

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ROBOCAST, INC.,

Plaintiff and Counterclaim Defendant,

v.

NETFLIX, INC.,

Defendant and Counterclaim Plaintiff.

C.A. No. 1:22-cv-00305-RGA-JLH

**PLAINTIFF'S NOTICE OF NON-OPPOSITION TO DEFENDANT'S MOTION FOR
LEAVE TO AMEND ITS ANSWER AND COUNTERCLAIMS**

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ROBOCAST, INC.

Plaintiff Robocast, Inc. (“Robocast”) files this Notice of Non-Opposition to Defendant Netflix, Inc.’s (“Netflix”) Motion for Leave to Amend Its Answer and Counterclaims (“Motion for Leave”) to correct Netflix’s factual misstatements in the motion and provide the Court a complete record.

On the afternoon of Wednesday, December 6, just one day before filing its Motion for Leave, Netflix provided notice by email of its intent to seek leave to file an amended answer and counterclaim. *See* Ex. A. Netflix offered two, 30-minute windows during which it could meet and confer the following day, one ending only an hour prior to the District of Delaware filing deadline. *Id.* Netflix’s email did not attach a copy of its proposed amended pleading.

The following day, Robocast requested to review the proposed amendments, noting it was essential for Robocast do so before taking a position on Netflix’s forthcoming Motion for Leave and its counsel’s unavailability within Netflix’s narrow windows. *Id.*

At 4:11 PM on December 7, Netflix provided its proposed amended pleading, which comprises 38 pages plus an additional 819 pages of newly cited exhibits, and informed Robocast it would proceed with filing its Motion for Leave at 4:30 PM, only 19 minutes later. *Id.* Given the nature and length of Netflix’s proposed amendments, Robocast was unable to provide its position within Netflix’s unreasonably short time frame.

Had Netflix provided Robocast timely notice and a reasonable opportunity to consider its proposed amended pleading, Robocast could have confirmed it did not oppose Netflix’s Motion for Leave as a procedural matter, and that there was thus no need to now burden the Court with motion practice.

To be clear, however, Robocast’s non-opposition is not an acquiescence in the merits or strength of Netflix’s new allegations, or any of its defenses. To the contrary, Netflix’s kitchen sink

approach to defending this case serves only to highlight the weakness of its defenses, which now number nearly **20** (counting multiple defenses listed under a single “affirmative defense”). In this regard, consistent with the Court’s scheduling order requiring the narrowing of asserted claims and prior art, Robocast respectfully submits that fairness and judicial economy warrant a process for reducing the number of non-prior art defenses in advance of trial, and intends to propose such a process to the Court at the appropriate time. *See, e.g., Natera, Inc. v. Archerdx, Inc.*, No. 20-cv-125-GBW, D.I. 573 (D. Del. Apr. 21, 2023) (defendant “shall narrow its defenses as follows: . . . (3) inventorship, prosecution laches, and one indefiniteness defense.”); *Boston Sci. Corp., et al. v. Nevro Corp.*, No. 16-cv-01163-CFC-CJB, (D. Del. Sept. 20, 2021) (defendant to identify “no more than two other defenses per claim”).

Dated: December 21, 2023

/s/ Ronald P. Golden III

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