to honor his grandfather.

D. The Fourth Grounds: The Court of Appeal's decision contains material omissions and misstatements of facts regarding the ceremony and notifying Bob Hope or Robin's surviving relatives

Fourth, the Court of Appeal's decision contains a material omission and misstatement of fact regarding the ceremony. In the section Ora's Campaign to Reinstate Robin's Star, the Court of Appeal's decision contains a material omission and misstatement of fact with this statement: "In July 2018, Martinez told Ora that she 'd[id]n't know [if] that [reinstatement] will happen as [the star] has to be sponsored and you said you didn't want to have a ceremony or the fanfare that comes with the event which is why we do this.' A few days later, before the Chamber of Commerce had communicated any decision about the potential reinstatement, Ora wrote a second letter informing Martinez that he now wanted to have a star-studded dedication ceremony that he hoped would be 'a grand celebration' with an 'exceptional turnout.'" (Ct. App. Dec., p. 3)

It sounds like the Appellant changed his mind on the ceremony. The Court unfairly portrayed what took place by leaving out this part said by Ora, "Ora was confused. He never said he didn't want to have a ceremony."[2] (Ora's Comp., p. 10, Alleg. no. 33) The Court has undeniably made the Appellant look like he changed his mind and responsible for the delay in the reinstatement of the star. The Appellant came into this Court believing that Lady Justice is blindfolded because justice is unbiased.

Further, the Court of Appeal's decision contains a material omission and misstatement of fact regarding notifying Bob Hope or Robin's surviving relatives. The pleading contained a news story by Ashley Lee from the Los Angeles Times on May 23, 2019, *Leo Robin never got his Walk of Fame star. Now his grandson is fighting for it*, as Exhibit 9, which reported: "A mistake it was not, noted Martinez to The Times. Back in 1989, before the ease of email and cellphones, honorees were not as repeatedly and actively pursued to secure their star as they are today. That means no follow-up letters and no calls to co-signers, even if Robin's application was cosigned by Hope, who has four stars on the Walk." The Court of Appeal's decision put its rosy spin on this as "Per the Chamber of

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[2] This is the complete email from Ms. Martinez where the Court of Appeal's left out the last part: "'On July 10, 2018, that same day, almost exactly one year since Ora had last heard from Ms. Martinez, he received the following email, 'Hi Scott, I resent (sic) this to my boss. I don't know that it will happen as it has to be sponsored and you said you didn't want to have a ceremony or the fanfare that comes with the event which is why we do this. Let's see what he says.' Ora was confused. He never said he didn't want to have a ceremony." (Ora's Comp., p. 10, Alleg. no. 33)

Commerce's practices at the time, no further attempts were made to notify Hope or Robin's surviving relatives." (Ct. App. Dec., p. 3)

E. The Fifth Grounds: The Court of Appeal's decision contains a material misinterpretation of the Robin✪ Contract regarding the conditions precedent where purportedly the Robin's star award had lapsed

Fifth, the Court of Appeal's decision contains a material misinterpretation of the Robin✪ Contract. The conditions precedent of the Robin✪ Contract are defined in the application as follows: "1. It is understood that the cost of installing a star in the Walk of Fame upon approval is $40,000** and the sponsor of the nominee accepts the responsibility for arranging for payment to the Hollywood Historic Trust, a 501(c)3 charitable foundation. 2. It is further understood that, should the abovenamed nominee be chosen for placement in the Walk of Fame, said nominee guarantees to be present at the dedication ceremonies on a date and time mutually agreed upon with the Walk of Fame Committee. An induction ceremony must be scheduled within two years of June selection date, or the nomination must be re-submitted." Back in the year 1990, the cost was $4,000 (Verified in allegation no. 15) and the recipient has up to five years to schedule their ceremony (Verified in allegation no. 16)." (Ora's Comp., p. 18, Alleg. no. 56)

Based on these terms, if the nomination must be re-submitted, then the Robin's star award had lapsed. The converse is true that if the nomination is not required to be resubmitted, then Robin's star award had not lapsed.

An indicator of a lapse would be if a nomination application is required like in this email Ms. Martinez sent to Ora on July 23, 2018 explaining that "Robins star lapsed" as follows:, "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. Sincerely, Ana Martinez, Vice President, Media Relations" (Appellant's FAC, Alleg. no. 37, p. 11, Exhibit 6)

There was no contemplation of the submission of an application on July 17, 2018 when Ms. Martinez sent Ora instructions on how to proceed forward, "Please let me know when you would like to do the ceremony and once you give me a date we can move forward." These instructions by Ms. Martinez are like for any run-of-the-mill honoree who was awarded a star and pursuant to the Robin✪ Contract. This shows that at this time, Robin's star award had not lapsed because Ms. Martinez did not state that it had lapsed and the nomination was not required to be resubmitted.

Most importantly, these instructions Ms. Martinez sent Ora on how to proceed prove there was a waiver. 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 after

the five year expiration period, an intention not to enforce the contractual limitations period.

What happened afterwards where 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 cancelled the ceremony should have no bearing on the determination of a waiver. The disagreement on the price of the star should also have no bearing on the determination of a waiver.

F. The Sixth Grounds: The Court of Appeal's decision contains a material misstatement of fact and unfounded contention regarding the Robin's star award had lapsed

Sixth, the Court of Appeal's decision contains a material misstatement of fact and unfounded contention regarding the Robin's star award had lapsed. In the Court's analysis regarding the waiver by the Hollywood Chamber of the conditions precedent, the Court relies on this material misstatement of fact and unfounded contention, as follows: "Instead, its representatives consistently stated that Robin's star award had lapsed and would need to be reinstated according to the Walk of Fame Committee's policies, and that Ora would need to pay a sponsorship fee at contemporary rates." (Ct. App. Dec., p. 11) This contention is based on its flawed theory that that Robin's star award had lapsed in this false statement, "Instead, its representatives consistently stated that Robin's star award had lapsed. . . . "

On the other hand, the Appellant's theory of events is supported by a reasonable interpretation of the Robin✪ Contract which the Court of Appeal's

decision would assume was a valid contract. Accordingly, the determination should be based on the terms of the Robin✪ Contract and not self serving policies of the Hollywood Chamber. The Appellant will show his theory of the events which demonstrates his consistency in his pleadings.

The Robin✪ Contract provides in term no. 2, in part, " . . . An induction ceremony must be scheduled within two years of June selection date, or the nomination must be re-submitted." (*Supra* in the Fifth Grounds on pp.15-16) The acceptance letter provides further instructions, "Please contact Ana Martinez . . . at the Hollywood Chamber of Commerce . . . and make arrangements for . . . ceremony" (Ora's Comp., p. 126, Exhibit 20.)

After Ora contacted Ms. Martinez, which is required by the instructions in the acceptance letter, Ms. Martinez sent Ora instructions on July 17, 2018 on how to proceed forward, "Please let me know when you would like to do the ceremony and once you give me a date we can move forward." This is in accordance with the Robin✪ Contract. There was no mention that "Robin's star award had lapsed. . . . " In fact, these instructions by Ms. Martinez regarding installment of the Robin✪ with a ceremony incontrovertibly demonstrate that Robin's star award did not lapse. Further, the fact that nomination was not required to be resubmitted also shows that Robin's star award had not lapsed.

Then "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." The fee is accordance with the terms under the Robin✪ Contract.

Next, Martinez reversed, about-face, her decision by 180 degrees and "On July 23, 2018, a further breach of the Robin✪ Contract by the Hollywood Chamber occurred when 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 cancelled the ceremony . . . "

There is a huge shift from how Martinez wanted to proceed with installment of the Robin✪ with a ceremony to claiming that "Robin's star award had lapsed. . . . " This demonstrates that the claim by the Court of Appeals that "Instead, its representatives consistently stated that Robin's star award had lapsed . . . " (Ct. App. Dec., p. 11.) is patently false.

G. The Seventh Grounds: The Court of Appeal's decision contains a material misstatement of fact and an unfounded contention regarding that the Appellant cannot establish performance of the contract's conditions precedent or a viable excuse for nonperformance

Seventh, the Court of Appeal's decision contains a material misstatement of fact and an unfounded contention regarding that the Appellant cannot establish performance of the contract's conditions precedent or a viable excuse for nonperformance. (Ct. App. Dec., p. 8.)

The Appellant demonstrated in his briefs that he fulfilled performance of the Robin✪ Contract's conditions which refutes the Court of Appeal's unfounded contention otherwise. Appellant pleaded in allegation no. 73 that he fulfilled performance of the Robin✪ Contract's conditions[3], as follows:

> 73. 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. Ora did everything in his power to fulfill performance of the Robin✪ Contract as quickly as possible following Ora's discovery of Robin's star on July 6, 2017 (delayed by the Hollywood Chamber's actions and inactions) which included a scheduled induction ceremony and Ora's tendered payment of the original offer of $4,000 in accordance with the Robin✪ Contract.

[3] The Appellant's pleadings including the proposed amendments show there is a waiver by the Hollywood Chamber of the conditions precedent with a five year expiration date and that the Appellant performed the conditions which had no specified expiration date.

H. The Eighth Grounds: The Court of Appeal's decision contains a material misstatement of fact and unfounded contention regarding that the FAC does not plead a legally valid excuse for non-performance of the conditions during the contractual period

Eighth, the Court of Appeal's decision contains a material misstatement of fact and unfounded contention regarding that the FAC does not plead a legally valid excuse for nonperformance of the conditions during the contractual period. (Ct. App. Dec., p. 10.)

In the event that Ora's tendered payment of the original offer of $4,000 which was then returned to Ora would be considered nonperformance of the conditions (which the Appellant disagrees), then this would be deemed an excuse for nonperformance. The Appellant showed in his briefs a legally valid excuse for nonperformance of the conditions during the contractual period even though he did not use the word excuse which refutes the Court of Appeal's unfounded contention otherwise. Appellant pleaded in allegation no. 74 a legally valid excuse for nonperformance of the conditions during the contractual period, as follows:

> 74. On July 23, 2018, a further breach of the Robin✪ Contract by the Hollywood Chamber occurred when 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 cancelled the ceremony as stated in her letter she wrote to him: "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. Sincerely, Ana Martinez, Vice President, Media Relations."

I. The Ninth Grounds: The Court of Appeal's decision contains a material misstatement of fact and unfounded contention regarding that the Hollywood Chamber did not waive performance of the conditions precedent

Ninth, 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.'" (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 (*supra* on pp. 14-15) and a reasonable interpretation of the FAC to show that Robin's star award had not lapsed in the Sixth Grounds (*supra* on 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.)

J. The Tenth Grounds: The Court of Appeal's decision is based upon a material mistake of law because the Appellant cited many cases with authority to support finding that the Hollywood Chamber waived the conditions precedent

Tenth, the Court of Appeal's decision is based upon a material mistake of law because the Appellant cited many cases with authority to support finding that the Hollywood Chamber waived the conditions precedent.

The Court of Appeal's claim "And the cases Ora does cite to support finding waiver are inapposite" (Ct. App. Dec., p. 12.) is baseless. This false claim is

accompanied with citing two cases. First, the court cites "(*Galdjie v. Darwish* (2003) 113 Cal.App.4th 1331, 1339 [describing cases in which a party's "'tacit approval'" of alternate payment plans or express acceptance of untimely payments waived performance]" (Ct. App. Dec., p. 12.) The Appellant still believes *Galdjie v. Darwish* supports his case as explained in the Eleventh Grounds *infra* on p. 23.

Second, the court also cites "*Wind Dancer Production Group v. Walt Disney Pictures* (2017) 10 Cal.App.5th 56, 78–81 [a party that approves sporadic tolling agreements during a contractual period of limitations may waive the right to enforce the original period of limitations].)" (Ct. App. Dec., p. 12.) The Appellant asserts that *Wind Dancer Production Group v. Walt Disney Pictures* is strong legal authority to support his case. *In Wind Dancer Production Group v. Walt Disney Pictures*, the court of appeal reversed because Disney waived a contractual limitations period due to the incontestability clause because of the prior failure to enforce the incontestability clause.

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.

