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17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 SHOSH YONAY, an individual, and
20 YUVAL YONAY, an individual,

21 Plaintiffs,

22 v.

23 PARAMOUNT PICTURES
24 CORPORATION, a Delaware
25 corporation, and DOES 1-10,

26 Defendants.

Case No. 22-CV-03846

COMPLAINT FOR:

- [1] DECLARATORY RELIEF**
- [2] COPYRIGHT INFRINGEMENT**
- [3] INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

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1 Plaintiffs Shosh Yonay and Yuval Yonay (collectively, the “Yonays” or
2 “Plaintiffs”), the heirs of writer Ehud Yonay (the “Author”), for their complaint
3 against defendant Paramount Pictures Corporation (“Paramount”), allege as
4 follows:

5 **NATURE OF THE ACTION**

6 1. Ehud Yonay is the author of the original 1983 story entitled “Top
7 Guns,” (the “Story”) from which the 1986 motion picture “Top Gun” (the “1986
8 Film”) and the recently released 2022 sequel motion picture “Top Gun: Maverick”
9 (the “2022 Sequel”) are derived.

10 2. The iconic 1986 Film all started with Paramount securing exclusive
11 motion picture rights to Ehud Yonay’s copyrighted Story immediately after its
12 publication. In fact, the Author’s Story was duly credited on the derivative 1986
13 Film, which is widely known to have been based on the Story.

14 3. On January 23, 2018, the Yonays properly availed themselves of their
15 right to recover the copyright to the Story under the Copyright Act, 17 U.S.C. §
16 203(a), by sending Paramount a statutory notice of termination (the “Termination
17 Notice”) and thereafter filing it with the Copyright Office, effective January 24,
18 2020.

19 4. On January 24, 2020, the copyright to the Story thus reverted to the
20 Yonays under the Copyright Act, but Paramount deliberately ignored this,
21 thumbing its nose at the statute. This case arises out of Paramount’s conscious
22 failure to re-acquire the requisite film and ancillary rights to the Yonays’
23 copyrighted Story prior to the completion and release of their derivative 2022
24 Sequel.

25 5. Paramount engaged in the willful conduct alleged herein,
26 notwithstanding that it is a sophisticated multinational corporation whose core
27 business is based upon the value and enforcement of copyrights and other
28 intellectual property.

1 **PARTIES**

2 6. Plaintiff Shosh Yonay is an individual and citizen of, and resides in,
3 Israel. Shosh Yonay is the widow and heir of the Author.

4 7. Plaintiff Yuval Yonay is an individual and citizen of, and resides in,
5 Israel. Yuval Yonay is the son and heir of the Author.

6 8. Upon information and belief, Defendant Paramount is a corporation
7 organized and existing under the laws of the State of Delaware, which has its
8 principal place of business in the County of Los Angeles, California.

9 **JURISDICTION AND VENUE**

10 9. This is a civil action for copyright infringement and injunctive relief
11 under the United States Copyright Act, 17 U.S.C. §§ 101 *et seq.* (hereinafter, “the
12 Copyright Act”) and for declaratory relief under the Declaratory Judgment Act,
13 18 U.S.C. § 2201.

14 10. This Court has original subject matter jurisdiction over the claims set
15 forth in this complaint pursuant to the Copyright Act, 17 U.S.C. § 101 *et seq.*, 28
16 U.S.C. §§ 1331, 1332, and 1338(a), and the Declaratory Judgment Act, 28 U.S.C.
17 § 2201.

18 11. Upon information and belief, this Court has personal jurisdiction
19 over Paramount because it has its principal place of business in the State of
20 California and in this District, and because a substantial portion of the relevant
21 acts complained of herein occurred in the State of California and in this District.

22 12. Upon information and belief, venue is proper in this Court pursuant
23 to 28 U.S.C. § 1391(b)(1) because Paramount resides in this District, and pursuant
24 to 28 U.S.C. § 1391(b)(2), because a substantial part of the events giving rise to
25 this action occurred in this District.

26 **STATUTORY BACKGROUND**

27 13. The U.S. Copyright Act of 1976, 17 U.S.C. § 101 *et seq.* (the
28 “Copyright Act”), provides an author with the inalienable right to recapture the

1 copyright to the author’s creative material, after a lengthy waiting period, by
2 statutorily terminating without cause prior transfer(s) of such copyright.
3 Termination is carried out by simply serving advance notice of termination on the
4 original grantee or its successors and filing the notice with the U.S. Copyright
5 Office, within delineated time windows. 17 U.S.C. § 203(a).

