

NOTICE OF AMENDED CLASS ACTION SETTLEMENT

TO: ALL PERSONS AND ENTITIES RESIDING IN THE UNITED STATES WHO ENROLLED IN A PAID NETFLIX MEMBERSHIP PROGRAM PRIOR TO JANUARY 15, 2005.

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ THE COMPLETE NOTICE CAREFULLY AS THE TERMS OF THE SETTLEMENT HAVE CHANGED.

I. Purpose of this Notice.

There is now pending in the San Francisco Superior Court a class action lawsuit entitled Frank Chavez v. Netflix, Inc., Case No. CGC-04-434884 (the "Litigation"). You may recall receiving a Notice of Class Action and Proposed Settlement in November 2005. Since that time, the parties have modified the settlement and have executed an Amended Settlement Agreement. These changes may have affected your legal rights and obligations. The purpose of this Notice is to explain the amended settlement and inform you of your legal rights and obligations. Unless otherwise set forth, this Notice incorporates by reference the definitions set forth in the Amended Class Action Settlement Agreement which you can review at www.netflix.com/settlement.

Judge Thomas J. Mellon of the San Francisco Superior Court (also referred to as the "Court") granted preliminary approval of the original settlement on October 27, 2005. Notice was distributed to the class in November 2005. The class was provided with an opportunity to sign-up for the proposed benefit, object to the settlement, or request exclusion from the class. Several class members, and the Federal Trade Commission, objected to certain provisions of the Original Settlement Agreement. Thereafter, the Parties entered into an Amended Settlement Agreement which made changes to the original settlement. Most importantly, under the Amended Settlement Agreement, if you are an eligible former Netflix member and sign up for the free one-month membership, your membership will end automatically unless you choose to continue your service. If you are an eligible current Netflix member and sign up for the free one-month upgrade, your upgraded membership will return to your previous service level unless you choose to continue the upgraded service. Additional changes to the settlement are reflected in the Amended Settlement Agreement. If you wish to compare the Amended Agreement with the Original Settlement Agreement, the Parties have posted a redline comparison at www.netflix.com/settlement.

On February 22, 2006 and March 22, 2006, the Court held hearings to determine the fairness and adequacy of the settlement for the class, after which the Court issued an Approval Order.

II. Class Members.

The Court has ruled that the Litigation may be maintained on behalf of the following:

All persons and entities residing in the United States who enrolled in a paid Netflix membership program prior to January 15, 2005.

Excluded from being Class Members are Netflix; any entity in which Netflix has a controlling interest; Netflix's directors, officers, employees; Netflix's legal representatives; Judge Mellon and the members of his immediate family; any persons who joined the Netflix service pursuant to a free trial offer but never became paying members of the Netflix service; any persons whose Netflix account was terminated or held due to suspected illegal activity (such as credit card fraud or copyright infringement); and all persons who timely and validly request exclusion from the Class in compliance with the requirements of this notice.

Non-excluded persons and entities that fall within the foregoing definition are referred to as "Class Members."

III. Settlement Benefit For Class Members.

A. Netflix has agreed to provide Class Members who timely and accurately complete the online Claim Form Process at www.netflix.com/settlement with the applicable "Class Benefit" described below. Your eligibility for the benefits is based on your membership status as of October 19, 2005.

1. **Current Subscribers.** Subscribers who were enrolled in a paid membership prior to January 15, 2005 and had an active membership as of October 19, 2005 are eligible to receive one month of a free one-level upgrade in service (e.g., from 3 DVDs at-a-time to 4 DVDs at-a-time) without a change in the existing subscription price during the upgraded month. The service to be upgraded shall be the Current Subscriber Class Member's service level as of the date his or her upgraded service begins. Current Subscriber Class Members enrolled in the 2 DVDs at-a-time capped program will be entitled to receive a 2 DVDs at-a-time unlimited program for one month. Current Subscriber Class Members enrolled in the 8 DVDs at-a-time unlimited program will be entitled to receive a 9 DVDs at-a-time unlimited program for one month.