The Appellant cited many other cases with authority to support finding that the Hollywood Chamber waived the conditions precedent. The 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) Further, 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 Appellant has proved a "waiver of a right . . . by clear and convincing evidence" (*City of Ukiah v. Fones* (1966) 64 Cal.2d 104, 107-108).

K. The Eleventh Grounds: The Court of Appeal's decision contains a material omission and misstatement of fact and is based upon a material mistake of law because it distorted Appellant's argument regarding the Hollywood Chamber waived the conditions precedent

Eleventh, the Court of Appeal's decision contains a material omission and misstatement of fact and is based upon a material mistake of law because it distorted Appellant's argument regarding the Hollywood Chamber waived the conditions precedent.

The Court of Appeal's contends, "On appeal, Ora argues that the Chamber of Commerce waived performance of the conditions precedent by 'continuing to deal with [him] after the dates specified in the contract.'" This argument fails both procedurally and substantively." This quote was taken out of context with no reference where this quote by Ora was taken from.

The Appellant made an analogy in his reply brief, "The Defendants waived performance of the conditions precedent and waived the time provisions by continuing to deal with Plaintiff after the dates specified in the contract based on the precedent of *Galdjie v. Darwish* (2003) 113 Cal.App.4th 1331, 1339." (Appel. Reply Brief, p. 21) The court in *Galdjie v. Darwish* said, "(2) Applying this rule to the present case, the trial court found that Barbara Darwish waived the time provisions by continuing to deal with respondent after the dates specified in the contract." (*Galdjie v. Darwish* (2003) 113 Cal.App.4th 1331, 1340.) This was meant to be an analogy and does support Appellant's argument but is a far cry

from the complete argument the Appellant made in his briefs and pleadings.

L. The Twelfth Grounds: The Court of Appeal's decision is based upon a material mistake of law because procedurally, the FAC did specifically allege that the Hollywood Chamber waived the conditions precedent

Twelfth, the Court of Appeal's decision is based upon a material mistake of law because procedurally, the FAC along with the proposed amendments did specifically allege that the Hollywood Chamber waived the conditions precedent of the Robin✪ Contract. (*Hale v. Sharp Healthcare* (2010) 183 Cal.App.4th 1373, 1388 ["'[E]xcuses must be pleaded specifically.' [Citation.]"].)

The Court of Appeal's claim that the FAC did not specifically allege that the Hollywood Chamber waived the performance of the conditions is unfounded. (Ct. App. Dec., p. 10.) The Appellant pleaded specifically that the Hollywood Chamber waived the conditions precedent of the Robin✪ Contract in allegation no. 72 with the proposed changes in the amendment, as follows:

> 72. 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. Thanks, Ana 'Handling the stars for many moons!' Producer, Hollywood Walk of Fame, Vice President of Media Relations, Hollywood Chamber of Commerce." These words and conduct gave up the Hollywood Chamber's right to require the conditions precedent before having to perform on the Robin✪ Contract based on well-established case law. Accordingly, the Defendants waived performance of the conditions precedent.

M. The Thirteenth Grounds: The Court of Appeal's decision is based upon a material mistake of law because the Court has not properly applied the standard established in Goodman v. Kennedy to the proposed amendments

Thirteenth, the Court of Appeal's decision is based upon a material mistake of law because the Court has not properly applied the standard established in *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349 to the proposed amendments. In *Goodman v. Kennedy*, the court held that 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."

Appellant argued that the trial court abused its discretion by sustaining the demurrer without leave to amend, as he maintains that amendment could have cured the FAC. The Court of Appeal's makes this baseless contention: "This contention is not borne out by the minimal alterations he proposes on appeal, which would not have any substantive impact on the

fatal defects in the FAC." (Ct. App. Dec., p. 12, FN no. 8.)

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 and Appellant proposed an amendment to elaborate further regarding the Defendants waived performance of the conditions precedent

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. The Appellant absolutely met his burden based on the standard established in *Goodman v. Kennedy* to show "in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading." The proposed amendments of the Appellant would 100% cure the defect.

N. The Fourteenth Grounds: 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

Fourteenth, 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 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.

III. Prayer for Relief

WHEREFORE, Petitioner prays that this Court grant the petition. For the foregoing grounds including that the Court of Appeal's decision contains 1) material omissions and misstatements of facts and 2) material misstatements of facts and unfounded contentions and 3) the decision is based upon a material mistake of law and 4) misinterpretation of the Robin✪ Contract, there are critical mistakes in the Court of Appeal's decision so the Petitioner respectfully requests for re-hearing 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 lead to the reversal of the superior court's decision it its entirety.

The Court of Appeal's who generally reviews what has occurred during the trial court has made earnest efforts to analyze the Appellant's argument regarding the waiver by the Hollywood Chamber of the conditions precedent. During oral argument, the Court of Appeal's kept most of the grounds for its decision under wraps so that the Appellant was blindfolded. Given these special circumstances, it is imperative that this Petition for Rehearing should be

granted in this case. It would be an injustice for the Appellant not be given an opportunity to argue and address the grounds of the Court of Appeal's decision.

Executed in Sherman Oaks, California
Dated: August 14, 2023

Respectfully submitted,

By: /s/ Scott Douglas Ora
Scott Douglas Ora
In Pro Per

[Filed on August 15, 2023]

APPENDIX A TO PETITION FOR REHEARING:
NEWS ARTICLE:
OFFER TO INSTALL LYRICIST ON HOLLYWOOD WALK OF FAME LAPSED

Metropolitan News-Enterprise
Thursday, August 3, 2023
Page 3

Court of Appeal: ***Offer to Install Lyricist on Hollywood Walk of Fame Lapsed***

Chamber of Commerce Said in 1989 That Leo Robin, Who Wrote Words to 'Thanks for the Memory,' Other Memorable Songs, Would Be Honored if $4,000 Fee Were Paid; Opinion Says 2017 Tender Came Too Late

By a MetNews Staff Writer

Lyricist Leo Robin, center, is seen with his songwriting partner, composer Ralph Rainger, left, and crooner Bing Crosby,

> rehearsing their new songs—"It's June in January," "Love Is Just around the Corner" and "With Every Breath I Take"—for Crosby's upcoming 1934 movie, "Here Is My Heart."

The man who wrote the lyrics to the Oscar-winning song, "Thanks for the Memory," sung by Bob Hope and Shirley Ross in the film, "The Big Broadcast of 1938," and came up with words to numerous other memorable tunes used in motion pictures and television, will have a star on the Hollywood Walk of Fame only if somebody comes up with $40,000, in light of a decision by the Court of Appeal for this district.

The lyricist was Leo Robin, who died in 1984. Four years later, his widow, Cherie Robin, nominated him for a star on the Walk of Fame, with Hope—who used "Thanks for the Memories" (with the title generally converted from "Memory" to "Memories") as his theme song over a period of decades—as co-sponsor.

Favorable action was taken by the Hollywood Chamber of Commerce, which controls the placement of the dedicatory markers on Hollywood Boulevard and Vine Avenue. The chairman of its 1990 Walk of Fame Committee, KTLA television personality Johnny Grant (since deceased), sent a letter to the widow in 1989 advising that the posthumous honor was offered, but conditioned on payment of a $4,000 sponsorship fee and the conducting of a ceremony within five years.

Hope Not Advised

However, Cherie Robin had died a year before the letter arrived, and it was marked "RETURN TO SENDER." Upon its receipt by the Chamber of Commerce, pursuant to a practice then in effect, no

notification was provided to Hope or to the lyricist's survivors.

In 2017, Scott Douglas Ora, Leo Robin's grandson and trustee of his trust, learned of the honor and tendered a check for $4,000. It was returned with the explanation that the fee was now $40,000.

Ora protested, to no avail, that the fee should be the same for his grandfather as for others selected as the 1990 honorees.

He sued for breach of contract and put forth tort theories that were dependent on the existence of a contract. In pro per, Ora appealed from a judgment of dismissal after Los Angeles Superior Court Judge Bruce G. Iwasaki sustained a demurrer to his first amended complaint, without leave to amend.

Ashmann-Gerst's Opinion

Acting Presiding Justice Judith Ashmann-Gerst of Div. Two wrote the unpublished opinion affirming the judgment. She said:

"The award notification letter was sent to the address of Robin's sponsor in June 1990. Under Ora's theory of the contract, the conditions precedent needed to be performed by June 1995 to trigger the Chamber of Commerce's contractual obligations. Yet Ora admits that no one attempted to satisfy these conditions until he mailed the Chamber of Commerce a letter containing a proposed date for the dedication ceremony and a $4,000 check in July 2018, more than 23 years after the contract expired."

She said that, "[c]ritically," Ora "does not plead a legally valid excuse for nonperformance of these conditions during the contractual period," elaborating in a footnote:

"The mere failure of an offeror to actually receive a mailed letter communicating acceptance is not a legally valid excuse for nonperformance under California law."

Ashmann-Gerst declared:

"[T]he demurrer was properly sustained as to Ora's breach of contract claim because the conditions that triggered the Chamber of Commerce's alleged contractual duty were never performed. Moreover, because amendment cannot cure this defect, the demurrer was properly sustained without leave to amend."

The case is *Ora v. Hollywood Chamber of Commerce*, B321734. Reid E. Dammann and Violaine Brunet of Gordon Rees Scully Mansukhani were attorneys on appeal for the Hollywood Chamber of Commerce.

"Thanks for the Memory" was recorded over the years by such vocalists as Bing Crosby, Ella Fitzgerald, and Rosemary Clooney, with Frank Sinatra introducing a version in 1981 with new words. Robin also wrote the lyrics to "Diamonds Are a Girl's Best Friend," sung by Marilyn Monroe in the 1953 movie "Gentlemen Prefer Blondes," and to "Prisoner of Love," "Blue Hawaii," "Love Is Just around the Corner," and "For Every Man There's a Woman."

APPENDIX G:
PETITION FOR REVIEW FILED IN THE SUPREME COURT OF THE STATE OF CALIFORNIA ON SEPTEMBER 7, 2023 (CASE NO. S281761, *ORA v. HOLLYWOOD CHAMBER OF COMMERCE*)

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,

Petitioner 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

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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
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[TOC, TOA, Omitted]

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 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 Robin[4] was awarded a

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[4] *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

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 Fame, a 'designated historic cultural landmark[5],' and are

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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.)

[5] 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

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 cases and the entire judicial system. First, an important question of law is raised

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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.)

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 law[6]. 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

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[6] 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.

involved are of special importance, that their deprivation requires a greater burden to be surmounted, and that the judicial system operates in a coordinated fashion to ensure as much." The heightened review furthers legislative policy.

Appellate courts review the sufficiency of evidence to satisfy a heightened standard of proof for clear and convincing standard in a major portion of their workload. 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 precedent[7]. The issue of the waiver was never fleshed out earlier because the trial court failed to acknowledge, overlooked and /or avoided this salient legal argument. The Respondent finally had broken its silence on the waiver 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

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[7] 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.)

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 it 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 reinstated 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: /s/ Scott Douglas Ora
Scott Douglas Ora
In Pro Per

[Filed on September 7, 2023]

APPENDIX H:
NATIONAL REGISTER OF HISTORIC PLACES INVENTORY—NOMINATION FORM (SUBMITTED ON MARCH 6, 1985 AND DATE ENTERED ON APRIL 4, 1985 WITH AND BY THE UNITED STATES DEPARTMENT OF THE INTERIOR NATIONAL PARK SERVICE TO DESIGNATE THE HOLLYWOOD WALK OF FAME AS A NATIONAL HISTORIC LANDMARK)

United States Department of the Interior
National Park Service

National Register of Historic Places Inventory—Nomination Form

United States Department of the Interior
National Park Service

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1. Name

Historic	N/A
and/or common	Hollywood Boulevard Commercial and Entertainment District

2. Location

street & number	6200-7000 Hollywood Blvd. with adjacent parcels on N. Vine Street N. Highland Avenue and N. Ivar Street
	N/A not for publication

city, town	Los Angeles N/A vicinity of
State	California
Code	06
County	Los Angeles
Code	037

3. Classification

Category	district
Ownership	private
Status	occupied
Present Use	commercial
Public Acquisition	n/a
Accessible	yes: unrestricted

4. Owner of Property

Name	Multiple - See attached continuation sheet

5. Location of Legal Description

courthouse, registry of deeds, etc.	Los Angeles County Hall of Records
street & number	320 W. Temple Street
city, town	Los Angeles
state	California 90012

6. Representation in Existing Surveys

Title	Hollywood Historic Survey
has this property been determined eligible?	no

Date 1978-80

State X

depository for survey records Hollywood Heritage, Inc., P.O. Box 2586

city, town Hollywood

state California 90078

7. Description

Condition good
Check one altered
Check one original site
Date N/A

Describe the present and original (if known) physical appearance

The Hollywood Boulevard District is a 12 block area of the commercial core along Hollywood's main thoroughfare, which contains excellent examples of the predominant architecture styles of the 1920s and 1930s. The area contains a mix of Classical Revival, Spanish Colonial Revival, and Art Deco structures. Over 100 buildings are included. The development pattern of the 1920s, with high-rise buildings at major intersections, flanked by one and two-story retail structures, remains intact to this day. Integrity is fair; the major landmark buildings still retain their distinctive identities, while many of the smaller buildings have been altered, remodeled, or covered with modern signage. Although the number of contributors is only 56% of the

total parcels, the larger scale and placement of the contributing structures create an impression of greater cohesion.

