

● ORIGINAL ●

87

897-2175 Patrick Brown

Chet Horn

897-2704

Center Non profit

- Brown Act

- Minors public

DANIEL E. LUNGREN,

Plaintiff,

v.

HOLLYWOOD CHAMBER OF COMMERCE,
et al.,

Defendants.

CITY OF LOS ANGELES,

Plaintiff in Intervention

v.

HOLLYWOOD CHAMBER OF COMMERCE,
et al.,

Defendants.

NO. BC 041349

SETTLEMENT AGREEMENT

6/92

A.G.

Chris Bingham

RECITALS

A. The Attorney General of the State of California ("AG") has filed an action number BC 041349 in the Los Angeles Superior Court naming the Hollywood Chamber of Commerce (The "HCOC"), Edward Lewis, William Welch, and Larry Kaplan, as defendants. Said action is hereinafter referred to as the "Action". A copy is attached hereto as Attachment A.

B. The City of Los Angeles (the "City") has moved to intervene in the Action and has claimed an interest in the various registered trademarks the HCOC holds and has claimed the

1 right to obtain trademarks on the landmark Hollywood Sign (the
2 "Sign") and the Hollywood Walk of Fame (the "WOF") (hereinafter
3 referred to as the "City's claims").

4 C. There exist two trusts created by the HCOC which
5 are known as the Hollywood Sign Trust ("HST") and Walk of Fame or
6 Historic ("WOFT") Trust established by Declarations of Trust
7 executed in 1978 and 1979, respectively. The HCOC is currently
8 the Trustee for both Trusts.

9 D. The HCOC and the individual defendants vigorously
10 deny the claims made by the AG and the City.

11 E. The Attorney General, City and HCOC, in the best
12 interests of the citizens of California and the residents of the
13 City of Los Angeles and of Hollywood, desire to settle the
14 Action and the City's claims and therefore enter into this
15 Settlement Agreement.

16 F. The Attorney General, City, HCOC and the individual
17 defendants, Edward Lewis, William Welch and Larry Kaplan agree
18 that a Stipulated Judgment in accord with the provisions of this
19 agreement and in the form attached hereto as Attachment B may be
20 entered by the court without further notice.

21 TERMS

22 It is hereby agreed by and between the parties to this
23 Agreement as follows:

24 1) There currently exist two charitable trusts known
25 respectively as the Hollywood Sign Trust ("HST") and the Walk Of
26 Fame (or Historic) Trust ("WOFT"). The Hollywood Chamber of
27 Commerce ("HCOC") is currently the trustee for both the HST and

1 WOFT. The HCOC hereby represents and warrants that as of January
2 31, 1992, the HST has a fund balance of \$189,647 and the WOFT has
3 a fund balance of \$156,178. The HCOC shall unconditionally and
4 irrevocably resign as trustee of both the HST and the WOFT
5 effective on or before _____, 1992.

6 2) There shall be no disbursements from, nor any
7 expenses or liabilities incurred by, the HST or WOFT from
8 January 31, 1992, until appointment and confirmation of the new
9 trustees of said trusts as provided in paragraph 5 of the
10 judgment to be entered herein.

11 3) HCOC shall pay to the HST and the WOFT in new
12 monies, the principal sum of \$224,464, payable \$161,883.50 to the
13 HST and \$62,580.50 to the WOFT on the following terms and
14 conditions:

15 a) \$224,464 to be paid in full over 10 years
16 commencing on December 31, 1992, in equal annual
17 installments of \$22,446.40 in principal payments plus
18 interest on the total unpaid balance at 9% per year simple
19 interest. Seventy-two percent (72%) of each payment of
20 principal and interest shall be made to the HST and twenty-
21 eight percent (28%) shall be made to WOFT.

22 b) The payments provided in paragraph 3a herein
23 represent a minimum payment. HCOC may prepay any amount
24 against principal at any time. In the event the HCOC pays
25 more than required to make an annual minimum payment, it
26 may, at HCOC's discretion, be credited with earlier
27 prepayments for the purpose of calculating its current

1 year's requirement under the ten-year payment schedule; if
2 so, the HCOC is not in default on the minimum payment
3 schedule.

4 c) The portion of the \$224,464.00 plus interest which
5 is allocated to the WOFT will be used exclusively for the
6 repair, maintenance, refurbishment, and capital improvements
7 to the Walk of Fame and not for the Hollywood Museum.

8 d) The portion of the \$224,464 plus interest which is
9 allocated to the HST will be used exclusively for the
10 repair, maintenance, refurbishment and capital improvements
11 to the Hollywood Sign or related thereto.

12 4) Until all monies payable pursuant to paragraph 3
13 herein are paid in full, HCOC shall pay over to the HST and WOFT
14 all (100%) of the net revenues obtained from all of the trade and
15 service marks (hereinafter collectively "marks") related to the
16 Hollywood Sign and/or Walk of Fame. To the extent said net
17 revenues exceed the minimum payment specified in Paragraph 3
18 herein for any ^{annual} ~~quarterly~~ period, HCOC shall account for and pay
19 over to the HST and WOFT, all such excess revenue within 180 days
20 of the date on which the ^{annual} ~~quarterly~~ payment was made. Any such
21 payment in excess of net revenue shall be allocated first to any
22 past due accrued interest, if any, and thereafter treated as a
23 reduction in the principal amount owed under Paragraph 3 herein.
24 In addition, until all monies pursuant to Paragraph 3 herein are
25 paid in full, HCOC pledges, and HST and WOFT shall have a lien
26 against, all (100%) of the net revenues from any and all marks
27 related to the Hollywood Sign and/or the Walk of Fame, including

1 all marks currently held and any that may be obtained, registered
2 or otherwise acquired by the HCOC in the future.

