

AMENDED CLASS ACTION SETTLEMENT AGREEMENT

This Amended Settlement Agreement (“Amended Agreement”) is entered into between plaintiff Frank Chavez (“Class Representative” or “Plaintiff”) on behalf of himself, the Settlement Class defined below, and the general public on the one hand, and defendant Netflix, Inc. (“Netflix” or “Defendant”) on the other hand (collectively, the “Parties”).

1. RECITALS

1.1. On or about September 23, 2004, Class Representative filed an action against Defendant entitled *Frank Chavez v. Netflix, Inc., et al.*, in the Superior Court for the City and County of San Francisco, Case No. CGC-04-434884.

1.2. In the Litigation, Class Representative alleged that since April of 2004 he had been a subscriber to Defendant’s online DVD-rental service. Class Representative alleged that in the sale and marketing of its DVD-rental service, Defendant falsely and misleadingly promised that he and other subscribers would receive “unlimited” DVD rentals for a flat monthly fee and that DVDs would be transmitted to him via “one-day delivery.” Class Representative further alleged that Defendant did not perform in accordance with those promises. Class Representative claimed that through its actions, Defendant had breached its contract with him and other subscribers; had engaged in fraud, deceit and misrepresentation; had committed false advertising and unfair trade practices in violation of California Business and Professions Code sections 17500, et seq. and 17200, et seq.; and had violated the California Legal Remedies Act. Class Representative sought restitution, damages, punitive damages, and injunctive relief.

1.3. Defendant denied all the allegations and claims. Defendant also asserted

affirmative defenses.

1.4. On and before January 15, 2005, Defendant modified its advertising and Terms of Use to more accurately and adequately describe the process by which the Netflix service works, including the method by which Netflix allocates, delivers and accepts returns of DVDs to and from its subscribers. Defendant acknowledges that the Litigation was a contributing factor in the modification to the Terms of Use.

1.5. In late 2004 and 2005, the Parties conducted extensive discovery. Defendant produced, and counsel for Class Representative reviewed, approximately 100,000 pages of documents. Both Parties served and answered interrogatories. Defendant deposed Class Representative. Class Representative deposed Netflix, Inc. through five of its employees over the course of seven days. Class Representative also deposed a third party.

1.6. On September 14, 2005, Class Representative filed a motion to certify a class of all similarly situated individuals. Defendant intended to oppose Plaintiff's motion for class certification and believes it has valid defenses to class certification under California law. The motion has been stayed, at the Parties' request, as a result of the Parties' effort to resolve this matter without further litigation.

1.7. On August 15 and September 22, 2005, the Parties engaged in arms-length mediation conducted by the Hon. Edward A. Infante (U.S. Magistrate Judge, retired) at JAMS in San Francisco (the "Mediation"), and engaged in additional communications in connection with the Mediation through Judge Infante on other dates in the interim.

1.8. In order to avoid the expense, inconvenience, and interference with ongoing business operations associated with the Litigation, Defendant has concluded after investigation

that it is in its best interests to settle the Litigation on the terms set forth below. Settlement Class Counsel and Class Representative have likewise concluded, after due investigation and after carefully considering the relevant circumstances, the Litigation and the applicable law, that it would be in the best interests of the Settlement Class to enter into this Amended Settlement Agreement in order to avoid the uncertainties of litigation and to assure that the benefits reflected herein are obtained for the Settlement Class. Settlement Class Counsel and the Plaintiff additionally consider the settlement set forth herein to be fair, reasonable, adequate, and in the best interests of the Settlement Class.

1.9. On October 25, 2005, the Parties executed a Settlement Agreement (the “Original Settlement Agreement”), which was presented to the Court for preliminary approval. Ex. 1 [Original Settlement Agreement]. After considering the Parties’ arguments in favor of the Original Settlement Agreement at a hearing held on October 19, 2005, the Court entered a Preliminary Approval Order on October 27, 2005, which granted preliminary approval of the Original Settlement Agreement and preliminary certification of the settlement class. Ex. 2 [Preliminary Approval Order]. Notice of the proposed settlement was sent to the Settlement Class, pursuant to the Preliminary Approval Order, in November 2005. Ex. 3 [Original Long Form Notice]; Ex. 4 [Original Summary Notice]. Certain Class Members objected to the terms of the proposed settlement, and the Federal Trade Commission submitted a Memorandum of Law as Amicus Curiae expressing concerns about certain settlement terms. Thereafter, the Parties entered into this Amended Settlement Agreement.

1.10. Nothing in this Amended Agreement or the Original Settlement Agreement shall be used to constitute an admission of liability or be used as evidence of liability. Defendant

denies any wrongdoing or liability.

1.11. Each of the terms herein set forth was reached through arms-length negotiations, including without limitation the Mediation. It is agreed by and among the undersigned, on behalf of Defendant, Class Representative, and the Settlement Class, that the Litigation be conditionally settled, compromised and dismissed on the merits and with prejudice, subject to the approval of the Court, on the following terms and conditions:

2. DEFINED TERMS

The following shall be defined terms for purpose of this Amended Agreement:

2.1. “Amended Agreement” or “Amended Settlement Agreement” means this Amended Settlement Agreement, including all exhibits thereto.

2.2. “Amended Long Form Settlement Notice” means the Notice attached hereto as Exhibit 5.

2.3. “Approval Order” means a non-preliminary order from the Court certifying the Settlement Class and approving this Amended Settlement Agreement as fair, reasonable, and adequate to the Settlement Class.

2.4. “Claim Form Process” means the online settlement registration process required to be completed by Class Members who wish to redeem the Class Benefit, as set forth in Section 6.1 of this Amended Agreement.

2.5. “Claims Period” means the period beginning on November 1, 2005 and running until 45 days after the Supplemental Notification Date.

2.6. “Claims Released By Netflix ” means the claims released as set forth in Section 8.1 of this Amended Agreement.

2.7. “Claims Released By The Class” means the claims released as set forth in Section 8.2 of this Amended Agreement.

2.8. “Class” or “Class Members” or “Settlement Class” means all persons and entities residing in the United States who enrolled in a paid Netflix membership program prior to January 15, 2005 except for Excluded Class Members.

2.9. “Class Action Settlement” means the resolution of the Litigation pursuant to the terms of this Amended Agreement.

2.10. “Class Benefit” means the benefit provided to Class Members that is set forth in Sections 4.1 and 4.2 of this Amended Agreement.

2.11. “Class Representative” and “Plaintiff” means Frank Chavez.

2.12. “Current Subscriber Class Members” and “Current Subscribers” mean those Class Members who as of October 19, 2005 were enrolled in a paid Netflix membership program.

2.13. “Defendant” means Netflix, Inc.

2.14. “Defendant’s Counsel” means the law firm of Wilson Sonsini Goodrich & Rosati.

