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AMAZING GRACE MOVIE, LLC, a California Limited Liability Company, Claimant, v. ANDREW MAYORAS, as Representative of the ESTATE OF ARETHA FRANKLIN; KECALF FRANKLIN, in his personal capacity; ROES 1-50, Respondents.	Case No.: 5345000713 **CLAIMANT'S APPLICATION FOR EMERGENCY RELIEF** Demand Filed: October 22, 2025

Claimant AMAZING GRACE MOVIE, LLC ("**AGM**" or "**Claimant**") files this Application for Emergency Relief ("Application") against Respondent ANDREW MAYORAS, in his capacity as Representative of the ESTATE OF ARETHA FRANKLIN (the "**Estate**" or "**Respondent**").

This Application is made pursuant to JAMS Rule 2 of the Comprehensive Arbitration Rules and Procedures and California law, as more particularly set forth herein, on the grounds that Claimant will suffer immediate loss and damage in the absence of emergency relief. Filed concurrently with this Application are the Declaration of Alan Elliot ("**Elliot Decl.**") and the Declaration of Fernando Sulichin ("**Sulichin Decl.**")

In this Application, Claimant seeks emergency relief from the Arbitrator against Respondent pursuant to an order:

(1) Enjoining Respondent from withholding consent to the Producer's Offer (as defined below)**;** **(2)** Enjoining Respondent from unreasonably interfering with Claimant's right to consummate the Producer's Offer; **(3)** Enjoining Respondent from further interference with Claimant's contractual rights pending final adjudication of this Arbitration; **(4)** Enjoining Respondent from relying on non-commercial factors, like subjective political viewpoints, to withhold consent to any right of exploitation falling within Category 2 of the Agreement.

I. INTRODUCTION

California courts have long recognized that contractual discretion—even where a party retains an apparent right to approve or disapprove—must be exercised in good faith and consistent with the reasonable expectations of the parties. These principles are not negotiable or subject to a contracting party's subjective viewpoints. Rather, they are enshrined in the case law that governs this case.

In *Locke v. Warner Bros., Inc.*, the California Court of Appeal held that a studio's discretion to approve or reject film projects under a "first look" deal could not be exercised arbitrarily or for reasons extraneous to the parties' commercial purposes. 57 Cal.App.4th 354 (1997). The same principle applies here. Like Warner Bros. in *Locke*, the Estate cannot hide behind the emotions or political persuasions of its heirs to frustrate Claimant's contractual rights.

The Estate's refusal—grounded in the personal political views of its representatives rather than any bona fide commercial purpose—constitutes precisely the type of bad-faith conduct that California law forbids. The implied covenant of good faith and fair dealing prohibits a contracting party from using discretionary approval rights to thwart the other party's legitimate contract expectations. Where, as here, a contract expressly limits the right to withhold consent to situations in which it is reasonable to do so, the law demands an objective showing of commercial justification—not a subjective disagreement with the message or perceived political tone of the work.

As further discussed, absent emergency relief, Claimant will suffer immediate loss. The opportunity that has been presented to Claimant is of a rare and fleeting variety that will soon disappear if the Estate's bad faith conduct goes unchecked. Claimant's goodwill, reputation and leverage with some of the industry's most prominent producers will be irreparably damaged.

Claimant will also suffer untold financial harm, as the offer currently on the table leaves open the possibility of future downstream and "back-end" revenues that are not currently ascertainable. Because Claimant can also demonstrate entitlement to relief on its most important claims (breach of contract and breach of the implied covenant of good faith and fair dealing), this Arbitrator should issue the requested relief.

II. FACTUAL BACKGROUND

A. The Concert

Over two nights in January of 1972, Aretha Franklin performed a concert from the pulpit of the New Temple Missionary Baptist Church in the Watts neighborhood of Los Angeles, California (the "**Concert**"). With the pulpit as her stage, Franklin delivered one of the most mesmerizing performances of her career. She was a preacher as much as a singer, a healer as much as an entertainer. Tucked in the pews were Mick Jagger and Charlie Watts, captivated and unblinking.

Franklin's performance, and all proceeds thereof, including, but not limited to, the sound recording and film footage was produced and owned by Warner Brothers and Atlantic Records[1] (collectively, "**Warner Bros**.") as part of Franklin's April 1, 1968, overall deal with Warner Bros. (the "**WB-Franklin Agreement**"). The WB-Franklin Agreement governed Franklin's exclusive personal services to Warner Bros. for a period of 5 years. (**Exh. A** to Elliott Decl., ¶ 3)

Unfortunately, the Concert footage wouldn't see the light of day for over three decades. Several technical requirements necessary to synchronize picture and sound were neglected, and most of the footage from the Concert was unusable. (Elliott Decl., ¶ 3) Alas, the immense amount of time, effort, and money required to correct the deficiencies with the footage resulted in the footage and accompanying sound recordings collecting dust in a Warner Bros. vault.

Separate and apart from the audio and visual recordings made for the concert film that Warner Bros. intended to release, Atlantic Records made a separate and distinct recording of the Concert for purposes of releasing Franklin's debut gospel album, "Amazing Grace," which was in fact released as an album in 1972. (Elliott Decl., ¶ 3) The two physical recordings are not the same. (Elliott Decl., ¶ 3)

[1] Warner Bros. acquired Atlantic Records in 1967 and later evolved into Warner Music Group (WMG).

