

1 Marc Toberoff (CA State Bar No. 188547)
2 *mtoberoff@toberoffandassociates.com*
3 TOBEROFF & ASSOCIATES, P.C.
4 23823 Malibu Road, Suite 50-363
5 Malibu, CA 90265
6 Telephone: (310) 246-3333
7 Facsimile: (310) 246-3101

8 Attorneys for Plaintiffs,
9 JAMES E. THOMAS and JOHN C. THOMAS

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JAMES E. THOMAS, an individual; and
JOHN C. THOMAS, an individual,

Plaintiff,

vs.

TWENTIETH CENTURY FOX FILM
CORPORATION, a corporation; TFCF
CORPORATION, a corporation; TFCF
ENTERTAINMENT GROUP, LLC, a
limited liability company; 20TH
CENTURY STUDIOS, INC., a
corporation; THE WALT DISNEY
COMPANY, a corporation; and DOES
1-10, inclusive,

Defendants.

CASE NO.: _____

COMPLAINT FOR:

**[1] DECLARATORY RELIEF
RE: TERMINATION,
17 U.S.C. § 203(a)**

DEMAND FOR JURY TRIAL

1 Plaintiffs JAMES E. THOMAS and JOHN C. THOMAS, by and through
2 their attorneys of record, hereby allege as follows:

3 **JURISDICTION AND VENUE**

4 1. This is a civil action seeking declaratory and injunctive relief under
5 the United States Copyright Act, 17 U.S.C. § 101 *et seq.*, (hereinafter the
6 “Copyright Act”), and under the Declaratory Judgment Act, 28 U.S.C. §§ 2201
7 and 2202.

8 2. This Court has subject matter jurisdiction over the claims set forth in
9 this Complaint pursuant to the Copyright Act, 17 U.S.C. § 101 *et seq.*, 28 U.S.C.
10 §§ 1331, 1332 and 1338(a) and (b), and the Declaratory Judgment Act, 28 U.S.C.
11 §2201.

12 3. This Court has personal jurisdiction over the Defendants in that
13 Defendants are regularly doing business in the State of California and in this
14 district and maintain contacts within the State of California and this district.

15 4. Venue is proper in the United States District Court for the Northern
16 District of California pursuant to 28 U.S.C. §§ 1391 (b) and (c) and 1400(a),
17 because Defendants are conducting business in this district and are subject to
18 personal jurisdiction in this district.

19 **NATURE OF THE ACTION**

20 5. The Copyright Act, 17 U.S.C. §203(a), provides authors with the
21 inalienable right to recapture the copyright to their creative work, after a lengthy
22 waiting period, by statutorily terminating *without cause* prior transfer(s) of
23 copyright, provided advance notice of termination is given and accepted for
24 recordation by the U.S. Copyright Office.

25 6. The termination right was specifically enacted by Congress in
26 recognition of the unequal bargaining position of authors and to enable them to
27 finally secure the financial benefits of their work, sold inevitably before its value
28 could be fairly tested in the marketplace. *See* H.R. Rep. No. 94-1476, at 124

1 (1976) (emphasizing that the termination right was enacted to give authors a
2 chance to obtain a more equitable portion of their creation’s value when it is no
3 longer conjectural.)

4 7. In or about 1984, brothers James E. Thomas and John C. Thomas
5 conceived and authored the original “spec” screenplay “Hunters” (hereinafter, the
6 “Screenplay”). Their Screenplay was acquired in 1986 by Twentieth Century Fox
7 Film Corporation and was the basis for the iconic hit film *Predator* (1987),
8 starring Arnold Schwarzenegger, launching the *Predator* film franchise.

9 8. In 2016, the Thomas brothers properly availed themselves of their
10 right under Section 203(a) of the Copyright Act to recover the copyright to their
11 literary material by serving and recording with the U.S. Copyright Office within
12 the prescribed statutory window, a notice of termination with an effective
13 termination date of April 17, 2021. This is a civil action seeking declaratory relief
14 that the Thomases’ termination is valid and effective under the Copyright Act.

15 PARTIES

16 9. Plaintiff JAMES E. THOMAS is an individual and a citizen of and
17 resides in the State of California, in the County of Santa Barbara, and is and at all
18 times has been a citizen of the United States.