2.15. “Defendant’s Web Site” or “Website” means that Internet web site located at www.netflix.com.

2.16. “Effective Date” means the latest of: (i) the date of final affirmance on an appeal, the expiration of the time for a petition for review, or if review be granted, the date of final affirmance following review pursuant to that grant; (ii) the date of final dismissal of any appeal or the final dismissal of any proceeding on review; or (iii) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from the Superior Court's judgment.

2.17. “Excluded Class Members” means Netflix; any entity in which Netflix has a controlling interest; Netflix’s directors, officers, employees; Netflix’s legal representatives; Judge Thomas Mellon of the Superior Court of the City and County of San Francisco 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 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 the Amended Long Form Settlement Notice.

2.18. “First Claims Period” means the period beginning on November 1, 2005 and ending two business days prior to the Supplemental Notification Date.

2.19. “Former Subscriber Class Members” and “Former Subscribers” mean those Class Members who as of October 19, 2005 were not enrolled in a paid Netflix membership program.

2.20. “Initial Notice” means the notice of the proposed settlement that was sent to the Settlement Class, pursuant to the Preliminary Approval Order, in November 2005. Ex. 3 [Original Long Form Notice]; Ex. 4 [Original Summary Notice].

2.21. “Judgment” means issuance of a judgment, following entry of an Approval Order, substantially in the form attached as Exhibit 10.

2.22. “Litigation” means Frank Chavez v. Netflix, Inc., et al., in the Superior Court for the City and County of San Francisco, Case No. CGC-04-434884.

2.23. “Netflix Released Parties” means 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.

2.24. “Original Settlement Agreement” means the settlement agreement that was executed by the Parties on October 25, 2005 attached hereto as Exhibit 1.

2.25. “Parties” means Plaintiff and Defendant, collectively.

2.26. “Settlement Class Counsel,” “Class Counsel” or “Plaintiff’s Counsel” means Gutride Safier LLP.

2.27. “Settlement Website” means collectively www.netflixsettlement.com and www.netflix.com/settlement, which contain links to the Claim Form Process and as otherwise described in Section 5.4.

2.28. “Supplemental Notification Date” means the first day on which Defendant initiates delivery of the Supplemental Summary Notifications as set forth in Sections 5.1 and 5.2 of this Amended Agreement.

2.29. “Supplemental Summary Notifications” means the Supplemental Notifications substantially in the form as Exhibits 6, 7 & 8 attached hereto.

2.30. “Terms of Use” means the online statement as amended from time to time posted by Defendant governing the terms of use of Defendant’s service. See <http://www.netflix.com/TermsOfUse>.

3. INJUNCTIVE RELIEF

3.1. By or on the Effective Date, Netflix shall modify its current Terms of Use in the manner attached hereto as Exhibit 9. Netflix retains discretion to otherwise modify its Terms of Use in any manner that it deems appropriate.

3.2. Netflix shall include the following language in advertisements it produces after

the Effective Date and which contain the terms “Unlimited Rentals,” “Rent all you want,” “Rent as many DVDs as you want,” “about one business day” delivery, or “one day” delivery:

3.2.1. In direct mail and print advertisements, Netflix shall include, in a location selected by Netflix, “Please visit www.netflix.com/TermsOfUse for complete terms and conditions, including shipping and delivery details.”

3.2.2. In television advertisements, Netflix shall include, in a location and time selected by Netflix, “See Terms of Use for Details.”

3.2.3. In radio advertisements, Netflix shall include, in a location and time selected by Netflix, “See Terms of Use.”

3.3. The requirements of Sections 3.1 and 3.2 shall remain in place for two years from the Effective Date except that Netflix may make changes to reflect changes in its product offering, processes, or other changes in its business.

4. BENEFIT FOR SETTLEMENT CLASS

4.1. Former Subscriber Class Members who have timely and accurately completed the Claim Form Process shall be entitled to receive a free one month Netflix membership of the 1, 2 or 3 DVDs at-a-time unlimited program (at the Former Subscriber Class Member’s election) which will not automatically renew at the end of the free month as it would have under the terms of the Original Settlement Agreement unless the Former Subscriber Class Member expressly elects to have the account renew at the end of the free month.

4.1.1. Former Subscriber Class Members who did not complete the Claim Form Process during the First Claims Period will receive notice of this Amended Settlement Agreement and another opportunity to complete the Claim Form Process. As part of the Claim

Form Process, Netflix shall be entitled to ask these Class Members to choose whether, upon completion of the free month, their subscription will (a) terminate automatically or (b) renew automatically at Netflix's regular subscription rate. In the absence of such an express election, the Former Subscriber Class Member's subscription will automatically terminate at the end of the free month without further action by the Former Subscriber Class Member. Former Subscriber Class Members who choose to remain Netflix subscribers will be charged at the applicable Netflix subscription rate for future periods.

4.1.2. Former Subscriber Class Members who completed the Claim Form Process during the First Claims Period 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. Prior to the end of the free month, Netflix shall be entitled to send all Former Subscriber Class Members who have redeemed the benefit an email asking whether they would like their account to automatically renew at the end of the free month. Former Subscriber Class Members who do not expressly elect to have their accounts renew at the end of the free month will have their service terminated at the end of the free month.

4.1.3. Because the free month of service for the Former Subscriber Class Members will not automatically renew at the end of the free month, Former Subscriber Class Members who receive the Class Benefit will be required to return all rented DVDs within 7 days following the expiration of the free month or may be charged subject to Netflix's current policy regarding unreturned DVDs (currently, \$20 per DVD), unless the Former Subscriber Class Member has expressly elected to continue the service. If their membership is not renewed,

Former Subscriber Class Members will receive the standard emails sent by Netflix to all subscribers at membership termination, listing the DVDs in the subscribers' possession and the date by which they have to be returned.

4.2. Current Subscriber Class Members who have timely and accurately completed the Claim Form Process shall be entitled 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 unlimited program) without a change in the price of their existing (non-upgraded) program 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 month 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. The one-level upgrade in service will not automatically renew at the end of the month as it would have under the terms of the Original Settlement Agreement unless the Current Subscriber Class Member voluntarily elects to have the upgrade automatically renew at the end of the month. (Those upgraded to a 9 DVD at-a-time program will not be provided the option to renew at that level, unless Netflix chooses to add such a program level, but instead will revert to the 8 DVD-at-a-time program at the end of the month.)

4.2.1. Current Subscriber Class Members who did not complete the Claim Form Process during the First Claims Period will receive notice of this Amended Settlement Agreement and another opportunity to complete the Claim Form Process. As part of the Claim Form Process, Netflix shall be entitled to ask these Class Members whether, upon completion of

the free upgrade month, their subscription will (a) revert automatically to their previous service level at the then-current subscription rate for that level or (b) remain at the upgraded service level at the then-current subscription rate for that service level. In the absence of such an express election, the upgrade in service level will automatically terminate at the end of the free upgrade 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. Current Subscriber Class Members who choose to remain at the higher service level will be charged at the applicable Netflix subscription rate for future periods.

