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10 ARTICLE THREE OF THE LAST WILL AND TESTAMENT OF TRUMAN CAPOTE
11 DATED MAY 4, 1981

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES**

14 ALAN U. SCHWARTZ, TRUSTEE OF)
15 THE TRUST UNDER ARTICLE THREE)
16 OF THE LAST WILL AND TESTAMENT)
17 OF TRUMAN CAPOTE DATED MAY 4,)
18 1981,)

19 Plaintiff,

20 v.

21 PARAMOUNT PICTURES)
22 CORPORATION, a Delaware corporation;)
23 and DOES 1 through 100, inclusive,)

24 Defendants.)
25 _____)

26 CASE NO. **20STCV42294**

27 **COMPLAINT FOR DECLARATORY**
28 **RELIEF**

29 Plaintiff ALAN U. SCHWARTZ, TRUSTEE OF THE TRUMAN CAPOTE LITERARY
30 TRUST UNDER ARTICLE THREE OF THE LAST WILL AND TESTAMENT OF TRUMAN
31 CAPOTE DATED MAY 4, 1981 (hereinafter “Plaintiff”) complains and alleges as follows:
32

33 **INTRODUCTION**

34 1. Plaintiff is the Trustee of a charitable trust, set up by Truman Capote. Capote is
35 the author who conceived “Breakfast at Tiffany’s,” which ultimately became the iconic motion
36 picture of the same name, which was produced by Paramount in 1961.
37

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1 partnerships, or other business entities, which were and are legally responsible and liable for the
2 acts, omissions, and events referred to in this Complaint.

3 9. Plaintiff is informed and believes and, based upon such information and belief,
4 alleges that DOES 51 through 100 are, and at all times herein mentioned were, individuals, who
5 were and are legally responsible and liable for the acts, omissions, and events referred to in this
6 Complaint.

7 10. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as
8 DOES 1 through 100, inclusive, and therefore sues said Defendants under such fictitious names.
9 Plaintiffs will seek leave to amend this Complaint to allege their true names and capacities when
10 the same have been ascertained.

11 11. Plaintiff is informed and believes and, based on such information and belief,
12 alleges that Defendants, and each of them, are, and at all times herein mentioned were, the alter
13 egos, agents, employees, partners, joint-venturers, co-conspirators, owners, principals, and
14 employers of the remaining Defendants, and each of them, and are, and at all times herein
15 mentioned were, acting within the course and scope of that agency, employment, partnership,
16 conspiracy, ownership, or joint-venture. Plaintiff is further informed and believes and, based
17 upon such information and belief, alleges that the acts and conduct herein alleged of each such
18 Defendant were known to, authorized by, and/or ratified by the other Defendants, and each of
19 them.

20 21 SUMMARY OF FACTS

22 *Truman Capote*

23 12. Truman Capote (hereinafter "Capote") was an American novelist, short story
24 writer, playwright, screenwriter, and actor. He began writing short stories when he was
25 approximately eight years old. His early stories were published in both literary quarterlies and
26 well-known popular magazines. Several of his short stories, novels, and plays have been praised
27 as literary classics, including *In Cold Blood*.

28 ///

1 13. His works have been adapted into more than twenty films and television dramas.
2 He was awarded numerous awards for his work, including two Edgar Awards from the Mystery
3 Writers of America, an Emmy Award for Best Screenplay, and was nominated for a Writer’s
4 Guild Award for Best Written American Drama, as well as a Golden Globe for Best Acting
5 Debut in a Motion Picture.

6
7 ***The Trust***

8 14. The Trust is a charitable trust, established in 1994 by Capote’s will. In
9 cooperation with the Iowa Writers Workshop at the University of Iowa, the Trust awards the
10 annual Truman Capote Award for Literary Criticism in Memory of Newton Arvin. The award
11 commemorates not only Capote but also his friend Newton Arvin, the Smith College professor
12 and critic, who lost his job after his homosexuality was publicly exposed. The award is said to
13 be the largest annual cash prize for literary criticism in the English language.

