SUPREME COURT OF CALIFORNIA
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Supreme Court of California
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Case No. S248614

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

OLIVIA DE HAVILLAND, DBE,
Plaintiff and Respondent,

v.

FX NETWORKS, LLC AND PACIFIC 2.1 ENTERTAINMENT GROUP, INC.,
Defendants and Appellants.

After a Published Decision of the California Court of Appeal
Second Appellate District, Division 3, Case No. B285629

Reversing a Ruling of the Los Angeles County Superior Court
Case No. BC667011
The Honorable Holly E. Kendig, Dept. 42

REPLY TO ANSWER TO PETITION FOR REVIEW

HOWARTH & SMITH
Don Howarth (SBN 53783)
dhowarth@howarth-smith.com
*Suzelle M. Smith (SBN 113992)
ssmith@howarth-smith.com
Zoe E. Tremayne (SBN 310183)
ztremayne@howarth-smith.com
523 West Sixth Street, Suite 728
Los Angeles, CA 90014
Tel: (213) 955 – 9400
Fax: (213) 622 – 0791

Attorneys for Plaintiff and Respondent
Olivia de Havilland, DBE

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I. INTRODUCTION

Defendants' Answer underscores, and does not undermine, Plaintiff's Petition. Review by this Court is "necessary to secure uniformity of decision or to settle an important question of law."[1] This case satisfies both criteria.

Defendants argue that the Court of Appeal's Opinion is "manifestly correct" and does not "justify[] this Court's expenditure of time…."[2] The *Los Angeles Times* considered the Opinion so significant on the scope of First Amendment immunity for commercial entertainment producers and media publishers that it took the extraordinary step of devoting an Editorial Board Opinion to the Court of Appeal's ruling.[3] Six amicus briefs were filed below.[4] And Plaintiff has received, to date, twenty-four amicus letters filed in support of review.

If Defendants truly believe the Opinion correctly states the law on anti-SLAPP standards and the scope of First Amendment protection for commercial expression, including docudramas,[5] they would encourage this

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[1] Cal. Rules of Court, rule 8.500(b)(1).
[2] Answer at 9.
[3] The Times Editorial Board, *Olivia de Havilland's legal loss means historical fiction gets to survive*, L.A. Times (Mar. 28, 2018) (http://www.latimes.com/opinion/editorials/la-ed-dehavilland-ruling-20180328-story.html).
[4] Respondent's Answer to Briefs Filed by Amici Curiae at 10; Amicus Curiae Brief of Screen Actors Guild.
[5] FX argues that if Miss de Havilland is allowed to collect damages from a false and unconsented use of her name and identity, there will be no more docudramas. Answer at 8. The Opinion states that producers will be in a "Catch-22," because if they do not tell lies but are accurate, then they will violate the right to publicity, and if they fabricate, they will be exposed to defamation. Opinion at 37. This is syllogistic reasoning, which asserts that docudramas are protected speech, docudramas may contain lies, and therefore, lies are protected speech. This is specious logic. There is no Catch-22. Docudramas about living people must not contain knowing lies or fabrications. Docudramas which want to use falsities can do so with

Court to grant the Petition and affirm. What Defendants like about the Opinion is not that it follows existing authorities, but that it is worth many millions of dollars to the industry, because it would eliminate the consent requirement, or having to offer compensation for consent, in the use of a person's name and identity in a commercial publication, and would allow publication of fabricated, disparaging portrayals of living celebrities for profit with no recourse. These are economic goals the industry has been pushing to achieve in its self-interest since the right of publicity statute was enacted.[6] The Opinion gives the industry what it could not achieve legislatively: the de facto repeal of the right of publicity and complete discretion to courts to dismiss such cases on disputed facts before trial.

