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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

GARY K. WOLF et al., Plaintiffs and Appellants, v. WALT DISNEY PICTURES AND TELEVISION et al., Defendants and Appellants.	B192656 (Los Angeles County Super. Ct. No. BC251199) ORDER MODIFYING OPINION AND DENYING REHEARING (NO CHANGE IN JUDGMENT)

THE COURT:

It is ordered that the opinion filed herein on May 9, 2008 be modified as follows:

1. The first full sentence on page 21, beginning with "This is true even when the undisputed extrinsic evidence" and ending with "renders the contract terms susceptible to more than one reasonable interpretation. (*Parsons*, at p. 865; *New Haven Unified School Dist. v. Taco Bell Corp.* (1994) 24 Cal.App.4th 1473, 1483.)," is modified and includes a new footnote.

> This is true even when conflicting inferences may be drawn from the undisputed extrinsic evidence (*Garcia v. Truck Ins. Exchange* (1984) 36 Cal.3d 426, 439; *Parsons*, at p. 866, fn. 2)[fn.] or that extrinsic evidence renders the contract terms susceptible to more than one reasonable interpretation. (*Parsons*, at p. 865; *New Haven Unified School Dist. v. Taco Bell Corp.* (1994) 24 Cal.App.4th 1473, 1483.)

[fn.] Chief Justice Traynor's opinion for the Court in *Parsons v. Bristol Development Co., supra*, 62 Cal.2d 1, adopted the position he had advocated in his dissent in *Estate of Rule* (1944) 25 Cal.2d 1, that "it is only when conflicting inferences arise from conflicting evidence, not from uncontroverted evidence, that the trial court's resolution is binding [on an appellate court]. 'The very possibility of . . . conflicting inferences,

2. On page 30, at the end of the fourth full sentence, which reads, "There was no 'conflict' in the evidence of Disney's predispute conduct, and thus no factual issue for the jury to resolve" add the following footnote.

> Fn. Although Cry Wolf and Disney vigorously dispute the inferences to be drawn from Disney's predispute conduct -- was it compelling evidence of the intended meaning of the term "Purchaser" or was it simply a mistake by individuals who were unaware of the negotiators' intent -- the evidentiary facts themselves are not in dispute. Accordingly, the trial court's admission of this evidence did not create any issue for the jury to resolve. (*Garcia v. Truck Ins. Exchange, supra*, 36 Cal.3d at p. 439 ["It is solely a judicial function to interpret a written contract unless the interpretation turns upon the credibility of extrinsic evidence, even when conflicting inferences may be drawn from uncontroverted evidence"].)

3. The addition of the above two footnotes will require renumbering of all subsequent footnotes, starting at page 21.

There is no change in the judgment.

Cry Wolf's petition for rehearing is denied.

PERLUSS, P. J. WOODS, J. ZELON, J.

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actually conflicting interpretations, far from relieving the appellate court of the responsibility of interpretation, signalizes the necessity of its assuming that responsibility.'" (*Parsons*, at p. 866, fn. 2 quoting dissenting opinion in *Estate of Rule*, at p. 17.)