3 a) "Net revenue" shall mean the revenue received by
4 the HCOC from the marks ~~on the WOFT and Sign~~ less any
5 commissions, expenses or fees paid for the marketing and
6 policing of the ~~trade~~ marks whether performed by an outside
7 agent or by the Chamber, less any taxes that must be paid
8 against said revenues and less any accounting and/or legal
9 fees incurred in registering, protecting, administering or
10 defending said ~~trade~~ marks whether provided by outside
11 services or by the Chamber internally.

12 b) Any dispute arising out of this paragraph,
13 including but not limited to what constitutes net revenue,
14 shall be finally settled pursuant to arbitration under the
15 commercial arbitration rules of the American Arbitration
16 Association before a single arbitrator, who shall be a
17 Certified Public Accountant, in Los Angeles.

18 5) The resignation of the HCOC as trustee of both the
19 HST and WOFT shall be effective _____ and the trust terms
20 for each trust (paragraph 7 of the HST instrument and paragraph 7
21 of the WOFT instrument) shall be modified to read in part as
22 follows:

23 This trust shall have nine trustees to be appointed as
24 follows:

25 1) Two trustees shall be appointed by the City of Los
26 Angeles. The city appointed trustees are full voting
27 trustees and each shall be either an elected/appointed

CRA. appointe e ?

1 official or City employee. The city trustees shall serve an
2 indefinite term at the sole discretion of the City of Los
3 Angeles.

4 2) Seven trustees shall be individuals appointed by
5 the HCOC. No more than four of the HCOC appointees may
6 serve concurrently (or have served in the past 5 years) as
7 an officer, director, or employee of the HCOC. All seven
8 initial appointments by the HCOC shall be nominated on or
9 before _____, 1992 and shall be approved by the court
10 prior to serving as trustees. The seven HCOC appointees
11 shall serve staggered terms, i.e., two for one year, three
12 for two years and two for three years. The trust shall
13 operate as an independent entity (excepting the HCOC's
14 appointment authority) and in any and all transactions
15 involving the HCOC, any trustee who is serving concurrently
16 or has served as an HCOC Director, Officer or employee
17 within the last 5 years shall recuse himself or herself from
18 voting along with the other trustees concerning that
19 transaction. After the initial terms of office are
20 completed in their entireties, appointees for new terms
21 shall not require court approval.

22 6) The HCOC will submit to the Internal Revenue
23 Service any materials regarding the changes in the trusts as set
24 forth above that it may be required to submit by law. All
25 parties hereto agree to cooperate to obtain any approval by the
26 Internal Revenue Service or any other agency or authority to the
27 extent any such approval may be required by law.

1 7) The Attorney General and the City of Los Angeles do
2 not and shall not challenge the Chamber's exclusive rights to the
3 trade and service marks which the HCOC holds or those which it
4 may create in the future which incorporate the likeness of the
5 Sign or Walk or any of their features. The HCOC agrees that it
6 will waive all royalties with respect to the City's use, without
7 further notice to the HCOC, of the ^{marks} ~~likeness of the Sign and~~
8 ~~the~~ provided that: (a) said use is solely by the City of Los
9 Angeles for governmental, non-commercial, purposes, and (b) said
10 use does not include any co-use or promotion by anyone other than
11 the City. In consideration thereof, the HCOC agrees that after
12 full payment of the \$224,464.00 plus interest (upon the terms
13 described in paragraph 3 above), the HCOC will pay thirty percent
14 (30%) of the net revenue received from the marks on the following
15 terms and conditions:

16 a) The base amount of money held by the HST shall be
17 \$150,000; the base amount of money held by the WOFT shall be
18 \$100,000. The base amount is to be calculated on December
19 31 of each year.

20 b) If, on December 31 of any year, the money held by
21 one of or both of the trusts is below the base amount, the
22 HCOC will pay 30% of the net revenue received from the marks
23 in the succeeding 12-month period to one or both the trusts
24 until each trust reaches the base amount. The 30 percent of
25 net revenue shall be paid in equal amounts to each trust
26 until said trust(s) reaches the base amount. Thereafter,
27 the HCOC is not obliged to make further payments to the

1 trusts from mark revenues until the trust revenue falls
2 below the base amount which will be determined on December
3 31 of any succeeding year. The trusts will make available
4 to the HCOC adequate financial and accounting documents to
5 determine when base amounts have been achieved in each
6 trust.

7 c) If the base amount in the trusts is such that the
8 HCOC is not obliged to pay 30% of the net revenue received
9 from the marks into the trusts, the HCOC may dispose of that
10 30% in any manner consistent with its charter, but may not
11 use that 30% for routine ~~general~~ HCOC general administrative
12 expenses, celebrating parties, or bonuses.

