

**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.**

\_\_\_\_\_ /

**DECLARATION OF STEVEN MADOFF**

I, Steven Madoff, state as follows:

1. My name is Steven Madoff and I am a resident of the State of California. I am over eighteen (18) years of age and fully competent in making this Declaration.

2. I have been retained by the law firm of Johnson, Pope, Bokor, Ruppel & Burns, LLP on behalf of Carole and Howard Baskin (the "Baskins"). I am being compensated at an hourly rate of \$725. I have previously testified as an expert witness in the following matters: *Televisa, S.A. de C.V. v. Univision Communications*

*Inc.; Univision Communications, Inc. and Telefutura Network v. Televisa S.A. de C.V. and Grupo Televisa S.A., which was Case No. CV-05-3444 PSG (MANx) in the United States District Court for the Central District of California; Tudor Television, Inc. v. Genius Products, Inc., which was Case No. BC 407-191 in the Superior Court of the State of California for the County of Los Angeles; Jillian Michaels v. International Trading and Manufacturing dba Genius Products, Inc., which was Case No. BC 407249 in the Superior Court of the State of California for the County of Los Angeles; and C3 Entertainment v. Columbia Pictures Television Inc., Sony Pictures Entertainment, Inc., et al., which was Case No. BC 345917 in the Superior Court of the State of California for the County of Los Angeles; William Peter Blatty v. Warner Bros. Entertainment Inc., which was Case No. CV-10-6611SJO (VBKx) in the United States District Court for the Central District of California; and Project Concord, Inc. v. NBC Universal Media, LLC., which was Case No. 72-472-E-01147-11 at the American Arbitration Association for the Federal Communications Commission. My resume is attached hereto as Exhibit A. A list of materials which I relied on in forming the opinions discussed below is attached as Exhibit B.*

3. I have been asked by the Baskins to review two virtually identical Appearance Releases that each signed on April 30, 2016 and April 3, 2018 (the "Appearance Releases") with Royal Goode Productions LLC ("Royal Goode Productions") to determine whether the scope of the Appearance Releases extends

to permit Royal Goode Productions to use footage of the Baskins filmed by Royal Goode Productions in sequel documentaries, a second season, additional episodes and/or subsequent derivative works based upon the originally anticipated “documentary motion picture” referenced in the Appearance Releases. I understand that film footage of the Baskins and the Big Cat Rescue sanctuary were used in Royal Goode Production’s show entitled *Tiger King: Murder, Mayhem, and Madness* (“Tiger King 1”) distributed by Netflix via its subscription streaming service beginning March 20, 2020. Specifically, I have been asked whether any language of the Appearance Releases contain terms or verbiage that have specific meanings understood in the motion picture and television industry to bear on the question of the scope of rights “released” by the Baskins to Royal Goode Productions under the Appearance Releases. I have also reviewed subsequent Appearance Release forms used by Royal Goode Productions when filming and securing film footage for the sequel production known as Tiger King 2 to assist me in evaluating the scope of the rights “released” by the Baskins to Royal Goode Productions under the Appearance Releases.

### **Professional Background**

4. I graduated from the State University of New York at Buffalo in 1975, earning two Bachelor of Arts degrees – one in Political Science and one in Creative Writing. I then earned a Master of Science degree in Television, Radio and Film in

1976 from Syracuse University's Newhouse School of Public Communications. I earned my Juris Doctor degree in 1979 from the University of Miami School of Law, and my Master of Law in Trade Regulation from the New York University School of Law in 1980.

5. I have been admitted to practice law in New York State continuously since 1979 and in California continuously since 1987.

6. I have over 25 years of experience as an executive in the motion picture and television industries. I began my career in the entertainment industry in 1982 at the Motion Picture Association of America, Inc. and its sister company the Motion Picture Export Association of America, Inc. ("MPAA"). I worked at the MPAA for four and one-half years. The MPAA is the trade association at that time made up of the major Hollywood studios (i.e., Walt Disney, Twentieth Century Fox, Paramount Pictures, Sony Pictures, Universal Pictures, Warner Bros. and Metro-Goldwyn-Meyer/United Artists).

