

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CAROLE BASKIN, an individual,

and

HOWARD BASKIN, an individual,

Plaintiffs,

vs.

CASE NO. _____

ROYAL GOODE PRODUCTIONS
LLC., a New York limited liability
company, and NETFLIX, INC., a
Delaware corporation,

Defendants.

_____ /

**PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING
ORDER AND/OR PRELIMINARY INJUNCTION**

Nature of Emergency - Ruling Requested by November 16, 2021

On September 25, 2021, Netflix announced its intention to release a sequel (“Tiger King 2”) to its 2020 program titled *Tiger King* (“*Tiger King 1*”). for streaming on November 17, 2021. On October 27, 2021, Netflix released its “Official *Tiger King 2* Trailer” (see <https://www.rollingstone.com/tv/tv-news/joe-exotic-tiger-king-2-trailer-1248832/>). This trailer reveals that Defendants are using unauthorized film footage of the Plaintiffs in *Tiger King 2* in contravention of the limitations of

their operative Appearance Releases. If Defendants are permitted to release Tiger King 2 using the disputed film footage of the Plaintiffs, the Plaintiffs will suffer irreparable harm for the reasons set forth below. To prevent this irreparable harm to Plaintiffs, **a ruling is respectfully requested by November 16, 2021**.

MOTION

Plaintiffs, CAROLE BASKIN and HOWARD BASKIN, (“the Baskins”), by and through their undersigned counsel, hereby move pursuant to Federal Rules of Civil Procedure 65(a) & (b) and Local Rules 6.01 & 6.02 for entry of a TRO¹ and/or preliminary injunction against Defendants, ROYAL GOODE PRODUCTION LLC (“Royal Goode Productions”) and NETFLIX, INC., (“Netflix”), enjoining Defendants from any use of film footage of the Baskins and the Big Cat Rescue sanctuary in *Tiger King 2* or in any related promotion or advertising in breach of the Appearance Releases dated April 30, 2016 and April 3, 2018.

Memorandum of Law

I. Factual Introduction

Carole Baskin is the founder and CEO of Big Cat Rescue Corp. (“Big Cat Rescue”). Howard Baskin is Carole Baskin’s spouse and serves as the Secretary,

¹ The requested TRO is with notice. The requested TRO is sought in the event that Defendants cannot be fully heard on the motion for preliminary injunction prior to November 16, 2021.

Treasurer, Advisory Board Chairman of Big Cat Rescue. Big Cat Rescue is a sanctuary in Hillsborough County, Florida, for abused and discarded exotic felines that have been bred and/or held in captivity. Big Cat Rescue is accredited by The Global Federation of Animal Sanctuaries, which requires the highest standards of care in the industry. For decades, the Baskins – individually and through Big Cat Rescue - have been powerful voices seeking to end the practice of keeping big cats in captivity. The Baskins are known as leaders and experts in big cat advocacy. C. Baskin decl., ¶¶2-7.

In April 2014, Royal Goode Productions approached the Baskins regarding their participation in what was characterized by Royal Goode Productions as a “*Blackfish*” style documentary to expose the big cat trade.² C. Baskin decl., ¶12. Based on this representation, the Baskins agreed to participate. Royal Goode Productions filmed the Baskins for ten (10) days over a five-year period: July 23-25, 2014; April 29-30, 2016; April 3, 2018; and October 10, 17 (in D.C.) and December 7, 2019. Royal Goode Productions also filmed extensively at Big Cat Rescue sanctuary and acquired materials from the Baskins. H. Baskin decl., ¶¶11 & 17.

² Blackfish is a 2013 American documentary film directed by Gabriela Cowperthwaite. It concerns Tilikum, an orca held by SeaWorld, and the controversy over captive killer whales. See generally [https://en.wikipedia.org/wiki/Blackfish_\(film\)](https://en.wikipedia.org/wiki/Blackfish_(film)) .