The Hollywood Boulevard commercial and entertainment district contains 102 buildings, the vast majority of which were constructed between 1915 and 1939. A major grouping of Classical Revival financial and professional buildings, several of which reached the legal height limit of 12 stories, anchor the major intersections along the Boulevard. A number of fine examples of Spanish Colonial Revival architecture and the Art Deco style lend character and sophistication to the street. There are a few examples of other period revival styles popular in the first three decades of the 20th century, notably French Chateausque, and a group of theater structures worthy of notice. While the majority of street-level facades have been altered, mainly in the 1950s, the upper stories of the buildings retain a high degree of integrity. Parapet corrections are another significant category of alteration, due to prevailing seismic codes. Many one and two-story commercial vernacular structures are supportive in size, scale, and construction period to the surrounding buildings, but their primary facades have been repeatedly remodeled and they have become visually noncontributing. Metal sheathing masks existing ornament on several candidates for rehabilitation. In addition to architectural details, there are several fine

urban design features: colored terrazo entry-ways, neon signage, and the Hollywood Walk of Fame.

Buildings Contributing to the Significance of the District:

1. Pantages Theater (6233 Hollywood Boulevard): 1930; B. Marcus Priteca A two-story concrete structure designed in the Art Deco style, the Pantages retains the stylized detailing in its ersatz stone exterior. Egyptian lotus patterns highlight the second story. First story windows are outlined with metal zigzag frames. Sculptured goddesses highlight the roofline. Interior has been restored to original; office lobby is intact, with elegant bronze sunbursts above the elevator doors.

8. Significance

Period 1900

Areas of Significance Check and justify below
Architecture
commerce
theater

Specific dates 1915-39

Builder/Architect Included in Section 7

Statement of Significance (in one paragraph)

Hollywood Boulevard, the main street of the film capital of the world, has been famous since the 1920s. The Golden Era of Hollywood is clearly depicted in this area of the commercial corridor with its eclectic and flamboyant architectural mix. The district is

a thematic one, representing the retail, financial, and entertainment functions of the street and the relationship of the various structures to the movie industry, a 20th century phenomenon which helped to shape the culture of the nation as a whole.

The proposed Hollywood Boulevard Historic District is a thematic one, centering on the significant commercial "main street" of the Hollywood community during the 1920s and 1930s, the period when the community achieved worldwide attention as the motion picture capital of the world. Between 1915 and 1935, Hollywood Boulevard was transformed from a residential street of stately homes to a bustling commercial center. The concentration of the buildings on Hollywood Boulevard is a microcosm of the era's significant architectural styles, and the streetscape and massing of buildings, with few intrusions, are reminiscent of development patterns of the period. The blocks of Hollywood Boulevard from Argyle to El Cerrito are an intact grouping of business, entertainment, and commercial structures of the Hollywood downtown area. In many cases, architectural style is appropriate to original use and imagery, with classic Beaux Arts Revival styles symbolizing financial and professional solidity, exotic modernism in new building types, flamboyant designs related to the movie industry in fantasy and Art Deco examples, and period revival Chateauesque and Spanish Colonial Revival used in retail. This collection

of buildings gives a compact and cohesive impression, a pedestrian-oriented shopping street with few intrusions, one of very few remaining in Los Angeles. The unparalleled growth of the movie industry during this period provided an infusion of capital that allowed industry chiefs and city boosters to create a special urban environment. A microcosm of significant architectural styles between 1920 and 1930, some of the individual buildings offer stylistic examples of great quality; works of most of Los Angeles' premier architects are represented. The concentration of colorful Art Deco structures, such as the Newberry Building, and fantasy entertainment environment offer a grouping which may be unique in the nation, structures which are increasingly rare examples of their styles in the city. This was a period of unparalleled growth and prosperity in the community and the quality of the existing building stock is evidence of the careful attention to quality and detail exhibited by the developers. Several real estate interests were instrumental in this staggering change, and their activities are revealed in the development patterns evident along the commercial corridor.

There were three major commercial centers along the Boulevard. The oldest, at the intersection of Cahuenga and Hollywood, was part of the original Hollywood ranch purchased by the Wilcox/Beveridge family. Another center at the western end of the street, at Highland, was established by the

Whitley and Toberman interests.

9. Major Bibliographical References

Assessor's Records, L.A. County 1900-84. Los Angeles Co. Tax Assessor Building Permits. Department of Building and Safety, Los Angeles City Hall Cultural Resources Survey Files. Hollywood Revitalization Committee. (see continuation sheet)

10. Geographical Data

Acreage of nominated property
Approximately 56
Quadrangle name Hollywood
Quadrangle scale 1:24,000

UTM References

A

11 (Zone)
377860 (Easting)
3774160 (Northing)

B

11 (Zone)
377850 (Easting)
3773860 (Northing)

C

11 (Zone)
376080 (Easting)
3773870 (Northing)

D

11 (Zone)
376090 (Easting)

3774180 (Northing)

Verbal boundary description and justification

See attached continuation sheet.

List all states and counties for properties overlapping state or county boundaries

State N/A

county N/A

11. Form Prepared By

name/title	Christy Johnson McAvoy
organization	Hollywood Heritage
date	August 1, 1984
street & number	P.O. Box 2586
telephone	(213) 851-8854 (213) 874-4005
city or town	Hollywood
state	California 90078

12. State Historic Preservation Officer Certification

The evaluated significance of this property within the state is: national

As the designated State Historic Preservation Officer for the National Historic Preservation Act of 1966 (Public Law 89-665), I hereby nominate this property for inclusion in the National Register and certify that it has been evaluated according to the criteria and procedures set forth by the National park Service.

{signature not legible}
State Historic Preservation Officer signature

Deputy State Historic Preservation Officer
Title

1/2/85
Date

For NPS use only

I hereby certify that this property is Included in the National Register

{signature not legible}
Keeper of the National Register

4/4/85
date

APPENDIX I:
HISTORIC-CULTURAL MONUMENT LIST (ON JULY 5, 1978, THE HOLLYWOOD WALK OF FAME WAS DESIGNATED A CITY LANDMARK IN LOS ANGELES BY THE CULTURAL HERITAGE COMMISSION AS ITEM NUMBER 194)

[. . .]

No. 193	**Name** Pantages Theater
Address 6225-6249 Hollywood Boulevard and 1709-1715 Argyle Avenue	**Adopted** 07/05/1978
Community Plan Area Hollywood	**CD** 13
No. 194	**Name** Hollywood Walk of Fame
Address Hollywood Boulevard (between Gower and La Brea) & Vine Street (between Sunset and Yucca)	**Adopted** 07/05/1978
Community Plan Area Hollywood	**CD** 13

No. 194	**Name** Hollywood Walk of Fame (Between Gower & Sycamore)
Address Hollywood Boulevard (between Gower and La Brea) & Vine Street (between Sunset and Yucca)	**Adopted** 07/05/1978
Community Plan Area Hollywood	**CD** 13
No. 195	**Name** James Oviatt Building
Address 615-617 South Olive Street	**Adopted** 07/19/1978
Community Plan Area Central City	**CD** 14
No. 196	**Name** Variety Arts Center Building
Address 938-940 South Figueroa Street	**Adopted** 08/09/1978
Community Plan Area Central City	**CD** 14

[. . .]

APPENDIX J:
NATIONAL HISTORIC PRESERVATION ACT (ON OCTOBER 15, 1966, THE NATIONAL HISTORIC PRESERVATION ACT AUTHORIZED THE NATIONAL PARK SERVICE BUREAU TO MAINTAIN A COMPREHENSIVE NATIONAL REGISTER OF HISTORIC PLACES)

As amended through December 16, 2016 and Codified in Title 54 of the United States Code

---

[The National Historic Preservation Act ("Act") became law on October 15, 1966, Public Law 89-665, and was codified in title 16 of the United States Code. Various amendments followed through the years. On December 19, 2014, Public Law 13-287 moved the Act's provisions from title 16 of the United States Code to title 54, with minimal and non-substantive changes to the text of the Act and a re-ordering of some of its provisions. This document shows the provisions of the Act as they now appear in title 54 of the United States Code.

The Act's name (the "National Historic Preservation Act") is found in the notes of the very first section of title 54. 54 U.S.C. § 100101 note. While Public Law 13-287 did not repeal the Act's findings, for editorial reasons those findings were not included in the text of title 54. The findings are still current law. However, rather than citing to the U.S. Code, when referring to the findings one may cite to: "Section 1 of the National Historic Preservation Act, Pub. L. No. 89-665, as amended by Pub. L. No. 96-515." For ease of use, this

document reproduces the text of those findings before proceeding to the title 54 text.

Finally, the attachment at the end of this document attempts to assist those preservation stakeholders who for many years have referred to the Act's various provisions according to the section numbers used in the 1966 public law and subsequent amendments ("old sections"). The attachment cross-references each of the old sections to the corresponding outdated title 16 legal cite and current title 54 legal cite.]

Section 1 of the National Historic Preservation Act, Pub. L. No. 89-665, as amended by Pub. L. No. 96-515:

(b) The Congress Finds and Declares That—

(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

(2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

(3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

(4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

(5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;

(6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and

(7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

Title 54 of the United States Code
Subtitle III—National Preservation Programs
Division A—Historic Preservation

Subdivision 1—General Provisions Chapter 3001

[. . .]

Subdivision 2—Historic Preservation Program

Chapter 3021—National Register of Historic Places

Sec.

§ 302101. Maintenance by Secretary

The Secretary may expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture.

§ 302102. Inclusion of properties on National Register

(a) IN GENERAL.—A property that meets the criteria for National Historic Landmarks established pursuant to section 302103 of this title shall be designated as a National Historic Landmark and included on the National Register, subject to the requirements of section 302107 of this title.

(b) HISTORIC PROPERTY ON NATIONAL REGISTER ON DECEMBER 12, 1980.—All historic property included on the National Register on December 12, 1980, shall be deemed to be included on the National Register as of their initial listing for purposes of this division.

(c) HISTORIC PROPERTY LISTED IN FEDERAL REGISTER OF FEBRUARY 6, 1979, OR PRIOR TO DECEMBER 12, 1980, AS NATIONAL HISTORIC LANDMARKS.—All historic property listed in the Federal Register of February 6, 1979, or prior to December 12, 1980, as National Historic Landmarks are declared by Congress to be National Historic Landmarks of national historic significance as of their initial listing in the Federal Register for purposes of this division and chapter 3201 of this title, except that in the case of a National Historic Landmark district for which no boundaries had been established as of December 12, 1980, boundaries shall first be published in the Federal Register.

§ 302103. Criteria and regulations relating to National Register, National Historic Landmarks, and World Heritage List

The Secretary, in consultation with national historical and archeological associations, shall—

(1) establish criteria for properties to be included on the National Register and criteria for National Historic Landmarks; and

(2) promulgate regulations for—

(A) nominating properties for inclusion on, and removal from, the National Register and the recommendation of properties by certified local governments;

(B) designating properties as National Historic Landmarks and removing that designation;

(C) considering appeals from recommendations, nominations, removals, and designations (or any failure or refusal by a nominating authority to nominate or designate);

(D) nominating historic property for inclusion in the World Heritage List in accordance with the World Heritage Convention;

(E) making determinations of eligibility of properties for inclusion on the National Register; and

(F) notifying the owner of a property, any appropriate local governments, and the general public, when the property is

being considered for inclusion on the National Register, for designation as a National Historic Landmark, or for nomination to the World Heritage List.