19 10. Plaintiff JOHN C. THOMAS (hereinafter, collectively with Plaintiff
20 JAMES E. THOMAS, the “Plaintiffs”) is an individual and a citizen of and resides
21 in the State of California, in the County of Santa Barbara, and is and at all times
22 has been a citizen of the United States.

23 11. Plaintiffs are informed and believe and based thereon allege that
24 Defendant TWENTIETH CENTURY FOX FILM CORPORATION (“TCFFC”)
25 is a Delaware corporation maintaining its principal place of business in Los
26 Angeles County, California, and that TCFFC regularly conducts significant
27 business in this district.

28 12. Plaintiffs are informed and believe and based thereon allege that

1 Defendant 20TH CENTURY STUDIOS, INC. is a California corporation
2 maintaining its principal place of business in Los Angeles County, California, and
3 that 20TH CENTURY STUDIOS, INC. regularly conducts significant business in
4 this district.

5 13. Plaintiffs are informed and believe and based thereon allege that
6 Defendant TFCF ENTERTAINMENT GROUP, LLC is a Delaware limited
7 liability company maintaining its principal place of business in in New York, New
8 York, and that TFCF ENTERTAINMENT GROUP, LLC regularly conducts
9 significant business in the State of California and in this district.

10 14. Plaintiffs are informed and believe and based thereon allege that
11 Defendant TFCF CORPORATION is a Delaware corporation maintaining its
12 principal place of business in New York, New York, and that TFCF
13 CORPORATION regularly conducts significant business in the State of
14 California and in this district.

15 15. Plaintiffs are informed and believe and based thereon allege that
16 Defendant THE WALT DISNEY COMPANY (“DISNEY”) is a Delaware
17 corporation maintaining its principal place of business in Los Angeles County,
18 California, and that DISNEY regularly conducts significant business in this
19 district. Plaintiffs are further informed and believe and based thereon allege that
20 Disney is the parent company and owner of TCFFC.

21 16. Plaintiffs are informed and believe and based thereon allege that the
22 fictitiously named Defendants captioned hereinabove as Does 1 through 10,
23 inclusive and each of them, were in some manner responsible or legally liable for
24 the actions, damages, events, transactions, and circumstances alleged herein. The
25 true names and capacities of such fictitiously named defendants, whether
26 individual, corporate, associate, or otherwise are presently unknown to Plaintiffs,
27 and Plaintiffs will amend this Complaint to assert the true names and capacities
28 of such fictitiously named Defendants when the same have been ascertained. For

1 convenience, each reference herein to a named Defendant shall also refer to the
2 Doe Defendants and each of them.

3 17. Plaintiffs are informed and believe and based thereon allege that
4 Defendants TCFFC, TFCF CORPORATION, TFCF ENTERTAINMENT
5 GROUP, LLC, 20TH CENTURY STUDIOS, INC., and DISNEY (hereinafter,
6 collectively, “Defendants”) are the alter-egos of each other and there exists a unity
7 of interest and ownership among the Defendants such that any separateness has
8 ceased to exist with respect to the Screenplay co-authored by Plaintiffs that is the
9 subject hereof.

10 18. Plaintiffs are informed and believe and based thereon allege that each
11 of the Defendants was the agent, partner, servant, employee, or employer of each
12 of the other Defendants herein, and that at all times herein mentioned, each of the
13 Defendants was acting within the course and scope of such employment,
14 partnership, and/or agency and that each of the Defendants is jointly and severally
15 responsible for the damages hereinafter alleged.

16 **STATUTORY BACKGROUND**

17 19. The U.S. Copyright Act of 1976, 17 U.S.C. § 101 *et seq.* (the
18 “Copyright Act”), provides an author with the inalienable right to recapture the
19 copyright to the author’s creative material, after a lengthy waiting period, by
20 statutorily terminating without cause prior transfer(s) of such copyright.
21 Termination is carried out by simply serving advance notice of termination on the
22 original grantee or its successors and filing the notice with the U.S. Copyright
23 Office, within delineated time windows. 17 U.S.C. § 203(a).