Furthermore, such an affirmance would chill legal challenges to commercial misappropriation of name, image and identity due to the anti-SLAPP penalty provision, which potentially awards millions of dollars in attorneys' fees if Plaintiff loses, even with admissible expert and percipient evidence of false and malicious statements of fact.[7] This grant of unfettered license for producers and publishers to flood print and broadcast media with lies about living persons under the guise of creative expression would be a significant financial victory for Defendants and their industry.[8]

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fictional characters, but not by disparaging actual living people. Neither *Masson*, nor any case cited in the Opinion or the Answer holds that all docudramas, including those which contain knowing or reckless falsehoods about living people, are protected by the First Amendment.

[6] *See, e.g., Do a few suits equal a "wave?" Are producers having a hard time making creative works?* (Mar. 10, 2018) <http://rightofpublicity.com/do-a-few-suits-equal-a-wave-are-producers-having-a-hard-time-making-creative-works>.); Heller, *Deciding Who Cashes in on the Deceased Celebrity Business* (2008) 11 Chap. L. Rev. 454.

[7] Code Civ. Proc. § 425.16.

[8] Jenkins, *We laugh at Russian propaganda. But Hollywood history is just as fake,* The Guardian (Jan. 11, 2018)

These repercussions, flowing from the Opinion, are why twenty-four individuals have written amicus letters in support of the Petition, including performing artists, opera conductors, a former governor, a retired general, educators, ambassadors, newspaper editors, priests, lawyers, writers, biographers, and even members of the entertainment industry who value truth over potential profit. That Defendants urge the Court not to grant the Petition is a recognition that the Opinion is fatally flawed, important, and in conflict with existing law.

Defendants argue that review should be denied because the Opinion did not "construe[] the anti-SLAPP statute to hold that courts should determine witness credibility and reject circumstantial evidence in assessing actual malice."[9] This is exactly what the Opinion states and does, and it is in conflict with California case law holding to the contrary. As set out in the Petition, quoting the Opinion verbatim, it states that "plaintiff must present *credible* evidence that satisfies the standard of proof…."[10] It further states that "[a]ctual malice … must be proven by direct evidence."[11] Unless this Court accepts the Petition and addresses this, it is the published Opinion, and not the recharacterization set out in Defendants' Answer, that will serve as controlling authority for those bringing right of publicity or defamation claims. The Opinion has placed the Second District in conflict with other appellate courts on important and now unsettled questions of law.

The Answer next states that the Opinion does not: "eliminate[] a plaintiff's right to a jury trial," but applies the anti-SLAPP motion "like a

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<https://www.theguardian.com/commentisfree/2018/jan/11/hollywood-history-churchill-getty-trust-fiction>.

[9] Answer at 10.

[10] Opinion at 13 (emphasis added).

[11] *Id.*

summary judgment motion, preclud[ing] meritless claims from reaching a jury without impinging the jury-trial right…. based on the evidence presented. (*See* Opinion at 14-37.)"[12] The Opinion does not say it considered all of Plaintiff's evidence and credited it as true, and cannot have done so. If it had, it would have reached the same conclusion as the trial judge—the case must go to a jury to find the facts. The Opinion references only a subset of Plaintiff's evidence while calling out all Defendants' evidence, and uses only Defendants' evidence in supporting its findings of fact.[13] By ignoring and failing to credit Plaintiff's admissible record evidence, and instead relying on Defendants' evidence in finding that "as a matter of law[, Plaintiff] cannot prevail," the Opinion announced a new legal standard for anti-SLAPP motions, in conflict with all reported case law and involving important questions of law, which will affect potentially hundreds of cases. The standards need to be settled by this Court.

Finally, Defendants state the Opinion was correct in holding that "Defendants' use of Plaintiff's name and likeness was transformative. (Opinion at 23-27.)"[14] It is undisputed that Defendants appropriated Plaintiff's name, photograph, and identity without consent, as the narrator or framing device of the miniseries.[15] The Opinion says that adding to this literal depiction other characters and realistic period sets, costumes, and make-up, somehow makes it transformative. This interpretation of *Comedy III*[16] and *Winter*,[17] as set forth in the Answer and Opinion, is in conflict with *No Doubt v. Activision Publishing, Inc.* (2011) 192 Cal.App.4th 1018,