4.2.2. Current Subscriber Class Members who completed the Claim Form Process during the First Claims Period 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. Prior to the end of the free upgrade month, Netflix shall be entitled to send all Current Subscriber Class Members who have redeemed the benefit an email asking whether they would like their account to automatically renew at the higher service level at the end of the free upgrade month. Class Members who do not expressly elect to have their upgraded service levels renew at the end of the free upgraded month will revert automatically to their previous service level at the then-current subscription rate for that level or, for subscribers who receive non-standard rates, the subscription rates applicable to those subscribers' memberships. Nothing herein shall prevent Netflix from changing its subscription rates.

4.2.3. All Current Subscriber Class Members who participate in the settlement will be required to return all additional DVDs rented as part of the upgraded plan until the

number of DVDs they have out is consistent with their regular service level unless the Current Subscriber Class Member elects to renew at the upgraded level, in which case he or she may continue to retain the number of DVDs permitted at that level.

4.3. Approximately four (4) to seven (7) days before the end of the Class Benefit for each Class Member, Netflix shall be entitled to send an additional email to those Class Members who did not select the automatic renewal option reminding the Class Member that the free month or upgrade is about to expire and asking whether they would like to choose the automatic renewal option.

4.4. Class Members' status as a Former Subscriber or Current Subscriber will be determined as of October 19, 2005. Class Members have the right to modify or cancel their subscriptions to Netflix at any time by using Netflix's regular methods for subscription modifications and cancellations subject to this Section 4.4 and Section 4.5. In the event that a Former Subscriber re-joins the Netflix service following October 19, 2005 and prior to receiving the benefit, that Former Subscriber who timely and accurately completes the Claim Form Process will be entitled to the Class Benefit described in Section 4.1, above, except that those eligible Former Subscribers 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 Section 6.2. In the event that a Current Subscriber cancels the service after October 19, 2005 and prior to receiving the upgrade benefit, that Class Member who timely and accurately complete the Claim Form Process shall be entitled to the Class Benefit described in Section 4.2, above, but only in the event that such Class Member re-joins the service as a

paying member prior to or on the date such Class Member's Class Benefit would otherwise begin as described in Section 6.3.

4.5. 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. Former Subscribers who voluntarily re-join the service after October 19, 2005 and prior to receiving the benefit, and are still members at the time they receive the benefit, shall not have their accounts cancelled after receiving the benefit; rather, the act of re-joining outside of the settlement claims process shall be considered an election to continue the service following the free month and until the Former Subscriber cancels his or her account through Netflix's standard cancellation procedure.

5. NOTIFICATION

5.1. As soon as possible but not later than twenty-one (21) days following the later of the date that the Court (a) issues an Approval Order or (b) issues an order approving attorney's fees and expenses not exceeding the amount set forth in Section 9, Netflix will initiate delivery of the Supplemental Summary Notifications by electronic mail to the following groups:

5.1.1. Class Members described in Sections 4.1.1 and 4.2.1 will be sent the Supplemental Summary Notification attached hereto as Exhibit 6.

5.1.2. Class Members described in Sections 4.1.2 and 4.2.2 will be sent the Supplemental Summary Notification attached hereto as Exhibit 7.

5.1.3. Class Members who have previously excluded themselves from the Settlement Class will be sent the Supplemental Summary Notification attached hereto as Exhibit 8 to provide them an opportunity to withdraw their notice of exclusion from the Settlement Class and to obtain the Class Benefit. In order to receive the Class Benefit, individuals who excluded themselves from the Settlement Class by electing to “opt-out” during the First Claims Period will be required to acknowledge during the registration process that their decision to receive the Class Benefit will act as an express revocation of their previous exclusion from the class during the Claim Form Process. Within ten (10) days of the date the Court issues an order approving this Amended Settlement Agreement, Class Counsel shall deliver to Defendant a list of the Class Members who have previously excluded themselves from the Settlement Class, containing all personally identifiable information provided to Class Counsel by such Class Members including but not limited to the Class Members’ names, addresses and email addresses associated with their Netflix accounts. Such list shall be delivered in an electronic format reasonably requested by Defendant. Defendant shall be entitled to rely on this list as conclusive evidence of the individuals entitled to receive the Supplemental Summary Notification attached hereto as Exhibit 8. Netflix shall not have any obligation to verify or confirm the accuracy of the contents of the list or to make more than one attempt to contact any individual should the information provided by Settlement Class Counsel fail to result in a successful notification.

5.2. In distributing the Supplemental Summary Notifications, Netflix shall use the electronic mail address of each Class Member that was not determined to be undeliverable following the Initial Notice. The electronic mail will be sent in batches of approximately one million notices per day until all notices have been sent. In the event that an electronic mail

message to a Former Subscriber Class Member is automatically returned to Netflix and reasonably determined by Netflix to be “undeliverable,” Netflix shall deliver the Summary Notice by first-class U.S. mail to the last known residence address of that Former Subscriber Class Member no later than 20 days after the last batch of emails has been sent. Netflix shall also deliver the Supplemental Summary Notification by standard U.S. mail to Class Members who were mailed the Initial Notice. The electronic mail form of the Supplemental Summary Notifications shall contain a link to the Settlement Website.

5.3. Netflix’s communications with Class Members regarding the settlement shall be limited to the Notifications set forth in this Amended Agreement, except that Netflix may communicate with Class Members in order to enable Class Members to accurately understand the nature of the Class Benefit (as described in the Amended Long Form Settlement Notice) and to assist Class Members with the Claims Form Process.

5.4. The Settlement Website shall have the structure substantially in the form of the Claim Form Process, contain links to this Amended Agreement, the Supplemental Long Form Settlement Notifications, and the revised Terms of Use, and contain such other text per the mutual agreement of the Parties consistent with the terms of this Amended Agreement.

5.5. During the Claims Period, Netflix shall post a hyperlink on the bottom of the home page of Defendant’s Website that links the home page to the Settlement Website.

5.6. Netflix shall be responsible for making all arrangements necessary to deliver the Supplemental Summary Notifications described herein and for payment of the costs of such delivery.

6. REDEMPTION OF BENEFIT BY CLASS MEMBERS

6.1. In order to receive the Class Benefit, each Class Member must, during the Claims Period, timely and accurately complete the Claim Form Process on the Settlement Website. Netflix shall have the right to disable the Claim Form Process two business days prior to the Supplemental Notification Date but shall enable the Claim Form Process again upon the Supplemental Notification Date. The Claim Form Process requires all Class Members to do the following online at the Settlement Website: (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 review the settlement documents available at the Settlement Website and that the information they have provided is correct. Netflix shall make available to Class Members the email and password assistive devices and customer service that Netflix employs in connection with its ordinary business practices. The conclusion of the Claim Form Process will notify the Class Members whether or not their information was successfully entered and will inform the Class Members that their claim will be subject to review and confirmation until the Effective Date.