13 d) If, on any given year, following the year in which
14 full payment of the \$224,464.00 plus accrued interest is
15 made, the HCOC is not obliged to make the 30% payment
16 referred to in paragraph (b) herein, and the net revenue
17 generated by the marks exceeds \$100,000.00, the HCOC will
18 pay 10 percent of the net revenues over \$100,000.00 for that
19 year to the trusts; 5 percent to each trust. For the
20 purposes of this paragraph, the net annual revenue received
21 from the marks will be determined on December 31 of each
22 year.

23 e) Other than as provided in this paragraph 7 and
24 paragraph 4 above, the HCOC is free to develop, register,
25 generate revenues from and expend revenues from marks which
26 incorporate the likeness of the Sign or Walk or any of their
27 features.

1 f) The trusts shall be empowered to decline to accept
2 any payments that would jeopardize their tax exempt status.

3 8) The City and Attorney General will, and do by this
4 Settlement Agreement, release the HCOC and the trusts, and all
5 individuals serving or who have served on the HCOC Board of
6 Directors and on the trusts, from any and all claims alleged in
7 or concerning the Action or the right to register and hold trade
8 or service marks which incorporate the likeness of the Sign or
9 Walk or any of their features, or to receive revenues therefrom,
10 to and including the date and execution of this Agreement. The
11 HCOC will consent to the City intervening into the Action for the
12 purpose of participating in this Settlement Agreement only.

13 9) In the event that either the HST or WOFT is
14 dissolved in the future, all monies held by the dissolved trust,
15 except those funds in the museum account of the WOFT, shall be
16 transferred to the City of Los Angeles to be held in an express
17 trust for the exact same purposes as the funds are currently held
18 by the current trust.

19 10) All revenues received ^{by the HCOC} /from person or entities in
20 connection with the use of the Sign or WOF or the likeness of
21 either in television or film shall be treated as mark revenues
22 and subject to the provisions of this Agreement.

23 11) This action is dismissed with prejudice as to
24 defendants Lewis, Welch and Kaplan. Each party to bear
25 his/her/its own costs and attorneys' fees.

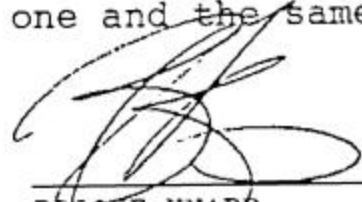
26 12) This Settlement Agreement shall be governed by the
27 laws of the State of California and shall be subject to the

1 jurisdiction of the Courts of the State of California.

2 13) The parties to this Settlement Agreement agree
3 that this Settlement Agreement is fully integrated, represents
4 the entire understanding of these parties, and that there are no
5 other agreements, representations, promises or negotiations which
6 have not been expressly embodied herein.

7 14) This Settlement Agreement may be executed in one
8 or more counterparts, each of which shall be deemed an original,
9 but all of which shall constitute one and the same instrument.

10
11 DATED: 3/10/92



BROOKE KNAPP
on behalf of the Hollywood
Chamber of Commerce

12
13
14 DATED: 3/4/92



on behalf of Daniel E.
Lungren, Attorney General of
the State of California

15
16
17 DATED: 3/11/92



on behalf of the City of Los
Angeles

18
19
20 DATED: 3/10/92



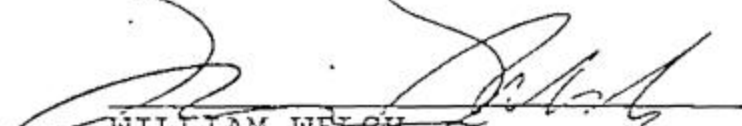
EDWARD LEWIS

21
22 DATED: 3/11/92



LARRY KAPLAN

23
24 DATED: 3/10/92



WILLIAM WELCH

25
26
27

EXHIBIT A

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Civil Files

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6 State of California

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10
11 DANIEL E. LUNGREN, as Attorney
General of the State of California,

12 Plaintiff,

13 v.

14 HOLLYWOOD CHAMBER OF COMMERCE, a
15 California mutual benefit corporation,
EDWARD LEWIS, WILLIAM WELCH,
16 LARRY KAPLAN, and DOES 1-20,

17 Defendants.

Case No. BC041349

COMPLAINT FOR
RESTITUTION,
DAMAGES, IMPOSITION
OF A CONSTRUCTIVE
TRUST, AND FOR OTHER
DECLARATORY AND
INJUNCTIVE RELIEF

Case assigned to
Judge Williams, E.G.

18
19 Daniel E. Lungren, Attorney General of the State of
20 California, files this complaint as Attorney General and alleges
21 as follows:

22 PRELIMINARY STATEMENT

23 1. Daniel E. Lungren is the duly constituted Attorney
24 General of the State of California and as such is charged with
25 the general supervision of all organizations and individuals who
26 obtain, hold or control property in trust for charitable and
27 eleemosynary purposes in this state. Under the common law and

1 statute, the Attorney General represents charitable beneficiaries
2 and exercises trust enforcement supervision over trustees and
3 fiduciaries who hold or control property in trust for charitable
4 or eleemosynary purposes.

5 2. At all times material herein, defendants, and each
6 of them, have transacted business within the County of Los
7 Angeles and elsewhere within the State of California. The
8 violations of law hereinafter described have been carried out
9 within said County and elsewhere within the State of California.
10 The actions of defendants and each of them, jointly and
11 severally, as set out below, are in violation of the laws and
12 public policy of the State of California and are inimical to the
13 rights and interests of the general public as beneficiaries of
14 charity.