B. Claimant's Efforts to Resurrect *Amazing Grace*

In 2007, producer and composer Alan Elliott ("**Elliott**"), the principal of Claimant and a longtime admirer of Franklin, convinced Warner Bros. to sell him all its right, title and interest in and to the Concert footage, including the non-synced audio and film footage. (Elliott Decl., ¶ 4) Elliott mortgaged his home and spent countless hours resurrecting and technically syncing the footage with the underlying sound recording intended for the original, never released, 1972 film. (Elliott Decl., ¶ 4) After pouring years of effort and equity into the project, Elliott restored the Concert Footage and created what eventually became one of the most celebrated concert documentaries of all time, *Amazing Grace* (the "**Picture**"). *See*, *e.g.* Wesley Morris, *Amazing Grace Review: Aretha Franklin Is Glorious in a Rousing Concert Film*, The New York Times (Dec. 5, 2018)[2]; Emily Lordi, *My Soul Is Satisfied: An Intimate New Documentary Explores The Source of Aretha Franklin's Power*, (April 5, 2019)[3]. AGM owns the Picture. (Elliott Decl., ¶ 7)

C. Claimant's Agreement with the Franklin Estate

On March 21, 2019, AGM entered into an agreement with the Estate, whereby AGM acquired a comprehensive grant of rights from Respondent (as set forth more particularly in the Agreement, the "**Rights**") in exchange for $1.1 million, 10% of the net proceeds from the Picture, and other valuable consideration, including posthumous "Starring" credit for Aretha Franklin, and a "Produced By" credit for the then current administrator of the Estate, Sabrina Owens. The March 2019 agreement was minimally amended on April 8, 2019 (together, the "**Agreement**"). (**Exh. B** to Elliott Decl., ¶ 5).

D. The Uknown Commercial Motivations of the Estate

In a recent filing before this Emergency Arbitrator, former Respondent Kecalf Franklin (who described himself as "an heir to the Estate") admitted that "one of the motivating purposes" of the Agreement was to generate income to "settle" the Estate's multi-million dollar "IRS debt." (*See* K. Franklin Mtn to Dismiss, Dkt. No. 1435495, p. 2)

Since receiving the Claimant's $1.1 million payment, the Estate has categorically refused

[2] https://www.nytimes.com/2018/12/05/movies/amazing-grace-review.html

[3] https://www.newyorker.com/culture/cultural-comment/my-soul-is-satisfied-an-intimate-new-documentary-explores-the-source-of-aretha-franklins-power

to consent to any requested use of the Rights that requires the Estate's consent[4], despite the Agreement mandating that such consent is "not to be unreasonably withheld." (Elliott Decl., ¶ 6).

It has become apparent to Claimant that the Estate entered into the Agreement without any intention to abide by its terms, but rather to satisfy excessive debts it has incurred over the years. Regardless, as further discussed, there is no dispute that the Agreement is purely commercial in nature.

E. Rights Granted to Claimant Under the Agreement

Section 2 of the Agreement is nothing short of a broad, exclusive, and all-inclusive grant of rights in and to the "name, image and performance of Aretha Franklin solely as embodied in the Film [Picture] and the Concert Footage… including, but not limited to, all rights to distribute, display, market, advertise, promote and publicize [the same] in all media, whether now known or hereafter devised…" (**Exh. B**, Sec. 2(a), p.2. to Elliott Decl., ¶ 5) The Agreement defines "Concert Footage" as the **audio and visual** recordings of the Concert:

> WHEREAS, although the Concerts were filmed and recorded (**the audio and visual recordings thereof, collectively, the "Concert Footage"**) and the record album of the concerts was released in 1972 by Warner's affiliate, Atlantic Recording Corporation, under the title "Amazing Grace" and went on to be a very successful album, creation of any movie or broadcast of the Concerts was not completed because of technical problems

(**Exh. B,** p. 1, to Elliott Decl., ¶ 5)

The Agreement further states:

> [T]he Rights expressly include the right to use the Appearance, Aretha Franklin's name, voice, likeness, biography and/or any portion or element thereof in connection with any and all ancillary and subsidiary rights in connection with the Film, the **Concert Footage** and/or Appearance, including but not limited to merchandising; commercial tie-in rights; performance rights; print and/or text publication rights; electronic game rights (including but not limited to videogame rights); music video rights; **soundtrack rights**, **publishing rights**, **music publishing rights**, Subsequent Production Rights (as defined below); and Clip Rights (as defined and subject to the terms below) (collectively the "Reserved Rights").

(**Exh. B**, Sec. 2(b), to Elliott Decl., ¶ 5) (emphasis added).