14 15. The Trust also awards graduate level fellowships at universities such as Cornell
15 University, the University of Iowa, the University of Alabama, and the University of North
16 Carolina. It also funds undergraduate level scholarship programs to promote creative writing
17 programs through various universities and colleges. The Trust’s educational grantees include:
18 Appalachian State University, University of Alabama, Brooklyn College, California Institute of
19 the Arts, Cornell University, Institute of American Indian Arts, University of Iowa Writers’
20 Workshop, University of Montana, Rutgers University – Newark, Xavier University of
21 Louisiana, and Yale Law School

22
23 ***History of Capote’s Work***

24 16. In or about 1958, Capote wrote a novella entitled “Breakfast at Tiffany’s”
25 (hereinafter the “Work”), which was originally published in *Esquire* Magazine on October 16,
26 1958. The Work’s prose style has been praised effusively, and reportedly prompted Norman
27 Mailer to refer to Capote as “the most perfect writer of [his] generation.” Mailer has stated that
28 he “would not have changed two words in ‘Breakfast at Tiffany’s.’” Capote’s original typed

1 manuscript was sold at auction in 2013 for \$306,000.00.

2 17. Shortly after its first publication in *Esquire*, the Work was published by Random
3 House in a collection with three other Capote stories, and received glowing reviews. The
4 collection has been reprinted several times.

5 18. The Work was registered with the U.S. Copyright Office in Capote's name on
6 October 14, 1958, under entry No. A:358806.

7 19. There have been two adaptations of Capote's Work into stage plays, both directed
8 by Sean Mathias. The first production was presented in 2009 at the Theatre Royal Haymarket in
9 London, starring Anna Friel and Joseph Cross. The second version was presented on Broadway
10 in 2013, at the Cort Theatre, starring Emilia Clarke, Cory Michael Smith, George Wendt. This
11 version was also produced in the U.K. in 2016, called "a play with music," and ran at the Theatre
12 Royal Haymarket in the West End from June to September, 2016.

13
14 ***1958 Motion Picture Rights Agreement With Paramount***

15 20. On December 9, 1958, Capote entered into an agreement with Paramount (the
16 "1958 Agreement"), whereby Capote granted to Paramount the right to create a motion picture
17 as a derivative work of Capote's Work. The agreement provided the following:

18 The Author [Capote] hereby conveys, grants and assigns to
19 [Paramount] all the motion picture rights, forever and throughout the
20 world, in and to and in connection with [the Work]

21 21. Pursuant to the 1958 Agreement, Paramount produced a motion picture entitled
22 "Breakfast at Tiffany's," starring Audrey Hepburn and George Peppard (hereinafter the
23 "Original Picture"), which was based upon, and derived from, Capote's Work.

24 22. The Original Picture was critically acclaimed, and won two Academy Awards, one
25 for Best Original Score and one for Best Original Song for "Moon River." The film was also
26 nominated for three other Academy Awards: Best Actress for Audrey Hepburn, Best Adapted
27 Screenplay, and Best Art Direction. In 2012, the film was deemed "culturally, historically, or
28 aesthetically significant" by the U.S. Library of Congress, and was selected for preservation in

1 the National Film Registry.

2 ***Capote's Death and Succession of Renewal Rights***

3 23. Capote died on August 25, 1984. Pursuant to the Copyright Act of 1909, an author
4 had the exclusive copyright in and to his/her copyrighted work for a 28-year term. Thereafter, if
5 the author was alive during the initial renewal term, the author had the right to renew his or her
6 exclusive copyright for an additional 28 years. (See §24 of the 1909 Act). Pursuant to the 1909
7 Act, the statutory succession worked as follows:

8 (a) If the author/owner of the copyright dies in the initial term of the work, then
9 the spouse and/or children become the statutory successor class, with the sole right to renew said
10 copyright.

11 (b) If the author/owner dies in the initial term of the copyright, childless,
12 unwed, but testate, and the right to renew the copyright passes to the "Author's Executors," not
13 in the executors' own right but as a fiduciary for the testamentary devisees of said copyrighted
14 work.