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[12] Answer at 10.
[13] Petition at 26-27.
[14] Answer at 11.
[15] *See* Opinion at 31.
[16] *Comedy III Prods., Inc. v. Gary Saderup, Inc.* (2001) 25 Cal.4th 387.
[17] *Winter v. DC Comics* (2003) 30 Cal.4th 881.

a case ignored by the Opinion.[18] *Comedy III* held that a literal depiction of the Three Stooges was not transformative as to any of them.[19] *Winter* found it transformative that the possible (not literal) celebrity identity was morphed into a villainous half-worm cartoon creature, placed in a fanciful context, and given an entirely different name.[20] The interpretation of *Winter* and *Comedy III* by the Court of Appeal raises important questions of law, and its conflict with *No Doubt* must be resolved.

II. ARGUMENT

A. Plaintiff's Petition Is Not a "Fact-Bound" Request to Correct Errors

Defendants claim: "This Court does not grant review to entertain fact-bound requests to correct errors," citing but not quoting *People v. Davis* (1905) 147 Cal. 346, 347-348.[21] The *Davis* Court actually stated: "It is not seriously claimed that the opinion of the district court of appeal is erroneous in its statement of the law.… Shall this court devote itself to the correction of alleged errors of fact … which are important only to the decision of the particular case in which they are made and to the rights of the particular parties there concerned?"[22] The Court answered no, and further stated: "We therefore, in this case, refuse to order the transfer …. The significance of such refusal is no greater than this—that this court does not consider that the interests of justice, or the purposes for which the power was given, require its exercise in the particular case."[23]

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[18] *See also In re NCAA Student-Athlete Name & Likeness Licensing Litig*. (9th Cir. 2013) 724 F.3d 1268, 1277 n.7.
[19] 25 Cal.4th 387.
[20] 30 Cal.4th 881.
[21] Answer at 20.
[22] *Davis*, 147 Cal. at p.347.
[23] *Id.* at 350.

The Petition does not ask this Court to "devote itself to the correction of alleged errors of fact…."[24] Plaintiff petitions for review because the Opinion is "erroneous in its statement of the law" and those errors lead it to a wrong result, completely opposite to the careful ruling of the trial judge. These errors put it in conflict with other opinions on important questions.[25] The rule and reasoning of *Davis* support review.

B. Broad Construction of Prong One of The Anti-SLAPP Statute Does Not Justify Conflict with the Constitutional Rights to Petition and Jury Trial

Defendants next assert that the anti-SLAPP statute "should be 'construed broadly.'"[26] To the extent that the Opinion and FX are relying on this "broad construction" (which applies only to prong one of the statute in all reported cases Plaintiff has located) to justify legislative infringement of the right to petition and right to jury trial on disputed facts, it is in conflict with *Equilon*, as well as *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1122-23, *S.B. Beach Properties v. Berti* (2006) 39 Cal.4th 374, 380-81, and *Un Hui Nam v. Regents of the Univ. of California* (2016) 1 Cal.App.5th 1176, 1179.[27] Even a legislative intent to protect the right to intentionally truthful speech, when it does so by infringing the inviolate right to jury trial in the process, would be unconstitutional.[28] Thus, Defendants' Answer serves to highlight a conflict between courts of appeal, as well as important issues of constitutional law and statutory construction which must be settled.

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[24] *Id.* at 347; *see generally* Petition.
[25] *See generally* Petition; *Davis*, 147 Cal. at p.347.
[26] Answer at 21 (citing Code Civ. Proc. § 425.16(a); *Equilon Enterprises, LLC v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 60).
[27] Petition at 30-33.
[28] *Id.*; Cal. Const., Art. I, §16; *Shaw v. Superior Court* (2017) 2 Cal.5th 983, 994-95.