6 14. Section 203(a) provides for the termination of post-1977 transfers of
7 rights under copyright by the author during a five (5) year period commencing
8 thirty-five (35) years after the date the rights were transferred. *Id.* § 203(a)(3). The
9 requisite notice of termination sets forth the “effective date” of termination, within
10 the five-year termination “window,” when the previously transferred rights under
11 copyright will be recaptured by the author. Notice of termination may be served
12 by the author at any time between ten (10), and two (2) years before the effective
13 termination date. *Id.* § 203(a)(4)(A).

14 15. “Works for hire” are the sole exemption from the Copyright Act’s
15 termination provisions. *Id.* § 203(a).

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

22 17. Furthermore, “[h]armless errors in a [termination] notice that do not
23 materially affect the adequacy of the information required to serve the purposes
24 of . . . section [203(a)] of title 17, U.S.C. . . . shall not render the notice invalid.”
25 37 CFR § 201.10(e)(1).

26 18. Congress anticipated that an author’s exercise of his/her termination
27 right would usually result in a new license by the author to the terminated grantee
28 (such as Paramount). To that end, Congress provided “the original grantee” with

1 the exclusive opportunity to re-license an author’s recaptured copyright “after the
2 notice or termination has been served,” but before “the effective date of the
3 termination.” *Id.* § 203(b)(4). The termination provisions thus reflect a deliberate
4 balance of competing interests.

5 19. Under the termination provisions, prior derivative works can
6 continue to be distributed just as before. 17 U.S.C. § 203(b)(1). Thus, the Yonays’
7 recovery of the U.S. copyright to the Story does not prevent Paramount or its
8 licensees from continuing to exploit prior derivative works, including the 1986
9 Film; it just requires a new license for sequel films and other derivative works
10 completed after the January 24, 2020 termination date.

11 20. In addition, because the Copyright Act has no extraterritorial
12 application, foreign rights to the Story remain with Paramount such that,
13 notwithstanding the Yonays’ Termination Notice, Paramount would always
14 continue to benefit from “Top Gun.” After the January 24, 2020 termination date,
15 a new U.S. license from the Yonays to Paramount of the underlying Story would
16 simply enable them to fairly participate with others in the proven market value
17 and financial rewards of the Author’s creation, just as Congress intended. H.R.
18 Rep. No. 94-1476, at 124 (1976).

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

20 **The Chain of Title**

21 21. Ehud Yonay’s Story was originally published on April 21, 1983 in
22 the May 1983 issue of *California* magazine and was registered in the U.S.
23 Copyright Office on October 3, 1983 (Reg. No. TX0001213463).

24 22. The magazine was not well known, and the subject of the Story—a
25 naval training base—was rather dry. In contrast, however, the Author’s copyrighted
26 Story was written in a remarkably vivid and cinematic fashion, with references to
27 Hollywood stars and epic films such as “From Here to Eternity.” Rather than
28 focusing merely on the dry historical details of the training school, the Story

1 focuses on the pilots (the “Top Guns”) and their personal experiences, singling
2 out two in particular, a hotshot pilot (“Yogi”) and his radio intercept officer
3 (“Possum”), as they are hammered into a team. It skillfully selects accounts of the
4 pilots’ personal lives and precise details of their “hops” (flight maneuvers) to
5 construct a romanticized, first-hand experience of what it is like to be a member
6 of an elite Navy fighter squadron. Indeed, the literary and cinematic way the Story
7 humanized and energized its subject was so compelling that Paramount
8 immediately sought to lock up exclusive film rights from its Author. The resulting
9 films, which faithfully translate this vision and narrative to the screen, have given
10 audiences worldwide a close-up look at the lives of U.S. Navy fighter pilots, as
11 curated by Ehud Yonay’s compelling Story.

12 23. Within weeks of the Story’s publication, Paramount secured from
13 Ehud Yonay an exclusive “Assignment of Rights” dated May 18, 1983, of motion
14 picture and allied rights in the Story (the “Grant”).

15 24. There is no doubt that the copyrighted Story was the clear genesis of
16 Paramount’s 1986 mega-hit film, “Top Gun.” But for the Author’s literary efforts
17 and evocative prose and narrative, Paramount’s beloved film franchise would not
18 exist.

19 25. On January 23, 2018, the Yonays properly availed themselves of their
20 termination rights under the Copyright Act, 17 U.S.C. § 203(a), by sending
21 Paramount a statutory notice of termination, terminating the Grant of the Author’s
22 rights under U.S. copyright in the Story, effective January 24, 2020.