24 20. Section 203(a) provides for the termination of post-1977 transfers of
25 rights under copyright by the author during a five (5) year period commencing
26 thirty-five (35) years after the date the rights were transferred. *Id.* § 203(a)(3).
27 The requisite notice of termination sets forth the “effective date” of termination,
28 within the five-year termination “window,” when the previously transferred rights

1 under copyright will be recaptured by the author. Notice of termination may be
2 served by the author at any time between ten (10) and two (2) years before the
3 effective termination date. *Id.* § 203(a)(4)(A).

4 21. “Works for hire” are the sole exemption from the Copyrights Act’s
5 termination provisions. *Id.* § 203(a).

6 22. The termination right is the most important authorial right provided
7 by the Copyright Act, short of copyright itself. Congress was therefore very
8 protective of the termination right and, to that end, enacted a number of provisions
9 to prevent any waiver or encumbrance of the termination interest. For instance,
10 “[t]ermination of the [prior copyright] grant may be effected notwithstanding any
11 agreement to the contrary [.]” *Id.* § 203(a)(5).

12 23. Furthermore, “[h]armless errors in a [termination] notice that do not
13 materially affect the adequacy of the information required to serve the purposes
14 of . . . section [203(a)] of title 17, U.S.C. . . . shall not render the notice invalid.”
15 37 CFR § 201.10 (e)(1).

16 24. Congress anticipated that an author’s exercise of his/her termination
17 right would usually result in a new license by the author to the terminated grantee
18 (such as TCFFC). To that end, Congress provided “the original grantee” with the
19 exclusive opportunity to re-license an author’s recaptured copyright “after the
20 notice or termination has been served,” but before “the effective date of the
21 termination.” *Id.* § 203(b)(4). The termination provisions thus reflect a deliberate
22 balance of competing interests.

23 25. Under the termination provisions, prior “derivative works” “can
24 continue to be” distributed as before. 17 U.S.C. § 203(b)(1). Plaintiffs’ recovery
25 of the U.S. copyright to their Screenplay therefore does not prevent Defendants or
26 their licensees from continuing to exploit prior derivative works, including the
27 original *Predator* film and TCFFC’s five sequel films.

28

1 26. In addition, because the Copyright Act has no extra-territorial
2 application, the foreign rights to Plaintiffs’ Screenplay remains with TCFFC. As
3 a result, after the effective date of Plaintiffs’ termination, new derivative *Predator*
4 works would simply require a license from Plaintiffs, thereby enabling the authors
5 to fairly participate with others at a level reflective of their work’s market value.
6 Accordingly, Plaintiffs’ exercise of their copyright termination right does not
7 prevent the exploitation of the *Predator* franchise; it simply allows its original
8 creators to, at long last, participate in the financial rewards of their creation, just
9 as Congress intended. H.R. Rep. No. 94-1476, at 124 (1976).

10 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

11 27. Plaintiffs JAMES E. THOMAS and JOHN C. THOMAS are brothers
12 who co-authored the original motion picture Screenplay entitled “Hunters” in
13 1984. Plaintiffs created the Screenplay “on spec,” on their own volition, with no
14 guarantee of compensation, and, as such, the Screenplay does not qualify as a
15 “work made-for-hire” under the Copyright Act, 17 U.S.C. §101.

16 28. On April 16, 1986, Plaintiffs transferred their rights under copyright
17 in the Screenplay to Defendant TCFFC (the “1986 Grant”), pursuant to an Option
18 Agreement for Literary Material between Plaintiffs and TCFFC dated January 22,
19 1985.

20 29. Thereafter, TCFFC produced a derivative feature-length motion
21 picture based upon the Screenplay, entitled *Predator*, which was released in
22 theaters on June 12, 1987.

23 30. Pursuant to the Copyright Act, 17 U.S.C. § 203(a), Plaintiffs, as the
24 authors of the original Screenplay, have the full power and authority to recover
25 the copyright in their Screenplay by serving on TCFFC, within the statutorily
26 defined time window (April 16, 2014 to April 16, 2024), a notice of termination
27 regarding the 1986 Grant, and filing that notice with the U.S. Copyright Office
28 prior to the notice’s effective termination date.

