

No. 19-1181

In the
Supreme Court of the United States

THE ESTATE OF THOMAS STEINBECK,
GAIL KNIGHT STEINBECK, AND
THE PALLADIN GROUP, INC.,

Petitioners,

v.

WAVERLY SCOTT KAFFAGA,
AS EXECUTOR OF THE ESTATE OF ELAINE ANDERSON STEINBECK,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

BRIEF OF AMICUS CURIAE
CALIFORNIA SOCIETY OF ENTERTAINMENT LAWYERS
IN SUPPORT OF PETITIONERS

DAVID ALBERT PIERCE
COUNSEL OF RECORD
JOHN R. BALDIVIA
PIERCE LAW GROUP LLP
9100 WILSHIRE BLVD.,
SUITE 225 EAST TOWER
BEVERLY HILLS, CA 90212
(310) 274-9191
DAVID@PIERCELLP.COM

APRIL 29, 2020

COUNSEL FOR AMICUS CURIAE

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
IDENTITY AND INTEREST OF <i>AMICUS CURIAE</i>	1
SUMMARY OF THE ARGUMENT	3
ARGUMENT	5
A. THE SECOND CIRCUIT DID NOT RESOLVE THE ISSUE OF WHETHER THE 1983 SETTLEMENT AGREEMENT WAS AN “AGREE- MENT TO THE CONTRARY.”	5
B. THE 1983 AGREEMENT IS AN “AGREEMENT TO THE CONTRARY,” AND THEREFORE VOID AT ITS INCEPTION UNDER THE PLAIN LANGUAGE OF 17 U.S.C. § 304(c)(5)	9
C. THE SECOND AND NINTH CIRCUIT RULINGS FRUSTRATE THE PURPOSE OF 17 U.S.C. § 304(c)(5) AND CONGRESS’ INTENT BY AFFIRMING THAT A COPYRIGHT HOLDER CAN RELINQUISH HIS OR HER TERMINATION RIGHT BY WAY OF A WRITTEN DOCUMENT	11
D. <i>KAFFAGA</i> OPENS THE FLOODGATES FOR ENTERTAINMENT COMPANIES TO EXTINGUISH THE TERMINATION RIGHTS OF CREATIVE PROFESSIONALS, WHICH IS EXPRESSLY WHAT CONGRESS SOUGHT TO PREVENT UNDER THE 1976 ACT	14

TABLE OF CONTENTS – Continued

	Page
E. AT BEST, THOM’S CONVEYANCE OF HIS RIGHTS IN PARAGRAPH 5 AND EXHIBIT A OF THE 1983 AGREEMENT ARE GRANTS OF HIS SEPARATE RIGHTS, WHICH ARE SUBJECT TO TERMINATION UNDER 17 U.S.C. § 203	18
CONCLUSION.....	20

TABLE OF AUTHORITIES

Page

CASES

<i>Fred Fisher Music Co. v. M. Witmark & Sons</i> , 318 U.S. 643 (1943)	2, 3, 11
<i>Horror Inc. v. Miller</i> , 335 F.Supp.3d 273 (D. Conn. 2018)	15
<i>Kaffaga v. Estate of Steinbeck</i> , 938 F.3d 1006 (9th Cir. 2019)	passim
<i>Koenig v. Warner Unified Sch. Dist.</i> , 41 Cal. App.5th 43 (Cal. Ct. App. 2019)	9
<i>Marvel Characters, Inc. v. Simon</i> , 310 F.3d 280 (2d Cir. 2002)	13, 15
<i>McIntosh v. Mills</i> , 121 Cal.App.4th 333 (2004)	9
<i>Mills Music, Inc. v. Snyder</i> , 469 U.S. 153 (1995)	12
<i>Milne v. Stephen Slesinger, Inc.</i> , 430 F.3d 1036 (9th Cir. 2005)	3, 12
<i>Penguin Group (USA) Inc. v. Steinbeck et al</i> , No. 1:06-cv-02438 (Entered: 09/18/2009)	5, 6
<i>Penguin Grp. (USA) Inc. v. Steinbeck</i> , 537 F.3d 193 (2nd Cir. 2008)	passim
<i>Steinbeck v. McIntosh & Otis</i> , 433 F. Supp.2d 395 (S.D.N.Y. 2006)	passim
<i>Steinbeck v. Steinbeck Heritage Found.</i> , 400 F. App'x 572 (2d Cir. 2010)	7, 8, 13
<i>Sybersound Records, Inc. v. UAV Corp.</i> , 517 F.3d 1137 (9th Cir. 2008)	19

TABLE OF AUTHORITIES – Continued

	Page
FEDERAL STATUTES	
11 U.S.C. § 541(c)(1)(B)	9
17 U.S.C. § 106	19
17 U.S.C. § 201	19
17 U.S.C. § 201(d)(1)	18
17 U.S.C. § 201(d)(2)	18
17 U.S.C. § 203	passim
17 U.S.C. § 203(a)(2)	12
17 U.S.C. § 203(a)(3)	19
17 U.S.C. § 203(a)(5)	10
17 U.S.C. § 304	passim
17 U.S.C. § 304(c)(2)	12
17 U.S.C. § 304(c)(5)	passim
17 U.S.C. § 304(d)(1)	6
Copyright Act of 1909	2, 11
Copyright Act of 1976	passim
STATE STATUTES	
Cal. Bus. & Prof. Code § 16600	9
Cal. Civ. Code § 711	9
Cal. Civ. Code § 1596	9
Cal. Civ. Code § 1598	9
Cal. Civ. Code § 1608	9

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.