15 (c) If the author/owner dies in the initial term of the copyrighted work,
16 childless, unwed and intestate, the right to renew belongs to the author's "Next of Kin" under the
17 appropriate state law of intestate succession. (See §24 of the 1909 Act).

18 24. Because Capote died testate in the initial term of the copyright period (1958-1986),
19 without wife or children, the renewal term under the copyright statute passed to the Executor of
20 his estate, as the fiduciary of the Trust established pursuant to Capote's will. After Capote's
21 death, the copyright in the Work was therefore renewed by, and in the name of, Alan U.
22 Schwartz, as Executor of the Estate of Truman Capote, on April 18, 1986, under entry No. RE:
23 291-743.

24 25. By an Assignment of Copyright dated July 1, 1990, Alan U. Schwartz, as Executor
25 of the Estate of Truman Capote, assigned to the Trustee of the Trust under Article Three of the
26 Last Will and Testament of Truman Capote dated May 4, 1981, in trust, all right, title, and
27 interest to all of Capote's literary works, including the Work, including "(1) all copyrights in the
28 United States of America and all copyrights and proprietary rights therein in all other countries

1 throughout the world; and (2) all causes of action for infringement of copyright and of other
2 rights of whatever nature, vested or contingent, past, present and future, in and to said literary
3 works and all of the proceeds from the foregoing, accrued and unpaid and thereafter accruing.”

4 26. Although Capote, pursuant to the 1958 Agreement, had granted film rights in and
5 to the Work to Paramount, including renewal rights, and although it was not explicitly set forth
6 in the assignment documents, the grant of a U.S. copyright pursuant to statute was contingent on
7 Capote being alive for the renewal term of his copyright period. Because the grant was only a
8 grant of an expectancy interest, and Capote did not receive the expectancy interest, the grant of
9 the U.S. copyright (renewal period) to Paramount had no force or effect.

10 27. Similarly, Capote’s grant to Paramount of the right to make and distribute future
11 productions and to continue distribution of the Original Picture during the renewal term of the
12 copyright was also deemed to have lapsed. To be sure, on April 24, 1990, the Supreme Court of
13 the United States decided the case of *Stewart v. Abend*, 495 U.S. 207 (1990), which held that: “if
14 the author [of a story upon which a motion picture or other derivative work is based] dies before
15 the renewal period, then the assignee may continue to use the original work ***only if the author’s***
16 ***successor transfers the renewal rights to the assignee***”

17 28. In fact, according to *Stewart*, Paramount’s continued distribution or other
18 exploitation of the Original Picture during the renewal term would constitute an infringement of
19 Capote’s copyright. “In this case, the grant of rights in the pre-existing work lapsed and,
20 therefore, the derivative work owner’s rights to use those portions of the pre-existing work
21 incorporated into the derivative work expired. Thus, continued use would be infringing To
22 say otherwise is to say that the derivative work nullifies the ‘force’ of the copyright in the
23 ‘matter employed.’” (*Stewart*, at 236). “So long as the pre-existing work remains out of the
24 public domain, its use is infringing if one who employs the work does not have a valid license or
25 assignment for use of the pre-existing work.” (*Stewart*, at 223). The same goes for the
26 production of any sequels, prequels, or remakes thereof.

27 29. The Trust, as Capote’s heir, therefore also had its own exclusive right to produce
28 such sequels, prequels, and remakes, or to assign those rights to third parties, and to prevent the

1 exploitation of the Original Picture, irrespective of the express terms of the 1958 Agreement.
2 “The renewal provisions [of the Copyright Act] were intended to give the author a second
3 chance to obtain fair remuneration for his creative efforts and to provide the author’s family a
4 ‘new estate’ if the author died before the renewal period arrived. An author holds a bundle of
5 exclusive rights in the copyrighted work, among them the right to copy and the right to
6 incorporate the work in derivative works.” (*Stewart*, at 220).