6.2. During the one hundred eighty (180) days following the Effective Date, Netflix will send Former Subscribers who timely and accurately completed the Claim Form Process electronic mail instructions for redeeming the Class Benefit. Netflix will send these electronic mail instructions to subsets of the group of eligible Former Subscribers on a rolling basis, and it will ensure that the instructions have been sent to all eligible Former Subscribers no later than one hundred eighty (180) days after the Effective Date.. Each Former Subscriber Class Member

will be eligible to redeem his or her Class Benefit set forth in Section 4.1, above, one time during the year following the date upon which the electronic mail instructions are sent to him or her by completing Netflix's sign-up process, which requires confirmation of account information and entry of a valid credit or debit card number. Netflix will not use the credit or debit card information to charge for any debts that the Former Subscriber Class Member may owe to Netflix as a result of that Former Subscriber Class Member's previous subscription with Netflix.

6.3. Current Subscribers who timely and accurately complete the Claim Form Process will receive the upgrade benefit automatically on a particular billing date for the Current Subscriber's account within one hundred eighty (180) days following the Effective Date, such date to be determined by Netflix and notified to the Current Subscriber at least ten (10) days before the Class Benefit is to be provided.

6.4. Netflix shall be responsible for all costs of handling the Claim Form Process, providing the electronic mails, and administering the Class Benefit redemption process described herein.

7. OPT-OUTS FROM THE SETTLEMENT CLASS

7.1. Individuals who excluded themselves from the Settlement Class by electing to "opt-out" during the First Claims Period but who now wish to claim the Class Benefit may do so by completing the Claims Form Process. As part of the Claims Form Process, such individuals must acknowledge that their decision to receive the Class Benefit will revoke their previous exclusion from the class.

7.2. Individuals who did not previously exclude themselves from the Settlement Class but who now wish to do so must send a request for exclusion no later than forty-five (45) days

after the Supplemental Notification Date and that complies with the terms set forth in the Amended Long Form Notice.

7.3. Individuals who previously excluded themselves from the Settlement Class and wish to remain excluded from the Settlement Class need not take any further action.

8. RELEASES

8.1. The Class Representative (for himself and as representative of the Settlement Class, and on behalf of each Class Member), and their respective agents, successors, heirs, or assigns, shall be deemed to have, and by operation of the Judgment, shall have fully, finally, and forever irrevocably released, relinquished and discharged with prejudice the Netflix Released Parties from any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, restitution, disgorgement, costs, attorneys' fees, losses, expenses, obligations or demands, of any kind whatsoever, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis or on behalf of the general public, whether known or unknown, suspected or unsuspected, threatened, asserted or unasserted, actual or contingent, liquidated or unliquidated, whether under federal statutory law, federal common law or federal regulation, or the statutory or common laws or regulations of any and all states or subdivisions, which are 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 ("Claims Released By The Class"). By operation of the Judgment, 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 Claims Released By The Class. 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.

8.2. Netflix and its respective agents, successors, heirs, or assigns, shall be deemed to have, and by operation of the Judgment, shall have fully, finally, and forever irrevocably released, relinquished and discharged with prejudice Plaintiff, Class Counsel, and Class Members from any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, restitution, disgorgement, costs, attorneys' fees, losses, expenses, obligations or demands, of any kind whatsoever, whether in arbitration, administrative, or judicial proceedings, whether known or unknown, suspected or unsuspected, threatened, asserted or unasserted, actual or contingent, liquidated or unliquidated, whether under federal statutory law, federal common law or federal regulation, or the statutory or common laws or regulations of any and all states or subdivisions alleged in the Litigation or related to the filing and prosecution of the Litigation, including malicious prosecution and abuse of process ("Claims Released By Netflix"). By operation of the Judgment, Netflix 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 Claims Released By Netflix. 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.

8.3. Although the releases provided in this Amended Agreement are not general releases, Defendant, the Class Representative (for himself and as representative of the Settlement Class), 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.

9. PAYMENTS TO CLASS REPRESENTATIVE AND COUNSEL

9.1. Subject to Court approval, no later than seven (7) days after the Effective Date Netflix shall pay a \$2,000.00 incentive award to the Class Representative to compensate him for the time spent in deposition, answering discovery and negotiating the settlement of this Litigation, and for the risks he undertook in bringing it including the risks of liability for costs.

9.2. Subject to Court approval, Netflix agrees to pay up to, and will not contest the reasonableness of \$2,528,000 in attorneys' fees and expenses to counsel for members of the Settlement Class, including Class Counsel and counsel for any Objector, intervener, or proposed intervener, to be distributed as set forth in Exhibit 12.

9.3. Netflix has the right to terminate this Amended Settlement Agreement if the total fees and expenses awarded to counsel for members of the Settlement Class, including Class Counsel, any Objector, intervener, and proposed intervener exceed \$2,528,000.

9.4. No later than seven (7) days after entry of an Approval Order, Netflix shall deposit \$2,528,000 into a Vanguard prime money market fund or similar money market account held by Netflix. Should the amount deposited exceed the Court's total award of attorneys' fees and expenses to all counsel for members of the Settlement Class, including Class Counsel and counsel for any Objector, intervener, and proposed intervener, the difference (including any

interest attributable to said difference) shall be withdrawn and returned to Netflix within ten (10) days of an order disposing of all applications for attorneys' fees and expenses. Within seven (7) days after the Effective Date and final judicial resolution of the fees applications, the balance of the account including accrued interest shall be distributed to counsel whose applications for fees and expenses were approved, in proportion to their share of the total amount of fees and expenses awarded by the Court. In the event that the Effective Date does not occur due to reversal or modification on appeal, or in the event that any order with respect to an award of fees and expenses is reversed or modified on appeal, the balance of the account shall be distributed pursuant to further order of the Court on remand implementing the rulings of the appellate court and otherwise consistent with this Settlement Agreement.

9.5. The Parties agree to oppose, including on appeal, any request for fees or expenses by any class member, objector, intervener or proposed intervener not set forth in Exhibit 12.

9.6. The incentive award will be paid within seven (7) days of the Effective Date unless another time is agreed by Plaintiff's Counsel and Defendant's Counsel.

10. PROCEDURE FOR CLASS CERTIFICATION AND APPROVAL, SEVERANCE, AND APPOINTMENT OF COUNSEL

10.1. Plaintiff will prepare and submit to the Court motions for approval and for an award of attorneys' fees consistent with the terms of this Amended Agreement. Netflix will submit requests that the Court issue approval consistent with the terms of this Amended Agreement.