On April 30, 2016, Royal Goode Productions presented the Baskins with a form appearance release drafted by Royal Goode Productions. Consistent with Royal Goode Productions' prior representation, the appearance release is limited to a single "documentary motion picture." H. Baskin decl., Ex. A. The Baskins signed this appearance release. C. Baskin decl., ¶15; H. Baskin decl., ¶12. On April 3, 2018, while filming the Baskins at the Big Cat Rescue sanctuary, Royal Goode Productions presented the Baskins with another form appearance release identical to the earlier appearance release except for the change in the possible title of the project. *Id.*, Ex. B. Jointly the April 30, 2016 and April 3, 2018 appearance releases will be referred to as the "Appearance Releases." The Baskins received no monetary compensation for entering into the Appearance Releases or participating in the filming. *Id.*, ¶15; C. Baskin, decl., ¶18. Royal Goode Productions never sought nor received releases for location filming at the Big Cat Sanctuary or for the materials received from the Baskins.

Tiger King 1 was anything but a documentary expose of the big cat trade. Instead, it was a sensationalized and salacious reality-esque serial focused upon Joe Exotic, a roadside zoo operator who notoriously breeds tigers in captivity for cubs that he can use in his commercial cub petting business. Joe Exotic was one of the big cat abusers targeted by the Baskins' advocacy efforts. Prior litigation between the Big Cat Rescue and Joe Exotic resulting in a \$1 million+ judgment

against Joe Exotic and his roadside zoo. Fearing the loss of his livelihood, Joe Exotic solicited a hit man to murder Carole Baskin. Fortunately, the plot was uncovered. In 2019, Joe Exotic was convicted of both the murder-for-hire scheme and for killing some of his tigers. H. Baskin decl., ¶¶6-8 & 21-22.

Tiger King 1 portrayed the Baskins as operating a zoo that was the ethical and moral equivalent of Joe Exotic's roadside zoo. *Tiger King 1* falsely presented footage appearing to show that the rescued big cats at Big Cat Recue were confined to inhumanely small cages worse than those used at Joe Exotic's roadside zoo. Perhaps most salaciously, *Tiger King 1* portrayed Carole Baskin as a murderer who had caused her first husband to "disappear" in 1997. It even suggested that she had disposed of her late husband's remains by feeding them to her big cats. *Id.*

Unfortunately for the Baskins, *Tiger King 1* became the most watched Netflix program in history. The consequences for the Baskins were dire. Viewers of *Tiger King 1* subjected them to tens of thousands of pieces of hate mail as well as verbal harassment and death threats. Big Cat Rescue had to continue its suspension of its general public tours for fear of violence. Many unfairly branded Carol Baskin a murderer. In short, the Baskins' reputations suffered immeasurably, all to the detrimental effect of their big cat welfare mission. C. Baskin decl., ¶¶24-28.

After *Tiger King 1*, Royal Goode Productions again approached the Baskins "to clear the air" and, presumably, to entice them into being filmed for the sequel

called *Tiger King 2*. The Baskins refused, believing that the Appearance Releases prevented any further use of their film footage by Royal Goode Productions and Netflix in any sequel. *Id.*, ¶29; H. Baskin decl., ¶24. Then, on October 27, 2021, Netflix released its Official *Tiger King 2* Trailer. To the Baskins' dismay, the trailer prominently displayed film footage of the Baskins and made clear that *Tiger King 2* would do the same.

The Baskins now turn to this Court for relief.

II. Legal Standard

The Eleventh Circuit has established four factors to be considered when determining whether to grant a temporary restraining order of preliminary injunction. A movant must establish “(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that entry of the relief would serve the public interest.” *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225 (11th Cir. 2005). “The primary difference between the entry of a temporary restraining order and a preliminary injunction is that a temporary restraining order may be entered before the defendant has an adequate opportunity to respond, even if notice has been provided.” *Dragados USA, Inc. v. Oldcastle Infrastructure, Inc.*, 2020 WL 733037 at *2 (S.D. Fla. Feb. 2, 2020). The purpose of both a TRO and a preliminary injunction

“is to protect against irreparable injury and preserve the status quo until the district court renders a meaningful decision on the merits.” *Canal Auth. of State of Florida v. Callaway*, 489 F.2d 567, 572 (5th Cir.1974).