C. The Opinion Holds Incorrectly That Plaintiff Must Present Credible Evidence, Rather Than That the Court Must Credit Plaintiff's Evidence

The Answer acknowledges that the Opinion states: "'To satisfy [the anti-SLAPP] prong-two showing, the plaintiff must present *credible* evidence that satisfies the standard of proof required ….' (Opinion at 13 [emphasis added by FX].)"[29] The Opinion cites no legal authority for this new rule.[30] The Answer demonstrates that this statement of the law is inconsistent, even with cases the Opinion also cites such as *Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821.[31] It quotes *Wilson*, stating: "'In deciding the question of potential merit … the court does not *weigh* the credibility or comparative probative strength of competing evidence….'"[32]

Credibility findings, by definition, require weighing whether the evidence is trustworthy or believable.[33] However, on an anti-SLAPP motion, the court must credit Plaintiff's evidence as true for the purpose of the motion.[34] The Answer impliedly acknowledges that the Opinion's statement of law, that "plaintiff must present credible evidence," is wrong.[35] This statement is in conflict with prior decisions of this Court, as well as other courts of appeal.[36] It presents an important question of law,

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[29] Answer at 22.
[30] *See* Opinion at 13.
[31] *Wilson*, while not inconsistent with the mainstream anti-SLAPP jurisprudence, involves a malicious prosecution summary judgment and whether the denial by the trial court of an anti-SLAPP motion constituted a finding of probable cause. 28 Cal.4th 811.
[32] Answer at 23.
[33] EVIDENCE, Black's Law Dict. (10th ed. 2014) (defining credible evidence as "evidence that is worthy of belief; trustworthy evidence.").
[34] *Baral v. Schnitt* (2016) 1 Cal.5th 376, 385.
[35] Answer at 22-26.
[36] Petition at 33.

not only as to the correct standard, but as to whether a court may escape review by citing two contradictory versions of the law—one erroneous and one correct—and then apply the erroneous version by not crediting Plaintiff's evidence. Defendants' characterization of the Opinion's statement of the law underscores that this Court should grant review.

D. The Court Used a New Legal Standard, Not Accepting All Plaintiff's Evidence and Ignoring Significant Admitted Evidence Putting It in Conflict with Other Opinions

Defendants agree that the court must accept all Plaintiff's evidence as true. However, they assert "As to each element of Petitioner's claims, the court concluded she had failed to meet her burden to survive the anti-SLAPP motion because, even *accepting all of her evidence as true*, she had failed to show a probability of prevailing on her claims."[37] Defendants do not cite the Opinion in making this statement, and nowhere does the Opinion claim to have considered all of Plaintiff's evidence or have accepted it as true.[38]

In contrast, the Opinion lists all of Defendants' evidence,[39] referring to it with approval, and does not mention Plaintiff's evidence to the contrary at all in its discussion section.[40] For example, Mr. Casady's admissible expert declaration states that the false portrayal of Plaintiff was damaging to her reputation and intentionally structured to appear as if she endorsed "Feud."[41] "[T]he storyline for 'Feud' was constructed to make it appear that Miss de Havilland actually made the statements about her private relationship with Bette Davis and Joan Crawford …. The

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[37] Answer at 23 (emphasis added).
[38] Petition at 26-27; *see generally* Opinion.
[39] *See* Opinion 7-8, 11-13.
[40] *See generally id.* at 11-37.
[41] JA0957 [Casady Decl. ¶11].

characterization of Miss de Havilland in 'Feud' not only misrepresents her reputation, but also undermines the public image that she has projected and nurtured over a lifetime."[42] The Opinion, however, accepts Defendants' contrary declarations that the portrayal was "that of 'a wise, respectful friend and counselor….,'" and adopts it as true.[43]

The template the Opinion has created for a court's consideration of an anti-SLAPP motion allows future courts to ignore Plaintiff's evidence in favor of the moving party's evidence to make factual determinations of falsity, defamatory meaning, and actual malice.[44] This is a sharp departure from other opinions, and this Court should grant the Petition to settle the conflict because the issue is one of constitutional significance.

E. The Opinion Creates a Higher Burden of Proof Requiring Clear and Convincing Evidence at the Anti-SLAPP Stage and Permits the Court to Disregard Such Evidence Even When Offered

Defendants next state that the "court concluded that Petitioner failed to demonstrate clear and convincing evidence of actual malice, not because it deemed her evidence incredible or outweighed by other evidence, but instead because Petitioner's evidence (even when accepted) did not support her claims…. This was not based on any credibility determination but rather because that evidence was legally irrelevant."[45] Defendants' characterization of the Opinion again demonstrates a conflict with other courts on a significant issue of law.