23 26. The Termination Notice, recorded with the U.S. Copyright Office on
24 January 29, 2018 (Doc. No. V9949D433), fully complied with Section 203(a) of
25 the Copyright Act and the regulations promulgated thereunder by the Register of
26 Copyrights, 37 C.F.R. § 201.10.

27 27. Therefore, as of January 24, 2020, the Yonays are the sole owners of
28 the U.S. copyright in the Story.

1 The 2022 Sequel is Derived from the Story

2 28. Ehud Yonay’s Story told the story of the Navy Fighter Weapons
3 School training program as personified by the Author through the eyes of two
4 lieutenants in the course, a hotshot pilot (“Yogi”) and his friend and second in the
5 two-man cockpit (“Possum”).

6 29. In the Story, the Author brought to life what could have easily been
7 a barren subject of facts and figures by painting the Naval Air Station as a place
8 of death-defying competition, comradery, romanticism, and 1950s post-war
9 nostalgia. The Author’s incredibly vivid imagery strapped readers in to the cockpit
10 of a fighter jet long before the days of GoPro cameras and smartphones.

11 30. In fact, Ehud Yonay’s colorful telling of the Navy training program
12 was so exhilarating and cinematic that it compelled Paramount to immediately
13 seek him out and secure the exclusive rights to produce films based on his Story,
14 mere weeks after its publication.

15 31. The resulting 1986 Film, produced by Jerry Bruckheimer and its
16 screenplay written by Jim Cash and Jack Epps, Jr., was derived from the Story.
17 Indeed, the 1986 Film specifically credits Ehud Yonay for his Story. It is also well
18 accepted that “Top Gun” was based on the Story.

19 32. It naturally follows that the 2022 Sequel to the 1986 Film, again
20 produced by Bruckheimer and on which Cash and Epps again received writing
21 credit, is derived from Ehud Yonay’s Story.

22 33. A review of the 2022 Sequel, like the 1986 Film, reveals key
23 elements that are substantially similar to those in the Story, as set forth in Exhibit
24 1 to this complaint, and incorporated by reference herein.

25 Paramount’s Exploitation of the 2022 Sequel Infringes the Story

26 34. Despite the 2022 Sequel clearly having derived from the Story,
27 Paramount consciously failed to secure a new license of film and ancillary rights
28 in the copyrighted Story following the Yonays’ recovery of their U.S. copyright

1 on January 24, 2020.

2 35. Plaintiffs are informed and believe and based thereon allege that the
3 2022 Sequel was not completed until May 8, 2021, more than one year *after*
4 Paramount's Grant had been statutorily terminated. The 2022 Sequel therefore,
5 unlike the 1986 Film, does not qualify for the "prior derivative works exception"
6 to statutory termination, 17 U.S.C. § 203(b)(1), and thus infringes the copyright
7 owned by the Yonays.

8 36. Plaintiffs are informed and believe and based thereon allege that
9 Paramount was and is involved in the financing, production, and distribution of
10 the 2022 Sequel in the United States and is the film's purported copyright holder.

11 37. Without a newly secured license, Paramount's exploitation of the
12 2022 Sequel in the United States constitutes ongoing intentional infringement of
13 the Yonays' copyright, including without limitation, their exclusive right to
14 "prepare derivative works based upon the copyrighted [W]ork," 17 U.S.C. §
15 106(2), which Paramount had owned pursuant to the Grant, but lost on January
16 24, 2020, and willfully proceeded to exploit nonetheless.

17 38. Paramount was placed on clear notice of these issues on January 23,
18 2018 when the Yonays served Paramount with their statutory Notice of
19 Termination, effective January 24, 2020. On May 11, 2022, the Yonays sent
20 Paramount a cease-and-desist letter regarding the 2022 Sequel. On May 13, 2022,
21 Paramount responded in total denial of the fact that its 2022 Sequel was obviously
22 derivative of the Story. Paramount additionally argued that the 2022 Sequel was
23 "sufficiently completed" by January 24, 2020 (the effective termination date) in a
24 disingenuous attempt to bootstrap the 2022 Sequel into the "prior derivative works"
25 exception to termination, 17 U.S.C. § 203(b)(1).