A Current Subscriber Class Member who canceled the service following October 19, 2005 but prior to receiving the Class Benefit shall be entitled to the Class Benefit described above, but only in the event that Current Subscriber re-joins the service as a paying member prior to or on the date such Current Subscriber's Class Benefit would otherwise begin, as described in paragraph IV.C. below.

2. **Former Subscribers.** Subscribers who were enrolled in a paid membership prior to January 15, 2005 and no longer had an active membership as of October 19, 2005 are eligible to receive a free one-month Netflix membership of either the 1, 2 or 3 DVDs at-a-time unlimited program (at the Former Subscriber Class Member's election).

A Former Subscriber Class Member who re-joined the Netflix service following October 19, 2005 but prior to receipt of the Class Benefit shall be entitled to the Class Benefit described above (and will return to the paid plan after the end of the benefit period), except that those Former Subscriber Class Members who re-join on a subscription plan other than the 1, 2 or 3 DVDs at-a-time unlimited program will receive a discount off of their regular subscription rate for one month in an amount equal to the then-current 3 DVDs at-a-time unlimited program price during the one-year period described in paragraph IV.C. below.

B. In addition, Netflix has agreed to modify portions of its Terms of Use and direct consumers to the Terms of Use in certain of its advertisements. A copy of the revised Terms of Use is available at www.netflix.com/settlement.

IV. Claims Process and Deadline.

A. **Claim Form Process.** In order to receive the Class Benefit, Class Members must accurately complete the online Claim Form Process at www.netflix.com/settlement no later than June 26, 2006. Class Members who do not do so prior to June 26, 2006 will not be eligible to receive the Class

Benefit. The Claim Form Process requires all Class Members to do the following online at www.netflix.com/settlement: (1) enter their e-mail address and password associated with their Netflix account; (2) verify their name, postal address, and telephone number on file with Netflix, or update those items to reflect their current information; (3) acknowledge their status as a current or former member, as applicable; (4) confirm they have not received or accepted duplicative offers; and (5) attest that they have had the opportunity to read the terms of this settlement and that the information they provided is correct. All Class Members must inform Netflix of any changes in their registration information, including their name, postal address, telephone number, e-mail address and password associated with their Netflix account in order to receive the notices described herein. Netflix is not responsible for providing the Class Benefit to any Class Member who does not receive the redemption email or Class Benefit due to changed account information that has not been provided to Netflix in a timely manner.

B. Redemption of Benefit.

1. Each Current Subscriber Class Member who timely and accurately completes the Claim Form Process will receive a free upgrade to his or her service level automatically on a particular billing date for the Current Subscriber Class Member's account within 180 days following the Effective Date. This date will be determined by Netflix and notified to the Current Subscriber Class Member by email no later than ten (10) days before the Class Benefit is provided.

a. Current Subscriber Class Members **who did not complete** the online Claim Form Process prior to receiving this Notice will be given another opportunity to do so. The Claim Form Process must be completed no later than June 26, 2006

b. Current Subscriber Class Members **who previously completed** the online Claim Form Process prior to receiving this Notice will not be required to complete the process again in order to receive the Class Benefit. However, the Class Benefit will not automatically renew at the end of the free upgrade month as it would have under the terms of the Original Settlement Agreement.

c. All Current Subscriber Class Members who elect to receive the Class Benefit will be given a voluntary opportunity to choose to remain at the higher service level upon completion of the free upgrade. In the absence of such an express election, the upgrade in service level will automatically end after one month and the Current Subscriber Class Member's subscription will return to the previous service level without further action by the Current Subscriber Class Member. In the event that the Current Subscriber Class Member chooses to remain at the higher service level, they will be charged at Netflix's regular subscription rate for that level.

