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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**  
13

14 TSG ENTERTAINMENT FINANCE LLC, a  
Delaware limited liability corporation,

15 Plaintiff,

16 v.

17 TWENTIETH CENTURY FOX FILM  
18 CORPORATION, a Delaware corporation, and  
19 THE WALT DISNEY COMPANY, a Delaware  
corporation,

20 Defendants.

21  
22 TWENTIETH CENTURY FOX FILM  
CORPORATION, a Delaware corporation,

23 Cross-Complainant,

24 v.

25 TSG ENTERTAINMENT FINANCE LLC, a  
26 Delaware limited liability corporation,

27 Cross-Defendant.  
28

Case No. 23STCV19433

**TWENTIETH CENTURY FOX FILM  
CORPORATION'S CROSS-COMPLAINT  
FOR DECLARATORY RELIEF**

Judge: Hon. Timothy Patrick Dillon  
Department: 73

Referee: Hon. Margaret M. Morrow (Ret.)

Complaint Filed: August 15, 2023

1 **INTRODUCTION**

2 1. This lawsuit is a calculated attempt by TSG Entertainment Finance LLC (“TSG”) to  
3 avoid its contractual obligations to Twentieth Century Fox Film Corporation (“20th”) and thwart  
4 20th’s rights under the parties’ agreement to recoup nearly one billion dollars it has funded and  
5 advanced on TSG’s behalf to develop, produce, market, and distribute the more than 130 films the  
6 companies have co-financed since 2012. TSG’s claims, once stripped of their accusatory rhetoric and  
7 false narratives, are readily revealed to be foreclosed by unambiguous contract language, barred by  
8 California law, and inconsistent with the undisputed facts.

9 2. 20th is one of the oldest and most storied motion picture studios in the world. Since  
10 its creation, 20th has developed, produced, and/or distributed some of the most iconic and highest-  
11 grossing motion pictures and motion-picture franchises of all times, including *Avatar*, *Deadpool*,  
12 *Planet of the Apes*, *Bohemian Rhapsody*, *Die Hard*, *Titanic*, *Alien*, and many others. In March 2019,  
13 The Walt Disney Company (“Disney”) acquired 20th. 20th’s legacy has continued to grow since  
14 joining the Disney family, including with the recent release of *Avatar: The Way of Water*—the third  
15 highest grossing box office film of all time.

16 3. In 2012, 20th entered into a film co-financing agreement titled Revenue Participation  
17 Agreement (“RPA”) with TSG, a private-equity backed film-financing entity. The RPA was heavily  
18 negotiated between the parties, each of which was represented by sophisticated counsel, and reflects a  
19 carefully calibrated sharing of risk and profits between TSG and 20th.

20 4. As relevant here, in the RPA, TSG agreed to fund a portion of the production costs for  
21 certain 20th theatrical motion pictures (“Qualifying Pictures”) and in exchange acquired a passive  
22 interest in such Qualifying Pictures, with 20th having “the *sole right in its discretion to control* the  
23 distribution, marketing, advertising, publicizing and other exploitation of the Qualifying Pictures,”  
24 and its decisions being “*binding and conclusive* on TSG.” *See* RPA § 5(a) (emphasis added); *see*  
25 *also id.*, Ex. B § VI.B (“as between [TSG] and [20th], [20th] shall have the complete, exclusive and  
26 unqualified control of the distribution, marketing, advertising, publicizing, exhibition, exploitation  
27 and other disposition of a Qualifying Picture.”). TSG further expressly acknowledged that 20th made  
28 “no express or implied warranty or representation as to the manner or extent of any distribution or

1 exploitation of any Qualifying Picture nor as to the amount of money to be derived from the  
2 distribution, exhibition or exploitation of any Qualifying Picture.” *Id.* § 5(c); *see also id.*, Ex. B §  
3 VI.A (“[20th] has not made any express or implied representation, warranty, guarantee or agreement  
4 that a Qualifying Picture will be released or distributed or, if released, that the Picture will earn any  
5 minimum amount of Defined Gross Receipts.”).