Other courts state the burden thus: "In opposing an anti-SLAPP motion, a defamation plaintiff need not establish malice by clear and

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[42] *Id.*
[43] Opinion at 36.
[44] *See id.* at 11-37.
[45] Answer at 23-24.

convincing evidence, the standard applicable at trial. Rather, the plaintiff must meet her minimal burden by introducing sufficient facts to establish a prima facie case of actual malice; in other words, she must establish a reasonable probability that she can produce clear and convincing evidence showing that the statements were made with actual malice."[46] Defendants' own construction of the Opinion demonstrates a conflict with constitutional implications.

Defendants also claim that the Court of Appeal found Plaintiff's evidence "irrelevant." Nowhere does the Opinion state a finding that Plaintiff's evidence of intentional falsity or any other element was irrelevant. Indeed, Defendants objected to Plaintiff's evidence on relevancy grounds, including that offered as to malice, and the trial court overruled those objections.[47] Defendants did not appeal the evidentiary rulings. Further, if the Opinion can be interpreted by FX in such a way, it raises additional significant legal issues, requiring review by this Court.[48]

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[46] *Young v. CBS Broad., Inc.* (2012) 212 Cal.App.4th 551, 563 (citing *Ampex Corp. v. Cargle* (2005) 128 Cal.App.4th 1569, 1578-79).

[47] JA1079-82 [Ruling on Evidentiary Objections Defendants' Motion to Strike at 1-4].

[48] Defendants argue that, where the Opinion acknowledged only some of Plaintiff's evidence, it was free to disregard it. Answer at 22-26. For example, Defendants state "the court of appeal instead held [not that Plaintiff's expert was lying, but] as a matter of law that 'the First Amendment simply does not require such acquisition [consent of a celebrity] agreements.' (Opinion at 21 [citing *Polydoros, supra,* 67 Cal.App.4th at p.326].)" *Id*. at 24. Casady's testimony about industry standard was not offered to prove a proposition of First Amendment law, but rather was offered as evidence that Defendants' use was neither innocent nor accidental. *See* Respondent's Brief in Opposition at 16-17, 50, 56. Such evidence is admissible. JA1080-82 [Ruling on Evidentiary Objections at 2-4]. It is crucial that litigants and understand and are uniform in deciding what evidence is sufficient to meet the anti-SLAPP burden, and this court should grant review to settle the issue.

F. Defendants' Attempt to Rewrite, Add To, or Change the Opinion Cannot Support Denial of Review

Defendants spend a lengthy section of their Answer attempting to diminish the conflicts of law created by the Opinion, but they do so by changing its language and asserting that it does not mean what it says. For example, Defendants state: "when viewed in the context of what the court actually said and did, 'credible' on page 13 of the decision means nothing more than evidence that a finder of fact *could* deem credible."[49] Defendants go on to discuss that language and assert that it is a correct statement of the law, citing cases not cited in the Opinion, such as *Scott v. Harris* (2007) 550 U.S. 372. An Opinion must be taken at face value, and will be by future litigants. It does not work to rewrite the court's language and claim to know what a court really "meant" as a means of avoiding a challenge to an Opinion with a result Defendants like. Furthermore, *Scott*[50] and the other cases cited by Defendants involve summary judgment standards in federal court, not anti-SLAPP standards in California state courts. To the extent the Opinion can be interpreted to adopt any standard which allows a court to ignore Plaintiff's admissible evidence and determine credibility at the anti-SLAPP stage, it is in conflict with other case law and the Constitution on an important matter of law, which should be settled by this Court.[51]

G. The Opinion States and Requires That Plaintiff Must Prove Malice by Direct Evidence, in Conflict with Other Opinions

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[49] Answer at 25.