2. Former Subscriber Class Members who timely and accurately complete the Claim Form Process will receive by electronic mail following the Effective Date instructions for redeeming the benefit described above in Section III.A.(2). Former Subscriber Class Members may redeem the benefit one time during the subsequent one-year period by completing the Netflix sign-up process, which requires confirmation of account information and entry of a valid credit or debit card. Because the free month of service for the Former Subscriber Class Members will automatically end after one month, Former Subscriber Class Members who receive the benefit will be required to return all rented DVDs within 7 days following the expiration of the free month or be subject to charge for the outstanding DVDs under Netflix's standard policy (currently, \$20 per DVD), unless the Former Subscriber Class Member has voluntarily elected to continue the service.

a. Former Subscriber Class Members **who did not complete** the online Claim Form Process prior to receiving this Notice will be given another opportunity to do so. The Claim Form Process must be completed no later than June 26, 2006.

b. Former Subscriber Class Members **who previously completed** the online Claim Form Process prior to receiving this Notice will not be required to complete the process again in order to receive the Class Benefit. However, the Class Benefit will not automatically renew at the end of the free month as it would have under the terms of the Original Settlement Agreement.

c. All Former Subscriber Class Members who elect to receive the Class Benefit will be given a voluntary opportunity to choose to remain a Netflix subscriber upon completion of the free month. In the absence of such an express election, the Former Subscriber Class Member's subscription will automatically end after one month without further action by the Former Subscriber Class Member. In the event that the Former Subscriber Class Member chooses to remain a Netflix subscriber, they will be charged at Netflix's regular subscription rate.

C. Receipt of Benefit. The Class Benefit will not be made available to any Class Member until the Effective Date. As described in the Amended Settlement Agreement, the Effective Date depends on such factors as the pendency of any appeals and is therefore difficult to predict. In addition, the Class Benefit will only be available during the time periods described above (on the identified billing date during a 180 day period for Current Subscriber Class Members, and during a one-year period for Former Subscriber Class Members). The date that the Class Benefit is available will be notified to the Class Members by email no later than ten (10) days before the Class Benefit is provided.

Excluded persons and entities are not eligible to receive the Class Benefit. Only one Class Benefit is available for each Class Member.

V. **Dismissal of Litigation, Entry of Judgment and Release of Claims.**

Based on the Court's Approval Order, the Court will enter a judgment that will dismiss the Litigation on the merits and with prejudice as to all Class Members. All Class Members who do not validly and timely request to be excluded from this settlement shall be forever barred from prosecuting their own lawsuits and shall be deemed to have released Netflix, and Netflix's past and present officers, directors, agents, attorneys, employees, parents, controlling or principal shareholders, general or limited partners or partnerships, subsidiaries, divisions, insurers, and all successors or predecessors in interest, assigns, or legal representatives from any and all claims, rights, demands, actions, causes of action, suits, debts, liens, contracts, liabilities, agreements, costs, expenses or losses of any kind whatsoever that any Class Member has or may claim to have against such persons which are based upon, arising out of, or in any way relating to any of the acts, omissions or other conduct that has been alleged in the Litigation, including but not limited to all claims relating to the advertising or description of Netflix's service arising from all media (e.g., its website or advertisements), practices relating to service allocation or inventory management and any claims for malicious prosecution or sanctions. All Class Members shall be deemed to have waived any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code or any comparable statutory or common law provision of any other jurisdiction with respect to the released claims. Section 1542 reads as follows:

Certain Claims Not Affected By General Release: A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of

executing the release, which if known by him must have materially affected his settlement with the debtor.

Although the releases granted under this settlement are not general releases, all Class Members nonetheless expressly acknowledge that they are waiving the protections of Section 1542 and of any comparable statutory or common law provision of any other jurisdiction.

VI. Attorneys' Fees and Costs.

Class Counsel have not received payments for their services, nor have they been reimbursed for any out-of-pocket expenses, in connection with this Litigation. Netflix has also agreed to pay up to \$2,528,000, and the Court has awarded \$1,387,138, in attorneys' fees and costs to counsel for members of the Settlement Class, including Class Counsel and all counsel for objectors, intervenors and proposed intervenors, with an express reservation that an additional and enhanced fee may be awarded upon the final showing of the number of Class Members who timely and accurately complete the Claim Form Process. Additionally, Defendant has agreed to pay Plaintiff \$2,000 for his time and effort related to the Litigation. Finally, Netflix has agreed to pay for all costs associated with this settlement including the class notice, costs of administering the settlement and providing the Class Benefit.