6           5.       In exchange for TSG’s passive investment, 20th agreed, among other things, to  
7 (i) advance a portion of TSG’s minority co-financing share of the production costs of the Qualifying  
8 Pictures; (ii) front and bear the remaining, and vast majority of, the production costs of the  
9 Qualifying Pictures; (iii) advance 100% of the Qualifying Pictures’ marketing and distribution  
10 expenses; (iv) pay TSG a portion of the Qualifying Pictures’ contractually defined gross revenues  
11 (*i.e.*, a percentage of the gross revenues regardless whether the films made or lost money); (v) pay  
12 TSG a contractually defined net-profit participation in the Qualifying Pictures; and (vi) generally  
13 forbear from “cross-collateralizing” the profits and losses from the Qualifying Pictures until two  
14 months after the release of the final Qualifying Picture or (if earlier) 18 months after expiration of the  
15 term of the RPA, which is likely to expire on December 31, 2024.

16           6.       For nearly a decade, TSG sat back and reaped without complaint the many benefits of  
17 the RPA, including 20th’s substantial advances on its behalf. Indeed, to date, TSG has received back  
18 all of its invested capital, plus much more—a fact tellingly omitted from its Complaint. And the  
19 filing of its Complaint at this time—as the end of the RPA approaches—is no accident. Far from it,  
20 by advancing spurious claims to inflate its share of the proceeds, including second-guessing 20th’s  
21 marketing and distribution decisions, raising unsupported and wildly extrapolated accounting claims,  
22 and asserting untenable positions about the operation of the RPA, TSG hopes to eviscerate 20th’s  
23 contractual right to cross-collateralize among all of the Qualifying Pictures and thereby frustrate  
24 20th’s ability to fully recoup nearly a billion dollars of advances.

25           7.       Briefly summarized below are just some examples why TSG’s claims are devoid of  
26 merit and 20th is entitled to the declarations requested herein:

27           •       20th’s License of *The Shape of Water* to FX Was Fully Consistent with the Terms of the  
28 RPA: Accusing 20th of “Hollywood accounting” and “self-dealing,” TSG alleges that 20th and FX

1 Network had a pre-existing “output” agreement that obligated 20th to license *The Shape of Water* to  
2 FX at a pre-determined license fee (based on the film’s box office), which 20th ignored and instead  
3 licensed the film to FX at a below-market price. *None* of that is true. The 20th-FX output deal  
4 explicitly *excludes* Searchlight films, such as *The Shape of Water*. Moreover, 20th only licensed *The*  
5 *Shape of Water* to FX after taking it to market, and the financial terms of the license reflect the  
6 market conditions and fully comply with the terms of the RPA.

7 • 20th Has Properly Accounted to TSG: Contrary to the misleading allegations in the  
8 Complaint, TSG’s audit of three Qualifying Pictures (*Deadpool 2*, *Logan*, and *The Shape of Water*)  
9 raised only a handful of minor accounting items, many of which TSG subsequently dropped, thereby  
10 confirming that 20th has accurately accounted to TSG in compliance with the RPA. With respect to  
11 the remaining disputed claims, the three audited Qualifying Pictures were available on and benefited  
12 from the “Movies Anywhere” service, and 20th properly deducted its share of costs associated with  
13 the service when accounting to TSG. 20th also charged the correct distribution fee for its distribution  
14 of the Qualifying Pictures via Electronic Sell-Through (“EST”). Contrary to logic and common  
15 sense, and, again, to exaggerate and inflate the value of its claims, TSG has since attempted to  
16 extrapolate its flawed conclusions as to those three Qualifying Pictures across the *entire 130-film*  
17 *slate* of Qualifying Pictures. There is no support or justification for such sweeping, indiscriminate  
18 extrapolation. Among other reasons, it is unreasonable to assume, let alone conclude, that these  
19 limited audit findings apply uniformly across all 130 films. Furthermore, TSG is legally barred from  
20 challenging many of these films’ accountings: under the express terms of the RPA, TSG agreed that  
21 it would have a limited window to object to 20th’s accounting statements, which has long passed for  
22 many of the periods in which TSG now seeks damages via its extrapolations.

23 • 20th Renegotiates Its Formerly Exclusive Pay 1 License to the Benefit of TSG: TSG  
24 complains that 20th should not have allowed certain films to be distributed on Disney+ and/or Hulu  
25 while they were also being licensed to HBO. But as the RPA expressly provides, 20th has sole  
26 discretion and control over distribution decisions—including whether, when, and how to distribute its  
27 movies during the Pay 1 window. This claim further fails for the independent reason that 20th’s  
28 decision to renegotiate its license with HBO to permit 20th to enter into a co-exclusive license with

1 HBO and Disney+ and/or Hulu for a few, select Qualifying Pictures resulted in combined fees  
2 *exceeding* those that TSG would have received under the prior, exclusive license with HBO. Put  
3 simply, 20th’s exercise of its contractually entitled decision-making significantly benefitted TSG.  
4 TSG’s challenge of 20th’s decision to advance the Pay 1 window and shorten other distribution  
5 windows fails for the same reasons and additionally ignores that distribution patterns have been  
6 changing throughout the industry for years.