§ 302104. Nominations for inclusion on National Register

(a) NOMINATION BY STATE.—Subject to the requirements of section 302107 of this title, any State that is carrying out a program approved under chapter 3023 shall nominate to the Secretary property that meets the criteria promulgated under section 302103 of this title for inclusion on the National Register. Subject to section 302107 of this title, any property nominated under this subsection or under section 306102 of this title shall be included on the National Register on the date that is 45 days after receipt by the Secretary of the nomination and the necessary documentation, unless the Secretary disapproves the nomination within the 45-day period or unless an appeal is filed under subsection (c).

(b) NOMINATION BY PERSON OR LOCAL GOVERNMENT.—Subject to the requirements of section 302107 of this title, the Secretary may accept a nomination directly from any person or local government for inclusion of a property on the National Register only if the property is located in a State where there is no program approved under chapter 3023 of this title. The Secretary may include on the National

Register any property for which such a nomination is made if the Secretary determines that the property is eligible in accordance with the regulations promulgated under section 302103 of this title. The determination shall be made within 90 days from the date of the nomination unless the nomination is appealed under subsection (c).

(c) NOMINATION BY FEDERAL AGENCY.—Subject to the requirements of section 302107 of this title, the regulations promulgated under section 302103 of this title, and appeal under subsection (d) of this section, the Secretary may accept a nomination directly by a Federal agency for inclusion of property on the National Register only if—

(1) completed nominations are sent to the State Historic Preservation Officer for review and comment regarding the adequacy of the nomination, the significance of the property and its eligibility for the National Register;

(2) within 45 days of receiving the completed nomination, the State Historic Preservation Officer has made a recommendation regarding the nomination to the Federal Preservation Officer, except that failure to meet this deadline shall constitute a recommendation to not support the nomination;

(3) the chief elected officials of the county (or equivalent governmental unit) and municipal political jurisdiction in which

the property is located are notified and given 45 days in which to comment;

(4) the Federal Preservation Officer forwards it to the Keeper of the National Register of Historic Places after determining that all procedural requirements have been met, including those in paragraphs (1) through (3) above; the nomination is adequately documented; the nomination is technically and professionally correct and sufficient; and may include an opinion as to whether the property meets the National Register criteria for evaluation;

(5) notice is provided in the Federal Register that the nominated property is being considered for listing on the National Register that includes any comments and the recommendation of the State Historic Preservation Officer and a declaration whether the State Historic Preservation Officer has responded within the 45 day-period of review provided in paragraph (2); and

(6) the Secretary addresses in the Federal Register any comments from the State Historic Preservation Officer that do not support the nomination of the property on the National Register before the property is included in the National Register.

(d) APPEAL.—Any person or local government may appeal to the Secretary—

(1) a nomination of any property for inclusion on the National Register; and

(2) the failure of a nominating authority to nominate a property in accordance with this chapter.

§ 302105. Owner participation in nomination process

(a) REGULATIONS.—The Secretary shall promulgate regulations requiring that before any property may be included on the National Register or designated as a National Historic Landmark, the owner of the property, or a majority of the owners of the individual properties within a district in the case of a historic district, shall be given the opportunity (including a reasonable period of time) to concur in, or object to, the nomination of the property for inclusion or designation. The regulations shall include provisions to carry out this section in the case of multiple ownership of a single property.

(b) WHEN PROPERTY SHALL NOT BE INCLUDED ON NATIONAL REGISTER OR DESIGNATED AS NATIONAL HISTORIC LANDMARK.—If the owner of any privately owned property, or a majority of the owners of privately owned properties within the district in the case of a historic district, object to inclusion or designation, the property shall not be included on the National Register or designated as a National Historic Landmark until the objection is withdrawn.

(c) REVIEW BY SECRETARY.—The Secretary shall review the nomination of the property when an objection has been made and shall determine whether or not the property is eligible for inclusion or designation. If the Secretary determines that the property is eligible for inclusion or designation, the Secretary shall inform the Advisory Council on Historic Preservation, the appropriate State Historic Preservation Officer, the appropriate chief elected local official, and the owner or owners of the property of the Secretary's determination.

§ 302106. Retention of name

Notwithstanding section 43(c) of the Act of July 5, 1946 (known as the Trademark Act of 1946) (15 U.S.C. 1125(c)), buildings and structures on or eligible for inclusion on the National Register (either individually or as part of a historic district), or designated as an individual landmark or as a contributing building in a historic district by a unit of State or local government, may retain the name historically associated with the building or structure.

§ 302107. Regulations

The Secretary shall promulgate regulations—

(1) ensuring that significant prehistoric and historic artifacts, and associated records, subject to subchapter I of chapter 3061, chapter 3125, or the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et

seq.) are deposited in an institution with adequate long-term curatorial capabilities;

(2) establishing a uniform process and standards for documenting historic property by public agencies and private parties for purposes of incorporation into, or complementing, the national historical architectural and engineering records in the Library of Congress; and

(3) certifying local governments, in accordance with sections 302502 and 302503 of this title, and for the transfer of funds pursuant to section 302902(c)(4) of this title.

§ 302108. Review of threats to historic property

At least once every 4 years, the Secretary, in consultation with the Council and with State Historic Preservation Officers, shall review significant threats to historic property to—

(1) determine the kinds of historic property that may be threatened;

(2) ascertain the causes of the threats; and

(3) develop and submit to the President and Congress recommendations for appropriate action.

[. . .]

APPENDIX K: ORGANIC ACT TO ESTABLISH THE NATIONAL PARK SERVICE (ON AUGUST 25, 1916, CONGRESS PASSED AND PRESIDENT WOODROW WILSON APPROVED THE ORGANIC ACT TO CREATE THE NATIONAL PARK SERVICE WITHIN THE INTERIOR DEPARTMENT TO PROMOTE AND REGULATE THE USE OF THE FEDERAL AREAS KNOWN AS NATIONAL PARKS, MONUMENTS AND RESERVATIONS)

An Act to Establish a National Park Service, and for Other Purposes, Approved August 25, 1916 (39 Stat. 535)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby created in the Department of the Interior a service to be called the National Park Service, which shall be under the charge of a director, who shall be appointed by the Secretary and who shall receive a salary of $4,500 per annum. There shall also be appointed by the Secretary the following assistants and other employees at the salaries designated: One assistant director, at $2,500 per annum; one chief clerk, at $2.000 per annum; one draftsman, at $1,800 per annum; one messenger, at $600 per annum; and, in addition thereto, such other employees as the Secretary of the Interior shall deem necessary: Provided, That not more than $8,100 annually shall be expended for salaries of experts, assistants, and employees within the District of

Columbia not herein specifically enumerated unless previously authorized by law. The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. (U.S.C., title 16, sec. 1.)

SEC. 2. That the director shall, under the direction of the Secretary of the Interior, have the supervision, management, and control of the several national parks and national monuments which are now under the jurisdiction of the Department of the Interior, and of the Hot Springs Reservation in the State of Arkansas, and of such other national parks and reservations of like character as may be hereafter created by Congress: Provided, That in the supervision, management, and control of national monuments contiguous to national forest she Secretary of Agriculture may cooperate with said National Park Service to such extent as may be requested by the Secretary of the Interior (U.S.C., title16, sec. 2.)

SEC. 3. That the Secretary of the Interior shall make and publish such rules and regulations as he may deem necessary or proper for he use and management of the parks, monuments, and reservations under the jurisdiction of the National Park Service, and any violations of any of the rules and regulations authorized by this Act shall be punished as provided

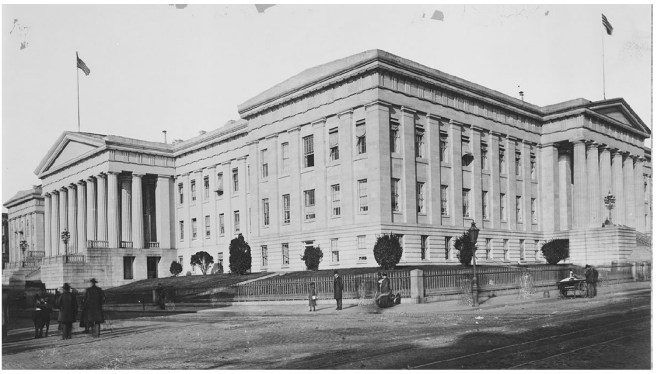
for in section fifty of the Act entitled "An Act to codify and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, as amended by section six of the Act of June twenty-fifth, nineteen hundred and ten (Thirty-sixth United States Statutes at Large, page eight hundred and fifty-seven). He may also, upon terms and conditions to be fixed by him, sell or dispose of timber in those cases where in his judgment the cutting of such timber is required in order to control the attacks of insects or diseases or otherwise conserve the scenery or the natural or historic objects in any such park, monument, or reservation. He may also provide in his discretion for the destruction of such animals and of such plant life as may be detrimental to the use of any of said parks, monuments, or reservations. He may also grant privileges, leases, and permits for the use of land for the accommodation of visitors in the various parks, monuments, or other reservations herein provided for, but for periods not exceeding twenty years; and no natural curiosities, wonders, or objects of interest shall be leased, rented, or granted to anyone on such terms as to interfere with free access to them by the public: Provided, however, That the Secretary of the Interior may, under such rules and regulations and on such terms as he may prescribe, grant the privilege to graze live stock within any national park, monument, or reservation here in referred to when in his judgment such use is not detrimental to the primary purpose for which such park, monument, or reservation was created, except that this provision shall not apply to the Yellowstone National Park. (U.S.C., title 16, sec. 3.)

SEC. 4. That nothing in this Act contained shall affect or modify the provisions of the Act approved February fifteenth, nineteen hundred and one, entitled "An Act relating to rights of way through certain parks, reservations, and other public lands." (U.S.C., title 16, sec. 4.)

APPENDIX L:
U.S. DEPARTMENT OF THE INTERIOR
(ON MARCH 3, 1849, BILL 43 U.S.C. § 1451 WAS PASSED TO CREATE THE DEPARTMENT OF THE INTERIOR TO TAKE CHARGE OF THE NATION'S INTERNAL AFFAIRS FOR THE INTERNAL DEVELOPMENT OF THE NATION)

U.S. Department of the Interior
Who We Are

In 1789, Congress created three Executive Departments: Foreign Affairs (later in the same year renamed State), Treasury, and War. It also provided for an Attorney General and a Postmaster General. Domestic matters were apportioned by Congress among these departments.



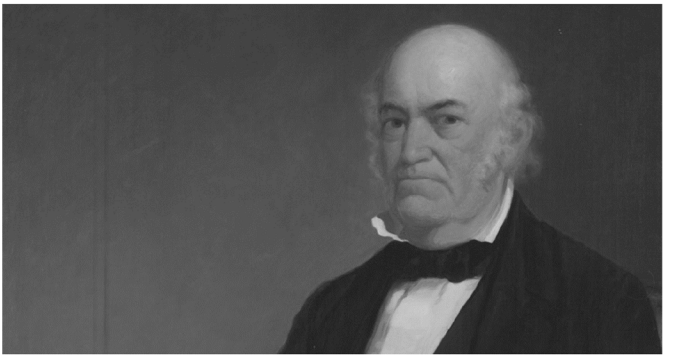
The first Interior Building, 1852 -1917. The Patent Office building, today housing the Smithsonian Institution's Portrait Gallery and the National Museum of American Art, served as DOI headquarters. Photo circa 1890, Library of Congress.

Why was the U.S. Department of the Interior created?

The idea of setting up a separate department to handle domestic matters was put forward on numerous occasions. It wasn't until March 3, 1849, the last day of the 30th Congress, that a bill was passed to create the Department of the Interior to take charge of the Nation's internal affairs:

The Department of Everything Else: Highlights of Interior History.