10.2. Plaintiffs, the Defendant, Settlement Class Counsel, and Defendant's Counsel agree to recommend approval of and to support this Amended Settlement Agreement to the

Court and to the Class Members and to undertake all reasonable steps and efforts contemplated by this Amended Settlement Agreement and any other reasonable steps and efforts that may be necessary or appropriate, by order of the Court or otherwise, to carry out the terms of this Amended Settlement Agreement. The Parties shall cooperate, assist and undertake all reasonable actions in order to accomplish the above on a timely basis in accordance with the schedule established by the Court.

10.3. Defendant is entitled to communicate with the Class Members in the ordinary course of Defendant's business and in accordance with Section 5.3. However, the Defendant will not aid or encourage any objections to this Amended Settlement Agreement (or any of its terms or provisions) nor to final certification of the Settlement Class, nor encourage any Class Members to elect to opt-out.

10.4. Class Counsel shall make all reasonable efforts to enforce the jurisdictional and injunctive provisions of this Amended Settlement Agreement. Any time and expense incurred by the Plaintiffs and Class Counsel to enforce the jurisdictional and injunctive provisions shall be deemed to be within the fees and expenses awarded by the Court pursuant to Section 9.2 of this Amended Agreement. Class Counsel attest by their signatures to this Amended Agreement that they have not attempted to, and will not attempt to, dissuade Class Members from opting out of the Settlement.

10.5. Following the Court's Approval Order, the Parties shall request that the Court enter a judgment in the form attached hereto as Exhibit 10.

11. DENIAL OF WRONGDOING

Defendant denies all liability with respect to this Litigation. Defendant enters into this Amended Agreement without in any way acknowledging any wrongdoing or liability of any kind. Neither this Amended Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendant of the truth of any of the allegations in this Action.

12. TERMINATION OF AMENDED AGREEMENT

12.1. Netflix shall have the right to terminate this Amended Agreement and the settlement in the event that greater than 5% of the eligible Class Members opt-out of the settlement.

12.2. If this Amended Agreement is terminated pursuant to Sections 9.3 or 12.1, if the Court does not enter a Judgment that is substantially similar to Exhibit 10, or if the Court's Judgment does not become final as a result of an appeal or subsequent proceedings on remand, nothing in this Amended Agreement shall be deemed to prejudice the position of any of the Parties with respect to the Litigation or otherwise, and neither the existence of this Amended Agreement nor its contents shall be admissible in evidence, referred to for any purpose in the Litigation or in any other litigation or proceeding, or be deemed a presumption, concession or admission by Netflix of any fault, liability or wrongdoing, or of the existence of a certifiable class. Notwithstanding the foregoing, the parties retain any and all rights to assert a breach of this Amended Agreement and to use this Amended Agreement in connection with such a claim. Further, notwithstanding the foregoing or any other provision herein to the contrary, the Court may reduce the amount of attorneys' fees and expenses to be awarded to Settlement Class Counsel or incentive award to Class Representative without any further action or agreement by

the Parties and without any impact on the remainder of this Amended Agreement.

12.3. The certification of the Class shall be effective only with respect to this settlement of the Litigation. In the event that the Amended Agreement is terminated pursuant to its terms or the Effective Date does not occur for any reason, the certification of the Class shall be vacated, and the Litigation shall proceed as though this Settlement had not been reached and the Class had never been certified.

13. STAY OF PROCEEDINGS

All proceedings in the Litigation, except as necessary to consummate the settlement for which this Amended Agreement provides will be stayed, unless otherwise ordered by the Court.

14. ADDITIONAL PROVISIONS

14.1. Upon mutual consent of the Parties, which may be withheld by either Party in its sole and absolute discretion, the Parties may issue the joint press release attached hereto as Exhibit 11 upon issuance of the Approval Order. This would be the Parties' only press release concerning the settlement, except that Netflix may issue releases or other announcements reasonably required for SEC or public company reporting purposes. The Parties agree that they will not make any oral or written comments which disparage any of the other Parties or their counsel in connection with any of the facts and circumstances surrounding or relating to this Litigation or this Settlement Agreement.

14.2. This Amended Agreement contains the entire agreement among the Parties hereto and supersedes any prior agreements or understandings between them. All terms of this Amended Agreement are contractual and not mere recitals. The terms are and shall be binding upon each of the Parties hereto, their agents, attorneys, employees, successors, and assigns, and

upon all other persons claiming any interest in the subject matter hereto through any of the Parties hereto, including any Class Member.

14.3. This Amended Agreement may be amended or modified only by a written instrument signed by counsel for all Parties. Amendments and modifications may be made without notice to the Class Members unless the Court requires notice.

14.4. This Amended Agreement shall be subject to, governed by, and construed and enforced pursuant to the laws of the State of California.

14.5. The exhibits to this Amended Agreement are integral parts of the Amended Agreement and Settlement and are hereby incorporated and made a part of this Amended Agreement.

14.6. To the extent permitted by law, this Amended Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of this Amended Agreement.

14.7. This Amended Agreement shall be deemed executed upon the last date of execution by all of the undersigned counsel.

14.8. This Amended Agreement may be executed in counterparts, each of which shall constitute an original. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Amended Agreement may be treated as originals.

14.9. All time periods and dates relating to the approval of this Amended Agreement, attorneys fees and expenses and the notification of the classes (but not those relating to the

substantive rights of the Parties and Class Members, such as those that are part of the class definition) are subject to approval and change by the Court.

14.10. No part of this Amended Agreement shall be admissible against the Parties in this or any court, administrative or other proceeding, except for a proceeding to enforce the terms of this Amended Agreement in this Court and except as set forth in Section 14.6.

SO AGREED.

Dated: ~~February~~, 2006

March 9, 2006

PLAINTIFF

By: 
Frank Chavez

NETFLIX, INC.

Dated: February __, 2006

By: _____

Its: _____

Approved as to form:

GUTRIDE SAFIER LLP

Dated: February __, 2006

By: _____
Adam Gutride
Seth Safier
Attorneys for Plaintiff Frank Chavez

WILSON SONSINI GOODRICH & ROSATI

Dated: February __, 2006

By: _____
Rodney G. Strickland, Jr.
Attorneys for Defendant, Netflix, Inc.

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14.10. No part of this Amended Agreement shall be admissible against the Parties in this or any court, administrative or other proceeding, except for a proceeding to enforce the terms of this Amended Agreement in this Court and except as set forth in Section 14.6.

SO AGREED.

PLAINTIFF

Dated: February __, 2006

By: _____
Frank Chavez

NETFLIX, INC.