7 30. Plaintiff therefore regained exclusive ownership and control over very valuable
8 intellectual property, particularly considering the success and fame of Capote’s original
9 “Breakfast at Tiffany’s” story and the Original Picture. As a result of the *Stewart* decision,
10 Paramount, on the other hand, had *lost* all ownership rights in very valuable intellectual property.

11 31. Paramount was therefore faced with the devastating prospect of forever losing its
12 right to exploit the Original Picture, forever being precluded from making a sequel, prequel, or
13 remake thereof, and forever being precluded from exploiting any television or other rights in
14 connection with Capote’s Work.

15 32. Desperate to re-obtain the rights to distribute the Original Picture, Paramount
16 initially took the position that Plaintiff was legally obligated to negotiate a “new deal.”
17 However, Plaintiff pointed out that the *Stewart* decision quite clearly did away with any such
18 argument. ***“But nothing in the copyright statutes would prevent an author from hoarding all
19 of his works during the term of the copyright. In fact, this Court has held that a copyright
20 owner has the capacity arbitrarily to refuse to license one who seeks to exploit the work.”***
21 (*Stewart*, at 229) (emphasis added).

22 33. Plaintiff was therefore well within his rights to refuse to allow Paramount to
23 further distribute the derivative Original Picture, to refuse to even negotiate with Paramount for
24 such rights or sequel, etc. rights, and to sue Paramount for copyright infringement for any
25 continued exploitation of the Original Picture or anything else that was derivative of Capote’s
26 Work.

27 34. Notwithstanding Plaintiff’s superior bargaining position in this regard, Plaintiff,
28 for the sake of the property, did agree to negotiate with Paramount concerning certain rights,

1 because it was extremely important to Plaintiff – and in fact was Plaintiff’s primary concern –
2 that this very valuable property be exploited properly, and actually produced and distributed.

3 Plaintiff was not interested, at any time, in having the rights tied up for an indefinite period of
4 time with no movement on production, irrespective of who had those rights, and irrespective of
5 how much money he received for those rights.

6 35. Plaintiff was willing to negotiate a new agreement that would grant Paramount the
7 continuing right to distribute the Original Picture, and to grant an option to Paramount to allow it
8 to produce future films based upon Capote’s Work. However, it was essential that such grant of
9 future rights would be conditional upon Paramount’s actually producing at least one motion
10 picture by a date certain.

11 36. By 1990-1991, the value of the future production rights of Capote’s Work had
12 greatly increased since 1957, due to the successful and iconic Original Picture, and the ongoing
13 success of the “Breakfast at Tiffany’s” story. Therefore, in 1990-1991, Plaintiff was not willing
14 to return to the conditions set in the original 1957 Agreement between Paramount and Capote, in
15 which the future production rights had been granted without any corresponding obligation of
16 Paramount to actually produce any motion picture based on the Work (other than the Original
17 Picture).

18 19 *Negotiations Leading Up To 1991 Agreement*

20 37. Paramount nevertheless took the position during those early negotiations that
21 Plaintiff was improperly making “excessive financial demands,” and was “suppressing further
22 exploitation of the film.” However, Plaintiff pointed out that that very argument had been dealt
23 with squarely in the Stewart decision, in which the Supreme Court determined that the author or
24 successor may suppress distribution of an existing work and make whatever demands that it
25 wishes. ***“Others may make demands . . . which are so exorbitant that a negotiated economic
26 accommodation will be impossible These arguments are better addressed by Congress
27 than the courts Presumably, respondent is asking for a share in the proceeds because he
28 wants to profit from the distribution of the work, not because he seeks suppression of it***

1 *The limited monopoly granted to the artists is intended to provide the necessary bargaining*
2 *capital to garner a fair price for the value of the works passing into public use.”* (Stewart, at
3 228-29) (emphasis added).

4 38. Prior to entering into an agreement with Plaintiff in 1991, Paramount made it very
5 clear that it intended to commence production of a remake of the Original Picture soon after the
6 agreement was signed. In fact, on or about March 19, 1991, less than five months prior to
7 entering into the 1991 Agreement, Paramount entered into a separate agreement with Robert
8 Evans to produce the remake. When that agreement was superseded and incorporated into an
9 overall producing deal with Paramount in July of 1991, Paramount even notified Schwartz of the
10 same by letter dated July 8, 1991.