26 39. Plaintiffs are informed and believe by Paramount's conduct, and
27 based thereon allege that Paramount will continue to prepare, produce, copy,
28 distribute, exploit, and/or authorize others to prepare, produce, copy, distribute, or

1 exploit the infringing 2022 Sequel and other derivative works which copy and
2 exploit the Story in violation of the Copyright Act.

3 40. As a direct and proximate result of Paramount's actions, the Yonays
4 will suffer imminent and irreparable harm, much of which cannot be reasonably
5 or adequately measured or compensated in damages.

6 **COUNT I: DECLARATORY RELIEF**

7 41. Plaintiffs re-allege and incorporate by reference paragraphs 1
8 through 40 inclusive, as though fully set forth herein.

9 42. By reason of the foregoing facts, an actual and justiciable
10 controversy has arisen and now exists between the Yonays and Paramount
11 regarding whether Paramount continued after January 24, 2020 to have the rights
12 to produce and exploit the 2022 Sequel and other derivative works based in whole
13 or in part on the Story and the 1986 Film, derived from the Story.

14 43. As of January 24, 2020, the Yonays own all rights in and to an
15 enforceable copyright to the Author's original Story.

16 44. The Yonays contend and Paramount denies that the 2022 Sequel does
17 not qualify for the "prior derivative works exception" under 17 U.S.C. §203(b)(1)
18 because it was not completed until long after January 24, 2020.

19 45. The Yonays contend and Paramount denies that the 2022 Sequel, like
20 the 1986 Film, is derived from the Author's Story.

21 46. The Yonays contend and Paramount denies that, but for the Story, the
22 1986 Film and 2022 Sequel would not exist.

23 47. The Yonays therefore desire a judicial determination that the 2022
24 Sequel is derivative of Ehud Yonay's Story.

25 48. The Yonays further desire a judicial determination that Paramount
26 does not have any rights to make, exploit, or distribute the 2022 Sequel or any
27 other derivative work based in whole or in part on the Story, and/or the 1986 Film
28 (as derived from the Story), in the United States.

1 49. A declaration of the Court is necessary and appropriate pursuant to
2 the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*, so that the Yonays may
3 ascertain their rights with respect to the 2022 Sequel and any future derivative
4 works based in whole or in part on the Story, and/or the 1986 Film.

5 **COUNT II: COPYRIGHT INFRINGEMENT**

6 50. Plaintiffs re-allege and incorporate by reference paragraphs 1
7 through 49 inclusive, as though fully set forth herein.

8 51. The Story is a wholly original Story and copyrightable subject matter
9 under the laws of the United States.

10 52. The Story was originally published on April 21, 1983 and was
11 registered in the U.S. Copyright Office on October 3, 1983 under registration
12 number TX0001213463.

13 53. By its exploitation and release of the 2022 Sequel, a motion picture
14 plainly derived from the Story, Paramount knowingly and willfully infringed, and
15 will continue to infringe, the Yonays' copyright and rights under copyright in the
16 Story.

17 54. Each infringement by Paramount and/or other parties of the Story
18 constitutes a separate and distinct act of infringement.

19 55. The Yonays sent an email and certified letter to Paramount on May
20 11, 2022 placing Paramount on notice of its infringement, yet Paramount
21 continues to infringe the Yonays' rights under copyright in willful disregard of and
22 indifference to the Yonays' rights.

23 56. As a direct and proximate result of Paramount's copyright
24 infringement, the Yonays have suffered and will continue to suffer severe injuries
25 and harm, much of which cannot be reasonably or adequately measured or
26 compensated in money damages if such wrongful conduct is allowed to continue
27 unabated. The ongoing harm this wrongful conduct will continue to cause the
28 Yonays is both imminent and irreparable. The Yonays' injuries and damages

1 include, without limitation, repeated infringement of their copyright and interests,
2 diminution of the value of their copyright and interests, loss of customers, dilution
3 of goodwill, and injury to their business reputation.

4 57. Pursuant to 17 U.S.C. § 502, the Yonays are entitled to a preliminary
5 injunction, during the pendency of this action, and to a permanent injunction,
6 enjoining Paramount, its officers, agents and employees, and all persons acting in
7 concert with it, from engaging in such further violations of the Copyright Act.

8 58. The Yonays are further entitled to recover from Paramount the
9 damages, including pre-judgment interest, they sustained and will sustain, and any
10 income, gains, profits, and advantages obtained by Paramount as a result of its
11 wrongful acts alleged hereinabove, in an amount which cannot yet be fully
12 ascertained, but which shall be assessed at the time of trial.