In this breach of contract action, governing New York law³ recognizes that injunctive relief is appropriate where the non-breaching party will otherwise suffer irreparable harm. *See, e.g., Yemini v. Goldberg*, 60 A.D.3d 935, 876 N.Y.S.2d 89 (2d Dept. 2009); *Wasilkowski v. Amsterdam Memorial Hosp.*, 92 A.D.2d 1016, 461 N.Y.S.2d 451 (3d Dept. 1983); *accord* Restatement (Second) of Contracts § 357 comment b. (1981) (“A court may by injunction direct a party to refrain from doing a specified act.”).

III. Argument

Defendants have breached their Appearance Releases with the Baskins by using film footage of the Baskins in the Official Trailer for the Sequel *Tiger King 2* and threaten to further breach the Appearance Releases by using this film footage in the streaming release of *Tiger King 2* commencing November 17th. The Baskins will suffer irreparable harm to their reputations should this film footage be used for which monetary damages would be insufficient to compensate them. The magnitude of the harm to the Baskins in the absence of an injunction dwarfs any

³ The Appearance Releases provide that New York law governs the contracts.

inconvenience to Netflix under such an injunction. It is in the public interest to permit private individuals to protect their reputations from the unauthorized use of film footage exploited for entertainment purposes.

A. Likelihood of Success on the Merits

Of the four prerequisites to temporary injunctive relief, likelihood of success on the merits is generally the most important. *Gonzalez ex rel. Gonzalez v. Reno*, 2000 WL 381901 at *1 (11th Cir. 2000). “The necessary level or degree of possibility of success on the merits will vary according to the court's assessment of the other factors.” *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir.1981). For example, “[w]here the ‘balance of the equities weighs heavily in favor of granting the [injunction],’ the movant need only show a ‘substantial case on the merits.’” *Garcia–Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir.1986)). In all events, “[a] substantial likelihood of success on the merits requires a showing of only *likely* or *probable*, rather than *certain*, success. *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223 (M.D. Fla. 2005) (original emphasis).

Thus, to satisfy this prerequisite, the Baskins must persuade the Court that they are “likely” to establish that the Appearance Releases do not authorize the Defendants to use the footage filmed by Royal Goode Productions in any sequel or derivative work; rather, the Defendants’ rights to use the film footage of the Baskins was limited to a single “documentary motion picture,” in this case, *Tiger*

King 1. Given the immense irreparable harm that the Baskins will suffer if *Tiger King 2* is released using this footage, this burden of persuasion need only evidence that the Baskins present “a substantial case on the merits.”

“Under the cardinal principle for construction and interpretation of contracts in New York, the intention of the parties controls. *SR Int'l Bus. Ins. Co. v. World Ctr. Props., LLC*, 467 F.3d 107, 125 (2d Cir.2006). “[T]he best evidence of intent is the contract itself; if an agreement is ‘complete, clear and unambiguous on its face[, i]t must be enforced according to the plain meaning of its terms.’ “ *Eternity Global Master Fund, Ltd. v. Morgan Guar. Trust*, 375 F.3d 168, 177 (2d Cir.2004) (quoting *Greenfield v. Philles Records, Inc.*, 98 N.Y.2d 562, 569, 750 N.Y.S.2d 565, 780 N.E.2d 166 (2002)).

Accordingly, the threshold question of law for the court is whether the contract it issue is ambiguous. *Law Debenture Trust Co. of New York v. Maverick Tube Corp.*, 595 F.3d 458, 465–66 (2d Cir.2010). “An ambiguity exists where the ... contract could suggest more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business.” *Morgan Stanley Group Inc. v. New Eng. Ins. Co.*, 225 F.3d 270, 275 (2d Cir.2000).

1. The Appearance Releases are Unambiguously Limited to One “Documentary Motion Picture.”

The language chosen by Royal Goode Productions when drafting the form Appearance Releases is clear as regards the scope of the agreement. The scope of the Appearance Releases is found in the initial unnumbered paragraph, which states that Appearance Releases confirm the agreement of the participant/releasor (in this case, the Baskins) “in connection with my participation in the making of a documentary motion picture (the “Picture”)...” Throughout the remainder of the Appearance Releases, reference to the project is always stated as “the Picture.” In these brief, one-page Appearance Releases, the operative phrase “the Picture” is used five times. There is never any plural reference to the project. Thus, this language establishes that the Appearance Releases are limited in scope to a single Picture: one documentary motion picture. Assuming that *Tiger King 1* constitutes a “documentary motion picture,” any further use of the film footage in other “motion pictures” such as *Tiger King 2* is unauthorized.