11 39. Robert Evans, at the time, was an “A-List” producer, having personally produced
12 “Chinatown,” “Marathon Man,” “Black Sunday,” “Urban Cowboy,” “The Cotton Club,” and
13 “The Two Jakes.” In addition, as the (previous) head of production at Paramount, Evans had
14 also overseen “Barefoot in the Park,” “The Odd Couple,” “The Detective,” “Rosemary’s Baby,”
15 “True Grit,” “The Confession,” “Love Story,” “Plaza Suite,” “Harold and Maude,” “The
16 Godfather,” “Serpico,” “Save the Tiger,” “The Great Gatsby,” and “The Conversation.” As a
17 studio executive, he also oversaw “The Godfather Part II.”

18 40. Plaintiff therefore understood that Paramount would produce the motion picture
19 relatively quickly after signing, and certainly never intended to allow Paramount to have an
20 open-ended perpetual *right* to produce a remake or sequel without actually *producing* that
21 motion picture.

22 41. Both parties were to benefit substantially from the actual *production* of a new
23 motion picture, and Plaintiff certainly would not have agreed to allow Paramount to sit on
24 remake rights, while not producing the picture. Moreover, Plaintiff certainly would not have
25 done so for the mere \$300,000.00 that Paramount ultimately paid, especially when Capote’s
26 original typed manuscript of the novella alone, years later, would be sold for more money.

27 42. During the negotiations, Plaintiff’s representative indicated that the purchase price
28 for the rights should be “made upon the earliest of (i) exercise of the option, (ii) making a star

1 pay-or-play or (iii) commencement of principal photography,” making Plaintiff’s understanding
2 clear that the production of the remake was imminent, and that Paramount might be signing a
3 star actor or starting filming before it even exercised the option to produce the picture.

4 43. Later in the negotiations, Paramount indicated that it did not want to “tie rights
5 payments to the vagaries of star deals,” and therefore would agree to “pay the purchase price on
6 the earlier of the option exercise or commencement of principal photography of [the remake],”
7 thus confirming its own intent imminently to commence production of the remake.

8 44. Plaintiff and Paramount also discussed the concept of Plaintiff’s entering into an
9 agreement with a third party to produce a motion picture. Paramount demonstrated its
10 acknowledgment that anyone tying up the rights to produce a motion picture indefinitely,
11 without actually *producing* the picture, was antithetical to the intent of the parties, by stating the
12 following: “*The suggestion that [Plaintiff] could tie-up the rights in perpetuity by entering into*
13 *an agreement with some third party is plainly contrary to the intent of the negotiations.*”

14 45. Very clearly, neither party wanted there to be any tie-up in rights that would allow
15 either party to sit on those rights and refrain from producing the picture.

16
17 ***1991 Agreement Between Estate, Trust, and Paramount***

18 46. On or about August 13, 1991, the Capote Estate and Plaintiff entered into an
19 “Option Agreement, Assignment of Copyright and Settlement Agreement” (hereinafter the
20 “1991 Agreement”) with Paramount. In the Agreement, Paramount acknowledged, among other
21 things, that Paramount desired to distribute the Original Picture throughout the world and to
22 obtain from Plaintiff “certain rights to produce future productions based upon the Work” in the
23 renewal term of the copyright of the Work.

24 47. In accordance with the 1991 Agreement, in the event that Paramount produced a
25 motion picture based upon Capote’s Work, Plaintiff was to receive 3% of the Adjusted Gross
26 Receipts from the picture, after initial cash breakeven, thus giving Plaintiff added incentive to
27 make certain that the motion picture was produced.

28 ///

1 48. The Agreement provided that there was to be an Initial Option Period (for sequel,
2 prequel, and prequel rights) from August 14, 1991 through February 14, 1993, for which
3 Paramount was to pay \$100,000.00. In that regard, Paramount paid Plaintiff \$100,000.00 upon
4 execution of the 1991 Agreement.