13 59. Alternatively, the Yonays are entitled to the maximum statutory
14 damages recoverable, or for such other amounts as may be proper, pursuant to 17
15 U.S.C. § 504.

16 60. The Yonays are further entitled to their attorneys' fees and full costs
17 pursuant to 17 U.S.C. § 505.

18 **COUNT III: INJUNCTIVE RELIEF**

19 61. Plaintiffs re-allege and incorporate by reference paragraphs 1
20 through 60 inclusive, as though fully set forth herein.

21 62. Unless enjoined and restrained by order of the Court, Paramount's
22 conduct will infringe the Yonays' copyright and interests.

23 63. By reason of Paramount's ongoing or imminent copyright
24 infringement and Paramount's unfair trade practices and unfair competition
25 against the Yonays, the Yonays have sustained and, unless and until Paramount is
26 enjoined, will continue to sustain substantial imminent and irreparable injury, loss
27 and damage, including repeated infringement of their copyright and interests,
28 diminution of the value of their copyright and interests, loss of customers, dilution

1 of goodwill, and injury to their business reputation.

2 64. The Yonays have no adequate remedy at law for many of their
3 injuries in that such injuries cannot be reasonably, adequately, or precisely
4 measured or compensated in damages if such wrongful conduct is not restrained
5 and is allowed to continue unabated.

6 65. The Yonays are entitled to a preliminary injunction during the
7 pendency of this action and a permanent injunction ordering that Paramount, its
8 agents, employees, licensees and assigns be enjoined from producing, reproducing,
9 distributing and exploiting or authorizing the production, reproduction,
10 distribution or exploitation of the 2022 Sequel and ancillary products based
11 thereon, derived from the Story.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, the Yonays pray for judgment against Paramount as
14 follows:

15 **ON THE FIRST CLAIM FOR RELIEF**

16 1. For a declaration that the 2022 Sequel is derivative of Ehud Yonay's
17 Story;

18 2. For a declaration that, as of January 24, 2020, Paramount does not
19 have and did not have any rights to make, develop, produce, or distribute the 2022
20 Sequel or any other derivative work based in whole or in part on the Story and/or
21 the 1986 Film (as derived from the Story); and

22 3. For an order preliminarily during the pendency of this action and
23 thereafter, permanently, enjoining Paramount, its officers, agents, employees,
24 licensees and assigns, and all persons acting in concert with it, from developing,
25 producing, or distributing the 2022 Sequel and any other derivative work based in
26 whole or in part on the Story and/or the 1986 Film.

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1 ON THE SECOND CLAIM FOR RELIEF

2 4. For an order preliminarily during the pendency of this action and
3 thereafter, permanently, (i) enjoining Paramount, its officers, agents, employees,
4 licensees and assigns, and all persons acting in concert with it, from infringing the
5 copyright in the Story, in any manner, and (ii) enjoining Paramount, its officers,
6 agents, employees, licensees and assigns, and all persons acting in concert with it,
7 from engaging in or authorizing the production, reproduction, distribution, display
8 and/or exploitation of the infringing 2022 Sequel and ancillary products based
9 thereon, derived from the Story, without a new license from the Yonays;

10 5. For compensatory and consequential damages, according to proof in
11 an amount determined at trial, together with interest thereon as provided by law;

12 6. For an accounting and restitution to the Yonays of all gains, profits
13 and advantages Paramount has derived from its production, distribution, display
14 and exploitation of the infringing 2022 Sequel, ancillary exploitations based
15 thereon, and from its copyright infringement of the Story;

16 7. In the alternative to actual damages, for statutory damages pursuant
17 to 17 U.S.C. §504(c), which election the Yonays shall make prior to the rendering
18 of final judgment herein; and

19 8. For such other and further relief and remedies available under the
20 Copyright Act, 17 U.S.C. §§ 101 *et seq.*, which the Court may deem just and
21 proper.

22 ON ALL CLAIMS FOR RELIEF

23 9. For the Yonays' costs of suit;

24 10. For interest at the highest lawful rate on all sums awarded the Yonays
25 other than punitive damages;

26 11. For reasonable attorneys' fees; and

27 12. For such other and further relief as the Court deems just and
28 appropriate.

1 DATED: June 6, 2022

Respectfully Submitted,

2 TOBEROFF & ASSOCIATES, P.C.

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury for all issues triable to a jury.

DATED: June 6, 2022

TOBEROFF & ASSOCIATES, P.C.

By: /s/ Marc Toberoff
 Marc Toberoff

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