The Interior Department had a wide range of responsibilities entrusted to it: the construction of the national capital's water system, the colonization of freed slaves in Haiti, exploration of western wilderness, oversight of the District of Columbia jail, regulation of territorial governments, management of hospitals and universities, management of public parks, and the basic responsibilities for Indians, public lands, patents, and pensions. In one way or another all of these had to do with the internal development of the Nation or the welfare of its people.



Portrait of Thomas Ewing, the first Secretary of the Interior, by John Mix Stanley, 1861. U.S. Department of the Interior Museum.

Significant dates in Interior history

1849 Creation of the Home Department consolidating the General Land Office (Department of the Treasury), the Patent Office (Department of State), the Indian Affairs Office (War Department) and the military pension offices (War and Navy Departments). Subsequently, Interior functions expand to include the census, regulation of territorial governments, exploration of the western wilderness, and management of the D.C. jail and water system.

1850-1857 Interior's Mexican Boundary Commission establishes the international boundary with Mexico.

1856-1873 Interior's Pacific Wagon Road Office improved the historic western emigrant routes.

1869 Interior began its geological survey of the western Territories with the Hayden expedition. The Bureau of Education is placed under Interior (later transferred to the Department of Health, Education and Welfare).

1872 Congress establishes Yellowstone as the first National Park.

1873 Congress transferred territorial oversight from the Secretary of State to the Secretary of the Interior.

1879 Creation of the U.S. Geological Survey.

1884 Interior's Bureau of Labor is established (becomes the Department of Labor in 1888).

1887-1889 The Interstate Commerce Commission is established in Interior. The Dawes Act authorizes allotments to Indians.

1902 The Bureau of Reclamation is established to construct dams and aqueducts in the west.

1903 President Theodore Roosevelt establishes the first National Wildlife Refuge at Pelican Island, Florida. The Census Bureau is transferred to the Department of Commerce.

1910 The Bureau of Mines is created to promote mine safety and minerals technology.

Stephen T. Mather, National Park Service's First Director. Photo circa 1910-1920, Library of Congress.

1916 President Wilson signed legislation creating The National Park Service.

1920 The Mineral Leasing Act establishes the government's right to rental payments and royalties on oil, gas, and minerals production.

[. . .]

APPENDIX M:
HOLLYWOOD WALK OF FAME NOMINATION SELECTION (THE TERMS OF THE ROBIN ✪ CONTRACT, INCLUDING THE CONDITIONS PRECEDENT, BETWEEN MRS. ROBIN AND ACTOR BOB HOPE WITH THE HOLLYWOOD CHAMBER)

HOLLYWOOD WALK OF FAME
Nomination for 2019 Selection

HOLLYWOOD WALK OF FAME COMMITTEE
NOW ACCEPTING WALK OF FAME
NOMINATIONS FOR YEAR 2019

THIS FORM HAS BEEN UPDATED.
NO PREVIOUS FORMS WILL BE ACCEPTED.
WALKOFFAME.COM
2019

NOMINEE: _____

CATEGORY:

_____ Motion Pictures
_____ Live Performance/Theatre
_____ Television
_____ Recording
_____ Radio

CHECK ONLY IF APPLICABLE:

_____ Posthumous*

_____ Duo or Group

SPONSOR: _____

ADDRESS: _____

CITY: _____

STATE: _____ ZIP: _____

COUNTRY: _____ EMAIL: _____

TELEPHONE: _____ FAX: _____

FOR NOMINATIONS BY STUDIOS: PLEASE PROVIDE NAME OF NOMINEE'S PERSONAL PUBLICIST: _____

PLEASE CAREFULLY REVIEW THE FOLLOWING BEFORE COMPLETING THIS FORM:

QUALIFICATIONS OF NOMINEE: (use additional sheet if necessary)

All applicants must have written consent from celebrity which states that nominee is in agreement with the nomination. Letter of consent must be attached to nomination form.

1. It is understood that the cost of installing a star in the Walk of Fame upon approval is $40,000** and the sponsor of the nominee accepts the responsibility for arranging for payment to the Hollywood Historic Trust, a 501(c)3 charitable foundation.

2. It is further understood that, should the above-named nominee be chosen for placement in the Walk of Fame, said nominee guarantees to be present at the dedication ceremonies on a date and time mutually

agreed upon with the Walk of Fame Committee. An induction ceremony must be scheduled within two years of June selection date, or the nomination must be re-submitted. Induction ceremonies are public events. Honorees recognize that, as such, footage and photos of the event are in the public realm. Honorees and speakers are expected to sign a release allowing the Hollywood Chamber of Commerce to use footage of the ceremony to promote Hollywood and the Walk of Fame.

3. First-time nominations not selected will automatically roll over for another year. If not selected during their second attempt, the nomination must be re-submitted with updated materials.

4. See "Special Rules For Performing Duos and Groups" at "Nomination Procedures" at http://www.walkoffame.com/pages/nominations before submitting any nomination for a Performing Duo or Group.

5. "Walk of Fame" and all associated symbols are trademarks of the Hollywood Chamber of Commerce and may not be used without permission. Any proposed promotional activities in conjunction with the Hollywood Walk of Fame ceremonies must be expressly approved in advance by the Hollywood Chamber of Commerce. Applications must be submitted by noon on Thursday, May 31, 2018.

* Posthumous nominations can be submitted after the fifth anniversary of death ** Sponsorship fees subject to change.

SPONSORS SIGNATURE: _____

DATE: _____

NOMINEE CATEGORY

___ MP ___ LP ___ TV ___ TC

___ RD ___ P/H& ___ D/G

SPONSOR: _____

TELEPHONE: _____

EMAIL: _____

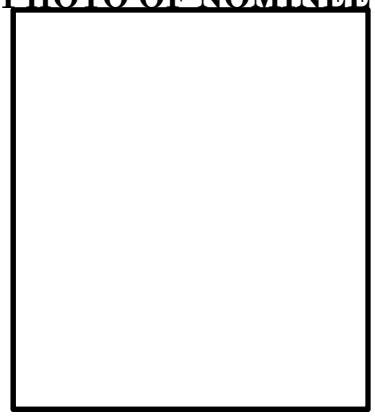
BRIEF BIOGRAPHY OF NOMINEE

Use additional blank paper if more space is needed.
Include no more than 5 pages.

DATE OF BIRTH: _____

PLACE OF BIRTH: _____

PHOTO OF NOMINEE



NOMINEE'S QUALIFICATIONS:

_____

_____

LIST OF CONTRIBUTIONS TO THE COMMUNITY AND CIVIC-ORIENTED PARTICIPATION

_____

_____

_____ LETTER OF AGREEMENT FROM THE NOMINEE OF HIS/HER MANAGEMENT
Original signed letter of agreement from Nominee must be mailed to

Walk of Fame Committee, c/o Ana Martinez, Hollywood Chamber of Commerce, 6255 Sunset Blvd., Ste 150, Hollywood, CA 90028

LETTER OF ACCEPTANCE

TO BE COMPLETED AND SIGNED BY TALENT AND/OR MANAGEMENT

Nominee: _____

Date: _____

To Hollywood Walk of Fame Committee

In C/O Ana Martinez, Producer, Hollywood Walk of Fame

Dear Ms. Martinez,

I, the undersigned _____ do hereby gladly accept the nomination put forth on my behalf for a star on the famous Hollywood Walk of Fame.

_____ If selected, I will participate in person at the Walk of Fame Star dedication ceremony.

_____ If selected, I will make arrangements to accept honor and schedule*ceremony within two years.

_____ I understand and agree that the Hollywood Chamber of Commerce will retain the rights to the Walk of Fame Star ceremony.

_____ YES! I'd like to make a donation of memorabilia for our future Hollywood Walk of Fame Museum.

Name: _____

Address: _____

Telephone: _____

Email: _____

Signature: _____

the original signed letter of agreement from nominee must be mailed to:

Walk of Fame Committee, c/o Ana Martinez,
Hollywood Chamber of Commerce, 6255 Sunset
Blvd., Ste 150, Hollywood, CA 90028

NO LATER THAN NOON ON THURSDAY,
MAY 31, 2018

HOLLYWOOD WALK OF FAME COMMITTEE NOW ACCEPTING WALK OF FAME NOMINATIONS FOR YEAR 2019

All Nomination Forms must be submitted by Thursday, May 31, 2018 at 12 Noon to be considered in June Selection Meeting

Download your Hollywood Walk of Fame Nomination Application at the below url: http://www.walkoffame.com/media/walkoffamenomination.pdf

Hollywood Walk of Fame Nomination Procedure

Nominations for the Hollywood Walk of Fame are now being accepted by the Hollywood Chamber of Commerce. Deadline for submission is Thursday, May 31, 2018 at 12 noon. All nominations will be considered at the annual Walk of Fame Committee meeting to be held in June. The committee will make selections for the year 2019.

Nomination applications can be obtained by downloading the link above or by sending a self-addressed, stamped envelope to:

Walk of Fame Committee
c/o Ana Martinez, Hollywood Chamber of Commerce
6255 Sunset Blvd, Ste 150
Hollywood, CA 90028

The Walk of Fame includes five categories:

- Motion Pictures
- Television
- Radio

- Recording
- Live Theatre/Performance.

All Nominations must include these documents:

- Photo of the nominee
- Brief bio of nominee - no more than 5 pages
- Nominee's qualifications
- List of contributions to the community and civic-oriented participation of the nominee
- Letter of agreement from the nominee or his/her management

The committee will select approximately 30 names for insertion into the Walk. Nomination of an individual or group must be approved by the Walk of Fame Committee, sometimes requiring several annual nominations before a nominee is selected to receive a star. The most qualified artists nominated are eligible for a star to be installed in the Walk during the subsequent year. Those not selected for the current year are requested to resubmit for the following nomination period. Should sponsor not want to make a second attempt, they must notify the Hollywood Chamber immediately, and the application will be pulled.

The criteria for receiving a star consists of the following: professional achievement, longevity in the category of five years or more, contributions to the community and the guarantee that the celebrity will attend the dedication ceremony if selected. Posthumous awards require a five-year waiting period.

After the Walk of Fame Committee has made its selections, the Chamber's Board of Directors also votes to approve the star and then for a final approval,

the names are submitted to the City of Los Angeles' Board of Public Works Department.

All honorees must be approved by the Hollywood Chamber of Commerce, the decisions of which are final and entirely within the Chamber's discretion. Nomination and selection procedures, forms, and qualifications are guidelines only, entirely within the Chamber's discretion, and are subject to change at any time, without notice.

Special Rules for Performing Duos and Groups:

The current owner(s) of a performing duo or group name must consent in writing to the nomination before it will be considered. The names of all group members, past and present, must be included on the nomination form. The Hollywood Chamber of Commerce reserves the right to condition award and installation of any star honoring a duo or group on its discretionary satisfaction with the sponsor's arrangements regarding honorees and the installation ceremony. The sponsor must provide proof of insurance naming the Hollywood Chamber and City of L.A. as additionally insured.

All Nomination Forms must be submitted by Thursday, May 31, 2018 at 12 Noon to be considered in June Selection Meeting.

See a Sample Nomination in this form or at below url: http://www.walkoffame.com/pages/ nominations and read FAQ before submitting your form at the below url: http://www.walkoffame .com/pages/faqs

If you still have any questions, please email info@hollywoodchamber.net or call 323-469-8311 and ask for Ana Martinez.

To request your a copy of the nomination form, please send a self-addressed, stamped envelope to:

Walk of Fame Committee c/o Ana Martinez,
Hollywood Chamber of Commerce
6255 Sunset Blvd, Ste 150,
Hollywood, CA 90028

Hollywood citizens and tourists alike look forward to each dedication ceremony with eager anticipation.

Hollywood Walk of Fame

Frequently Asked Questions

Q: How can I nominate someone for a Walk of Fame Star?

A: You can nominate your favorite celebrity with their permission by downloading and completing the Walk Of Fame Nomination Form on our official website www.walkoffame.com.

Q: Who can do the nominating?

A: Anyone, including a fan, can nominate a celebrity as long as the celebrity or his/her management is in agreement with the nomination. If there is no letter of agreement included from the celebrity or his/her representative, the committee will not accept the application.

Q: What is the cost of a Walk of Fame star ceremony?