5 49. There was also to be a Second Option Period (for sequel, prequel, and remake
6 rights) from August 14, 1993 through August 14, 1994, for which Paramount was to pay an
7 additional \$75,000.00. In that regard, Paramount paid Plaintiff \$75,000.00 on February 8, 1993.

8 50. After the Second Option Period expired, there was to be a six-year reversionary
9 period (from August 14, 1994 through August 14, 2000), whereby all rights (other than the
10 continuing right to exploit the Original Picture) reverted to Plaintiff. In yet another example of
11 how important it was to the parties to actually get a motion picture produced, Plaintiff had six
12 years, not to hold rights or to exercise any option, but to actually commence production of a
13 motion picture.

14 51. During the Initial Option Period and the Second Option Period, the “Made for TV
15 Series rights” were to be “frozen,” as between Plaintiff and Paramount until Plaintiff’s
16 “Reversionary Period” (III.B.). In the event that Paramount exercised one of those options, “the
17 Made for TV Series rights shall remain frozen as set forth in Paragraph III.B. above,” (meaning
18 that such rights were to be frozen until Plaintiff’s Reversionary Period, which commenced on
19 August 14, 1994, and Paramount had a right of first negotiation and matching rights thereafter.

20 52. In the event that Plaintiff did not commence production of the motion picture
21 during that time, Paramount was to receive an additional three-year option, from August 14,
22 2000 through August 14, 2003, “to produce further Motion Pictures based upon the Work”
23 This period was referred to as the “Additional Option Period.”

24 53. Consistent with both parties’ intent to get the motion picture produced and not tie
25 up Plaintiff’s valuable rights in the Work in perpetuity, the 1991 Agreement provided that, after
26 paying the Acquisition Price of \$300,000.00 at any time for the rights that were optioned, if
27 Paramount did not produce a motion picture by the end of the Additional Option Period (August
28 14, 2003), then all rights regarding Capote’s Work, other than Paramount’s “continuing and

1 perpetual distribution rights to the Original Picture,” would revert to Plaintiff. The rights that
2 were subject to reversion included, among other rights, sequel rights, prequel rights, remake
3 rights, and made for television series rights.

4 54. Paramount paid the Acquisition Price of \$300,000.00 on August 8, 1994.

5 55. The August 14, 2003 reversion to Plaintiff was never conditioned on *when*
6 Paramount paid the acquisition price of \$300,000.00 to Plaintiff. In fact, it was the production
7 of the motion picture that was Plaintiff’s primary concern; not when Paramount decided to write
8 the check.

9 56. To be sure, there was nothing in the 1991 Agreement that expressed or implied
10 that Paramount would have to pay more for an acquisition fee if it paid Plaintiff in 1994 (in
11 which case, according to Paramount, it would possess the sequel, prequel, and remake rights
12 subject to no reversion if the motion picture were not produced by August 14, 2003) than if it
13 paid Plaintiff in 2003 (in which case, according to Paramount, there would be a reversion to
14 Plaintiff if the motion picture were not produced by August 14, 2003), thus being of substantially
15 less value.

16 57. If Paramount had even hinted that it would take the position in the future that
17 paying the acquisition fee in 1994, rather than in 2003, would have such a catastrophic legal
18 significance, *i.e.*, that Paramount would have the perpetual *right*, but no obligation, to produce a
19 motion picture, Plaintiff quite clearly would never have entered into the 1991 Agreement.

20 58. Paramount failed to produce a motion picture by August 14, 2003. As such, any
21 and all rights that Paramount owned in connection with Capote’s Work, except for the right to
22 continue to exploit the Original Picture, automatically reverted to Plaintiff on that date.