The Agreement also enshrines Claimant's exclusive right to "develop and/or exploit any production that is derivative of the Concert Footage, including but not limited to any remake,

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[4] As further discussed below, the Estate does not enjoy absolute rights of approval and **must** exercise its consent rights "reasonably."

sequel, television production, spin-off, interactive production rights, live stage production (whether musical or not), and productions produced for any other medium or channel of distribution now or hereafter known or devised[.]" (*Id*. at Sec. 2(c).) The Agreement defines "Clip Rights" as, in part:

> [T]he right to exploit, in any medium, whether now known or hereafter devised, all still photographs, footage, trims and outtakes (including but not limited to "bloopers", behind-the-scenes and "B-roll" footage) of, from and/or relating to the Film, and ***any portion thereof or of the Concert Footage*** (collectively, "Clip Material"), in connection with the creation of other motion pictures, television programs, Internet programs and/or other audiovisual works[…]

(**Exh. B**, Sec. 2(d), to Elliott Decl., ¶ 5) (emphasis added)

The Rights granted to Claimant, pursuant to Section 2 of the Agreement, are subject to certain discretionary rights of the Estate, set forth in Exhibit R to the Agreement concerning "Ancillary Rights." (*Id*. at Sec. 2(b)) Exhibit R to the Agreement delineates three approval categories for certain uses of the Rights under the Agreement (Category 1, Category 2 and Category 3, respectively). (**Exh. B,** at p. 21 to Elliott Decl., ¶ 5). Exhibit R to the Agreement, sets forth the scope of the Estate's Category 2 consent rights as follows:

Category 2 of the Agreement provides:

> Estate has prior written approval on case-by-case basis, **<u>not to be unreasonably withheld</u>**. Seven (7) business day response period following written notice to the Estate of the material terms of the offer and any other additional information reasonably sufficient to allow the Estate to make an informed decision regarding the applicable approval; if no response, last specific proposal submitted in writing to Sabrina Owens as Estate-designated Personal Representative will be deemed approved. If Parties cannot agree with respect to any Category 2 opportunity presented by AE, AE or the Estate has right to submit the matter to binding expedited arbitration (per the arbitration provisions set forth in par.10 of the Agreement.) (emphasis added)

(**Exh. B**, at p. 21 to Elliott Decl., ¶ 5) (emphasis added)

Clip Rights, which include "any portion thereof or of the Concert Footage," fall under Category 2 set forth in Exhibit R. (**Exh. B**, Sec. 2(d) to Elliott Decl., ¶ 5). **As conceded by the Estate and its representatives** during the parties' pre-litigation discussions, the instant dispute pertains to approval that Claimant sought to exploit Clip Rights for a portion of the audio from the

Concert Footage, which is subject to Category 2 consent rights per Exhibit R to the Agreement. (**Exh. B** to Elliott Decl., ¶ 5).

Indeed, both the Estate's outside music counsel, Adina Schechter, and Respondent Mayoras (both experienced lawyers) conceded that Claimant was seeking approval as to a Category 2 right. (**Exh. C,** p. 6 & 10 to Elliott Decl., ¶ 11).

F. Respondent's Representations and Warranties

As part of the parties' representations and warranties, the Estate-Respondent also promised that it would "not, either directly or indirectly, take any action that would interfere with the performance of this Agreement by any other Party which would adversely affect any of the rights provided for in this Agreement." (**Exh. B**, Sec 7.7 to Elliott Decl., ¶ 5).

G. Respondent's Bad Faith Conduct Giving Rise to the Instant Action

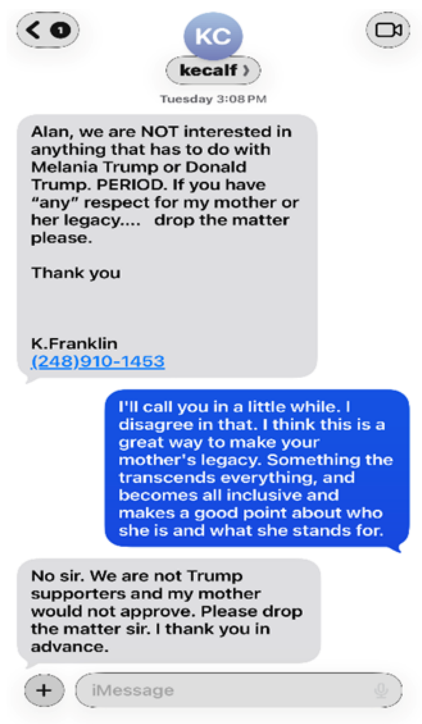
In June of 2025, AGM was offered a fee of $200,000 plus other valuable consideration by RatPac Entertainment, for use of a four minute thirty-nine second audio clip of the "Concert Footage" (the "Producer's Offer"). (Sulichin Decl., ¶ 12; Elliott Decl., ¶ 12). This was the equivalent of **$40,000 per minute**. The production was seeking to license audio from outtakes of the "Concert Footage" of Franklin's performance of the song "Amazing Grace" for use in the official biographical documentary of First Lady, Melania Trump, entitled *Melania* (the "**Documentary**") set to be theatrically released on January 30, 2026, and then streamed on Amazon/MGM+. (Elliott Decl., ¶ 8). The Documentary is historical in nature and focuses on Melania Trump's day-to-day activities as she transitions into her role as First Lady of the United States. (Sulichin Decl., ¶ 8). The Film depicts Melania Trump designing her outfits for the inauguration, hiring staff, honoring fallen soldiers at Arlington National Cemetery, moving into the White House, and turning the White House residence into a home. (Sulichin Decl., ¶ 8). The Documentary further highlights the historical roles that U.S. First Ladies play during their transition to the White House. (*Id.*). Examples of this include Melania Trump's interactions with other first ladies like Brigitte Macron of France, Queen Rania of Jordan, and the families of hostages taken during the October 7, 2023, attacks in Israel. (*Id.*). The Documentary is not intended as a political statement of any kind, and does not contain (or intend to convey) any political views of any kind or nature. (*Id.*).