[50] *Scott* has been highly criticized for its position that a video of an event has only one interpretation. Mezey, *The Image Cannot Speak for Itself: Film, Summary Judgment, and Visual Literacy* (2013) 48 Val. U. L. Rev. 1, 3.

[51] Petition at 32-33.

FX argues that "[n]othing in *Beilenson* [quoted by the Opinion] or the decision below says or implies that circumstantial evidence is inadmissible to prove actual malice."[52] The Opinion actually states the contrary, quoting *Beilenson*: "'Actual malice cannot be implied and must be proven by direct evidence.'"[53] That FX can interpret such an important statement of law to mean its opposite shows the problem here. The Opinion is in conflict with others which state and hold that circumstantial evidence is sufficient to prove malice.

H. Whether Summary Judgment Is a Favored Procedural Device or Not, an Anti-SLAPP Statute May Not Infringe the Inviolate Constitutional Right to Jury Trial

FX argues that "the court of appeal's resolution of this case does not threaten any litigant's right to a jury trial."[54] Defendants support this with citations to a number of cases discussing summary judgment, not anti-SLAPP motions, which are pre-discovery and entail greater constitutional concern.[55] The published Opinion, which did not consider, much less accept all of Plaintiff's admissible evidence, has set a new standard for the court on anti-SLAPP dismissals, which by definition denies Plaintiff the right to jury trial.[56] This new standard is in conflict with other opinions

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[52] Answer at 26.
[53] Opinion at 13.
[54] Answer at 27.
[55] *Id.* Even summary judgment motions may implicate the right to jury trial if all procedures are not strictly followed. *Bahl v. Bank of Am.* (2001) 89 Cal.App.4th 389, 395.
[56] *See* Petition at 32-33. Defendants also assert "the right [to jury trial] is not threatened by a court's resolution of a suit where, as here, there is no disputed issue of fact." Answer at 28. Per Defendants' logic, a court may ignore admissible evidence of the non-moving party on an anti-SLAPP motion, consider only opposing evidence, accept all of it, and then declare there is no disputed issue of fact. This again puts the Opinion in conflict with other opinions and is an important issue of law. Petition at 32-36.

and, if allowed to stand, renders the statute unconstitutional. Defendants' attempt to distinguish these cases and the procedural rules of law they enunciate and to reconcile them to the Opinion, misses the point entirely.[57] In those cases denying summary judgment or affirming jury verdicts, the courts observed that there was admissible evidence on falsity, harm to reputation, and malice, even where a court or judge might think that the outcome should be in favor of defendant, such as in *Masson*.[58] Because of the disputed facts in these cases, a dispositive result by a court rather than a jury was not permissible.[59] The Opinion erases this line and takes upon itself the role of factfinding by weighing evidence, ignoring evidence, and favoring Defendants' evidence.[60] This is not a role the California Constitution permits on an anti-SLAPP motion or summary judgment.[61] *Bahl*, 89 Cal.App.4th at p.395 ("'Though often said, it appears necessary to again reiterate that a summary judgment is a drastic measure which deprives the losing party of trial on the merits.' [Citations.] The right to a jury trial, embodied in article I, section 16 of the California Constitution, is at stake…. [T]echnical compliance with the procedures of … section 437c is required to ensure there is no infringement of a litigant's hallowed right to have a dispute settled by a jury of his or her peers."). The Opinion's declared and applied method of deciding an anti-SLAPP motion is unconstitutional, is in conflict with other opinions, and the Court should grant review.

However, the Opinion does not state there was "no disputed issue of fact." It could not say this (even if Defendants are willing to do so), because there was admitted evidence to support every element of Plaintiff's causes of action, as the trial court found. *See* JA1083-98 [Trial Court Ruling].

[57] *See* Answer at 29-31; Petition at 34-36.

[58] *Masson v. New Yorker Magazine, Inc.* (1991) 501 U.S. 496.

[59] *See* Petition at 34-36.

[60] *Id.* at 26-29.

[61] *Id.* at 30-32.