7. My first role at the MPAA was in a business development position, managing the efforts and activities of the individual member studios in connection with entering the then-nascent international home entertainment, pay television and cable television businesses. In my second year at the MPAA, I was promoted to the position of International Counsel. As International Counsel, I was

responsible for the business and legal affairs of the individual member studios in their market entry activities and ventures. Thus, I was involved in negotiating the fundamental terms of dozens of international cable and pay television deals. In this capacity, I worked closely with the sales and business affairs executives at the individual member studios on the one hand and television licensees of content on the other.

8. In 1987, I was hired by Paramount Pictures Corporation in Los Angeles to be in-house counsel responsible for business and legal affairs in Paramount's home entertainment, basic cable and pay television divisions. My duties included negotiating and drafting contracts in connection with the television, home entertainment, Internet and digital media distribution of Paramount's motion pictures and television properties. Among the contracts that I negotiated and drafted were Talent Appearance Releases, Material Releases (sometimes also known as clip licenses), Location Agreements and Life Story Rights Options. During my 20 years with Paramount, I rose to the position of Executive Vice President of Worldwide Business & Legal Affairs. I held this position for ten years and at one point had over 30 attorneys and business affairs and business development executives reporting to me. While at Paramount, I was responsible for:

- Negotiating, drafting and executing more than 1,000 free television, basic cable, pay television, pay-per-view, transactional video-on-demand, subscription VOD, digital media and internet delivery agreements, covering the United States and over 100 international territories. (These included “output” deals, where licensees acquire rights to as-yet unreleased theatrical motion pictures; and “library” (also known as “catalog”) deals, involving films more than about five years old from their theatrical release.)
- The agreements ranged in value from \$10,000 to over \$1 billion, and licensees included Home Box Office/Cinemax, Showtime/The Movie Channel, Starz/Encore, USA Cable, TNT, Bravo, AMC, A&E, Sundance, IFC, MTV, VH-1, Comedy Central, Apple, Amazon, Microsoft, Movielink, AOL, CinemaNow, Best Buy and Wal-Mart.
- Overseeing the formation, launch and operation of over 25 television channels and networks, in which Paramount participated as a television channel or network operator, licensing motion picture and television content from other studios and independent motion picture producers.
- Negotiating, drafting and executing all of the production agreements for the theatrical and television motion picture content produced by Paramount Home Entertainment including talent, option and release agreements.
- Overseeing the negotiation, drafting and execution of over 500 agreements where Paramount was the licensee of motion picture and television content.
- Paramount’s first satellite license agreements, both internationally (BSkyB in the U.K.) and domestically (DirecTV), as well as Paramount’s first Internet venture, Movielink, for which I was also a Member of the Board of Directors.<sup>1</sup>

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<sup>1</sup> Movielink was a joint venture among Paramount, MGM/UA, Sony Pictures, Universal Pictures and Warner Bros. that provided Internet delivery to viewers of motion picture and television content on a video-on-demand (VOD) and an electronic sell-through (EST) basis. I represented both Paramount as a licensor of content to Movielink and Movielink as a licensee of content from each of the major studios as well as from many independent producers.

- Developing and negotiating Paramount's first deals with online video distributors ("OVDs"), including Apple, Amazon, Microsoft and Netflix, which required identifying ways to exploit new forms of distribution while complying with existing contractual obligations and business models.
- Helping to conclude Paramount's acquisition of the Dreamworks motion picture and television studio, reviewing and analyzing all of Dreamworks' television and new media license agreements.<sup>2</sup>

9. In particular, while at Paramount, I was responsible for negotiating, drafting and executing more than 1,000 Talent Release, Appearance Release, Location Release, Material Release and Clip License Agreements. These agreements provided for the inclusion of film footage of people, materials and locations in productions allowing Paramount to distribute its programs containing such content.