Per the terms of the Agreement and the scope of Category 2 therein, Claimant provided to Respondent-Estate all the material terms of the Producer's Offer, including a portion of the unreleased scene from the Documentary intended for use with the proposed audio clip. (Elliott Decl., ¶ 10). During the parties' negotiations, the Estate's outside counsel and Specially Appointed Representative, Respondent Mayoras, conceded that the proposed use fell within, and was subject to, Category 2 consent rights per Exhibit R to the Agreement. (**Exh. C.,** p. 7 to Elliott Decl., ¶ 11). In other words, the Estate had to exercise its discretion "reasonably" and was not authorized to veto the proposed use arbitrarily.

The Producer's team advised Claimant that the estates of **Michael Jackson**, **James Brown, Al Green, Elvis Presley, Edith Piaf** and **Nina Simone**, had already granted the Producers the required licenses for their music to be played in the Documentary. (Elliott Decl., ¶ 14). The Producers were eager to use a portion of "Amazing Grace" for a scene where the First Lady is lighting a memorial candle for her late mother in St. Patrick's Cathedral in New York City. (Sulichin Decl., ¶ 9).

Between July 17 and October 2, 2025, Claimant and the Estate engaged in several rounds of discussions, wherein the Estate was provided with the material terms of the Producer's Offer, including the proposed fee, use, duration, compensation, nature of the project and even a relevant clip from the Documentary. (**Exh. C**. to Elliott Decl., ¶ 11). Regardless, the Estate declined to provide consent on grounds of "potential implied religious and/or political connotations." (*Id*.) The Agreement, however, does not bestow upon Respondent a right to withhold consent on grounds of political, religious or similar interpretations. (*see generally*, **Exh. B** to Elliott Decl.)

On or about September 30, 2025, Kecalf, Aretha Franklin's son and heir, confirmed that the Estate's baseless and unreasonable refusal to grant consent was devoid of any reasonable commercial considerations. (**Exh. D** to Elliott Decl., ¶ 12).



III. <u>LEGAL STANDARD</u>

A. JAMS R. 2(C)(iv) is the Governing Standard

While interpretation of the Agreement and disputes arising therefrom are governed by California law, this Arbitration is subject to the JAMS Comprehensive Rules.

JAMS R. 2(c) governs "Emergency Relief Procedures" available to parties "in need of emergency relief prior to the appointment of an Arbitrator[.]" *See* JAMS R. 2(c)(i). Further, JAMS R. 2(c)(iv) provides that a party is entitled to emergency relief when it has shown that "immediate loss or damage will result in the absence of emergency relief and whether the requesting Party is entitled to such relief." If a party can meet this standard, then the "Emergency Arbitrator **<u>shall</u>** enter an order or Award granting or denying the relief, as the case may be, and stating the reasons therefor." JAMS R. 2(c)(iv)(emphasis added). Various trial courts around the country have recognized the JAMS Emergency Relief Procedures. *See e.g., Mobile Med. Work Health Sols., Inc. v. Moore*, No. 1:24-CV-1219-RP, 2025 U.S. Dist. LEXIS 49159, at *7-8 (W.D. Tex. Mar. 17, 2025) ("The JAMS Rules even create a mechanism for emergency provisional relief before an arbitrator is appointed. JAMS Rule 2(c)(i)… A Party in need of emergency relief prior to the appointment of an Arbitrator may notify JAMS and all other Parties in writing of the relief sought and the basis for an Award of such relief. . . . (ii) JAMS shall promptly appoint an Emergency Arbitrator to rule on the emergency request"); *T-Mobile United States v. Verity Wireless*, No. 2:21-cv-00733-RAJ-BAT, 2021 U.S. Dist. LEXIS 181367, at *3 (W.D. Wash. July 22, 2021) ("JAMS Rule 2(c) creates Emergency Relief Procedures that permit a party to seek emergency relief by "notify[ing] JAMS and all other Parties in writing of the relief sought and the basis for an award of such relief." JAMS Rule 2(c)")

The JAMS standard is more lenient than what is required for expedited relief under California law, but AGM meets both standards.