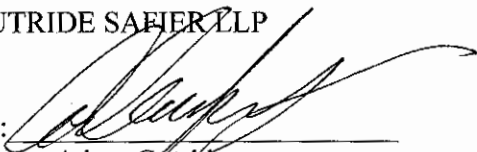
Dated: February __, 2006

By: _____
Its: _____

Approved as to form:

GUTRIDE SAFIER LLP

March 8
Dated: February __, 2006

By: 
Adam Gutride
Seth Safier
Attorneys for Plaintiff Frank Chavez

WILSON SONSINI GOODRICH & ROSATI

Dated: February __, 2006

By: _____
Rodney G. Strickland, Jr.
Attorneys for Defendant, Netflix, Inc.

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14.10. No part of this Amended Agreement shall be admissible against the Parties in this or any court, administrative or other proceeding, except for a proceeding to enforce the terms of this Amended Agreement in this Court and except as set forth in Section 14.6.

SO AGREED.

PLAINTIFF

Dated: February __, 2006

By: _____
Frank Chavez

NETFLIX, INC.

march 8
Dated: ~~February~~ __, 2006

By: *Jennifer Challen*
Its: Associate General Counsel

Approved as to form:

GUTRIDE SAFIER LLP

Dated: February __, 2006

By: _____
Adam Gutride
Seth Safier
Attorneys for Plaintiff Frank Chavez

March
Dated: ~~February~~ 8, 2006

WILSON SONSINI GOODRICH & ROSATI
By: *Rodney G. Strickland, Jr.*
Rodney G. Strickland, Jr.
Attorneys for Defendant, Netflix, Inc.

Exhibits:

1. Original Settlement Agreement
2. October 27, 2005 Preliminary Approval Order
3. Original Long Form Notice
4. Original Summary Notice
5. Amended Long Form Notice
6. Supplemental Summary Notification No. 1 (No Claim Submission)
7. Supplemental Summary Notification No. 2 (Previous Claim Submission)
8. Supplemental Summary Notification No. 3 (Previous Opt-Out)
9. Modified Terms of Use
10. Final Judgment
11. Press Release
12. Attorney's Fees and Costs

CLASS ACTION SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between plaintiff Frank Chavez (“Class Representative” or “Plaintiff”) on behalf of himself, the Settlement Class defined below, and the general public on the one hand, and defendant Netflix, Inc. (“Netflix” or “Defendant”) on the other hand (collectively, the “Parties”).

1. RECITALS

1.1. On or about September 23, 2004, Class Representative filed an action against Defendant entitled *Frank Chavez v. Netflix, Inc., et al.*, in the Superior Court for the City and County of San Francisco, Case No. CGC-04-434884.

1.2. In the Litigation, Class Representative alleged that since April of 2004 he had been a subscriber to Defendant’s online DVD-rental service. Class Representative alleged that in the sale and marketing of its DVD-rental service, Defendant falsely and misleadingly promised that he and other subscribers would receive “unlimited” DVD rentals for a flat monthly fee and that DVDs would be transmitted to him via “one-day delivery.” Class Representative further alleged that Defendant did not perform in accordance with those promises. Class Representative claimed that through its actions, Defendant had breached its contract with him and other subscribers; had engaged in fraud, deceit and misrepresentation; had committed false advertising and unfair trade practices in violation of California Business and Professions Code sections 17500, et seq. and 17200, et seq.; and had violated the California Legal Remedies Act. Class Representative sought restitution, damages, punitive damages, and injunctive relief.

1.3. Defendant denied all the allegations and claims. Defendant also asserted

affirmative defenses.

1.4. On and before January 15, 2005, Defendant modified its Terms of Use to more accurately and adequately describe the process by which the Netflix service works, including the method by which Netflix allocates, delivers and accepts returns of DVDs to and from its subscribers. Defendant acknowledges that the Litigation was a contributing factor in the modification.

1.5. In late 2004 and 2005, the Parties conducted extensive discovery. Defendant produced, and counsel for Class Representative reviewed, approximately 100,000 pages of documents. Both Parties served and answered interrogatories. Defendant deposed Class Representative. Class Representative deposed Netflix, Inc. through five of its employees over the course of seven days. Class Representative also deposed a third party.

1.6. On September 14, 2005, Class Representative filed a motion to certify a class of all similarly situated individuals. The motion has been stayed.

1.7. On August 15 and September 22, 2005, the Parties engaged in arms-length mediation conducted by the Hon. Edward A. Infante (U.S. Magistrate Judge, retired) at JAMS in San Francisco (the "Mediation"), and engaged in additional communications in connection with the Mediation through Judge Infante on other dates in the interim.

1.8. In order to avoid the expense, inconvenience, and interference with ongoing business operations associated with the Litigation, Defendant has concluded after investigation that it is in its best interests to settle the Litigation on the terms set forth below. Settlement Class Counsel and Class Representative have likewise concluded, after due investigation and after carefully considering the relevant circumstances, the Litigation and the applicable law, that it

would be in the best interests of the Settlement Class to enter into this Settlement Agreement in order to avoid the uncertainties of litigation and to assure that the benefits reflected herein are obtained for the Settlement Class. Settlement Class Counsel and the Plaintiff additionally consider the settlement set forth herein to be fair, reasonable, adequate, and in the best interests of the Settlement Class.

1.9. Nothing in this Settlement Agreement shall be used to constitute an admission of liability or be used as evidence of liability. Defendant denies any wrongdoing or liability.

1.10. Each of the terms herein set forth was reached through arms-length negotiations, including without limitation the Mediation. It is agreed by and among the undersigned, on behalf of Defendant, Class Representative, and the Settlement Class, that the Litigation be conditionally settled, compromised and dismissed on the merits and with prejudice, subject to the approval of the Court, on the following terms and conditions:

2. DEFINED TERMS

The following shall be defined terms for purpose of this Agreement:

2.1. "Agreement" or "Settlement Agreement" means this Settlement Agreement, including all exhibits thereto.

2.2. "Class" or "Class Members" or "Settlement Class" means all persons and entities residing in the United States who enrolled in a paid Netflix membership program prior to January 15, 2005 except for Excluded Class Members.

2.3. "Class Benefit" means the benefit provided to Class Members that is set forth in Sections 4.1 and 4.2 of this Agreement.

2.4. "Claim Form Process" means the online settlement registration process required

to be completed by Class Members who wish to redeem the Class Benefit, as set forth in Section 6.1 of this Agreement.

2.5. "Claims Period" means the period beginning on the Notice Date and running until 30 days after Final Approval.

2.6. "Class Action Settlement" means the resolution of the Litigation pursuant to the terms of this Agreement.

2.7. "Class Representative" and "Plaintiff" means Frank Chavez.

2.8. "Current Subscriber Class Members" and "Current Subscribers" mean those Class Members who as of the Preliminary Approval Date are enrolled in a paid membership program.

2.9. "Defendant" means Netflix, Inc.

2.10. "Defendant's Counsel" means the law firm of Wilson Sonsini Goodrich & Rosati.

