

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

Robocast Inc.,

Plaintiff,

vs.

Netflix, Inc.,

Defendant.

Civil Action No. 22-305-JLH-CJB

[REDACTED]
[PUBLIC VERSION]

DECLARATION OF BRETT SMITH REGARDING ROBOCAST'S *IN-CAMERA*
SUBMISSION OF LOGGED DOCUMENTS

I, Brett Smith, do hereby declare as follows:

1. I am an attorney licensed to practice law in New York and Senior Vice President for Legal and Intellectual Property at Robocast, Inc. I have personal knowledge of the matters contained herein and if called, could and would testify competently thereto.

2. I am over 18 years of age and suffer no legal disabilities.

3. This declaration is submitted in concert with Robocast's in-camera submission of 25 documents identified by Netflix from Robocast's log of withheld documents in order to provide supporting context for Robocast withholding the documents. I understand from counsel that the Court has indicated that privileged documents, work product, and documents withheld for litigation funding that do not relate to the value of the IP in this case should not be produced.

4. From March 2008 to 2010 I worked as Director of Business and Legal Affairs (this being a commonly understood media industry title for an attorney) for IMU.¹ On or about 2011 through on or about 2012, I worked as Special Counsel at Foley & Lardner LLP, working

¹ IMU (Interactive Media Universe) is a solely-owned LLC owned by Robocast founder Damon Torres which was formed solely to hold Mr. Torres's shares and support Robocast operations. My title when I was hired was Director of Operations and Business Development, but this changed after a few months when it became clear I was performing mostly legal work for both IMU and Robocast.

on document review and other tasks [REDACTED]

[REDACTED]. On or about February 2012 I returned to Robocast as Counsel. I served as Counsel for Robocast for about a year and was then promoted to Vice President, Business and Legal Affairs. I served as Vice President, Business and Legal Affairs until on or about June 2017, when I left to start a consulting business. In April 2019, I formed my law firm Brett Smith Law PLLC, through which in May 2019, I resumed legal work for Robocast. I returned full-time to Robocast in February 2022, as Senior Vice President for Legal and Intellectual Property where I am sole in-house legal counsel providing legal advice on all aspects of Robocast's business, including but not limited to general corporate affairs, intellectual property management, and contract negotiation.

5. Document 1, ROBO-REV0000005659, is a draft agreement related to equity investments, scanned with hand edits. The document date and authorship are not clear from the face of the document. [REDACTED]

[REDACTED]. To the best of my knowledge this marked-up draft was not shared outside of Robocast and its agents.

6. Concerning Document 2, ROBO-REV0000005728, is a document identifier that I understand from counsel inadvertently appears twice on Robocast's privilege log with different document dates and document descriptions. [REDACTED]

[REDACTED]. The second

entry for ROBO-REV0000005728 [REDACTED]

[REDACTED], and is also being provided to the Court for in-camera review.

7. I also understand from counsel that, despite assuring Robocast that it will select its final 25 documents from among those listed in Appendix 1 and Appendix 2 to their Reply letter at D.I. 294, that ROBO-REV0000005728 did not appear in either of Netflix's Appendices. I understand from counsel that Netflix did not previously raise any issue with the inadvertent double entry for ROBO-REV0000005728 prior to its submission on August 19, 2024, and if it had, that counsel could have quickly corrected the issue without Court involvement.

8. Document 3, ROBO-REV0000006850, was initially withheld as privileged. Upon further investigation in connection with the current dispute, counsel, Robocast employees, and I determined that the tracked changes initially thought to reflect communications with counsel did not in fact reflect communications with counsel. I understand from counsel that this document was produced to Netflix on August 14, 2024 along with a chart mapping ROBO-REV identifiers to production Bates numbers.

9. Document 4, ROBO-REV0000006345, [REDACTED]

[REDACTED]

10. Document 5, ROBO-REV0000006361, [REDACTED]

[REDACTED] An alternate draft of this ultimately unshared communication that omits discussion of [REDACTED] has been produced.

11. Concerning Document 6, ROBO-REV0000014246, I [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] While from the date of the documents it appears [REDACTED]

[REDACTED], I can confirm that this document was nonetheless prepared pursuant to my instructions [REDACTED]

[REDACTED] To the best of my knowledge, this document was not shared beyond Robocast and its outside counsel.

12. Document 7, ROBO-REV0000000951, and Document 25, ROBO-REV0000012661 are [REDACTED]

[REDACTED]. To the best of my knowledge this document was not shared outside of Robocast and its agents. While the document date listed on Robocast's privilege log is after I departed Robocast, I understand that if a document was saved over with additional edits by other Robocast employees after I departed Robocast, that the document metadata would reflect the date last edited, and not the date created. I further understand that if the document was saved as a new version with additional revisions from other employees, it would also reflect a document date post-dating my June 2017 departure

from Robocast. In either case, the date on the document does not change the fact that the document contains legal advice from me in my role as Robocast's in-house counsel.

13. Document 8, ROBO-REV0000012333, and Document 9, ROBO-REV0000012334, are documents created within Robocast's project management system Basecamp² [REDACTED]

[REDACTED]. Jon Hertzig has served as a consultant to Robocast from 2016 to the present. Mr. Hertzig is a technical writer who generally assists Robocast with drafting communications and other writing needs. [REDACTED]

[REDACTED] To the best of my knowledge, these documents have not been shared outside of Robocast employees and agents.

14. Document 10, ROBO-REV0000012338, is [REDACTED]

[REDACTED]. Jon Hertzig, consultant to Robocast, provided drafting assistance.

15. Document 11, ROBO-REV0000012339, is [REDACTED]

² Basecamp is a project management system that allows for communication and collaboration between team members. Robocast uses Basecamp for virtually all of its document drafting, organization, and collaboration and virtually all documents produced for the first time in the present litigation originated from Basecamp. Within Basecamp, Robocast has discrete projects or folders to organize different documents. Access can be granted to discrete projects or folders without granting access to the entirety of Robocast's documents and communications. Basecamp documents withheld for privilege or work product were taken from projects/folders that were accessible only to Robocast and its agents. See <https://basecamp.com/>.

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