1 31. On June 9, 2016, Plaintiffs availed themselves of their federal
2 termination right by serving a notice of termination, pursuant to 17 U.S.C. §
3 203(a) (hereinafter, the “Termination Notice”) on Defendants TCFFC, TFCF
4 Corporation (formerly known and served as Twenty-First Century Fox, Inc.), and
5 TFCF Entertainment Group, LLC (formerly known and served as Fox
6 Entertainment Group, LLC), statutorily terminating the 1986 Grant of rights under
7 copyright in their Screenplay.

8 32. The Termination Notice bore an effective termination date of April
9 17, 2021, when Plaintiffs will recapture pursuant to § 203(a), all rights under
10 copyright in and to their Screenplay.

11 33. The June 9, 2016 Termination Notice was served on TCFFC (and
12 related Defendants) well in advance of the April 17, 2021 termination date. The
13 Termination Notice was drafted, served, and accepted for recordation by the U.S.
14 Copyright Office on June 28, 2016—all in full compliance with the Copyright
15 Act, 17 U.S.C. § 203(a), and the regulations promulgated thereunder by the
16 Register of Copyrights, 37 C.F.R. § 201.10.

17 34. For *four and one-half (4½) years* after the Termination Notice was
18 served, Defendants did not object to it in any respect. Then, in early January 2021,
19 Defendants’ counsel unexpectedly contacted Plaintiffs’ counsel, contesting the
20 Termination Notice as supposedly untimely, based on a theory that the 1986 Grant
21 of the Screenplay underlying their *Predator* films allegedly qualified for the
22 special, delayed termination time “window” in 17 U.S.C. § 203(a)(3), intended
23 for “book publication” grants. *See* M. Nimmer and D. Nimmer, 3 *Nimmer on*
24 *Copyright*, § 11.05[A][2] (“*Nimmer*”). On January 13, 2021, Defendants served
25 a “counter-notice” on Plaintiffs, reciting their arguments, which squarely
26 contradicted both *Nimmer* and the legislative history of the statutory provision (§
27 203(a)(3)) they purported to rely on. Copyright Reg. Supp. Rep., pp. 74-75.

28 35. On January 12, 2021, in response and in an abundance of caution,

1 Plaintiffs served two alternate notices of termination on TCFFC and related
2 Defendants, addressing their theory: one with an effective termination date of
3 June 14, 2022 (hereinafter, the “Second Termination Notice”), and the other with
4 an effective termination date of January 13, 2023 (hereinafter, the “Third
5 Termination Notice”) (collectively, the “Alternate Notices”). On March 12, 2021,
6 the Alternate Notices were mailed to the U.S. Copyright Office for recordation.
7 Although Plaintiffs considered Defendants’ last minute objections to be without
8 merit, the Alternate Notices were served as a “belt and suspenders” precaution.

9 36. On March 25, 2021, different counsel for Defendants served a
10 second “counter-notice” on Plaintiffs, repeating Defendants’ supposed objection
11 regarding the Termination Notice, and adding an assortment of additional
12 purported arguments regarding the Alternate Notices, in an effort to evade the
13 Copyright Act’s authorial termination right.

14 **FIRST CLAIM FOR RELIEF**

15 (Declaratory Relief: Termination Notice Is Effective Under 17 U.S.C. § 203(a))

16 37. Plaintiffs re-allege and incorporate by reference paragraphs 1
17 through 36 inclusive, as though fully set forth herein.

18 38. By reason of the foregoing facts, an actual and justiciable
19 controversy has arisen and now exists between Plaintiffs and Defendants
20 concerning the validity of Plaintiffs’ Termination Notice (and Alternate Notices),
21 and the parties’ respective rights to the Screenplay, for which Plaintiffs desire a
22 declaration of rights.

23 39. Plaintiffs contend, and Defendants deny, that their Termination
24 Notice is valid and effective under the Copyright Act.

25 40. Plaintiffs thus seek a declaration from this Court that:

26 a. The Termination Notice is valid and effective under 17 U.S.C.
27 § 203(a) and terminates on April 17, 2021, Plaintiffs’ 1986 Grant of their
28 Screenplay to TCFFC and that, as of said date, Plaintiffs recovered the U.S.