7 • TSG’s Vague Claims of Purported Mismanagement Are Baseless and Barred by the RPA:

8 Without identifying any films, decisions, or other specifics, TSG indiscriminately accuses 20th of  
9 mismanaging the marketing and distribution of the Qualifying Pictures. Putting aside that no such  
10 allegations of mismanagement were ever raised by TSG when the films were released or distributed,  
11 all such claims are directly foreclosed by the plain language of the RPA in which TSG agreed that  
12 20th would have sole discretion and control over marketing and distribution decisions and that 20th’s  
13 decisions would be “binding and conclusive” on TSG. *See* RPA § 5(a); *id.*, Ex. B § VI.B. Moreover,  
14 TSG knowingly acknowledged the risks and uncertainty inherent in the RPA and agreed to take a  
15 passive role. *Id.* § 5(c); *id.*, Ex. B § VI.A. Having done so, it cannot now sit back and second-guess  
16 20th’s business decisions after the fact.

17 • 20th Had No Obligation to Offer to Repurchase Select Qualifying Picture Slates: Also

18 specious is TSG’s claim that 20th deprived TSG of liquidity by refusing to buy back TSG’s interest  
19 in certain of the Qualifying Pictures. Under the RPA, TSG has a limited right to request that 20th  
20 make an offer to purchase TSG’s interest in select tranches of five Qualifying Pictures over the  
21 course of the deal. Under the plain language of the RPA, however, TSG must make such a request  
22 within five years of the initial domestic theatrical release of the fifth Qualifying Picture in the  
23 applicable tranche. Section 15(c)(i) of the RPA, as amended, provides in relevant part:

24 On the date that is five (5) years after the initial domestic theatrical release of the  
25 fifth (5th) Qualifying Picture not previously repurchased pursuant to clause 15(a)  
26 or 15(b) above, at TSG’s request, [20th] shall provide TSG with a reasonable  
27 good faith written offer determined consistent with [20th’s] general practices to  
purchase TSG’s interest in the first five released Qualifying Pictures (the “First  
Qualifying Picture Slate”) at a fair market price...

28 RPA § 15(c)(i) (as amended).



1 **JURISDICTION AND VENUE**

2 11. Section 22 of the RPA provides, in relevant part, that “[a]ll actions, proceedings or  
3 litigation arising from this Agreement shall be instituted solely within the State of California and,  
4 except as provided in Section 23 below, [20th] and TSG hereby consent to the exclusive jurisdiction  
5 of the state courts of California and the federal courts located in the State of California as to any  
6 matter arising out of or relating to this Agreement.” RPA § 22.

7 12. Section 23(a) of the RPA further provides, in relevant part, that “[a]ny claims,  
8 disputes, disagreements or other matters in question arising out of or relating to this Agreement (each,  
9 a ‘Claim’) shall be submitted to a general, non-jury reference (the ‘Referee’) to hear and decide all  
10 matters relating to the Claim pursuant to California Code of Civil Procedure Sec. 638 (‘638  
11 Reference’).” RPA § 23(a). Accordingly, by agreement of 20th and TSG, this Court has jurisdiction  
12 to submit these claims to a Referee pursuant to California Code of Civil Procedure Sec. 638.

13 13. Jurisdiction in this Court is proper under California Code of Civil Procedure § 410.10  
14 because, as alleged above, the parties consented to jurisdiction in this Court and TSG has  
15 purposefully availed itself of this Court’s jurisdiction by filing the Complaint.

16 14. Venue in this Court is proper under California Code of Civil Procedure §§ 395(a) and  
17 395.5.

18 **FIRST CAUSE OF ACTION**

19 **(Declaratory Relief – Code of Civil Procedure § 1060)**

20 (By 20th against TSG)

21 15. 20th realleges and incorporates by reference the allegations contained in paragraphs 1  
22 through 14 above.