10. I was also responsible at Paramount for the formation, launch and operation of over 25 television channels and networks, in which Paramount participated as a television channel or network operator licensing motion picture and television content from other studios and independent motion picture producers. In this capacity, I oversaw the negotiation, drafting and execution of

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<sup>2</sup> I similarly reviewed and analyzed the television and new media license agreements of MGM/UA as part of the due diligence conducted in connection with the possible acquisition of MGM/UA.

over 500 agreements where Paramount was the licensee of motion picture and television content.

11. At Paramount, I was also responsible for the company's first satellite license agreements, both internationally (BSkyB in the U.K.) and domestically (DirecTV), as well as Paramount's first Internet venture, Movielink, for which I was also a Member of the Board of Directors. Movielink was a joint venture among Paramount, MGM/UA, Sony Pictures, Universal Pictures and Warner Bros. that provided Internet delivery to viewers of motion picture and television content. In this role, I represented both Paramount as a licensor of content to Movielink and also Movielink as a licensee of content from each of the major studios as well as many independent producers.

12. I left Paramount at the end of 2006, and have been consulting for various entertainment companies and law firms since then. In particular, I have provided services to Univision Television Networks in its capacity as the licensee of motion picture and television content; Genius Products as both the licensee and distributor of content; and Warner Bros. Pictures, Universal Pictures and Paramount Pictures..



13. In addition, in 2019, I joined the law firm of Bona Law as of counsel. Bona Law primarily handles antitrust and trade regulation matters and has offices in La Jolla, New York, Dallas, Detroit and Minneapolis.

### **Consideration of the Facts and Basis of Opinion**

14. The primary focus of my review is on the Appearance Releases themselves. In this regard, I understand that the Baskins only have copies of the Appearance Releases executed by Howard Baskin. Exs. C-1 & C-2. Copies of the Appearance Releases executed by Carole Baskin were apparently not provided to her by Royal Goode Productions. However, my understanding is that both Carole and Howard Baskin signed the Appearance Releases on the same dates while Royal Goode was filming the Baskins at the Big Cat Rescue sanctuary in Tampa, Florida. Thus, under these circumstances, I am comfortable with the assumption that the language of the Appearance Releases executed by Carole Baskin is identical to the language of the Appearance Releases executed by Howard Baskin and attached to this Declaration as Exs. C-1 & C-2.

15. The Appearance Releases were form documents drafted by or on behalf of Royal Goode Productions. It is common practice and custom in the motion picture industry for motion picture production companies to draft and use form appearance releases when filming. It is extremely rare and uncommon for

the terms of an appearance release to be subject to negotiation between the releasor and the production company.

16. Appearance releases are used in the ordinary and standard operating practices of motion picture production companies to assure that the production company has the legal right to use the footage filmed of the releasor by the production company and to delineate the scope and terms of these legal rights. As used and understood in the motion picture industry the key elements of an appearance release which are relevant in this matter are:

- a. Scope of Release – this element sets forth the manner in which the film footage can be used by the motion picture production company. It can be quite broad such as permitting use of the film footage in any and all shows or motion pictures or it can be quite narrow, limiting the use to a specific motion picture project. The nature of the media (e.g., theatrical film release, television, industrial videos) and the territory (world-wide or domestic) is typically addressed. Also addressed is any limitation in the duration that the production company may use the film footage.
- b. Compensation – to be legally valid there must be consideration underlying the appearance release; some kind of exchange of value between the participant releasor and the production company.

Mostly, consideration is in the form of payment to the participant releasor. When no payment is given, standard practice in the industry is to acknowledge that the participant releasor is a volunteer and is receiving consideration in the form of receiving publicity for being associated with the project or for both parties to affirmatively acknowledge that no financial consideration is being exchanged.