15 3. Defendant Hollywood Chamber of Commerce
16 (hereinafter, "Chamber") is a California nonprofit mutual benefit
17 corporation incorporated on September 17, 1925, and is registered
18 with the California Secretary of State. Defendant Chamber's
19 principal place of business has been in Los Angeles County at all
20 times relevant to this matter. Plaintiff is informed and
21 believes that the Chamber has exercised control over assets
22 impressed with a charitable trust as sole trustee of the
23 Hollywood Sign Trust and the Hollywood Historic Trust,
24 (hereinafter, "Sign Trust" and "Historic Trust") both charitable,
25 tax exempt trusts, registered with the Registry for Charitable
26 Trusts for public and eleemosynary purposes.

27 / / /

1 4. Defendant William Welch (hereinafter, "Welch")
2 during the years of 1978 through 1988, was president and director
3 of the Hollywood Chamber of Commerce, and has exercised control
4 over the assets and operations of the Sign Trust and the Historic
5 Trust. All of the actions of defendant Welch, alleged herein
6 occurred with the State of California.

7 5. Defendant Edward Lewis (hereinafter, "Lewis") was
8 during the years of 1985 through the present, a director and /or
9 employee of the Hollywood Chamber of Commerce and exercised
10 control over the assets of the Sign Trust and the Historic Trust,
11 including management of the Chamber's licensing program. All the
12 actions of Lewis, alleged herein occurred within the State of
13 California.

14 6. Defendant Lawrence Kaplan (hereinafter, "Kaplan")
15 was during the years 1985 through June 1991, president and
16 director of the Hollywood Chamber of Commerce, and exercised
17 control over the assets and operation of the Hollywood Sign Trust
18 and the Historic Trust. All the actions of defendant Kaplan,
19 alleged herein occurred within the State of California.

20 7. DOES 1 through 20 are the fictitious names of
21 defendants who have acted as directors, officers, trustees,
22 agents or employees of the Hollywood Chamber of Commerce and/or
23 the Hollywood Sign Trust and the Historic Trust or who have
24 participated or acted in concert with one or more of the
25 defendants, or who have acted on behalf of or as agent, servant
26 or employee of one or more of the defendants herein, but whose
27 true names and capacities, whether individual, corporate or

1 otherwise, are presently unknown to plaintiff. Plaintiff is
2 informed and believes that defendants DOE 1 through DOE 20 have
3 directly or indirectly participated in and are responsible for
4 the acts and omissions which are more specifically described
5 herein. Because plaintiff is presently uniformed as to the true
6 names and capacities of these defendants, he sues them herein by
7 fictitious names but will seek leave to amend his complaint when
8 their true names are discovered.

9 FIRST CAUSE OF ACTION
10 (For Breach Of Charitable Trust)

11 8. Plaintiff realleges and incorporates by reference
12 each and every allegation in paragraphs 1 through 7, above.

13 9. Plaintiff is informed and believes that in 1978,
14 the Hollywood Sign, a local landmark in the City of Los Angeles,
15 was in need of repair and restoration. The defendant Chamber in
16 cooperation with city officials and local businesses set about to
17 raise funds to repair the sign. Following the initial
18 restoration, the Chamber established a charitable trust with the
19 remaining funds known as the Hollywood Sign Trust, with itself as
20 the sole trustee. The purposes of the Sign Trust are as follows:

21 "This HOLLYWOOD SIGN TRUST is formed with the express
22 purpose of repairing, refurbishing and maintaining the
23 HOLLYWOOD SIGN for the benefit of the public at large and to
24 preserve and maintain Hollywood as the Worldwide Center of
25 the Motion Pictures and Cinema Arts".

26 The property on which the Hollywood Sign is situated, and the
27 sign itself, is the property of the City of Los Angeles under the

1 control of the Board of Commissioners for the Department of
2 Recreation and Parks.

3 10. Plaintiff is informed and believes that prior to
4 establishing the Sign Trust, the Chamber established another
5 charitable, tax exempt trust, known as the Hollywood Historic
6 Trust on or about February 28, 1975. The original purposes of
7 the Historic Trust were to establish and maintain a museum
8 portraying the history of the entertainment industry in Hollywood
9 and Los Angeles. In 1980, the Chamber amended the trust's
10 purposes to include projects highlighting the "Walk of Fame".
11 The property on which the brass stars of the Walk of Fame are
12 situated, is the property of the City of Los Angeles.

13 11. The Historic Trust and the Sign Trust both hold
14 all of their assets in trust for charitable or public purposes.
15 Defendant Chamber is, and has been at all times relevant to this
16 action, the sole trustee of both the Historic Trust and the Sign
17 Trust.

18 12. Plaintiff is informed and believes that commencing
19 on or about January 1, 1978, and continuing through 1989, the
20 defendant Chamber misappropriated charitable assets from the Sign
21 Trust in the form of unlawful loans to itself in breach of trust
22 and in violation of Probate Codes, sections 16002 [formerly Code
23 of Civil Procedure, section 2229], 16009 and the express
24 conditions of the Sign Trust which state in paragraph 13:

25 . . . no powers enumerated herein [Sign Trust] or
26 accorded to trustees generally pursuant to law shall be
27 construed to enable the Trustor . . . to borrow all or

1 part of the principal or income of the trust directly
2 or indirectly without adequate interest or security."