23 16. There presently exists a justiciable controversy between 20th and TSG concerning the  
24 parties’ rights and obligations under the RPA with respect to 20th’s license agreement with FX  
25 Network for the Searchlight film *The Shape of Water*. TSG contends that 20th ignored the terms of  
26 its existing output agreement with FX and, instead, entered into a below-market license agreement  
27 with FX for *The Shape of Water*. 20th disputes TSG’s assertion, including because the 20th-FX  
28

1 output deal explicitly *excludes* Searchlight films, such as *The Shape of Water*, and 20th’s license  
2 agreement with FX for *The Shape of Water* was fully consistent with the terms of the RPA.

3 17. 20th is entitled to a declaration that the terms of its license agreement with FX for *The*  
4 *Shape of Water* comply with the RPA. Such a declaration is necessary and appropriate to protect  
5 20th’s rights under the RPA.

6 **SECOND CAUSE OF ACTION**

7 **(Declaratory Relief – Code of Civil Procedure § 1060)**

8 (By 20th against TSG)

9 18. 20th realleges and incorporates by reference the allegations contained in paragraphs 1  
10 through 14 above.

11 19. There presently exists a justiciable controversy between 20th and TSG concerning the  
12 parties’ rights and obligations under the RPA with respect to the distribution fee that 20th is entitled  
13 to charge for distribution of the Qualifying Pictures via EST. The RPA provides that 20th shall be  
14 permitted to charge a negotiated distribution fee for all distribution, except, as relevant here, “with  
15 respect to territories where [20th] uses subdistributors or agents,” in which case 20th shall be  
16 permitted to deduct the fee of the subdistributor or agent as a distribution expense and charge a lower  
17 negotiated distribution fee. TSG contends that Apple, Amazon, and other parties perform all  
18 distribution functions with respect to EST distribution and thus 20th should have charged the lower  
19 distribution fee for its distribution of the Qualifying Pictures via EST. 20th disputes TSG’s assertion  
20 and maintains that it is the distributor of the Qualifying Pictures via EST and that the provision in the  
21 RPA providing for a lower distribution fee is inapplicable here.

22 20. 20th is entitled to a declaration that it is entitled to charge the greater of the negotiated  
23 distribution fees under the RPA for its distribution of the Qualifying Pictures via EST. Such a  
24 declaration is necessary and appropriate to protect 20th’s rights under the RPA.

25 **THIRD CAUSE OF ACTION**

26 **(Declaratory Relief – Code of Civil Procedure § 1060)**

27 (By 20th against TSG)

28 21. 20th realleges and incorporates by reference the allegations contained in paragraphs 1

1 through 14 above.

2 22. There presently exists a justiciable controversy between 20th and TSG concerning the  
3 parties' rights and obligations under the RPA and whether 20th is entitled to deduct certain costs  
4 associated with the "Movies Anywhere" service when accounting to TSG for its share of Defined  
5 Gross Receipts from the Qualifying Pictures. TSG contends that 20th has improperly deducted costs  
6 associated with the "Movies Anywhere" service, while 20th contends that it is entitled to deduct such  
7 costs as distribution expenses for the Qualifying Pictures under the RPA.

8 23. 20th is entitled to a declaration that it is permitted to deduct costs associated with the  
9 "Movies Anywhere" service when accounting to TSG for its share of Defined Gross Receipts from  
10 the Qualifying Pictures. Such a declaration is necessary and appropriate to protect 20th's rights  
11 under the RPA.

12 **FOURTH CAUSE OF ACTION**

13 **(Declaratory Relief – Code of Civil Procedure § 1060)**

14 (By 20th against TSG)

15 24. 20th realleges and incorporates by reference the allegations contained in paragraphs 1  
16 through 14 above.

17 25. There presently exists a justiciable controversy between 20th and TSG concerning the  
18 parties' rights and obligations under the RPA with respect to 20th's license of certain of the  
19 Qualifying Pictures in the Pay 1 window. TSG contends that 20th breached the RPA by renegotiating  
20 the terms of the formerly exclusive Pay 1 agreement with HBO to obtain the ability to license certain  
21 Qualifying Pictures co-exclusive with Disney+ and/or Hulu during the Pay 1 window. 20th contends  
22 that, by the express terms of the RPA, it has sole discretion and control over distribution decisions,  
23 which necessarily includes whether, when, and how to distribute its movies during the Pay 1 window.  
24 20th further contends that its license of certain of the Qualifying Pictures to Disney+ and/or Hulu  
25 during the Pay 1 window was fully consistent with the terms of the RPA.