- c. Collective Bargaining Agreement and Other Third-Party Clearances
  - This element clarifies that the participant is not a member of any collective bargaining agreement such as SAG/AFTRA/Actors Equity and that no third party clearances or payments are required.
- d. Release of Claims/Indemnity - this element protects the production company from claims and lawsuits by the participant related to the permitted uses of the film footage.
- e. Assignment Rights - the production company must have the right to assign, license and transfer its rights under the appearance release to market the resulting motion picture.

17. The Appearance Releases used by Royal Goode Productions with the Baskins do not permit the use of the film footage and materials in a sequel given consideration of at least three (3) of the “key” elements: scope of the release, content being released and compensation.

18. Scope of Release - The scope of the Appearance Releases is found in the initial unnumbered paragraph. The Royal Goode Productions form language states that Appearance Releases confirms the agreement of the participant/releaser (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 Appearance Releases, the operative phrase “the Picture” is used five times. There is never any plural reference to the project. Thus, this language established that the Appearance Releases are limited in scope to this single Picture: one documentary motion picture.

19. Significantly from a motion picture industry standpoint, there is no mention of sequel rights, television or other production rights, derivative rights or remake rights. 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. The Appearance Releases do not use any of these established and known terms. From the absence of such terms, 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.

20. 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 to allowing Royal Goode Productions to use the film footage of the Baskins in sequels or uses unrelated to the single, original “documentary motion picture.”

a. “all ancillary and subsidiary uses” - this phrase is modified by the reference to “the Picture.” 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. On some occasions, the term ancillary will encompass “merchandising rights.” The term “subsidiary” has no unique meaning in the motion picture

industry. In normal parlance, “subsidiary” is a synonym to “ancillary.” Accordingly, “subsidiary” will also refer to merchandising rights.. 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.

b. “all advertising and publicity therefore” – this language is also modified by the phrase “the Picture” and 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.”

c. “exploit the Picture in any and all manner and media now known or hereafter devised” – again, this language is modified by “the Picture.” “Exploitation of the Picture in any and all manner and media known or hereafter devised” is language understood in the motion picture industry as designed to permit any “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.”

21. Content being Released - Related to appearance releases are materials releases which release to a production company the right to use certain materials (e.g., film or video footage, letters, diaries, family photos) in a motion picture and location releases which release to a production company the right to use footage filmed in a particular locale.

22. In this instance, it is my understanding that the Baskins provided certain “materials” such as pre-existing photographs and videos to Royal Goode Productions. It is further my understanding that no materials release was submitted to the Baskins, nor signed by the Baskins. Under motion picture industry standards, in the absence of a written executed and binding materials release, Royal Goode Productions lacks the permission and right to use such materials.

23. It is also my understanding that Royal Goode Productions filmed extensively at the Big Cat Rescue sanctuary. Again, it is my understanding that no location release was submitted nor executed for this filming. Under motion picture industry standards, in the absence of a written executed and binding location release, Royal Goode Productions lacks the permission and right to use such film footage.

24. I have been informed that Royal Goode Productions also filmed the Baskins in 2014, prior to the execution of the Appearance Releases. Since the Appearance Releases do not reference the use of any previously filmed footage, it appears that Royal Goode Productions lacks permission and the right to use this 2014 film footage of the Baskins under motion picture industry standards.

25. Compensation - Nowhere in the Appearance Releases is consideration or compensation mentioned. I am informed that the Baskins were not paid in connection with the Appearance Releases. Since, as I am told, Royal Goode Productions described its “documentary motion picture” as an expose’ of the big cat breeding and cub petting trade akin to the documentary feature film entitled *Blackfish*, and the Baskins only participated in the filming with this understanding, there may be a failure of consideration relative to the Appearance Releases because I am informed that the ultimate production, *Tiger King 1*, was not – even remotely – such a production.