The award of attorneys' fees and costs and the payment to the Plaintiff will be paid separately from, and will not reduce, the Class Benefit provided under this settlement. Except any fees incurred by a Class Member's previous objection or intervention in the litigation, Class Members will not be personally liable for any attorneys' fees and costs or payment to the Plaintiff.

VII. Rights and Options of Class Members.

A. Remain a Class Member.

1. If you have not requested and do not request exclusion from the Class, you will remain a Class Member. Your interests in connection with this settlement will be represented by Plaintiff and Class Counsel. You, however, will not be charged for the services or expenses of Class Counsel. You must comply with the Claims Process and Deadline requirements described above to receive the Class Benefit.

Class Counsel are the following attorneys:

GUTRIDE SAFIER LLP
Adam Gutride, Esq.
Seth Safier, Esq.
835 Douglass Street
San Francisco, CA 94114
www.gutridesafier.com

Netflix is represented in the Litigation by:

WILSON, SONSINI, GOODRICH & ROSATI
Keith E. Eggleton, Esq.
Rodney G. Strickland, Esq.
650 Page Mill Road
Palo Alto, California 94304-1050

2. If you have requested exclusion prior to receiving this Notice (i.e., if you chose to “opt-out”) you can rejoin the class by completing the online Claim Form Process, which will revoke your previous request for exclusion.

3. If judgment becomes final, you will be eligible for to the Class Benefit described in Section III, above, provided you timely and accurately complete the online Claim Form Process. If judgment does not become final, the certification of the Class will be vacated and the Litigation will continue as if no proposed settlement has been reached.

4. As a Class Member, you will be bound by any judgment or other disposition of the Litigation, even if you do not submit a claim or take advantage of any of the Class Benefits. Furthermore, you and your executors, administrators, representatives, agents, partners, successors and assigns will be deemed to have agreed to the terms of this settlement and the release set forth in Section V, above.

B. Opt-Out of the Settlement. You have the right to opt-out of this settlement. If you opt-out of this settlement, you will not be bound by or subject to any judgment or settlement of the Litigation. If you opt-out, however, you will also not be entitled to receive the Class Benefit. If you wish to opt-out, you must submit a written, signed request to opt-out, stating (1) your name, address, email address, and telephone number (a) associated with your Netflix account and (b) at the current time, if different, (2) a reference the Litigation (i.e., Chavez v. Netflix, Inc., Case No. CGC-04-434884), (3) approximately when you became a Netflix member, if and when you canceled, and what service level(s) you subscribed to and (4) that you wish to opt-out of the Class. Requests to opt-out must be post-marked or otherwise delivered to Netflix Opt Out, P.O. Box #210340, San Francisco, CA 94121-0340, by June 26, 2006. If you do not submit a timely opt-out request that complies with these requirements, your opt-out request will be deemed invalid and you will not be excluded from the Class.

If you already submitted a complete and timely opt-out request in response to the prior Notice of Settlement, you do not need to do so again in order to be excluded from the class. However, you can now rejoin the class by completing the online Claim Form Process, which will revoke your previous request for exclusion.

VIII. Additional Information and Important Dates.

A. Additional Information.

The description of the Litigation set forth in this notice is general and does not cover all of the issues and proceedings thus far. If you have additional questions you can contact Class Counsel or see the complete file by visiting the office of the Clerk of the Court in Department 103 of the San Francisco Superior Court, located at 400 McAllister Street, San Francisco, California. The Clerk will make the file relating to the Litigation available to you for inspection and copying at your own expense.

B. Deadlines and Dates to Remember.

Following is a list of important dates to remember. Please refer to www.netflix.com/settlement from time to time for updates and further information.


- **June 26, 2006 is the deadline to Opt-Out of this settlement.**
- **June 26, 2006 is the deadline to complete the Class Benefit Claim Process.**

- **Availability of Class Benefit: By email notice following the Effective Date (see IV.C. above).**

Dated: May - 4 2006

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By: Order of the San Francisco Superior Court



HONORABLE JUDGE THOMAS J. MELLON