3 13. The Chamber's misappropriation of charitable
4 assets in the form of unlawful loans is a breach of trust and
5 violation of Probate Code sections 15002 and 15004. In 1989, the
6 Chamber repaid the principal of said loans, but refused on that
7 date and continues to refuse to pay the proper interest on said
8 loans as required under the express conditions of the Sign Trust,
9 resulting in a loss to the Sign Trust of at least \$98,000.

10 14. The Attorney General, exercising due diligence,
11 was unaware of sufficient facts of the allegations contained
12 herein so as to become aware of their detrimental effects on the
13 trust beneficiaries, i.e., the public, until July, 1989.
14 Commencing in 1989, the Attorney General conducted an
15 investigation into this matter which provided the facts upon
16 which the complaint herein is based.

17 15. During the period 1979 through the present, the
18 defendant Chamber, as trustee of the two charitable trusts herein
19 noted, was required to, and did register with the California
20 Registry of Charitable Trusts and file annual financial reporting
21 forms with that Registry. In each and every year through 1988,
22 the Chamber, as trustee, represented under penalty of perjury
23 that it had not engaged in any loans, contracts, or other self-
24 dealing financial transactions. Said representations were untrue
25 and concealed the existence of said illegal financial
26 transactions.

27 //

1 SECOND CAUSE OF ACTION
2 (For Commingling and Diversion of Assets)

3 16. Plaintiff realleges and incorporates by reference
4 the allegations in paragraphs 1 through 15, above.

5 17. In or about late 1985, the defendants approached
6 the Board of Recreation and Parks Commission (hereinafter, "Parks
7 Commission") for assistance in seeking donations for the repair
8 and maintenance of the Hollywood Sign. The defendants requested
9 that persons applying for filming permits to film the Hollywood
10 Sign be directed to the Chamber, who would then request a
11 charitable donation to be used for the repair and maintenance of
12 the Hollywood Sign. On or about February 14, 1986, the Parks
13 Commission granted the defendants permission to solicit donations
14 and instructed city officials to direct persons applying for
15 filming permits to the defendants, to enable them to request
16 donations. Defendants were informed that a charitable donation
17 would not be a prerequisite for obtaining a filming permit from
18 the City of Los Angeles.

19 18. Plaintiff is informed and believes that on or
20 about January 1985, defendants began soliciting donations
21 expressly for the repair and maintenance of the Hollywood Sign,
22 misrepresenting to those solicited that the funds were licensing
23 fees required for filming the Hollywood Sign, and/or that the
24 fees were charitable donations expressly for the benefit of the
25 Hollywood Sign. Instead of segregating and accounting for the
26 charitable donations in the Sign Trust accounts, the defendants
27 initiated a "licensing program" and misappropriated the

1 charitable donations as "user fees" for the benefit of the
2 Chamber.

3 19. Plaintiff is informed and believes that the
4 defendants solicited donations and fees for the filming of the
5 Walk of Fame in the same manner as cited in paragraph 18, above,
6 misrepresenting to those solicited that the funds were licensing
7 fees required to obtain a filming permit and/or were charitable
8 donations to be used for the express benefit of the Walk of Fame.
9 Defendants did not segregate the donations and fees collected for
10 the benefit of the Walk of Fame, but rather said donations and
11 fees were misappropriated as "user fees" in the defendants'
12 licensing program, which were used for the benefit of the
13 Chamber.

14 20. Plaintiff is informed and believes that the
15 defendants received in excess of \$97,000 in "user fees" for the
16 benefit of the Hollywood Sign and in excess of \$94,000 in "user
17 fees" for the benefit of the Walk of Fame during the years 1985
18 through 1990, which were diverted and commingled with the
19 Chamber's accounts.

20 21. Defendants' failure to segregate, account for, or
21 use the funds collected for the repair and maintenance of the
22 Hollywood Sign or the Walk of Fame is a misappropriation of
23 charitable assets and a violation of Probate Code sections, 16002
24 and 16009.

25 //

26 //

27 //

1 THIRD CAUSE OF ACTION
2 (For Constructive Fraud)

3 22. Plaintiff realleges and incorporates by reference
4 the allegations in paragraphs 1 through 21, above.

5 23. Plaintiff is informed and believes that on or
6 about March 1987, the defendants Chamber and Welch requested that
7 the City of Los Angeles permit the alteration and lighting of the
8 Hollywood Sign as a promotional event for the FOX television
9 network, representing to the City of Los Angeles and the Parks
10 Commissions that the FOX network would make a \$27,000 donation
11 for the complete restoration of the Hollywood Sign if permitted
12 to alter and light the sign.

13 24. Plaintiff is informed and believes that the FOX
14 network relied on the representations of defendants Chamber and
15 Welch, that the donated funds would be used for the restoration
16 of the Hollywood Sign, in making the \$27,000 donation to the
17 Chamber, and that the City of Los Angeles relied on the
18 representations of the defendants in permitting the alteration
19 and lighting of the Hollywood Sign.