26. As mentioned previously, the release language of paragraph 2 in the Appearance Releases is confusing in certain respects. First, it purports to release “any and all claims” “arising out of the production, distribution, broadcast or exploitation of the Picture or the Recordings.” Given the lack of compensation, it is out of the norm of the motion picture industry to have a release of claims that might arise from the “misuse” of the film footage. For example, if the film footage



was used to falsely portray the Baskins involvement in a criminal act or some other improper and harmful use such as a pornographic depiction, it seems unconscionable to require release of such claims. Further, given the limited scope of the Appearance Releases by the agreements' own terms, such an overbroad reading of the release language would "swallow" the express limitation of its scope. Therefore, from an industry perspective, the only consistent reading of the release of claims and release of injunctive rights language is to strictly adhere to the limitation created by "the Picture" modifier. The release of claims and injunctive relief rights thus must only apply to use of the film footage in the single, original "documentary motion picture" defined in the Appearance Releases.

27. Since the release of *Tiger King 1*, it is my understanding that Royal Goode Productions has embarked on a sequel known as *Tiger King 2*. During the course of filming for this sequel, Royal Goode Productions has used a new form of appearance release reflected in Exs. D-1, D-2 and D-3. Each of these sequel appearance releases appear to use identical language.

28. Significantly, the language of the sequel appearance releases differs markedly from the Appearance Releases executed by the Baskins. Specifically, the sequel appearance releases language indicates a scope much broader than the limited scope of the Appearance Release. 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 it can also be used in any *other* motion picture or any *other* project. By virtue of the language of the sequel appearance release drafted by Royal Goode Productions, my understanding of the limited scope and meaning of the Appearance Releases signed by the Baskins is reconfirmed. I also note that Royal Goode Productions’ use of the term “ancillary” in conjunction with

merchandising and related rights is consistent with the industry meaning as I explained above.

29. I have also been asked to provide an opinion with respect to the potential harm, if any, which Netflix may experience in the event it was enjoined from using the film footage of the Baskins and, thereby, from exhibiting Tiger King 2 on November 17, 2021 as it currently plans.

30. Based on my 25 years as a business executive in the entertainment industry and an additional 15 years as a consultant and attorney working in the motion picture industry, it is my opinion that Netflix is not likely to suffer material or even significant harm if the initial airing (or streaming) of Tiger King 2 is delayed or postponed.

31. This is because 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.

### My Opinions

32. It is my opinion that the Appearance Releases do not grant Royal Goode Productions (or its assignees and licensees such as Netflix) the right to use the film footage of the Baskins and the Big Cat Rescue sanctuary or any other materials in the production and exploitation of *Tiger King 2*, the sequel to *Tiger King 1*. For Royal Goode Productions and Netflix to do so is a violation of the Appearance Releases which limited the producer's right of use of the film footage.

My opinion is based on three main reasons:

- a. The scope of the Appearance Releases does not include "sequels;"
- b. Some of the content (materials, location footage and pre-April 30, 2016 film footage of the Baskins) was never included in the Appearance Releases; and
- c. Royal Goode Productions did not provide the Baskins with adequate compensation/consideration for the use of the Baskins' materials.

It is significant that – after *Tiger King 1* was aired and Netflix was involved in 2020 – the release agreement used by Royal Goode Productions for the *Tiger King 2* sequel changed and clearly provided that film footage could be used in an "audiovisual documentary series" and could also be used "in connection with the Program and/or any other motion picture and/or any other project." Royal Goode Productions – the drafter of both the Appearance Releases and the sequel

appearance releases - clearly knows how to provide clear language when it intends to acquire rights beyond a single "documentary motion picture."

33. The Appearance Releases which are the subject of this dispute do not meet industry norms and fall short in a number of ways that appearance releases are customarily used in the motion picture industry.

34. Any harm to Netflix from any delay of the exhibition of *Tiger King 2* that might result if the use of the film footage of the Baskins and related materials is enjoined will be negligible because Netflix is a subscription-based content streaming company that is very unlikely to lose subscribers if a single program is delayed or postponed.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on: October 31, 2021

  
\_\_\_\_\_  
STEVEN MADOFF