Nowhere in the Appearance Releases does Royal Goode Productions mention sequel rights,⁴ television or other production rights, derivative rights or

⁴ Sequel rights are well-known in the motion picture industry. See, e.g., *Trust Co. Bank v. MGM/UA Entertainment Co.*, 772 F.2d 740 (11th Cir. 1985); *Goodis v. United Artists Television, Inc.*, 425 F.2d 397, 406 (2d Cir. 1970)

remake rights. From a motion picture industry standpoint this omission is telling, if not dispositive.

Supporting the Baskins' Motion is the Declaration of Steven Madoff who has over 25 years of experience as an executive in the motion picture and television industries. Madoff decl., ¶6. In his quarter century of involvement in the motion picture industry, Madoff was routinely and regularly involved in drafting and negotiating Talent Appearance Releases, Material Releases (sometimes also known as clip licenses), Location Agreements and Life Story Rights Options. *Id.*, ¶8.

As Madoff explains: "The motion picture industry is keenly aware of the meaning of and the importance of these terms. In my experience in the motion picture industry, agreements such as appearance releases, life story rights agreements, materials releases and location agreements will expressly include references to sequel rights, television rights, other production rights, derivative works and remake rights if the intent of the agreement is to include these rights within the agreement's scope." *Id.*, ¶19. "From the absence of such terms," Madoff opines, "it is clear to me as a motion picture industry professional, that the scope of the Appearance Releases is limited to a single 'documentary motion picture' and not sequels, or an episodic television series or other productions or works derived from the original 'documentary motion picture' or remakes." *Id.*

Paragraph 1(iii) of the Appearance Releases permits Royal Goode Productions to:

(iii) use the Recordings along with my name, photographs, likenesses, voice and biographical material in and in connection with the Picture and all ancillary and subsidiary uses thereof and all advertising and publicity therefore and to exploit the Picture in any and all manner and media now known or hereafter devised, throughout the world, in perpetuity.

None of this language expands the expressed and established limited scope of the Appearance Releases so as to allow Royal Goode Productions to use the film footage of the Baskins in sequels or for uses unrelated to the single, original “documentary motion picture.”

Importantly, the phrase “all ancillary and subsidiary uses” is modified in the Appearance Release by the word “thereof,” which refers to “*the* Picture.” The word “ancillary,” according to the Meriam-Webster dictionary, means “subordinate, subsidiary, auxiliary or supplementary. See <https://www.merriam-webster.com/dictionary/ancillary> . None of these definitions equate to the grant of sequel rights, derivative work rights or episodic television rights.

In the motion picture industry, the term “ancillary” typically means “other forms of distribution” such as “pay-per-view, cable, television, hotel, or home video markets.” See *Columbia Pictures Industries, Inc. v. Miramax Films Corp.*, 11 F. Supp.2d 1179, 1183 (C.D. Cal. 1998); see also *McKinney v. Morris*, 201 WL 5617125 at *4 (Cal. Ct. App. 2013) (new release required to convert project from single

episode of Showtime television series to full documentary film for “worldwide theatrical and ancillary distribution.”) On some occasions, the term ancillary will encompass “merchandising rights.” *Lee v. Marvel Enterprises, Inc.*, 386 F.Supp.2d 235, 245-46 (S.D.N.Y. 2005); *accord* Madoff decl., ¶20(a).

In common parlance, “subsidiary” means: furnishing aid or support, auxiliary or of secondary importance. See <https://www.merriam-webster.com/dictionary/subsidiary>. The term “subsidiary” has no unique meaning in the motion picture industry, but – as a synonym for “ancillary” – “subsidiary” will also refer to merchandising rights. Madoff decl., ¶20(a); See 5 Entertainment Law 3d: Legal Concepts and Business Practices Appendix B-6 & B-23 (Dec. 2020) (Form Reality TV Release – Sec. II(A)(2) defines subsidiary rights as “merchandising” & Form Performer Agreement – ¶9 defines “all ancillary and subsidiary rights therein (e.g., publications, merchandising, theme parks, cassettes, discs, record album and jacket covers, online and wireless)”).