2.11. "Defendant's Web Site" or "Website" means that Internet web site located at www.netflix.com.

2.12. "Effective Date" means the latest of: (i) the date of final affirmance on an appeal, the expiration of the time for a petition for review, or if review be granted, the date of final affirmance following review pursuant to that grant; (ii) the date of final dismissal of any appeal or the final dismissal of any proceeding on review; or (iii) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from the Superior Court's judgment approving this Agreement.

2.13. "Excluded Class Members" means Netflix; any entity in which Netflix has a controlling interest; Netflix's directors, officers, employees; Netflix's legal representatives; Judge Thomas Mellon of the Superior Court of the City and County of San Francisco 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 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 the Long Form Settlement Notice.

2.14. “Final Approval” means issuance of judgment granting final approval of this Class Action Settlement.

2.15. “Former Subscriber Class Members” and “Former Subscribers” mean those Class Members who as of the Preliminary Approval Date are not enrolled in a paid Netflix membership program.

2.16. “Litigation” means Frank Chavez v. Netflix, Inc., et al., in the Superior Court for the City and County of San Francisco, Case No. CGC-04-434884.

2.17. “Long Form Settlement Notice” means the Notice attached hereto as Exhibit 1.

2.18. “Notice Date” means the first day which the Defendant initiates delivery of Summary Notice as set forth in Section 5.1 of this Agreement.

2.19. “Parties” means Plaintiff and Defendant, collectively.

2.20. “Preliminary Approval Date” means the date upon which the Court issues an order granting Preliminary Approval.

2.21. “Preliminary Approval” means the preliminary approval of this Class Action Settlement.

2.22. “Released Claims” means the claims released as set forth in Section 7 of this Agreement.

2.23. "Released Parties" means the Parties and the Class Members and all of their past and present officers, directors, agents, designees, servants, sureties, attorneys, employees, parents, associates, controlling or principal shareholders, general or limited partners or partnerships, subsidiaries, divisions, affiliates, insurers, heirs, and all successors or predecessors in interest, assigns, or legal representatives.

2.24. "Settlement Class Counsel," "Class Counsel" or "Plaintiff's Counsel" means the Law Offices of Adam Gutride and the Law Offices of Seth A. Safier.

2.25. "Settlement Website" means the website which contains links to the Claim Form Process and as otherwise described in Section 5.2.

2.26. "Summary Notice" means the Notice attached hereto as Exhibit 2.

2.27. "Terms of Use" means the online statement posted by Defendant governing the terms of use of Defendant's service. See <http://www.netflix.com/TermsOfUse>.

3. INJUNCTIVE RELIEF

3.1. By or on the Effective Date, Netflix shall modify its current Terms of Use in the manner attached hereto as Exhibit 3. Netflix retains discretion to otherwise modify its Terms of Use in any manner that it deems appropriate.

3.2. Netflix shall include the following language in advertisements produced after the Effective Date and which contain the terms "Unlimited Rentals," "Rent all you want," "Rent as many DVDs as you want," "about one business day" delivery, or "one day" delivery:

3.2.1. In direct mail and print advertisements, Netflix shall include, in a location selected by Netflix, "See Terms of Use for Details."

3.2.2. In television advertisements, Netflix shall include, in a location and time

selected by Netflix, "See Terms of Use for Details."

3.2.3. In radio advertisements, Netflix shall include, in a location and time selected by Netflix, "See Terms of Use."

3.3. The requirements of Sections 3.1 and 3.2 shall remain in place for one year from the Effective Date.

4. BENEFIT FOR SETTLEMENT CLASS

4.1. Former Subscriber Class Members who have timely and accurately completed the Claim Form Process shall be entitled to receive a free one month Netflix membership of the 1, 2 or 3 DVDs at-a-time unlimited program (at the Former Subscriber Class Member's election). Netflix shall be permitted to automatically renew the service at the end of the free month at the level chosen by the Former Subscriber Class Member at Netflix's regular subscription rate, unless and until the Class Member cancels the service or modifies his or her subscription.

4.2. Current Subscriber Class Members who have timely and accurately completed the Claim Form Process shall be entitled 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 unlimited program) without a change in the price of their existing (non-upgraded) program 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 month 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. Those Current Subscriber Class Members enrolled in the 8 DVDs at-a-time unlimited program shall be entitled to receive one month of a 9 DVDs at-a-time unlimited program and will return to the 8 DVDs at-a-time unlimited program at the end of the upgraded month. For all but the 8

DVDs at-a-time Current Subscriber Class Members, Netflix shall be permitted to automatically renew the upgraded service automatically at the end of the upgraded month at Netflix's regular subscription rate for the upgraded program, unless and until the Class Member cancels the service or modifies his or her subscription.

4.3. No less than four (4) nor more than seven (7) days before the end of the Class Benefit for each Class Member, Netflix will send an email to the Class Member reminding the Class Member that he or she may elect not to renew the service at the benefit level. Such email shall, at a minimum, inform the Class Member of (1) the program/service level in which the Class Member is enrolled pursuant to this Class Action Settlement, (2) the date upon which the membership/service level will renew, (3) the price that the Class Member will be charged for continuing enrollment/upgraded service level and (4) the method for the Class Member to modify or cancel the membership/upgraded service level.

4.4. Class Members' status as a Former Subscriber or Current Subscriber will be determined as of October 19, 2005 (the date of the hearing on plaintiff's motion for Preliminary Approval). Class Members have the right to modify or cancel their subscriptions to Netflix at any time by using Netflix's regular methods for subscription modifications and cancellations subject to this Section 4.4 and Section 4.5. In the event that a Former Subscriber re-joins the Netflix service following October 19, 2005 and prior to receiving the benefit, that Former Subscriber will be entitled to the Class Benefit described in Section 4.1, above, except that those Former Subscribers 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 six-

month period described in Section 6.2. In the event that a Current Subscriber cancels the service after October 19, 2005 and prior to receiving the upgrade benefit, that Class Member shall be entitled to the Class Benefit described in Section 4.2, above, but only in the event that such Class Member re-joins the service as a paying member prior to or on the date such Class Member's Class Benefit would otherwise begin as described in Section 6.3.

4.5. 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.

5. NOTICE

5.1. As soon as possible but not later than fourteen (14) days following Preliminary Approval, Netflix will initiate delivery of the Summary Notice by electronic mail to the last known electronic mail address of each Former Subscriber Class Member and to the email address in the account records for each Current Subscriber Class Member in batches of approximately one million notices per day until all notices have been sent. In the event that an electronic mail message to a Former Subscriber Class Member is automatically returned to Netflix and reasonably determined by Netflix to be "undeliverable," Netflix shall deliver the Summary Notice by first-class U.S. mail to the last known residence address of that Former Subscriber Class Member no later than 20 days after the last batch of emails has been sent. The Summary Notice shall contain a link to the Settlement Website.