B. Although not Required, Claimant also Satisfies California Legal Standards

"[T]rial courts should evaluate two interrelated factors when deciding whether or not to issue [a restraining order]. The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the [restraining order] were denied as compared to the harm that the defendant is likely to suffer if the [order] were issued." *Church of Christ in Hollywood v. Superior Court*, 99 Cal. App. 4th 1244, 1251 (2002). Injunctive relief may be also appropriate in a claim for breach of contract "where plaintiff can show irreparable injury and the inadequacy of legal remedies. *See John Goyak & Associates, Inc. v. Terhune*, 299 Fed.bAppx. 739, 740 (9th Cir. Nov. 6, 2008); *see also Lucasfilm Ltd. v. Media Market Group, Ltd.*, 182 F.Supp.2d 897, 899 (N.D. Cal. 2002). Courts applying this standard balance the likelihood of success against the relative interim harm to the parties, giving weight to evidence of contractual breaches that threaten unique or non-monetary interests such as creative opportunities, reputation, or goodwill. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.* (9th Cir. 2001) 240 F.3d 832, 841

Where a contract expressly requires that consent "not be unreasonably withheld," the moving party may establish a likelihood of success by showing that the refusal was arbitrary, pretextual, or based on considerations outside the scope of legitimate business judgment. *Storek & Storek, Inc. v. Citicorp Real Estate, Inc.* (2002) 100 Cal.App.4th 44, 57–58; *Pasadena Live, LLC v. City of Pasadena* (2004) 114 Cal.App.4th 1089, 1093–94.

IV. ARGUMENT

A. The Parties' Agreement Contemplates Swift Adjudication of Matters Concerning the Estate's Unreasonable Withholding of Consent

The Agreement's explicit terms demonstrate the parties' intent to swiftly resolve disputes involving the reasonable exercise of the Estate's approval rights under Category 2. Indeed, Section

10 of the Agreement distinguishes disputes of the kind at bar from all others and provides for "expedited arbitration" in the event of such disputes. Section 10 provides, in pertinent part:

> **With respect to disputes regarding the reasonableness of a refusal by the Estate to approve an ancillary rights project falling under Category II of the ancillary rights provisions**, the dispute shall be subject to **expedited arbitration** under the rules of JAMS regarding expedited arbitrations.

(**Exh. B**, Sec. 10, to Elliott Decl., ¶ 5)(emphasis added)

Exhibit R to the Agreement similarly echoes this intention with substantially similar language: "If Parties cannot agree with respect to any Category 2 opportunity presented by AE, AE or the Estate has the right to submit the matter to binding expedited arbitration (per the arbitration provisions set forth par.10 of the Agreement)." (Exh. B, p. 10 to Elliott Decl., ¶ 5).

The Agreement's terms demonstrate that the parties understood that opportunities like the Producer's Offer are rare and fleeting. Producers and entertainment executives need quick answers and are subject to strict theatrical and streaming release deadlines. (Sulichin Decl., ¶ 16). Here, the Producers will pull their offer if the Estate is permitted to disregard well settled contractual principles of commercial good faith and stonewall this opportunity because of an unsubstantiated viewpoint bias. (Sulichin Decl., ¶ 16). Further, if the basis for the Estate's refusal to consent to the Producer's Offer is upheld, AGM's harm will be compounded because the Estate will be emboldened to withhold consent for future economic opportunities simply because of the subjective viewpoints of Franklin's heirs. Such a result would be irreparably detrimental to Claimant; more importantly, it would contravene decades of well-settled principles of contract law.

The instant motion relates precisely to the "immediate loss" that AGM will suffer if the Estate is allowed to block the Producer's Offer on grounds that are wholly outside of what the Agreement, and California law, prescribe. If emergency relief is denied here, Respondent is emboldened to forever unreasonably and arbitrarily withhold consent, forcing Claimant into repeated arbitrations, and causing it to suffer further lost opportunities and goodwill, reputational damage, and unnecessary expenditures. This nightmare scenario would vitiate the Agreement's purpose and leave Claimant with having paid $1.1 Million for essentially nothing more than frustration, dead ends, and losses.

B. Claimant Will Suffer Immediate Loss and Untold Damage Without Emergency Relief

Evidence of threatened loss of prospective customers or goodwill certainly supports a finding of the possibility of irreparable harm. *Stuhlbarg Int'l Sales Co.*, 240 F.3d 832, 841 (9th Cir. 2001) Moreover, in situations where there is a potential imminent loss of a unique economic opportunity, courts have consistently recognized that such loss can constitute irreparable harm warranting injunctive relief. *See*, *e.g.* *Starlight Sugar v. Soto*, 114 F.3d 330, 332 (1st Cir. 1997)("While it is true that injunctive relief is generally inappropriate where money damages can make a plaintiff whole, we have recognized that the loss of a unique or fleeting business opportunity can constitute irreparable injury.") *Accord hiQ Labs, Inc. v. LinkedIn Corp*., 31 F.4th 1180, 1188 (9th Cir. 2022)

1. The Precise Amount of Claimant's Damages Is Impossible to Ascertain

Injunctions are appropriate when it is difficult or impossible to ascertain the amount of compensation that would afford adequate relief. Courts have consistently recognized that equitable relief is warranted in such circumstances, particularly when monetary damages are inadequate, uncertain, or impractical to calculate. Further, Code Civ. Proc. § 526(a)(5) permits injunctions to issues where, as here, "it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief."

In *Disney Enters. v. VidAngel, Inc*, the Ninth Circuit upheld a district court's granting of a preliminary injunction where "[t]he district court had substantial evidence before it that VidAngel's service undermines the value of the Studios' copyrighted works, their windowing business model, **and their goodwill and negotiating leverage with licensees**." *Disney Enters. v. VidAngel, Inc*., 869 F.3d 848, 866 (9th Cir. 2017) (emphasis added).