Importantly, in the motion picture industry, neither term – ancillary or subsidiary – is understood as a synonym to or substitute for the well-known industry phrases of sequel rights, television rights, other production rights, derivative works or remake rights. Madoff decl., ¶20(a). Accordingly, this clause does not alter the clear and expressed limitation on use of the Baskins’ film footage to a single, “documentary motion picture.”

The phrase “all advertising and publicity therefore” in Paragraph 1(iii) is modified by the word “therefore,” which again refers to the phrase “*the* Picture.” Such terminology is commonly understood in the motion picture industry as permitting the producer – in this case Royal Goode Productions – to use the film footage, names and likenesses of the Baskins in advertising and publicity relating to and supporting the single “documentary motion picture.” *Id.*, ¶20(b). Thus, while this language may permit use of the Baskins’ film footage to advertise and publicize the original “documentary motion picture” (*Tiger King 1*), It does not extend the scope of the Appearance Releases to permit use of the Baskins’ film footage in advertising and publicity for *Tiger King 2* as has occurred in Netflix’s “Official *Tiger King 2* Promotional Trailer” released on October 27th.

The phrase “in any and all manner and media now known or hereafter devised” in Paragraph 1(iii) is also modified by and limited to “*the* Picture.” Such language is understood in the motion picture industry to permit “exploitation” of the original, single “documentary motion picture” in any and all media even if the media or manner of exploitation is yet to be devised. This language simply permits the producer to have unbridled rights of commercialization of the single “documentary motion picture.” *Id.*, ¶20(c).

Paragraph 2 of the Appearance Releases includes language whereby the Baskins “expressly release” Royal Goode Productions and its assigns (Netflix)

“from and against any and all claims ... arising out of the production, distribution, broadcast or exploitation of the Picture or the Recordings.” The Baskins further “agree that in no event shall [they] seek or be entitled to obtain injunctive or other equitable relief against Producer, the Picture or the Recordings.”

Construction of this language is controlled by the New York maxim that “[c]ontracts must be read as a whole, and if possible, courts must interpret them to effect the general purpose of the contract.” *Postlewaite v. McGraw-Hill, Inc.*, 411 F.3d 63, 67 (2d Cir.2005). “When construing contractual provisions, courts must be mindful of the New York principles of law that “[c]ontracts should be viewed in the light in which they were made”, *Postlewaite*, 411 F.3d at 69, and “interpretations that render contract provisions meaningless or superfluous [are disfavored],” *Manley v. AmBase Corp.*, 337 F.3d 237, 250 (2d Cir.2003).

By its own terms – as drafted by Royal Goode Productions – the Appearance Releases are concerned with the production of “a documentary motion picture.” The participant signatories are not asked to release the use of the resulting film footage for any and all *other* projects and productions and uses. Thus, the release language of Paragraph 2 must be construed through this prism and in this context. To read the language in Paragraph 2 otherwise would swallow up all the restrictions in Paragraph 1. It follows that the participant signatories (such as the Baskins) could reasonably be expected to release claims related to the use of the

film footage in relation to “the Picture” as well as the Producer and the Recordings (the film footage itself) in connection with “the Picture.” It also follows that a participant signatory to the Appearance Releases could also be expected to agree not to seek an injunction related to “the Picture” as well as the Producer and the Recordings (the film footage itself) in connection with “the Picture.”

But no basis exists for any construction of the language of Paragraph 2 interpreting the participant signatory releases for all claims and rights to injunctive relief to extend outside of “the Picture.” Such an interpretation would render the remainder of the Appearance Releases superfluous and without meaning. *Cf. International Brotherhood of Electrical Workers, Local Union 43 v. N.L.R.B.*, 9 F.4th 63, 75 (2d Cir. 2021) (“it is well settled that courts should not adopt an interpretation that leaves a provision of a contract without force or effect.”) An unlimited reading of the language of Paragraph 2 would improperly permit the Producer to ignore Paragraph 1 and use the film footage in unintended commercial ways such as for advertisements endorsing cub petting and for in-captivity breeding of big cats for private ownership (or in nefarious ways such as creating “deep fake” pornographic films).

