In the

Supreme Court of the United States



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

Petitioners,

VS.

WAVERLY SCOTT KAFFAGA, as Executor of the Estate of Elaine Anderson Steinbeck,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF AMICI CURIAE THE AUTHORS
GUILD INC., DRAMATISTS GUILD OF
AMERICA, INC., THE AMERICAN SOCIETY OF
JOURNALISTS AND AUTHORS and RALPH
OMAN IN SUPPORT OF PETITIONERS

RAYMOND J. DOWD

Counsel of Record

OLIVERA MEDENICA

DUNNINGTON BARTHOLOW

& MILLER LLP

230 Park Avenue, 21st Floor
New York, New York 10169
(212) 682-8811

rdowd@dunnington.com

Attorneys for Amici Curiae



Table of Contents

			Page
TABLE	OF A	UTHORITIES	iv
INTERE	EST C	OF AMICI CURIAE	1
SUMMA	RY (OF ARGUMENT	4
ARGUM	ENT		7
I.	TEI CAS IMI ON UN FU' GR. LAI AC'	E ISSUE OF COPYRIGHT RMINATION RAISED BY THIS SE IS OF EXTRAORDINARY PORTANCE BECAUSE RELIANC LEGISLATIVE INTENT TO DERMINE INALIENABLE TURE TERMINATION RIGHTS ANTED BY THE PLAIN NGUAGE OF THE COPYRIGHT I IS CAUSING UNCERTAINTY D PROMPTING LITIGATION TIONWIDE	
	A.	In the 1976 Copyright Act Congress Makes Termination of a Prior Transfer an Inalienable Right of Recapture	
	В.	Congress Permitted Termination of Copyright Grants Made Prior the 1976 Act	to
	C.	1998–Congress Extends Copyright Duration Again, Grants Authors Second Inalienable Right of Recapture	a



	D.	To Avoid Authors and Families Alienating Their Rights Before Having Full Economic Power, Congress Invalidates Grants of Termination Rights That Pre-Date The Effective Date of Termination14
	E.	The Copyright Office Is Giving Advice To The Public That Conflicts With The Decision Below15
II.	WA PET PRO RIG GU AM	CAUSE COLLATERAL ESTOPPEL S APPLIED TOO BROADLY, FITIONERS WERE DEPRIVED OF DPERTY RIGHTS AND THE SHT TO A JURY TRIAL ARANTEED BY THE SEVENTH ENDMENT TO THE UNITED ATES CONSTITUTION
	A.	The Application of Collateral Estoppel To Preclude Gail's Defenses Was Particularly Unjust Because She Was Not A Party To The First-Filed Litigation Involving The Scope of Collateral Estoppel
	В.	This Second-Filed Diversity Action For Breach of Contract and Tortious Interference
	C.	The Trial Court's Exclusion of Petitioners' Copyright Law Expert 19



III.	THE DECISION BELOW
	THREATENS THE UNIFORMITY OF
	THE NATIONAL COPYRIGHT
	REGIME BECAUSE IT PERMITTED
	A MONETARY JUDGMENT ON
	CALIFORNIA TORT CLAIMS
	INCONSISTENT WITH THE
	PREEMPTION OF SECTION 301 OF
	THE COPYRIGHT ACT AND
	GRANTING REVIEW COULD
	RESOLVE A CIRCUIT SPLIT20
IV.	IN THE ALTERNATIVE, BECAUSE
	THIS CASE RAISES IMPORTANT
	QUESTIONS INVOLVING THE
	COPYRIGHT OFFICE'S
	ADMINISTRATION OF
	TERMINATION RIGHTS AND
	ADVICE TO THE PUBLIC, THIS
	COURT SHOULD SOLICIT THE
	VIEWS OF THE SOLICITOR
	GENERAL22
V.	IN THE ADDITIONAL
	ALTERNATIVE, AMICI CURIAE
	RESPECTFULLY REQUEST THAT
	THIS COURT GRANT, VACATE AND
	REMAND FOR A RULING ON
	WHETHER THE 1983 AGREEMENT
	IS AN "AGREEMENT TO THE
	CONTRARY" WITH RESPECT TO
	THE FILM RIGHTS TO GRAPES OF
	WRATH AND EAST OF EDEN22
CONCLU	JSION25



Table of Authorities

Page(s)
Cases
Altera Corp v. Clear Logic, Inc., 424 F.3d 1079 (9th Cir. 2005)21
Baldwin v EMI Feist Catalog, Inc., 805 F.3d 18 (2d Cir. 2015)11, 12, 14
Clark v. Young & Co., 5 U.S. (1 Cranch) 181 (1803)16
Feltner v Columbia Pictures Tel., Inc., 523 U.S. 340 (1998)16
Fred Fisher Music Co., Inc. v. M. Witmark & Sons, 318 U.S. 643 (1943)
G. Ricordi & Co. v. Paramount Pictures, Inc., 189 F.2d 469 (2d. Cir.), cert. denied, 342 U.S. 849 (1951)10
Harper & Row Publishers, Inc. v. Nation Enters., 723 F.2d 195 (2d Cir. 1983) rev'd on other grounds, 471 U.S. 539 (1985)21
Kaffaga v. Estate of Steinbeck, 938 F.3d 1006 (9th Cir. 2019)5
Kaffaga v. Steinbeck, 18:55336, 12/07/201818, 19
Kaffaga v. Steinbeck, 2016 WL 11187014 (C.D. Ca. 11/10/2016)17, 18
Kaffaga v. Steinbeck, Case 2:14-cv-08699-TJH-FFM (C.D. Cal.) Docket Number 171-2 1/18/20178



DOCKET

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.