23 24 ***Knowledge of the Parties After the 1991 Agreement***

25 59. Plaintiff and Paramount both understood that such rights reverted to Plaintiff on
26 August 14, 2003. For example, in 2004, Plaintiff and Paramount discussed Paramount’s
27 possible investment in a Broadway or West End production of a musical based on the Work that
28 the Estate had licensed because “it would also be beneficial to the continued revenues of *the*

1 *original motion picture* to have Paramount work closely with the Trust and with any commercial
2 producer in exploiting the rights to the musical version of “Breakfast at Tiffany’s.” There was
3 no discussion of Paramount’s potential investment being beneficial to any other rights in the
4 Work, because all such rights had reverted to Plaintiff some nine months previously.

5
6 ***Paramount’s Interference With Plaintiff’s Third Party Negotiations***

7 60. In or about January of 2020, Plaintiff (through his agent), opened discussions with
8 several (ultimately numbering ten) producers concerning the production of a limited television
9 series based on Capote’s Work. All seemed to agree that a television series was the best and
10 most strategic vehicle for a “Breakfast at Tiffany’s” project.

11 61. Plaintiff, for many reasons, believed that it would be most appropriate to secure a
12 female producer to produce what would basically be the story of “Breakfast at Tiffany’s”
13 character, Holly Golightly.

14 62. Plaintiff received numerous bids for the project that were exceptional and
15 acceptable, with hundreds of thousands of dollars offered for up front payments, with significant
16 seven-figure back-end payments.

17 63. Three or four weeks into the bidding/negotiations, executives from Paramount
18 contacted Plaintiff’s agent, requesting information about the discussions. Plaintiff’s agent
19 advised them that he had been shopping the series, and that there were a number of parties that
20 were very interested in producing the project.

21 64. Paramount’s executives then advised Plaintiff’s agent that there was a problem
22 with the rights. They indicated that Paramount (after 26 years) had done a “deep dive” into the
23 rights, and determined that Paramount and Plaintiff shared in the television series rights. They
24 then demanded that Plaintiff cease and desist from engaging in any further discussions with any
25 third parties.

26 65. While Plaintiff did, in fact, accede to the demands of Paramount, he made his
27 position clear to Paramount that the Trust, and not Paramount, exclusively owned and controlled
28 all such television series rights. Attorneys for Plaintiff exchanged letters with Paramount’s

1 business affairs attorneys in that regard, with neither side backing down from its/his respective
2 positions.

3
4 ***Paramount's Bad Faith Negotiations Re TV Deal***

5 66. At one point during those exchanges, Paramount's representatives advised Plaintiff
6 that they saw a "business solution" to the rights problem. When Plaintiff expressed a
7 willingness to consider such a solution, Paramount asked Plaintiff's representatives for their
8 highest bids, to which Plaintiff's representatives responded with their two highest bids.
9 Paramount responded with a bid of its own, which was well within the range of the Plaintiff's
10 highest bids.

11 67. Plaintiff and Paramount then commenced negotiations for a television
12 co-production agreement for a made for television series, and continued the negotiations over a
13 period of approximately two months.

14 68. During the entire negotiation process, Paramount continued to maintain that it
15 owned the feature rights to Capote's Work, and insisted that Plaintiff acknowledge that in the
16 television deal. Plaintiff maintained throughout the process that the Trust clearly owned the
17 feature rights because Paramount did not produce the motion picture before August 14, 2003,
18 and in fact never produced the picture.

19 69. Ultimately, Paramount "agreed to disagree" on the issue, and agreed to a provision
20 in the television agreement that simply stated that the feature rights to Capote's Work were "in
21 dispute" (and would remain in dispute).

22 70. Once that drafting issue was settled, the parties virtually concluded the financial
23 and other terms of the television agreement, leaving only one or two deal points remaining, with
24 the final conclusion of the agreement imminent.

25 71. However, in or about May of 2020, these negotiations came to a screeching halt
26 when Plaintiff's agent was contacted by two Paramount business affairs attorneys, who advised
27 him that the project had come to the attention of the Paramount features division, which decided
28 that it "wanted the project."

1 72. The Features division and the Television division had made their respective
2 pitches to the Chairman of Paramount, Jim Gianopulos, and he ultimately chose the feature
3 project over the television project, notwithstanding the months of negotiations between the two
4 sides.