20 25. Plaintiff is informed and believes that defendants
21 made the above-referenced representations to the FOX network and
22 the City of Los Angeles with knowledge of the falseness of the
23 representations. The \$27,000 donation made for the benefit of
24 the Hollywood Sign from the FOX network was not used for the
25 above-stated purposes and was diverted to the use and benefit of
26 the Chamber in breach of Civil Code section 1573 and Probate Code
27 sections 16002 and 16009.

FOURTH CAUSE OF ACTION
(For Unfair Business Practices)

26. Plaintiff incorporates by reference the allegations in paragraphs 1 through 25, above.

27. Plaintiff is informed and believes that defendants' conduct as set forth hereinabove, constitutes unlawful, unfair and fraudulent business practices as defined in Business and Professions Code section 17200 and Business and Professions Code section 17500 in that:

A. Defendants made, caused to be made, and continue to make and disseminate false and misleading statements to the public and the City of Los Angeles in order to solicit and collect donations for the filming of the Hollywood Sign or the Walk of Fame, as set forth in paragraphs, 17 through 21, above.

B. Defendants made, caused to be made, and continue to make and disseminate false and misleading statements regarding "licensing fees" required by the City of Los Angeles to film the Hollywood Sign and the Walk of Fame, as set forth in paragraphs 23 through 25, above.

28. Defendants knew, or should have known, that the statements set forth above, were false or misleading at the time defendants made said statements, or caused the statements to be made, and would result in unfair and deceptive business practices by the defendant Chamber to the injury of the public and the two charitable trusts.

//

1 29. Plaintiff is informed and believes and thereupon
2 alleges that the defendants have continued, and will continue to
3 engage in the conduct alleged in paragraphs 26 through 28,
4 hereinabove, including the dissemination of false information,
5 and engaging in unfair business practices. Said continuing
6 conduct represents a threat the public.

7 FIFTH CAUSE OF ACTION
8 (For Constructive Trust)

9 30. Plaintiff realleges and incorporates by reference
10 the allegations in paragraphs 1 through 28, above.

11 31. Plaintiff is informed and believes that commencing
12 on or about January 1985, defendant Chamber approached the City
13 of Los Angeles with the proposal that the City support the
14 Chamber in obtaining service and trade marks of the likeness of
15 the Hollywood Sign and the Walk of Fame under the representation
16 that the said defendants would use the funds exclusively for the
17 benefit of the Hollywood Sign and the Walk of Fame. The City of
18 Los Angeles assisted defendants in obtaining the service marks of
19 the likeness of the Hollywood Sign and the Walk of Fame and
20 informed persons applying for filming permits that the Chamber
21 held service marks and trade marks for any uses of the Hollywood
22 Sign and the Walk of Fame.

23 32. Plaintiff is informed and believes that defendants
24 acquired and presently hold the service marks and trade marks of
25 the likeness of the Hollywood Sign and the Walk of Fame in
26 constructive trust for the benefit of the Hollywood Sign Trust
27 and the Historic Trust, and have collected in excess of \$400,000

1 from the licensing of the service marks and trade marks. Said
2 funds have been diverted by defendants for the benefit of the
3 Chamber. Defendants' business transactions have benefitted the
4 Chamber at the expense of the charitable trusts, and is a
5 misappropriation of charitable funds and a violation of Probate
6 Code sections 16002 and 16004. The above-referenced service
7 marks and trade marks, along with any and all proceeds from said
8 service marks and trade marks are impressed with a constructive
9 trust for the benefit of the two trusts.

10 WHEREFORE, plaintiff prays for judgment as follows:

11 1. That an order issue directing the defendants and
12 each of them to render to the court and plaintiff a full and
13 complete accounting of all funds and assets received by
14 defendants for the benefit of the Hollywood Sign Trust or the
15 Hollywood Historic Trust; that defendants render a complete
16 accounting of funds and assets received for the filming of the
17 Hollywood Sign or the Walk of Fame, and all funds and assets
18 received for licensing fees for the use of the service and trade
19 marks registered to the Hollywood Chamber of Commerce depicting
20 the likeness of the Hollywood Sign or the Walk of Fame.

21 2. Upon the rendering of such accounting, that the
22 Court determine the total amount in funds and assets of the
23 Hollywood Sign Trust and the Hollywood Historic Trust which have
24 been wrongfully and unlawfully ordered disbursed or
25 misappropriated by the Hollywood Chamber of Commerce, and/or any
26 of its directors, officers or employees and to determine whether
27 the trustees of the Hollywood Sign Trust and Hollywood Historic

1 Trust have breached their trust so as to require their removal as
2 trustees of said trusts.

3 3. For damages according to proof.

4 4. For a judgment declaring that the service marks
5 and trade marks obtained by defendants are held in constructive
6 trust for the benefit of the Sign Trust and Historic Trust.

7 5. For exemplary damages as permitted by law.

8 6. For an order enjoining defendants from engaging in
9 any additional unfair business practices as set forth
10 hereinabove, and for restitution and civil penalties as provided
11 by law for each and every act of unfair business practices by
12 defendants.

13 7. That plaintiff recover costs of investigation and
14 suit.

15 8. For such other and further relief as the court
16 deems just and proper.

17 DATED: October 31, 1991.

18 DANIEL E. LUNGREN, Attorney General
19 of the State of California
20 JAMES R. SCHWARTZ,
21 PATRICIA BARBOSA,
22 Deputy Attorneys General

23 By: _____

24 JAMES R. SCHWARTZ
25 Deputy Attorney General

26 PB:lc

27 A:\Chamber.COM

EXHIBIT B

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DANIEL E. LUNGREN,
Plaintiff,
v.
HOLLYWOOD CHAMBER OF COMMERCE,
et al.,
Defendants.