I. The Opinion's Interpretations of *Winter* and *Comedy III* Are Wrong and in Conflict with *No Doubt*

Defendants claim "[t]he [c]ourt of [a]ppeal [c]orrectly [a]pplied [t]his [c]ourt's [p]recedents to Petitioner's [r]ight of [p]ublicity [c]laims."[62] They further assert that *No Doubt*[63] is not in conflict with the Opinion.[64] The Opinion did not mention *No Doubt*, a case strikingly similar to *de Havilland v. FX*, holding that a literal use of a celebrity's name and image doing what they do in real life is not transformative, even if there are other characters, fanciful settings (unlike the realistic ones in "Feud"), and other artistic contributions.[65] Defendants' Answer, which labors to reconcile the Opinion and the holdings and reasoning of *Winter*, *Comedy III*, and *No Doubt*, again underscores the conflict, as well as the importance of the unsettled issues. The Court should grant review.

III. CONCLUSION

Defendants' Answer illustrates precisely why this Court should review the Opinion below. This case presents important and unsettled questions of law. It perhaps uniquely presents a full factual record with evidence supporting each of Plaintiff's claims for each cause of action, as the trial court found. It presents a clear example of literal use of a name and identity, placed in a realistic setting, but held nonetheless to be transformative. There is admitted evidence of actual malice, falsity, and harm to Miss de Havilland's reputation. The case also presents an issue of first impression of great importance to citizens and the industry, namely, whether docudramas that contain knowingly false statements about living people are immune from liability for defamation or violation of the right of

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[62] Answer at 31.
[63] 192 Cal.App.4th 1018.
[64] Answer at 32-33.
[65] 192 Cal.App.4th at p.1033-34.

publicity. This case is the right opportunity for this Court to resolve these important issues of law, and to clear up the conflicts the Opinion engenders. The Petition should be granted.

Dated: June 4, 2018

Respectfully submitted,

HOWARTH & SMITH

By: /s/ Suzelle M. Smith
Don Howarth
Suzelle M. Smith
Zoe E. Tremayne
Attorneys for Plaintiff and Respondent OLIVIA DE HAVILLAND, DBE

CERTIFICATE OF COMPLIANCE

Counsel of record hereby certify that pursuant to Rule 8.504(d) of the California Rules of Court, the enclosed Respondent's brief in reply is produced using 13-point Times New Roman font, including footnotes, and contains 4,193 words according to the word count of the computer program used to prepare this brief.

Dated: June 4, 2018

Respectfully submitted,

HOWARTH & SMITH

By: /s/ Suzelle M. Smith
Don Howarth
Suzelle M. Smith
Zoe E. Tremayne
Attorneys for Plaintiff and Respondent OLIVIA DE HAVILLAND, DBE

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 523 W. Sixth Street, Suite 728, Los Angeles, CA, 90014. My electronic service address is agilbert@howarth-smith.com.

On June 4, 2018, I served true copies of the following documents described as:

REPLY TO ANSWER TO PETITION FOR REVIEW

On the interested parties in this action as follows:

Glenn D. Pomerantz, Esq.
glenn.pomerantz@mto.com
Kelly M. Klaus, Esq.
kelly.klaus@mto.com
Fred A. Rowley, Esq.
fred.rowley@mto.com
Mark R. Yohalem, Esq.
mark.yohalem@mto.com
MUNGER TOLLES & OLSON LLP
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071
Tel: (213) 683 – 9100
Fax: (213) 687 – 3702

Attorneys for Defendants and Appellants FX Networks, LLC and Pacific 2.1 Entertainment Group, Inc.

Supreme Court of California

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California Court of Appeal
Second District, Division Three
Ronald Reagan State Building
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

On the Attorney General of California as follows:

Office of the Attorney General
300 South Spring Street
Los Angeles, CA 90013

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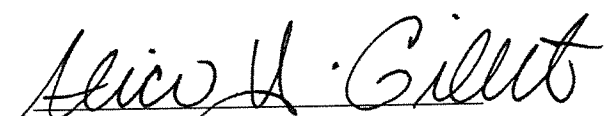

Alice Gilbert