If such an alternative construction of the language of Paragraph 2 were permitted, the Appearance Releases would become illusory because the Producer would be released from any and all claims whether the Producer respects its

obligations under the Appearance Releases or not. In New York, contract “interpretation that renders a contract illusory and therefore unenforceable is disfavored...” *Credit Suisse First Bos. v. Utrecht–Am. Fin. Co.*, 80 A.D.3d 485, 915 N.Y.S.2d 531, 535 (2011). Only a construction giving effect to the explicit limitation of the Appearance Releases to a single documentary motion picture can be permitted. Indeed, under New York law, “a release, should be construed reasonably, and, if it be ambiguous, against the draftsman.” *Jersey Ins. Co. of New York v. Parrish*, 33 N.Y.S.2d 440, 442 (1942)

2. If the Appearance Releases are Ambiguous, the Extrinsic Evidence Establishes the Limitation of the Scope to a Single Documentary Picture.

If the Defendants convince this Court that the Appearance Releases are ambiguous, then resort must be made to extrinsic evidence. *See Nuance Communications, Inc. v. International Business Machine*, --- F.Supp.3d ----, 2021 WL 2535575 at *10 (S.D.N.Y. June 21, 2021). In this regard, “a contract will be construed against its drafter since the drafter is responsible for any ambiguity.” *M. Fortunoff of Westbury Corp. v. Peerless Ins. Co.*, 432 F.3d 127, 142 (2d Cir.2005). In cases where the drafter is in a decidedly superior position – as is the case with Producers and appearance releases – this construction against the drafter is subject to particularly rigorous enforcement. *See e.g., In re Estate of Benware*, 121 A.D.3d 1331, 1333-34, 995 N.Y.S.2d 311, 314 (3d Dept. 2014).

“Extrinsic evidence includes (1) the acts and circumstances surrounding execution of the ambiguous term, (2) conversations, negotiations and agreements made prior to or contemporaneous with the execution of a written [agreement], and (3) the parties’ course of conduct throughout the life of the contract.” *Nuance Communications, Inc.*, 2021 WL 2535575 at *11 (quotations omitted). “The best evidence of the intent of parties to a contract is their conduct after the contract is formed.” *Ames v. County of Monroe*, 162 A.D.3d 1724, 1727, 80 N.Y.S.3d 774, 777 (4th Dept. 2018).

Here, the conduct of Royal Goode Productions after signing the Appearance Releases is unequivocal. Ms. Chealsi Putman, Joe Exotic’s niece, also signed two appearance releases with Royal Goode Productions as part of her filmed interviews that were used in *Tiger King 1*. Putman decl., ¶¶2-3. The form of the appearance releases signed by Putman were the same as the Baskins’ Appearance Releases. *Id.*, ¶4.

After Netflix released *Tiger King 1*, Royal Goode Productions re-approached Putman about participating in *Tiger King 2*. *Id.*, ¶6. At that time, in May 2020, Rebecca Chaiklin of Royal Goode Productions told Putman that she “needed to sign a new materials and appearance release with Royal Good Productions LLC because the prior releases that [Putman] had signed were only for one project (*Tiger King 1*) and they [Royal Goode Productions] could not use them for the

second project (*Tiger King 2*).” *Id.* Thus, Royal Goode Productions has expressly admitted that the appearance releases that it drafted and used for *Tiger King 1* do not extend to use of film footage in *Tiger King 2*.

Lest there remains any doubt as to Royal Goode Productions’ intentions regarding the scope of the Appearance Releases, one need only consider the appearance releases used by Royal Goode Productions for *Tiger King 2*. A participant in *Tiger King 2*, Mina Johnson, signed two appearance releases for the *Tiger King 2* sequel. Johnson decl., Exs. A & B. These sequel appearance releases are identical to the ones Royal Goode Productions asked Putman to sign as well. Ms. Putman refused to sign the releases. Putman decl., ¶¶7 & 8 and Ex. B.