If the Estate's capricious, unfair and bad faith exercise of discretion is allowed to stand, Claimant will suffer an "immediate loss" (JAMS R. 2(c)(iv) in excess of $200,000, **plus an unknown (and potentially substantial) amount in further downstream royalty revenues that cannot presently be calculated**. (Elliott Decl., ¶ 13). Every minute that Claimant is hampered by the Estate's bad faith and unreasonable refusal to consent, it is losing leverage to negotiate with the licensee-producer of the Documentary. (Elliott Decl., ¶ 15). The Production is aware of the undue influence the Estate is now attempting to impose on Claimant's contractual rights, and views Claimant as an unreliable party with little leverage and no power to exploit rights it paid $1.1 million to obtain. (Sulichin Decl., ¶ 15) (Elliott Decl., ¶ 15). The unique approval window and deadline imposed by the Production, and the clear ultimatum of the Production to revoke its offer, places Claimant in the crosshairs of immediate economic and non-economic harm. (Elliott Decl., ¶ 18).

Even if Claimant stands to recover an eventual award of monetary damages, such damages are an inadequate remedy here because the harm consists of loss of control over distribution windows, "damage to reputation and goodwill," loss of "leverage with licensees," and erosion of unique market opportunities—precisely the kinds of intangible, hard-to-quantify injuries that support injunctive relief under California law, including CCP § 526(a)(5), and the 9th Circuit's holding in *Disney v. VidAngel* (*supra*) 869 F.3d at 860–64.

The Production's offer to Claimant is also exceedingly rare, in that it presents Claimant with the opportunity to license rights to a project that has already fetched $40 million from Amazon/MGM Studios, and to work with two highly prominent Hollywood producers, Fernando Sulichin[5] and Brett Ratner[6]. (Elliott Decl., ¶ 8 & 9). Fernando Sulichin is an experienced film producer with over 30 years of experience. (Sulichin Decl., ¶ 4). Throughout Sulichin's esteemed career, he has produced over 30 films, including *Malcolm X*, *Spring Breakers*, and *Snowden*. Sulichin's films have received theatrical releases and critical acclaim, including fetching awards at the Sundance and the Venice film festivals. (Sulichin Decl., ¶ 4) Brett Ratner is an influential figure in the entertainment industry and has played a pivotal role in the production and success of Hollywood blockbusters, including *Justice League*, a Warner Bros. film which earned over $600 million in the global box office, and *Ready Player One*, a film directed by Steven Spielberg which generated over $500 million in global box office revenue. (Sulichin Decl., ¶ 6). Opportunities to work with such prominent figures are few and far between and represent an opportunity to establish lucrative and mutually beneficial relationships leading to future licensing opportunities. (Elliott Decl., ¶ 16). The loss of such opportunities cannot be remediated with money.

Moreover, leaving unchecked the Estate's bad faith refusal to consider the commercial merits of the offer will only embolden the Estate's disregard of its contractual obligation "**not to** unreasonably withhold consent" to Claimant's Category 2 use requests. (Elliott Decl., ¶ 12).

In addition, Claimant has no other business or revenue stream, and no other way to generate income, other than the exploitation of the rights it acquired. (Elliott Decl., ¶ 18). Opportunities to

[5] https://en.wikipedia.org/wiki/Fernando_Sulichin
[6] https://www.imdb.com/name/nm0711840/

exploit the subject rights are infrequent, and each opportunity is significant for Claimant, both financially and reputationally. (Elliot Decl., ¶ 16). Claimant's principal risks having to mortgage his home again if the Estate's unreasonable and bad faith tactics are not addressed. (Elliot Decl., ¶ 18).

C. Claimant is Entitled to Relief and Likely to Succeed on its Claims for Breach of Contract and Breach of the Implied Covenant of Good Faith

1. Claimant is Entitled to Relief on its Breach of Contract Claim

In California, to prevail on a cause of action for breach of contract, the plaintiff must prove "(1) the contract, (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff." *Richman v. Hartley* 224 Cal.App.4th 1182, 1186 (2014). Where a contract confers on one party a discretionary power affecting the rights of the other, a duty is imposed to exercise that discretion in good faith and in accordance with fair dealing. *Perdue v. Crocker National Bank* 38 Cal. 3d 913, 923 (1985); *accord*, *Kendall v. Ernest Pestana, Inc*., 40 Cal. 3d 488, 500 (1985)

Per the Agreement, Claimant fully performed by paying the sum of $1.1 Million in exchange for the *exclusive* right to exploit, *inter alia*, all rights in and to the Concert Footage, including audio rights, soundtrack rights, music publishing rights, and outtakes thereof. (*See generally*, **Exh. B**. to Elliott Decl., ¶ 5). The Agreement refers repeatedly to "Concert Footage" as inclusive of "the audio and visual recordings" of Aretha Franklin's 1972 concert performance. (Recital 2 of **Exh. B** to Elliott Decl., ¶ 5).