5 73. Plaintiff's agent was further advised that Elizabeth Raposo, the President of
6 Productions of Paramount, liked the "Breakfast at Tiffany's" project, that there was a screenplay
7 at Paramount (hereinafter the "Paramount Screenplay") that Paramount executives liked, and
8 that Paramount intended to sell the project to a streaming platform.

9 74. Paramount's business affairs attorneys advised Plaintiff's agent that Plaintiff
10 would have to finish the negotiations with Paramount's features department, but that he had
11 advised the features department how much time and effort both sides had devoted to the
12 negotiations, and how far "down the line" the parties had gone.

13 75. Notwithstanding the foregoing, Plaintiff's agent received a call from another
14 business affairs attorney soon after that exchange, wherein the attorney advised Plaintiff's agent
15 that they had reviewed the documents concerning the project, and that it was clear that the
16 feature film rights (and all other rights) in Capote's Work were Paramount's.

17 76. Suddenly, Paramount terminated all discussions with Plaintiff, and took the
18 erroneous position that Paramount had the unfettered and perpetual right to produce (or not
19 produce) a feature film based on Capote's Work, to the exclusion of Plaintiff and all others,
20 notwithstanding Paramount's complete inaction for decades since exercising an option for the
21 project in 1994, and notwithstanding the August 14, 2003 reversion (to Plaintiff) of all rights,
22 other than rights in the Original Picture as alleged hereinabove¹.

23
24
25 ¹Paramount claims that the only way that there could have been an Additional Option
26 Period, so that the reversion would be triggered by Paramount's failure to produce the new
27 feature film was if it had not already exercised another option. However, if Paramount had
28 not exercised an option, it would have had no right to produce a new film in the first place,
and the reversion (based upon Paramount's failure to produce the new film) would make no
sense whatsoever.

1 **FIRST CAUSE OF ACTION**

2 **(For Declaratory Relief - Against All Defendants)**

3 77. Plaintiff adopts, realleges, and by this reference incorporates, Paragraph 1 through
4 76, inclusive, hereinabove.

5 78. An actual controversy has arisen between Plaintiff and Defendants, and each of
6 them, in that Plaintiff contends, and Defendant denies, that Defendants have no right to exploit
7 Capote's Work in any manner other than through the continued exploitation of the Original
8 Picture.

9 79. Plaintiff desires a judicial determination that:

10 (a) Plaintiff owns all rights, title, and interest in and to Capote's Work;

11 (b) Those rights have not been sold, assigned, or otherwise transferred to
12 Defendants, or any of them;

13 (c) Defendants have no present or future rights to sell, distribute, license, or
14 otherwise exploit Capote's Work, or any portions or derivative works thereof, other than the
15 continued distribution of the Original Picture; and

16 (d) The Paramount Screenplay is a derivative work of Capote's Work.

17
18 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
19 follows:

20
21 **AS TO THE FIRST CAUSE OF ACTION:**

22 1. For a judicial determination that:

23 (a) Plaintiff owns all rights, title, and interest in and to Capote's Work;

24 (b) Those rights have not been sold, assigned, or otherwise transferred to
25 Defendants, or any of them;

26 (c) Defendants have no present or future rights to sell, distribute, license, or
27 otherwise exploit Capote's Work, or any portions or derivative works thereof, other than the
28 continued distribution of the Original Picture; and

1 (d) The Paramount Screenplay is a derivative work of Capote's Work.
2

3 **AS TO ALL CAUSES OF ACTION:**

- 4 2. For costs of suit herein incurred; and
5 3. For such other and further relief as the Court deems just and proper.
6

7 DATED: November 4, 2020

McPHERSON LLP
Edwin F. McPherson
Pierre B. Pine

9 By: /s/ Edwin F. McPherson
10 EDWIN F. McPHERSON
11 Attorneys for Plaintiff ALAN U.
12 SCHWARTZ, TRUSTEE OF THE
13 TRUST UNDER ARTICLE THREE
14 OF THE LAST WILL AND
15 TESTAMENT OF TRUMAN
16 CAPOTE DATED MAY 4, 1981
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