A: $40,000 after selection. The money is used to pay for the creation and installation of the star, as well as maintenance of the Walk of Fame. Price subject to change.

Q: Can someone who is deceased be nominated?

A: Yes. One posthumous award may be given each year.

Q: Can someone who is deceased be nominated for a star immediately?

A: No. A posthumous nomination has a five year waiting period.

Q: Is posthumous waiting period five years after the date of their death?

A: Yes. There is a five year waiting period after death.

Q: Can I nominate someone who doesn't fit in any of the five categories?

A: No. The categories do not change and the nominee must be or have been active in the field of entertainment.

Q: How long after someone has been nominated will the ceremony take place?

A: The recipient has up to five years to schedule their ceremony. If it is not done within the five-year period, it will expire and an application must be resubmitted.

Q: Does the committee accept signatures, petitions or phone calls?

A: The committee does not accept signatures, phone calls, e-mails, or any form of petitions for a nomination. Only official Walk of Fame applications are accepted.

Q: Who are the members of the Walk of Fame selection committee?

A: Each of the five categories is represented by someone with expertise in that field.

Q: How often are stars voted in?

A: Stars are voted in once a year in June. An average of 30 stars are selected per year.

Q: If a nominee isn't selected during the voting process, do I have to re-submit the application for the following year?

A: The application is effective for two years. If, after two years, the nominee is still not selected, the applicant can file a new application or send a letter requesting that the application be reinstated. Updates on the recipients are accepted and included in their file.

Q: When does the Committee meet?

A: The Committee meets once a year, in June.

Q: How can I find out if someone has a star on the Walk of Fame?

A: You can find star locations on the Walk of Fame Directory on www.walkoffame.com.

Q: Can I attend a Walk of Fame ceremony?

A: Walk of Fame ceremonies are open and free to the public. There is a public viewing area set up for all to enjoy. Please be aware that ceremony dates are subject to change. Call the Walk of Fame information line (323-469-8311) or check our website www.walkoffame.com for verification.

Q: How many nominations are submitted each year?

A: The committee receives an average of two hundred applications a year.

Q: Why do some stars face one way and others face another?

A: So that people walking either direction can see the stars easily.

Q: What are the stars made of?

A: Terrazzo and brass.

[* * *]

Hollywood Walk of Fame Nomination Sample

Please Follow This Preferred Sample for Walk of Fame Nomination Form

KEVIN COSTNER

Often portrayed as America's sexiest actor, Kevin Costner's talent is what has truly guided him through his immensely successful career. An actor, producer and director, Costner gave bus tours of the stars homes in Hollywood before landing his first role in THE BIG CHILL although his scenes eventually made their way to the cutting room floor. He has gone on to appear in over thirty films spanning the last two decades. His most credited film, DANCES WITH WOLVES, won him numerous awards, including the Oscar® for Best Director and Best Picture in 1991. Charity: Haven House-a home for victims of domestic violence.

Dances with Wolves (1990)

1991 Won Academy Award—Best Director
1991 Won Academy Award—Best Picture
1991 Nominated Academy Award—Best Actor in a Leading Role
1992 Nominated BAFTA Film Award—Best Actor, Best Direction, Best Film
1991 Won Silver Berlin Bear—Outstanding Single Achievement
1991 Nominated Golden Berlin Bear

1991 Won DGAAward—Outstanding Directorial Achievement in Motion Pictures
1991 Won Golden Globe—Best Director – Motion Picture
1991 Nominated Golden Globe—Best Performance by an Actor in a Motion Picture - Drama
1990 Won National Board Review—Best Director
1991 Won Motion Picture Producer of the Year Award
1991 Won Bronze Wrangler-Western Heritage Award—Theatrical Motion Picture

JFK (1991)

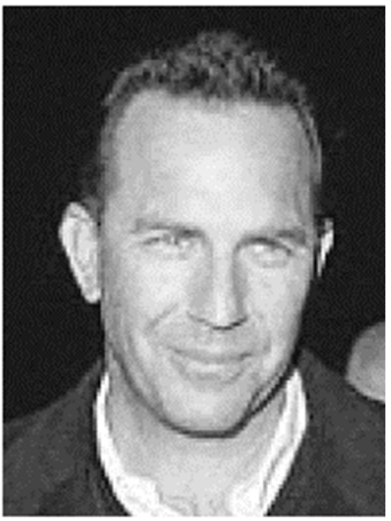
1992 Nominated Golden Globe—Best Performance by an Actor in a Motion Picture - Drama

Robin Hood: Prince of Thieves (1991)

1992 Nominated MTV Movie Awards—Best Male Performance
1992 Nominated MTV Movie Awards—Best On-Screen Duo
1992 Nominated MTV Movie Awards—Most Desirable Male

The Bodyguard (1992)

1993 Nominated MTV Movie Awards—Best Male Performer
1993 Nominated MTV Movie Awards—Best On-Screen Duo
1993 Nominated MTV Movie Awards—Most Desirable Male



Tin Cup (1996)

1997 Nominated Golden Globe—Best Performance by an Actor in a Motion Picture – Comedy/Musical

Message in a Bottle (1999)

2000 Nominated Blockbuster Entertainment Award—Favorite Actor – Drama/Romance

Misc.

1988 Won Golden Apple—Male Star of the Year
1990 Won Hasty Pudding Theatricals—Man of the Year
1992 Won People's Choice Award—Favorite Dramatic Motion Picture Actor
1993 Won People's Choice Award—Favorite Dramatic Motion Picture Actor

APPENDIX N:
PROPOSED AMENDMENTS REGARDING THE DEFENDANTS WAIVED PERFORMANCE OF THE CONDITIONS PRECEDENT
(FEBRUARY 27, 2023)

Appellant proposes the following amendments to the First Amended Complaint (FAC) related to the Defendants waived performance of the conditions precedent:

A. Propose the deletion of allegation no. 72 from FAC to the first cause of action for breach of contract, at page 23, line 3.

B. Propose the following new allegation no. 72 to the first cause of action for breach of contract, at page 23, line 3, as follows:

72. 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. Thanks, Ana 'Handling the stars for many moons!' Producer, Hollywood Walk of Fame, Vice President of Media Relations, Hollywood Chamber of Commerce." (Verified in allegation no. 35) <u>These words and conduct gave up the Hollywood Chamber's right to require the conditions precedent before having to</u>

perform on the Robin✪Contract based on well-established case law. Accordingly, the Defendants waived performance of the conditions precedent.[7]

Executed in Sherman Oaks, California

DATED: February 27, 2023

By: /s/ Scott Douglas Ora
In Pro Per

[7] The new allegation no. 72 is exactly the same as the former allegation no. 72 appearing in the FAC (3 CT 749.) except the underlined portion which represents the part being added to reflect clarification related to the Defendants waived performance of the conditions precedent.

APPENDIX O:
PROPOSED AMENDMENTS REGARDING THE DEFENDANTS WAIVER'S IMPACT ON THE STATUTE OF LIMITATIONS (FEBRUARY 27, 2023)

Appellant proposes the following amendments to the FAC related to the waiver's impact on the statute of limitations (SOL):

A. Propose the following new allegation no. 76 to the first cause of action for breach of contract, at page 24, line 11, as follows:

> The time for filing suit is subject to two different limitations periods – one statutory as determined in allegation no. 75, above on p. 23, line 24, and one contractual as provided here. The SOL for the Robin✪Contract is based on the contractual terms which has two conditions precedent. However, the Defendants waived performance of the conditions precedent provided in the proposed amendment in allegation no. 72 of Appendix A.
>
> As a result of the Defendants waived performance of the conditions precedent, the contractual limitation period to determine the SOL begins running "On July 23, 2018, a further breach of the Robin✪Contract by the Hollywood Chamber occurred when 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 cancelled the ceremony . . ." (Allegation no. 74

on p. 23, lines 15-17.) Therefore, the contractual SOL would expire 4 years later on July 23, 2022.

B. Starting with allegation no.77 in Second Amended Complaint (2AC) to the first cause of action for breach of contract, at page 24, line 23, all of the allegations would be renumbered due to the addition of new allegation no. 76 in 2AC to the first cause of action for breach of contract.[8]

Executed in Sherman Oaks, California

DATED: February 27, 2023

By: /s/ Scott Douglas Ora
In Pro Per

[8] The FAC contained 101 allegations (3 CT 760.); as a result of one additional allegation, the 2AC would total to 102 allegations. Allegations no. 74-77 referenced above are located at 3 CT 749-750.

APPENDIX P:
THE CAPTION PAGE ALONG WITH THE PRAYER FOR RELIEF OF THE COMPLAINT AND FIRST AMENDED COMPLAINT SHOWS THE PLAINTIFF DEMANDED A JURY TRIAL

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

SCOTT DOUGLAS ORA, IN PRO PER

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

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

Plaintiff,

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.

No. 21 STCV 23999

PLAINTIFF SCOTT ORA'S VERIFIED COMPLAINT FOR BREACH OF CONTRACT, NEGLIGENCE AND PERMANENT INJUNCTIVE RELIEF TO INSTALL THE STAR ON THE HOLLYWOOD WALK OF FAME AWARDED TO LYRICIST LEO ROBIN MORE THAN 31 YEARS AGO

JURY TRIAL DEMANDED

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[. . .]

1. An injunction ordering the Hollywood Chamber to comply with the Robin✪ Contract by the following instructions:

a) To install Robin's✪ on the Walk of Fame;

b) For a traditional ceremony to accompany the unveiling of the star;

c) For Ora to be given a star plaque;

d) For Ora to be given the actual acceptance letter, not a copy, from the Hollywood Chamber addressed to Mrs. Robin; and

e) For all other customary practices that take place with the award of a star;

2. Ora will fulfill the sponsors obligation of $4,000 to be tendered to the Hollywood Historic Trust immediately upon the Court's order of injunctive relief in No.1 above in prayer for relief;

3. For general, compensatory and consequential damages in amounts to be shown in accordance with proof at the time of trial;

4. For punitive damages in amounts to be shown in accordance with proof at the time of trial;

5. For reasonable attorneys' fees and litigation costs, expert fees and costs and any other Plaintiff's costs of the proceedings herein; and

6. For any such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all claims and causes of action so triable in this lawsuit.

I declare 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: June 29, 2021

Respectfully Submitted,

By: /s/ Scott Douglas Ora
Scott Douglas Ora
In Pro Per

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

ORIGINAL

RECEIVED
MAR 17 2022
FILING WINDOW

SCOTT DOUGLAS ORA, IN PRO PER

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MAR 17 2023
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FILED
Superior Court of California
County of Los Angeles
MAR 17 2022
Sherri R. Carter, Executive Officer/Clerk
By Robert Lee Deputy
Robert Lee

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

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

Plaintiff,

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.

No. 21 STCV 23999

Dept.: 58

Judge: Honorable Bruce G. Iwasaki

Action Filed: June 29, 2021

Trial Date: December 5, 2022

PLAINTIFF SCOTT ORA'S VERIFIED FIRST AMENDED COMPLAINT FOR BREACH OF CONTRACT, NEGLIGENCE AND PERMANENT INJUNCTIVE RELIEF TO INSTALL THE STAR ON THE HOLLYWOOD WALK OF FAME AWARDED TO LYRICIST LEO ROBIN MORE THAN 31 YEARS AGO

JURY TRIAL DEMANDED

COPYRIGHT NOTICE

[. . .]

PRAYER FOR RELIEF

101. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1 through 100 above as if fully set forth herein.

WHEREFORE, for the above stated reasons, Plaintiff prays for judgment by the Honorable Court as follows:

1. An injunction ordering the Hollywood Chamber to comply with the Robin✪ Contract by the following instructions:

a) To install Robin's✪ on the Walk of Fame;

b) For a traditional ceremony to accompany the unveiling of the star;

c) For Ora to be given a star plaque;

d) For Ora to be given the actual acceptance letter, not a copy, from the Hollywood Chamber addressed to Mrs. Robin; and

e) For all other customary practices that take place with the award of a star;

2. Ora will fulfill the sponsors obligation of $4,000 to be tendered to the Hollywood Historic Trust immediately upon the Court's order of injunctive relief in No.1 above in prayer for relief;

3. For general, compensatory and consequential damages in amounts to be shown in accordance with proof at the time of trial;

4. For punitive damages in amounts to be shown in accordance with proof at the time of trial;

5. For reasonable attorneys' fees and litigation costs, expert fees and costs and any other Plaintiff's costs of the proceedings herein; and

6. For any such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all claims and causes of action so triable in this lawsuit.