As the owner of those rights, Claimant, and only Claimant, enjoys (and paid for) the benefits of exploiting and licensing the broad and comprehensive rights it acquired. In the case of the "Category 2" right at issue here, Claimant's rights of exploitation are subject only to the expressly limited discretion the Estate has. (**Exh. B**, p. 19, to Elliott Decl., ¶ 5). The language of the Agreement is mandatory and places an obligation on the Estate that its consent is "**not to be** unreasonably withheld." (*Id*.) The same provision that places an obligation of reasonableness upon the Estate provides that the Estate **must** respond to an inquiry within "[s]even (7) business days" or the offer "**will be deemed approved**." (*Id*.) Thus, the Agreement is explicit that a Category 2 right is not subject to the Estate's sole or absolute discretion.

Contrary to applicable law and the Agreement, the Estate ignored the commercial merits of the Producer's Offer, and its contractual obligation "not to" unreasonably withhold consent, in favor of its subjective assessment that the proposed use of AMAZING GRACE had "political and religious connotations." (Elliott Decl., ¶ 11). This was confirmed when the Estate's agent and heir, Kecalf Franklin, conveyed to Claimant that the refusal to grant consent was rooted in arbitrary political biases, rather than business judgment or commercial reasonableness. (**Exh. D** to Elliott Decl., ¶ 12). Mr. Franklin's unretractable message stating, "***We*** are NOT interested in anything that has to do with Melania Trump or Donald Trump. PERIOD," confirms the undeniable reality of the Estate's coordination with Aretha Franklin's heirs. In fact, Respondent Mayoras confirmed in writing that the heirs had decision-making authority over Claimant's request <u>**and**</u> that the heirs would likely decline consent on "political" grounds. (**Exh. C** to Elliott Decl., ¶ 11)("As part of that consideration process, we would need to discuss the proposed use with the heirs. **It is quite likely that the heirs would find the proposed use objectionable in light of the political nature of the subject matter**, but we are not even in a position to present it to them without complete information, including the proposed fee to the Estate.")(emphasis added). More egregious is a September 2, 2025 email from the Estate's outside counsel, Adina Schecter, wherein she claims that although Claimant had allegedly "not yet provided all of the requested materials" for the Estate to consider the Producer's Offer, the Estate was nonetheless rejecting Claimant's request for consent.

> You have not provided all of the requested materials for the Estate to make an informed decision. However, based on the information that has been provided, the Estate expressly disapproves of the proposed use for various reasons, including potential implied religious and/or political connotations.

(**Exh. C**, p. 5 to Elliott Decl., ¶ 11). The statement from the Estate's counsel demonstrates that Respondent was not discharging is obligations to consider, and not unreasonably withhold, consent in good faith. Rather, while maintaining that it still did not possess all of information it needed, the Estate had proverbially 'heard enough,' and was summarily declining Claimant's request without more.

In an effort to avoid litigation and save the deal, Claimant retained counsel, Sarah Matz, who again attempted to level with the Estate and provided its representatives with the intended scene from the Documentary. Even then, Kecalf Franklin's words spoke louder, and truer, the coded tone of the Estate's counsel: "Alan, **we** are NOT interested in anything that has to do with Melania Trump or Donald Trum. PERIOD. If you have 'any' respect for my mother or her legacy… drop the matter please." This message was followed by, "[w]e are not Trump supporters and my mother would not approve. Please drop the matter sir." (**Exh. D** to Elliott Decl., ¶ 12). This is <u>**not**</u> how contracts work, much less those that explicitly required a party to exercise discretion reasonably, aka in good faith.

In refusing to consider the commercial merits of the Producer's Offer, the Estate breached its representation and warranty to "not, either directly or indirectly, **take any action that would interfere with the performance of this Agreement by any other Party which would adversely affect any of the rights provided for in this Agreement**." (Secs. 7.5, 7.7 of **Exh. B**, to Elliott Decl., ¶ 5).

2. Claimant is Entitled to Relief on its Claim for Breach of Implied Covenant of Good Faith and Fair Dealing

"It has long been recognized, of course, that every contract imposes upon each party a duty of good faith and fair dealing in the performance of the contract such that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." *Storek*, 100 Cal. App. 4th at 55. "[Where] a contract confers on one party a discretionary power affecting the rights of the other, a duty is imposed to exercise that discretion in good faith and in accordance with fair dealing." *Kendall v. Ernest Pestana*, 40 Cal. 3d 488, 500 (1985). Therefore, this covenant applies particularly to situations where one party is invested with a discretionary power affecting the rights of another, requiring that such power be exercised in good faith." *See*, *Carma Developers (Cal.), Inc. v. Marathon Development California, Inc*. 2 Cal.4th 342, 371–372 (1992))

A "breach of a specific provision of the contract is not a necessary prerequisite" to a breach of an implied covenant of good faith and fair dealing. *Carma Developers (Cal.), Inc.*, 2 Cal. 4th at 350. "The covenant is implied . . . to prevent a contracting party from engaging in conduct which (while not technically transgressing the express covenant) frustrates the other party's rights of the benefits of the contract." *Los Angeles Equestrian Ctr., Inc. v. City of Los Angeles*, 17 Cal. App. 4th 432, 447 (1993); *accord Marsu, B.V. v. Walt Disney Co*., 185 F.3d 932, 937-38 (9th Cir. 1999)

> **In the absence of a specific expression in the contract or one implied from the subject matter, the preference of the law is for the less arbitrary reasonable person standard. … The reasonableness test is especially preferable when factors of commercial value or financial concern are involved, as distinct from matters of personal taste**.