The language in these sequel appearance releases is dramatically different from the Appearance Releases signed by the Baskins. The sequel appearance releases define “the Program” as “the audiovisual documentary series currently entitled ‘TIGER KING’” and gives Royal Goode Productions the right:

- (a) To use, incorporate, broadcast, telecast, exhibit, distribute, re-use, publish, re-publish, alter and/or edit (in Producer’s sole discretion) the Material and/or my Likeness in whole or in part, alone or in conjunction with other material *in connection with the Program and/or any other motion picture and/or any other project*, in any and all media and by any and all technologies, in any and all forms and versions, now known or hereafter devised, throughout the universe and in perpetuity and in any ancillary exploitation thereof, including, without limitation, publications, soundtracks and merchandising, and in connection with publicity, marketing, promotion and advertising of and for

the Program and any telecaster or other exhibitor of the Program or any element thereof in any and all media now known or hereafter devised.

From this language in the sequel appearance releases as drafted by Royal Goode Productions, it is clear that Royal Goode Production knows how to differentiate the scope of the appearance rights being released. In the sequel appearance release, the film footage of the participant releasor may be used not merely in a “series” called Tiger King, but also in *any other* motion picture or *any other* project.

“By virtue of the language of the sequel appearance release drafted by Royal Goode Productions,” Madoff’s “understanding of the limited scope and meaning of the Appearance Releases signed by the Baskins is reconfirmed. [He] also note[s] that Royal Goode Productions’ use of the term “ancillary” in conjunction with merchandising and related rights is consistent with the industry meaning.” Madoff decl., ¶28.

Extrinsic evidence also reconfirms the limited reach of the language of Paragraph 2 of the Appearance Releases. The Baskins received no compensation for the Appearance Release. C. Baskin decl., ¶18; H. Baskin decl., ¶15. The only arguable consideration that the Baskins received was to participate in the *Blackfish* documentary version of exposing captive big cat breeders and cub petting

operations. As we all know, *Tiger King 1* is no such documentary even by the Producers own admissions.

Given the lack of financial compensation, it is out of the norms of the motion picture industry to have release language that might arise from the “misuse” of the film footage, for example in unauthorized productions. Madoff decl., ¶26.

3. Unauthorized Use of Content not Covered in the Appearance Releases.

In *Tiger King 1*, the Defendants used film footage of the Baskins and Big Cat Rescue sanctuary along with materials from the Baskins that are not included in the language of the Appearance Releases. Specifically, in *Tiger King 1*, Royal Goode Productions used film footage of the Baskins from a July 2014 shoot that predates the Appearance Releases as well location footage of the Big Cat Rescue sanctuary for which there was never a location release. In addition, Royal Goode Productions used materials from the Baskins for which there was never any materials release. Anticipating that this film footage and materials is likely to be used in *Tiger King 2* again with any releases, the Defendants are without contractual authority to do so. See Madoff decl., ¶¶21-24.

B. Irreparable Harm

“An injury is ‘irreparable’ only if it cannot be undone through monetary remedies.” *Northeastern Florida Chapter of Ass'n of General Contractors of America v.*

City of Jacksonville, Fla., 896 F.2d 1283, 1285 (11th Cir. 1990). “The injury must be ‘neither remote nor speculative, but actual and imminent.’” *Id.* (quoting *Tucker Anthony Realty Corp. v. Schlesinger*, 888 F.2d 969, 973 (2d Cir.1989)). “[G]rounds for irreparable injury include loss of control of reputation, loss of trade, and loss of goodwill.” *Ferrellgas Partners, L.P. v. Barrow*, 143 F. App'x 180, 190 (11th Cir. 2005).

In this case, the prospective injury to the Baskins should their film footage be used without authorization in *Tiger King 2* is severe and irreparable. Moreover, this irreparable harm is not speculative based on their experience with Defendants’ use of the film footage of the Baskins in *Tiger King 1*.

In the first three months after the release of *Tiger King 1*, the Baskins were deluged with tens of thousands of instances of hate “mail” and death threats on social media, and via e-mails and texts. Carole Baskin’s phone accumulated more than three hours of vitriolic voice mails. A compilation of these voice mails, memes, posts, texts and e-mails is available at <https://vimeo.com/407776022> [WARNING: GRAPHIC AND PROFANE CONTENT]. Examples of some of the threats and harassing communications are attached as Ex. A to Carole Baskin’s declaration.

The hatred generated by *Tiger King 1* and directed towards the Baskins is real and pervasive. Out of concern that these violent threats might actually be

brought to fruition, Big Cat Rescue has had to continue the suspension of tours at its sanctuary. On the opening page of its website is the following statement:

We don't know if we will ever resume doing general public tours again. Even after the virus concerns subside, the betrayal by the liars who produced *Tiger King*, and the lies viewers were told in the series, creates a concern about having visitors we do not know.