I declare 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: March 9, 2022

Respectfully Submitted,

By: /s/ Scott Douglas Ora
Scott Douglas Ora
In Pro Per

APPENDIX Q:
THE SECOND PETITION FOR REHEARING WAS FILED IN THE SUPREME COURT OF THE UNITED STATES ON MAY 23, 2024 NO. 23-766, *SCOTT DOUGLAS ORA, PETITIONER V. HOLLYWOOD CHAMBER OF COMMERCE*)

No. 23-766

In the Supreme Court of the United States

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

Petitioner,

v.

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

Respondents.

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

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PETITION FOR REHEARING

Scott Douglas Ora
Petitioner Pro Se
4735 Sepulveda Blvd. Apt. 460
Sherman Oaks, CA 91403
(818) 618-2572
sdo007@aol.com

TABLE OF CONTENTS

{ internal page numbers omitted }

[. . .]

PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.2, Petitioner respectfully seeks petition for rehearing of the Court's April 29, 2024 order denying the petition for rehearing of the writ of certiorari. This Court's Rule 44.2 authorizes a petition for rehearing based on "intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented." There are intervening circumstances that followed the first petition for rehearing of the writ of certiorari that substantially impact the case at bar—the ideal vehicle for an ordinary person deserving the same due process rights as the rich and powerful.

The Petitioner has timely filed the petition for rehearing herein within 25 days after the date of the order of denial of the first petition for rehearing. "Any petition for the rehearing of an order denying a petition for a writ of certiorari or extraordinary writ shall be filed within 25 days after the date of the order of denial" under Supreme Court Rule 44.2. However, "the Clerk will not file consecutive petitions and petitions that are out of time" under Supreme Court Rule 44.4.

Even when a petition for rehearing has been denied, Supreme Court Rule 44.4, barring consecutive and out-of-time petitions for rehearing, does not preclude a rehearing to modify the Court's original order involved in this civil case. The Court's avowed standard for deciding whether to permit an untimely or "consecutive" filing is whether doing so would advance "the interests of justice." *United States v. Ohio Power Co.*, 353 U.S. 98, 99 (1957). In the case at bar, the intervening circumstances would advance "the interests of justice."

In United States v. Ohio Power Co., the court held: "We have consistently ruled that the interest in finality of litigation must yield where the interests of justice would make unfair the strict application of our rules. . . . " *Clark v. Manufacturers Trust Co.,* 337 U.S. 953; *Goldbaum v. United States,* 347 U.S. 1007; *Banks v. United States,* 347 U.S. 1007; *McFee v. United States,* 347 U.S. 1007; *Remmer v. United States,* 348 U.S. 904; *Florida ex rel. Hawkins v. Board of Control,* 350 U. S. 413; *Boudoin v. Lykes Bros. S.S. Co.,* 350 U.S. 811; *Cahill v. New York, N.H. & H. R. Co.,* 351 U.S. 183; *Achilli v. United States,* 352 U.S. 1023."

GROUNDS FOR REHEARING

I. The Uncanny Similarity Between the Waiver Granted for Robin's Star by the Hollywood Chamber and the Waiver Granted for Frankie Valli & The Four Seasons' Star by the Hollywood Chamber Supports the Rehearing of This Case.

The news that Frankie Valli & The Four Seasons, aka "The Four Seasons," were granted a waiver to get their star on the Hollywood Walk of Fame supports the rehearing of this case. However, unlike here, the Hollywood Chamber of Commerce is honoring the waiver it granted to The Four Seasons for their star to be installed on the Hollywood Walk of Fame.

There is an uncanny similarity between the waiver of performance of conditions precedent for Robin's star by the Hollywood Chamber and the waiver of performance of conditions precedent for The Four Seasons' star by the Hollywood Chamber.

In the case of The Four Seasons' star awarded nearly 26 years ago, at the meeting on June 17,1998 of the Board of Directors of the Hollywood Chamber, Johnny Grant, Chairman of the 1999 Walk of Fame Committee, submitted a list of celebrities nominated for the 1999 Walk of Fame which included Frankie Valli & The Four Seasons (Reh.app., *infra*, 3a). A letter was sent on April 5, 2024 from the Hollywood Walk of Fame to Public Works Engineering regarding that the Hollywood Chamber has approved the installation of the name Frankie Valli & the Four Seasons into the Hollywood Walk of Fame. (Reh.app., *infra*, 1a). Then the Los Angeles City Council on May 1, 2024 approved the installation of the name. (Reh.app., *infra*, 5a) The Hollywood Chamber made an announcement on April 26, 2024 that the star induction ceremony would be on May 3, 2024 in the press release *Frankie Valli & The Four Seasons To Be Honored With Star On The Hollywood Walk of Fame.* (Reh.app., *infra*, 7a) Frankie Valli opted out until now.

In the case of Robin's star, it was a fortuitous search on the internet on July 6, 2017 that led Petitioner to something about his grandfather, the songwriter Leo Robin, that neither his family nor he knew anything about that happened more than 27 years ago—Robin was awarded a posthumous star on the Walk of Fame 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. (3 CT 732.)

Plaintiff alleged in the FAC the relinquishment of the conditions precedent by the Hollywood Chamber in allegation no. 72:

> 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 . . . Please let me know if you do want to move forward." (Cert., pp. 29-30)

The waiver of performance of conditions precedent for Robin's star by the Hollywood Chamber is strikingly comparable 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.

Whether a star is awarded to a recording group from Jersey or a songwriter from Tin Pan Alley, they have constitutionally guaranteed rights under the Seventh and Fourteenth Amendments. The judicial system demands "equal protection of the laws." The Hollywood Chamber honored the waiver granted to The Four Seasons so that they received their star on

the Hollywood Walk of Fame. The Hollywood Chamber failed to honor the waiver granted to Robin so that he never received his star on the Hollywood Walk of Fame. The Court of Appeal's decision egregiously violated Petitioner's due process rights and sacred right to a jury trial.

II. The Pattern of Granting Waivers for Stars by the Hollywood Chamber of Commerce Supports the Rehearing of This Case.

In the first petition for rehearing, it was demonstrated that Martha Reeves appeared to be granted a waiver on her journey to get her star on the Hollywood Walk of Fame is a comparable situation to the waiver in the instant case. However, unlike here, the Hollywood Chamber honored the waiver granted to Reeves so that she had her star installed on March 27, 2024 on the Hollywood Walk of Fame.

Based on the terms of the Reeves' star contract, the $55,000 was due "upon approval" at the time the star was awarded back in June of 2021. According to BUSINESS INSIDER on Mar 26, 2023 by Taylor Ardrey in her news story *Singer Martha Reeves of Motown's Martha and the Vandellas is fundraising to get her star on the Hollywood Walk of Fame — and has 3 months to secure her spot*, "Now in a bind, and under new management, her team created a fundraiser to help gather enough money by June [2023] to secure her spot for next year [2024], according to the [Detroit] Free Press." (Pet. reh'g., p.7)

This means that the payment came in 2023, approximately two years after it was due in 2021. The only way this could occur is with a waiver by the

Hollywood Chamber to allow the payment to be after the time stated in the terms of the contract.

In the petition herein, the news that The Four Seasons were granted a waiver of performance of conditions precedent by the Hollywood Chamber is another instance with an uncanny resemblance to the waiver of performance of conditions precedent for Robin's star by the Hollywood Chamber.

The pattern of granting waivers for stars by the Hollywood Chamber is frequent, apparently standard operating procedure, with waivers being granted to Robin, Reeves and now The Four Seasons. 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.

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.'"

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. It would be up to the trier of fact to consider all of the facts including that Reeves and The Four Seasons were granted waivers for their stars by the Hollywood Chamber. Moreover, the pattern of granting waivers for stars by the

Hollywood Chamber is an important fact for the trier of fact to consider to determine if the Hollywood Chamber waived performance of the conditions precedent for the star awarded to Robin.

III. The New Important Developments That Followed the First Petition for Rehearing of the Writ of Certiorari Tip the Scales Even More to Grant a Petition for Rehearing and Writ of Certiorari to Protect the Statewide and Nationwide Historical and Cultural Interests.

The new important developments that followed the first petition for rehearing of the writ of certiorari warrant consideration for granting a rehearing given the high-stakes which impact the statewide and nationwide historical and cultural interests.

Before the new developments, a sum up of the state of affairs. During the trial court proceedings, Plaintiff repeatedly argued the absolute and ironclad waiver of performance of conditions precedent by the Hollywood Chamber. 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.

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

As presented in the first petition for rehearing, a common theme among many of the actions against former President Trump is the standard of proof. In the oral argument of *Trump v. Anderson*, No. 23-719, 601 U.S. ___ (March 4, 2024), the Honorable Justice Samuel Alito skillfully pressed Jason Murray, the attorney on behalf of Anderson and respondents, on what the U.S. Supreme Court should do on standard of proof. Justice Alito's questions were directed at procedural due process in an effort to fashion due process in the circumstances.

In *Anderson v. Griswold*, Case No. 2023CV32577 (Denv. Dist. Ct. Nov. 17, 2023), Trump's brief regarding standard of proof for the proceeding provides bedrock analysis and authorities. It stated the test with the factors established in *Mathews v. Eldridge*, 424 U.S. 319 (1976) regarding whether a particular standard of proof in a particular proceeding satisfies due process. This validates the reasoning in Petitioner's

writ which is the identical formula that was set forth in Petitioner's writ but identified as the "trifactor balancing analysis" from Judge Friendly's "Some Kind of Hearing." 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 certiorari. The balancing analysis to determine the type of process due in the initial adjudication would at a minimum mandate for 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. (Cert., pp. 14-15)

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.

The court in *Conservatorship of O.B.* (2020) 9 Cal. 5th 989, 1012 held that "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 Court of Appeal thwarted the stated objective "for a heightened

standard of proof that applied in the trial court." 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 (Cert., pp. 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 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). (Cert., p. 33)

Like in *Trump v. Anderson* where Justice Alito's questions are targeted at procedural due process in an effort to craft due process in the circumstances, the Court of Appeal here should've addressed due process with the same due diligence and remanded the case back to the trial court with instructions to make a determination as the factfinder whether or not Plaintiff met the "clear and convincing" standard.

Whether it be the name Trump on a ballot as in *Anderson v. Griswold* or a star with Robin's name on the Hollywood Walk of Fame, they have constitutionally guaranteed rights. "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*.

Petitioner has presented new developments that tip the scales even more for granting a petition for rehearing. The analysis in *Anderson v. Griswold* regarding whether a standard of proof applied in a proceeding satisfies due process lends support to the reasoning in Petitioner's writ. Further, Justice Alito's questions in *Trump v. Anderson* in an effort to fashion due process in that case should be a beacon how the case here should be managed. Finally, the news that The Four Seasons were granted a waiver to get their star, especially given the striking resemblance to the waiver granted for Robin's star and the pattern of waivers granted by the Hollywood Chamber, is relevant context for the trier of fact to consider in determining whether Petitioner met the "clear and convincing" standard to prove the waiver by the Hollywood Chamber.

Given the new developments, the case here is an exceptional candidate for grant, vacate, and remand (GVR) on rehearing. The basis of this GVR is not triggered by a new Supreme Court decision. However, the same general principles could be applied to the reasoning. What was reasoned in *Trump v. Anderson* and *Anderson v. Griswold* applies mutatis mutandis to the case at bar. The question in *Anderson v. Griswold* whether a standard of proof applied in a proceeding satisfies due process presents a similar constitutional question to the one raised here. Granting rehearing and GVR in light of the reasoning in these cases justifies consideration here.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Honorable Court to grant rehearing and the petition for a writ of certiorari and, alternatively, a GVR to protect the statewide and nationwide historical and cultural interests.