26 26. 20th is entitled to a declaration that its agreements with HBO and Disney+ and/or  
27 Hulu for the Qualifying Pictures during the Pay 1 window comply with the terms of the RPA. Such a  
28 declaration is necessary and appropriate to protect 20th's rights under the RPA.

1 **FIFTH CAUSE OF ACTION**

2 **(Declaratory Relief – Code of Civil Procedure § 1060)**

3 (By 20th against TSG)

4 27. 20th realleges and incorporates by reference the allegations contained in paragraphs 1  
5 through 14 above.

6 28. There presently exists a justiciable controversy between 20th and TSG concerning the  
7 parties' rights and obligations under the RPA with respect to 20th's marketing and distribution of the  
8 Qualifying Pictures. While TSG fails to identify any films, decisions, or other specifics with respect  
9 to its purported "mismanagement" claim, 20th contends any such claim challenging its marketing and  
10 distribution decisions is foreclosed by the plain language of the RPA in which TSG agreed that 20th  
11 would have sole discretion and control over marketing and distribution of the Qualifying Pictures and  
12 that 20th's decisions in such regard would be "binding and conclusive" on TSG.

13 29. 20th is entitled to a declaration to confirm its discretion and control over marketing  
14 and distribution of the Qualifying Pictures under the RPA. Such a declaration is necessary and  
15 appropriate to protect 20th's rights under the RPA.

16 **SIXTH CAUSE OF ACTION**

17 **(Declaratory Relief – Code of Civil Procedure § 1060)**

18 (By 20th against TSG)

19 30. 20th realleges and incorporates by reference the allegations contained in paragraphs 1  
20 through 14 above.

21 31. There presently exists a justiciable controversy between 20th and TSG concerning the  
22 parties' rights and obligations under the RPA with respect to TSG's right to request that 20th make an  
23 offer to purchase TSG's interest in certain tranches of five Qualifying Pictures. TSG contends that  
24 that 20th is obligated to make an offer to repurchase TSG's interest in select tranches of five  
25 Qualifying Pictures even when TSG makes its request for such offer not before, but at any time on *or*  
26 *after* the fifth anniversary of the release of the fifth Qualifying Picture in the applicable tranche. 20th  
27 disputes that interpretation and contends that TSG must make such a request prior to the fifth  
28

1 anniversary of the initial domestic theatrical release of the fifth Qualifying Picture in the applicable  
2 tranche.

3 32. 20th is entitled to a declaration that 20th is not required to make an offer to purchase  
4 TSG's interest in a tranche of five Qualifying Pictures as provided in the RPA unless TSG requests  
5 that 20th make such an offer prior to the fifth anniversary of the initial domestic theatrical release of  
6 the fifth Qualifying Picture in such tranche. Such a declaration is necessary and appropriate to  
7 protect 20th's rights under the RPA.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, 20th respectfully requests that the Court:

- 10 1. Declare that 20th's license agreement with the FX Network for *The Shape of Water*  
11 complies with the RPA;
- 12 2. Declare that 20th is entitled to charge the greater of the negotiated distribution fees  
13 under the RPA for its distribution of the Qualifying Pictures via EST;
- 14 3. Declare that 20th is permitted to deduct costs associated with the "Movies Anywhere"  
15 service when accounting to TSG for its share of Defined Gross Receipts from the  
16 Qualifying Pictures;
- 17 4. Declare that 20th's agreements with HBO and Disney+ and/or Hulu for the Pay 1  
18 window complies with the terms of the RPA;
- 19 5. Declare that 20th has sole discretion and control over marketing and distribution of the  
20 Qualifying Pictures under the RPA;
- 21 6. Declare that 20th is not required to make an offer to purchase TSG's interest in a  
22 tranche of five Qualifying Pictures as provided in the RPA unless TSG requests that  
23 20th make such an offer prior to the fifth anniversary of the initial domestic theatrical  
24 release of the fifth Qualifying Picture in such tranche;
- 25 7. Award 20th its costs and fees incurred in defense of this action, including the  
26 Referee's fees and expenses; and
- 27 8. Award 20th any other relief that this Court deems just and proper.
- 28

Dated: September 15, 2023

O'MELVENY & MYERS LLP

By:   
\_\_\_\_\_ Daniel M. Petrocelli

*Attorneys for Defendant/Cross-Complainant  
Twentieth Century Fox Film Corporation*

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