<https://bigcatrescue.org/>. The indeterminate suspension of tours at Big Cat Rescue has severely harmed the Baskins in fulfilling their mission to educate the public and encourage support for their legislative initiatives. H. Baskin decl., ¶24.

Millions of viewers of *Tiger King 1* believe that Carole Baskin is a murderer. Use of the Baskins' film footage in *Tiger King 2* will only further support the confirmation bias of these viewers and mislead new viewers, all to the very real detriment of the Baskins' reputations.

The Baskins are aware that they cannot control the stories that may be spun by Defendants no matter how misleading, distorted, unethical and libelous. But, the Baskins should not be forced to be involuntary participants in this endeavor through the unauthorized use of the film footage. This film footage alone gives the false impression that the Baskins endorse or, at least agreed to participate in *Tiger King 2*.

Since the release of the "Official Tiger King 2 Trailer" by Netflix, the Baskins have seen an up-tick in social media comments decrying Carole Baskin as a

“murderer” and further harming the reputation of Big Cat Rescue through retaliatory negative on-line reviews. C. Baskin decl., ¶33.

No amount of money can restore the further injury to the reputations of the Baskins that will be occasioned by the release of their film footage as part of *Tiger King 2*. This injurious “bell” cannot be un-rung nor salved with money. Irreparable harm is present if “damages would be ‘difficult or impossible to calculate.’” *Scott v. Roberts*, 612 F.3d 1279, 1295 (11th Cir. 2010). Only a preservation of the *status quo* will protect against this irreparable injury to the Baskins.

C. Balance of Hardships

In stark juxtaposition to the irreparable injury that the Baskins will suffer if their film footage is used in *Tiger King 2* without their permission is the rather nominal impact the requested relief will have on Netflix. The requested injunctive relief will not prevent Netflix from releasing *Tiger King 2*, it merely prohibits the Defendants from using the film footage for which they have no authorization. If some brief delay or postponement of the release date occurs, there will be no meaningful harm to Netflix. As motion picture industry expert Madoff explains:

unlike motion picture studios which derive most of their revenue from box office receipts or television networks which derive most of their revenue from advertising, Netflix derives virtually all of its revenue from subscriptions. These monthly subscriptions offer Netflix viewers tens of thousands of programs to choose from and stream. It is unlikely that Netflix would experience any material or significant (or even

measurable) drop in subscribers solely as a result of one program being delayed or postponed.

Madoff decl., ¶31.

D. Public Interest

The public interest is advanced by permitting individuals to control how film depicting them is used. In contrast, delaying the release date of entertainment content does not adversely affect the public interest.

E. Bond

Given the relatively nominal adverse impact that the requested injunctive relief might cause Defendants, the Baskins believe that a bond of \$10,000 and no more than \$25,000 is appropriate.

Conclusion

WHEREFORE, Plaintiffs respectfully request that this Court enter a temporary restraining order and/or preliminary injunction against Defendants ordering that:

Royal Goode Productions and Netflix, their agents, servants, employees and, attorneys, and all those persons in active concert or participation with them, be temporarily restrained and/or preliminarily enjoined from: Using any film footage of the Baskins or the Big Cat Rescue sanctuary filmed by Royal Goode Productions or on its behalf, as well as any materials provided to Royal Goode Productions or its agent by the Baskins, in the sequel series entitled *Tiger King 2* or in any advertising or promotion the sequel series entitled *Tiger King 2* or in any manner whatsoever other than in the existing series entitled *Tiger King: Murder, Mayhem, and Madness*;

Respectfully submitted,

s/ Frank R. Jakes

Frank R. Jakes

LEAD COUNSEL

Florida Bar No. 372226

Joseph J Weissman

Florida Bar No. 0041424

E-Mail: FrankJ@jpfirm.com

JOHNSON, POPE, BOKOR,

RUPPEL & BURNS, LLP

P.O. Box 1100

Tampa, FL 33601-1100

TEL: (813) 225-2500

FAX: (813) 223-7118

Attorneys for Plaintiff