NO. BC 041349

STIPULATED JUDGMENT AS TO
DEFENDANT HOLLYWOOD CHAMBER
OF COMMERCE

CITY OF LOS ANGELES,
Plaintiff in Intervention
v.
HOLLYWOOD CHAMBER OF COMMERCE,
et al.,
Defendants.

WHEREAS plaintiff, Daniel E. Lungren, Attorney General
of the State of California, acting through his attorneys of
record, James R. Schwartz and H. Chester Horn, Jr., Deputy
Attorneys General, and plaintiff in intervention, the City of Los
Angeles, acting through its attorneys of record, Pedro B.
Echeverria and John Haggarty, and defendants Hollywood Chamber of
Commerce, Edward Lewis, and William Welch, acting through their
attorneys, Daniel M. Kolkey and William Wegner of Gibson, Dunn &
Crutcher, and defendant Larry Kaplan, acting through his

1 attorney, Leroy S. Walker, agree and stipulate to entry of this
2 judgment as to the Hollywood Chamber of Commerce and to the
3 matters stated herein, and

4 WHEREAS the parties hereto through their respective
5 authorized counsel, have obtained all necessary authority and
6 complied with all prerequisites to their execution of this
7 agreement and stipulation to enter judgment;

8 It is hereby stipulated, adjudged and decreed as
9 follows:

10 1) There currently exist two charitable trusts known
11 respectively as the Hollywood Sign Trust ("HST") and the Walk Of
12 Fame (or Historic) Trust ("WOFT"), established by the
13 declarations of trust dated 1978 and 1979. The
14 Hollywood Chamber of Commerce ("HCOC") is currently the trustee
15 for both the HST and WOFT. The HCOC shall unconditionally and
16 irrevocably resign as trustee of both the HST and the WOFT
17 effective on or before , 1992.

18 2) There shall be no disbursements from, nor any
19 expenses or liabilities incurred by, the HST or WOFT from
20 January 31, 1992, until appointment and confirmation of the new
21 trustees of said trusts as provided in paragraph 5 of this
22 judgment.

23 3) HCOC shall pay to the HST and the WOFT in new
24 monies, the principal sum of \$224,464, payable \$161,883.50 to the
25 HST and \$62,580.50 to the WOFT on the following terms and
26 conditions:

27 a) \$224,464 to be paid in full over 10 years

1 commencing on December 31, 1992, in equal annual
2 installments of \$22,446.40 in principal payments plus
3 interest on the total unpaid balance at 9% per year simple
4 interest. Seventy-two percent (72%) of each payment of
5 principal and interest shall be made to the HST and twenty-
6 eight percent (28%) shall be made to WOFT.

7 b) The payments provided in paragraph 3a herein
8 represent a minimum payment. HCOC may prepay any amount
9 against principal at any time. In the event the HCOC pays
10 more than required to make an annual minimum payment, it
11 may, at HCOC's discretion, be credited with earlier
12 prepayments for the purpose of calculating its current
13 year's requirement under the ten-year payment schedule; if
14 so, the HCOC is not in default on the minimum payment
15 schedule.

16 c) The portion of the \$224,464.00 plus interest which
17 is allocated to the WOFT will be used exclusively for the
18 repair, maintenance, refurbishment, and capital improvements
19 to the Walk of Fame and not for the Hollywood Museum.

20 d) The portion of the \$224,464 plus interest which is
21 allocated to the HST will be used exclusively for the
22 repair, maintenance, refurbishment and capital improvements
23 to the Hollywood Sign or related thereto.

24 4) Until all monies payable pursuant to paragraph 3
25 herein are paid in full, HCOC shall pay over to the HST and WOFT
26 all (100%) of the net revenues obtained from all of the trade and
27 service marks (hereinafter collectively "marks") related to the

1 Hollywood Sign and/or Walk of Fame. To the extent said net
2 revenues exceed the minimum payment specified in Paragraph 3
3 herein for any ~~quarterly~~^{annual} period, HCOC shall account for and pay
4 over to the HST and WOFT, all such excess revenue within 180 days
5 of the date on which the ~~quarterly~~^{annual} payment was made. Any such
6 payment in excess of net revenue shall be allocated first to any
7 past due accrued interest, if any, and thereafter treated as a
8 reduction in the principal amount owed under Paragraph 3 herein.
9 In addition, until all monies pursuant to Paragraph 3 herein are
10 paid in full, HCOC pledges, and HST and WOFT shall have a lien
11 against, all (100%) of the net revenues from any and all marks
12 related to the Hollywood Sign and/or the Walk of Fame, including
13 all marks currently held and any that may be obtained, registered
14 or otherwise acquired by the HCOC in the future.

15 5) The resignation of the HCOC as trustee of both the
16 HST and WOFT shall be effective _____ and the trust terms
17 for each trust (paragraph 7 of the HST instrument and
18 paragraph 7 of the WOFT instrument) shall be modified to
19 read in part as follows:

20 This trust shall have nine trustees to be appointed as
21 follows:

22 1) Two trustees shall be appointed by the City of Los
23 Angeles. The city appointed trustees are full voting
24 trustees and each shall be either an elected/appointed
25 official or City employee. The city trustees shall serve an
26 indefinite term at the sole discretion of the City of Los
27 Angeles.