Respectfully submitted,

Scott Douglas Ora

Petitioner Pro Se
4735 Sepulveda Blvd. Apt. 460

Sherman Oaks, CA 91403

(818) 618-2572

sdo007@aol.com

Executed in Sherman Oaks, California

May 23, 2024

RULE 44.2 CERTIFICATE

I hereby certify, under penalty of perjury, that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.

Executed in Sherman Oaks, California

Scott Douglas Ora

Scott Douglas Ora
Petitioner Pro Se

APPENDIX Q.A:
A LETTER WAS SENT ON APRIL 5, 2024 FROM MS. ANA MARTINEZ, PRODUCER OF THE HOLLYWOOD WALK OF FAME, TO MR. TED ALLEN, OF PUBLIC WORKS ENGINEERING, REGARDING THAT THE HOLLYWOOD CHAMBER OF COMMERCE APPROVED THE INSERTION OF THE NAME FRANKIE VALLI & THE FOUR SEASONS INTO THE HOLLYWOOD WALK OF FAME WITH DETAILS ON THE LOCATION, DATE OF THE CEREMONY, BIO OF FRANKIE VALLI & THE FOUR SEASONS AND MINUTES OF THE BOARD OF DIRECTORS

April 5, 2024

Mr. Ted Allen
Public Works Engineering
Att: Wesley Tanjiri
Los Angeles, CA 90014

Dear Mr. Allen:

The Walk of Fame/Hollywood Chamber of Commerce has approved the below-listed name for insertion into the Hollywood Walk of Fame:

FRANKIE VALLI & THE FOUR SEASONS – (Category-RECORDING) – Requested star location to be 6150 Hollywood Boulevard near

El Centro Apartments on the south side of the street. The star (38a) for FRANKIE VALLI & THE FOUR SEASONS will be in the original row between the stars of ANNA Q. NILSON (38A) to the east and MARY BOLAND (39A) to the west. This information is according to sheet #9 plan 13788. Star to point east. Ceremony is set for Friday, May 3, 2024 at 11:30 a.m.

Thanks you for your cooperation in this request. I look forward to a response from your office soon.

The following materials are enclosed: FRANKIE VALLI & THE FOUR SEASONS's bio and the Board of Director's Minutes.

Sincerely,

/s/ Ana Martinez
Vice President, Media Relations
Producer Hollywood Walk of Fame

APPENDIX Q.B:
MINUTES FROM THE MEETING ON JUNE 17, 1998 OF THE BOARD OF DIRECTORS OF THE HOLLYWOOD CHAMBER WHERE JOHNNY GRANT, CHAIRMAN OF THE 1999 WALK OF FAME COMMITTEE, SUBMITTED A LIST OF CELEBRITIES NOMINATED FOR THE 1999 WALK OF FAME WHICH INCLUDED FRANKIE VALLI AND THE FOUR SEASONS (ACCOMPANIED LETTER SENT ON APRIL 5, 2024)

Hollywood Chamber of Commerce

BOARD OF DIRECTORS
Wednesday, June 17, 1998

MINUTES

Attending: Mary Lou Dudas, President; Arslanian, Dohy, Druyen, Grant, Greer, Kleinick, Mandernach, Nedick, Nelson, Panatier, Putrimas, Rainwater, Ruiz, Salamone, Jon-Smith, Strabala, Templeton, Waller.

Honorary Directors: Adams, Dial, Dubin, Hilty, Johnson, Rossini, Robertson, Salomon, Spero.

Staff: French, Gubler, Merckling, Martinez-Holler, Welsh.

Directors Absent: Agnew, Baumgart, Carley, Cluff, Corvo, Langer, Laxineta, Lestz, Lew, Lovoy, Malmuth, Minzer, Moore, Nadel, Papadaki, Thomas, Tillman, Tronson, Van Cleve, Wenslaff, Williams.

President Dudas called the meeting to order at 4:15 p.m.

Walk of Fame

Grant submitted a list of celebrities nominated for the 1999 Walk of Fame: Jamie Lee Curtis, Samuel L. Jackson, Wesley Snipes, Robert Vaughn, James Woods, Dennis Franz, Michelle Lee, Jess Marlow, Bob Newhart, Jane Seymour, The Simpsons, Buffalo Bob Smith, Alex Trebek, Alabama, Freddy Fender, John Fogerty, Reba McEntire, Charley Pride, Keely Smith, Frankie Valli and the Four Seasons, Patsy Cline, and Jaime Jarrin. Grant, Nedick (MSP) to approve recommendations.

There being no further business, the meeting was adjourned at 5:02 p.m.

Respectfully submitted,

/s/ Ronald E. Merckling
Director of Governmental Affairs

APPENDIX Q.C:
THE LOS ANGELES CITY COUNCIL ON MAY 1, 2024 APPROVED THE INSTALLATION OF THE NAME FRANKIE VALLI & THE FOUR SEASONS ON THE HOLLYWOOD WALK OF FAME

Los Angeles City Council Agenda

Wednesday, May 1, 2024

JOHN FERRARO COUNCIL CHAMBER ROOM 340, CITY HALL 200 NORTH SPRING STREET, LOS ANGELES, 10:00 AM

Roll Call

Approval of the Minutes

Commendatory Resolutions, Introductions and Presentations

Multiple Agenda Item Comment

Public Testimony of Non-agenda Items Within Jurisdiction of Council

Items Noticed for Public Hearing

[. . .]

Post

(23) 24-0007-S10 CD 13

CONTINUED CONSIDERATION OF COMMUNICATION FROM THE CITY ENGINEER relative to the installation of the name of Frankie Valli and The Four Seasons on the Hollywood Walk of Fame.

Recommendation for Council action:

APPROVE the installation of the name of Frankie Valli and The Four Seasons at 6150 Hollywood Boulevard.

Fiscal Impact Statement: The City Engineer reports that there is no General Fund impact. All costs are paid by the permittee.

Community Impact Statement: None submitted

(Continued from Council meeting of April 19, 2024)

[. . .]

APPENDIX Q.D:
THE HOLLYWOOD CHAMBER OF COMMERCE MAKES ANNOUNCEMENT ON APRIL 26, 2024 IN THE PRESS RELEASE *FRANKIE VALLI & THE FOUR SEASONS TO BE HONORED WITH STAR ON THE HOLLYWOOD WALK OF FAME* WHICH STATED FOR THE STAR INDUCTION CEREMONY TO BE ON MAY 3, 2024

FRANKIE VALLI & THE FOUR SEASONS TO BE HONORED WITH STAR ON THE HOLLYWOOD WALK OF FAME

WHO | HONOREE

Frankie Valli & The Four Seasons

EMCEE

Marc Malkin, Variety/Senior Editor, Culture & Events

GUEST SPEAKERS

Irving Azoff

WHAT

Dedication of the 2,780th star on the Hollywood Walk of Fame

WHEN

Friday, May 3, 2024 at 11:30 AM PT

WHERE

6150 Hollywood Boulevard

WATCH LIVE

The event will be streamed live exclusively at walkoffame.com

Frankie Valli & The Four Seasons will be honored on Friday, May 3rd, 2024 at 11:30 AM PT with the 2,780th star on the Hollywood Walk of Fame at 6150 Hollywood Boulevard. The group will be honored with a star in the category of Recording. Frankie Valli will accept the star on behalf of Bob Gaudio who is not able to attend and the late Tommy DeVito and Nick Massi. Bob Gaudio sent a special message to accept the honor and it will be read at the ceremony.

The Hollywood Chamber of Commerce administers the legendary Hollywood Walk of Fame for the City of Los Angeles and has proudly hosted the globally iconic star ceremonies for decades. Millions of people from here and worldwide have visited this cultural landmark since 1960.

About Our Honorees

"In a career that has spanned more than six decades, Frankie Valli & The Four Seasons have left an indelible mark on the music industry and have touched fans around the world with their timeless music," stated Ana Martinez, Producer of the Hollywood Walk of Fame. "Their legion of fans from around the world will be excited to see their names on our iconic sidewalk!" added Martinez.

The Four Seasons was formed in 1960 in Newark, New Jersey. Since 1970, they have been known as Frankie Valli & The Four Seasons. The lead singer is Valli, Bob Gaudio on keyboards and tenor vocals, Tommy DeVito on lead guitar and baritone vocals, and Nick Massi on bass guitar and bass vocals.

The original Jersey boy, Frankie Valli, is a true American legend. His incredible career with The Four Seasons and his solo success has spawned countless hit singles, with unforgettable tunes like "Sherry", "Walk Like A Man", "Big Girls Don't Cry", "Rag Doll", "December '63 - Oh What A Night", "Can't Take My Eyes Off of You", and of course "Grease".

His songs have been omnipresent in other iconic movies such as "The Deer Hunter", "Dirty Dancing", "Mrs. Doubtfire", "Conspiracy Theory", and "The Wanderers". Over 200 artists have done cover versions of Frankie's "Can't Take My Eyes Off of You" from Nancy Wilson's jazz treatment to Lauryn Hill's hip-hop makeover.

Frankie Valli and The Four Seasons have sold over 175 million records worldwide. Valli's long-lasting career has led to the overwhelming success of the Broadway musical JERSEY BOYS. The musical

chronicles Frankie Valli and the Four Seasons' incredible career and features all of their greatest hits.

The JERSEY BOYS juggernaut has now been seen by over 18 million people worldwide, won 4 Tony Awards including Best Musical (2006), and is currently playing in New York, Las Vegas, London, in cities across the U.S. on a National Tour and The Netherlands, and will open soon in Korea. It is the 15th longest-running show in Broadway history, having given over 3,250 performances and recently passing "Fiddler on the Roof", "Hello Dolly!", "The Producers", "Hairspray", "My Fair Lady", and "Oklahoma".

In 2014, Frankie Valli's life story was again featured in the film adaptation of JERSEY BOYS, directed by Academy Award-winning director Clint Eastwood. In Rob Reiner's romantic comedy, "And So It Goes", Valli also returned to acting. The film starred Michael Douglas and Diane Keaton and was released on July 18, 2014. Frankie recently appeared in this past season of "Hawaii 5-0", and his mega-hit BIG GIRLS DON'T CRY was inducted into the Grammy Hall of Fame in 2015. On May 18, 2015, Dan Rather profiled the legend for his series, The Big Interview, and Valli also participated in the AMC series, "The Making of the Mob".

In 2016, Frankie Valli and the Four Seasons appeared on Broadway in a limited engagement from October 21 through October 29 at the Lunt-Fontanne Theatre. Frankie Valli released TIS THE SEASONS, a holiday album, on October 14, 2016, on Rhino. His first-ever foray into jazz, the meticulously crafted album titled 'A Touch of Jazz' was released on June 25, 2021, marking a bold departure from his familiar pop sound. Showcasing Valli's unparalleled vocal range and

emotive delivery, the album reimagines classic jazz standards with his own distinctive flair, earning widespread praise from critics and music aficionados alike. Despite this venture into uncharted territory, Valli remains as dynamic and captivating as ever, captivating audiences worldwide with his electrifying performances as he continues to tour extensively, ensuring that his timeless music resonates across generations and borders.

The charities that Frankie Valli and the Four Seasons participate in, include MusiCares and Broadway Cares.

[. . .]

APPENDIX R:
THE LETTER FROM THE SUPREME COURT OF THE UNITED STATES ON MAY 30, 2024 ACCOMPANYING THE RETURNED SECOND PETITION FOR REHEARING STATING "PURSUANT TO RULE44.4 CONSECUTIVE PETITIONS FOR REHEARING WILL NOT BE RECEIVED" (NO. 23-766, *SCOTT DOUGLAS ORA, PETITIONER v. HOLLYWOOD CHAMBER OF COMMERCE*)

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

May 30, 2024

Scott D. Ora
4735 Sepulveda Blvd.
Apt. 460
Sherman Oaks, CA 91403

RE: Ora v. Hollywood Chamber of Commerce, et al.
No: 23-766

Dear Mr. Ora:

The petition for rehearing received May 29, 2024 is herewith returned. Rehearing was denied in the above-entitled case on April 29, 2024. Pursuant to Rule 44.4 consecutive petitions for rehearing will not be received.

Your money order number 28964746326 in the amount of $200.00 is herewith returned.

Sincerely,

Scott S. Harris, Clerk

By: /s/ Redmond K. Barnes
Redmond K. Barnes
(202) 479-3022