Peak-Las Positas Partners v. Bollag, 172 Cal. App. 4th 101, 106 (2009) (quoting *Storek*, 100 Cal.App.4th at 59–60)(emphasis added)

Here, the Estate's right to consent under Category 2 is mitigated by the explicit contractual obligation **not to** withhold such consent "unreasonably." (**Exh. B,** p.19, to Elliott Decl., ¶ 4) In such cases, discretionary consent **must** be exercised "in good faith and in accordance with fair dealing." *Locke v. Warner Bros.*, 57 Cal. App. 4th 354, 363 (1997); *see also Perdue v. Crocker*

National Bank, 38 Cal. 3d 913, 923 (1985) *accord*, *Kendall* (*supra*) 40 Cal. 3d at 500. This means that the Estate, whose consent must be exercised "reasonably" per the Agreement, is prohibited from unduly interfering with Claimant's right to receive the benefits of the Agreement – namely, exploitation of the Rights it paid a substantial sum to acquire.

Moreover, the Estate's right to consent to Claimant's exploitation of Category 2 uses are not couched in subjective factors like "fancy, taste or judgment." *Locke*, 57 Cal. App. 4th at 363-64. No such terms exist in the Agreement, but, even if they did, the Estate would *still* be required to exercise its discretion "**in good faith**." *Id.* (emphasis added) The categorical veto of the Producer's Offer by the Estate, an act of bad faith, was not grounded in any commercially reasonable basis, but rather in a subjective, arbitrary, and wholly unreasonable basis that is unsupported by any provision of the Agreement. Denying consent based on personal taste, convenience or sensibility is not commercially reasonable where the subject contract does not provide for subjectivity in the exercise of discretion. *See*, *e.g., Locke*, 57 Cal.App.4th at 363.

In *Locke v. Warner Bros.* (*supra*) the California Court of Appeal provided examples of contracts that "involve matters of fancy, taste or judgment (…) when it is a condition of an obligor's duty that he or she be subjectively satisfied with respect to the obligee's performance[.]" *Locke*, 57 Cal. App. 4th at 363 (emphasis original)

> Traditional examples are employment contracts . . . and agreements to paint a portrait, write a literary or scientific article, or produce a play or vaudeville act. In such cases, the promisor's determination that he is not satisfied, ***when made in good faith***, has been held to be a defense to an action on the contract.

Id. at 363-64 (emphasis original) **None of these examples are applicable to the case at bar**. But, even if they were, the Estate's determination of consent would still need to be governed by standards of good faith per the holding in *Locke*.

The Agreement is conspicuously devoid of language that bestows upon the Estate veto power over Category 2 uses if such uses do not comport with their viewpoints, artistic or political sensibilities, or other subjective factors. Rather, the Agreement expressly confines the Estate's consent to Category 2 uses by stating that such consent is "<u>**not to be**</u> unreasonably withheld." (**Exh. B**, p.19, to Elliott Decl., ¶ 5).

Further, Claimant is **not** an "obligee" who must "perform" to the subjective satisfaction of the Estate. Rather, it is the Estate, already enriched by the consideration it willingly accepted from Claimant, whose discretion must be rooted in "commercially reasonable standards" not political or religious sensibilities. *Kendall*, 40 Cal. 3d at 500 (1985)

Furthermore, it has become apparent that, in entering into the Agreement, the Estate was motivated by commercial purposes as, at the time of the Agreement, it needed to satisfy an outstanding debt to the IRS. Since receiving the consideration and satisfying the debt, the Estate has categorically refused to evaluate proposed uses in good faith. Instead, the Estate has selfishly received the value of its bargain and simultaneously undermined and injured Claimant's rights under the Agreement.

Claimant is entitled to relief and likely to succeed on its claim for Breach of the Implied Covenant of Good Faith and Fair Dealing.

D. The Balance of Equities and Public Interest Strongly Favor Injunctive Relief

Granting Claimant's emergency motion imposes no burden whatsoever on the Estate, which merely must refrain from enforcing an unreasonable and viewpoint-based veto. In fact, granting the instant motion would cause the Estate to become enriched in sums that will likely exceed its entitlement to a percentage of the $200,000 in the form of downstream royalties and other "back-end" compensation.

By contrast, denying relief would irreparably damage Claimant's unique opportunity to work on a rare project of this kind, not to mention harm its reputation, goodwill and contractual leverage with prominent industry players.

V. CONCLUSION

Because Plaintiff has demonstrated that it is entitled to relief on its claims, and that it will suffer immediate loss absent emergency relief, the Arbitrator should issue a an order granting Claimant's request as set forth in the concurrently submitted proposed order.

DATED: November 10, 2025 PESSAH LAW GROUP, PC

/s/ Maurice David Pessah
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