1 2) Seven trustees shall be individuals appointed by
2 the HCOC. No more than four of the HCOC appointees may
3 serve concurrently (or have served in the past 5 years) as
4 an officer, director, or employee of the HCOC. All seven
5 initial appointments by the HCOC shall be nominated on or
6 before _____, 1992 and shall be approved by the court
7 prior to serving as trustees. The seven HCOC appointees
8 shall serve staggered terms, i.e., two for one year, three
9 for two years and two for three years. The trust shall
10 operate as an independent entity (excepting the HCOC's
11 appointment authority) and in any and all transactions
12 involving the HCOC, any trustee who is serving concurrently
13 or has served as an HCOC Director, Officer or employee
14 within the last 5 years shall recuse himself or herself from
15 voting along with the other trustees concerning that
16 transaction. After the initial terms of office are
17 completed in their entireties, appointees for new terms
18 shall not require court approval.

19 6) The HCOC will submit to the Internal Revenue
20 Service any materials regarding the changes in the trusts as set
21 forth above that it may be required to submit by law. All
22 parties hereto agree to cooperate to obtain any approval by the
23 Internal Revenue Service or any other agency or authority to the
24 extent any such approval may be required by law.

25 7) The Attorney General and the City of Los Angeles do
26 not and shall not challenge the Chamber's exclusive rights to the
27 trade and service marks which the HCOC holds or those which it

1 may create in the future which incorporate the likeness of the
2 Sign or Walk or any of their features. The HCOC agrees that it
3 will waive all royalties with respect to the City's use, without
4 further notice to the HCOC, of the ^{marks} ~~likeness of the Sign and/or~~
5 ~~the WOFT~~ provided that: (a) said use is solely by the City of Los
6 Angeles for governmental, non-commercial, purposes, and (b) said
7 use does not include any co-use or promotion by anyone other than
8 the City. In consideration thereof, the HCOC agrees that after
9 full payment of the \$224,464.00 plus interest (upon the terms
10 described in paragraph 3 above), the HCOC will pay thirty percent
11 (30%) of the net revenue received from the marks on the following
12 terms and conditions:

13 a) The base amount of money held by the HST shall be
14 \$150,000; the base amount of money held by the WOFT shall be
15 \$100,000. The base amount is to be calculated on December
16 31 of each year.

17 b) If, on December 31 of any year, the money held by
18 one of or both of the trusts is below the base amount, the
19 HCOC will pay 30% of the net revenue received from the marks
20 in the succeeding 12-month period to one or both the trusts
21 until each trust reaches the base amount. The 30 percent of
22 net revenue shall be paid in equal amounts to each trust
23 until said trust(s) reaches the base amount. Thereafter,
24 the HCOC is not obliged to make further payments to the
25 trusts from mark revenues until the trust revenue falls
26 below the base amount which will be determined on December
27 31 of any succeeding year. The trusts will make available

1 to the HCOC adequate financial and accounting documents to
2 determine when base amounts have been achieved in each
3 trust.

4 c) If the base amount in the trusts is such that the
5 HCOC is not obliged to pay 30% of the net revenue received
6 from the marks into the trusts, the HCOC may dispose of that
7 30% in any manner consistent with its charter, but may not
8 use that 30% for routine ~~general~~ HCOC general administrative
9 expenses, celebrating parties, or bonuses.

10 d) If, on any given year, following the year in which
11 full payment of the \$224,464.00 plus accrued interest is
12 made, ~~and~~ if the HCOC is not obliged to make the 30% payment
13 referred to in paragraph (b) herein, and the net revenue
14 generated by the marks exceeds \$100,000.00, the HCOC will
15 pay 10 percent of the net revenues over \$100,000.00 for that
16 year to the trusts; 5 percent to each trust. For the
17 purposes of this paragraph, the net annual revenue received
18 from the marks will be determined on December 31 of each
19 year.

20 e) Other than as provided in this paragraph 7 and
21 paragraph 4 above, the HCOC is free to develop, register,
22 generate revenues from and expend revenues from marks which
23 incorporate the likeness of the Sign or Walk or any of their
24 features.

25 f) The trusts shall be empowered to decline to accept
26 any payments that would jeopardize their tax exempt status.

27 //

8) In the event that either the HST or WOFT is dissolved in the future, all monies held by the dissolved trust, except those funds in the museum account of the WOFT, shall be transferred to the City of Los Angeles to be held in an express trust for the exact same purposes as the funds are currently held by the current trust.

9) This action is dismissed with prejudice as to defendants Lewis, Welch and Kaplan. Each party is to bear its own costs and attorneys' fees.

10) Nothing in this Judgment shall be deemed a finding of wrongdoing by any party or an admission by any party of any liability or lack thereof with regard to the merits of the allegations contained in the Complaint filed in this action. This Judgment has been entered into by consent of all parties for settlement purposes only.

11) ~~130~~) Services by mail upon counsel for each party shall be sufficient for all purposes.

DATED: _____

JUDGE OF THE SUPERIOR COURT

Linda
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Attorney Siga
Attorney General

Trust violation

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