5.2. The Settlement Website shall have the structure substantially in the form of the Claim Form Process, contain links to this Agreement, the Long Form Settlement Notice, and the revised Terms of Use, and contain such other text per the mutual agreement of the Parties consistent with the terms of this Agreement.

5.3. During the Claims Period, Netflix shall post a hyperlink on the bottom of the home page of Defendant's Website that links the home page to the Settlement Website.

5.4. Netflix shall be responsible for making all arrangements necessary to deliver the Summary Notice described herein and for payment of the costs of such delivery.

6. REDEMPTION OF BENEFIT BY CLASS MEMBERS

6.1. In order to receive the Class Benefit, each Class Member must, during the Claims Period, timely and accurately complete the Claim Form Process on the Settlement Website. The Claim Forms Process requires all Class Members to do the following online at the Settlement Website: (1) provide their name, postal address, telephone number, e-mail address and password associated with their Netflix account; (2) acknowledge their status as a current or former member, as applicable, (3) confirm they have not received or accepted duplicative offers; and (4) attest, under penalty of perjury, that they have read and agreed to the terms of this settlement, specifically including the release, and that the information provided is correct. The conclusion of the Claim Form Process will notify the Class Members whether or not their information was successfully entered and will inform the Class Members that their claim will be subject to review and confirmation until the Effective Date.

6.2. Former Subscribers who timely and accurately complete the Claim Form Process will receive by electronic mail instructions for redeeming the Class Benefit. Netflix will send the

redemption email by the later of five (5) days after (i) the Effective Date or (ii) the date upon which the Former Subscriber Class Member timely and accurately completed the Claim Form Process. Former Subscriber Class Members will be eligible to redeem the Class Benefit set forth in Section 4.1, above one time during the six months following the Effective Date by completing Netflix's sign-up process (which requires confirmation of account information and entry of a valid credit or debit card number).

6.3. Current Subscribers who timely and accurately complete the Claim Form Process will receive the upgrade benefit automatically on a particular billing date for the Current Subscriber's account within ninety (90) days following the Effective Date, such date to be determined by Netflix and notified to the Current Subscribers.

6.4. Any Former Subscriber Class Member who owes Netflix money as a result of his or her prior membership (e.g., for unreturned disks or unpaid membership fees) shall remain liable to Netflix, and Netflix shall have the right to charge said Former Subscriber Class Member's credit or debit card for any unpaid amounts upon receipt of the Former Subscriber Class member's payment information. Netflix will act in good faith to resolve any disputes with Former Subscriber Class Members regarding unpaid amounts.

6.5. Netflix shall be responsible for all costs of handling the Claim Form Process, providing the electronic mails, and administering the Class Benefit redemption process described herein.

7. RELEASES

7.1. Except as set forth in Section 6.4, Netflix and the Class Representative (for himself and as representative of the Settlement Class, and on behalf of each Class Member), and their respective agents, successors, heirs, or assigns, shall be deemed to have, and by operation of the Final Approval, shall have fully, finally, and forever irrevocably released, relinquished and discharged with prejudice the Released Parties from any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, restitution, disgorgement, costs, attorneys' fees, losses, expenses, obligations or demands, of any kind whatsoever, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis or on behalf of the general public, whether known or unknown, suspected or unsuspected, threatened, asserted or unasserted, actual or contingent, liquidated or unliquidated, whether under federal statutory law, federal common law or federal regulation, or the statutory or common laws or regulations of any and all states or subdivisions, which are alleged or could have 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 ("Released Claims"). By operation of the Final Approval, 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.

7.2. Although the releases provided in this Agreement are not general releases, Defendant, the Class Representative (for himself and as representative of the Settlement Class), 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.

8. PAYMENTS TO CLASS REPRESENTATIVE AND COUNSEL

8.1. Subject to Court approval, Netflix shall pay a \$2,000.00 incentive award to the Class Representative.

8.2. Subject to Court approval, Netflix agrees to pay Class Counsel up to, and will not contest the reasonableness of, \$2,528,000 in attorneys' fees and costs.

8.3. The incentive award and attorneys fees and costs will be paid within seven (7) days of the Effective Date unless another time is agreed by Plaintiff's Counsel and Defendant's Counsel.

9. PROCEDURE FOR CLASS CERTIFICATION AND APPROVAL, SEVERANCE, AND APPOINTMENT OF COUNSEL

9.1. Plaintiff will prepare and submit to the Court motions for Preliminary and Final Approval and for an award of attorneys' fees consistent with the terms of this Agreement. Netflix will submit requests that the Court issue Preliminary and Final Approval consistent with the terms of this Agreement.

9.2. The Parties agree to jointly request that the Court enter an order in the form attached as Exhibit 4 (the "Preliminary Approval Order").

9.3. Plaintiffs, the Defendant, Settlement Class Counsel, and Defendant's Counsel agree to recommend approval of and to support this Settlement Agreement to the Court and to the Class Members and to undertake all reasonable steps and efforts contemplated by this Settlement Agreement and any other reasonable steps and efforts that may be necessary or appropriate, by order of the Court or otherwise, to carry out the terms of this Settlement Agreement. The Parties shall cooperate, assist and undertake all reasonable actions in order to accomplish the above on a timely basis in accordance with the schedule established by the Court.

9.4. Defendant is entitled to communicate with the Class Members about this Class Action and this Settlement Agreement in the ordinary course of Defendant's business. However, the Defendant will not aid or encourage any objections to this Settlement Agreement (or any of its terms or provisions) nor to final certification of the Settlement Class, nor encourage any Class Members to elect to opt-out.

9.5. Settlement Class Counsel shall make every reasonable effort to encourage Class Members to participate and not to opt-out. In addition, Settlement Class Counsel shall make all reasonable efforts to enforce the jurisdictional and injunctive provisions of this Settlement Agreement. Any time and expense incurred by the Plaintiffs and Settlement Class Counsel to enforce the jurisdictional and injunctive provisions shall be deemed to be within the fees and costs awarded by the Court pursuant to Section 8.2 of this Agreement.

9.6. Upon the Court's final approval of this Agreement and the settlement set forth herein, a judgment in the form attached hereto as Exhibit 5 shall be entered.

10. DENIAL OF WRONGDOING

Defendant denies all liability with respect to this Litigation. Defendant enters into this Agreement without in any way acknowledging any wrongdoing or liability of any kind. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendant of the truth of any of the allegations in this Action.

11. TERMINATION OF AGREEMENT

11.1. Netflix shall have the right to terminate this Agreement and the settlement in the event that greater than 5% of the eligible Class Members opt-out of the settlement.

11.2. If this Agreement is terminated pursuant to Section 11.1, if the Court does not enter the Preliminary Approval Order that is substantially similar to the order attached hereto as Exhibit 4, if the Court does not enter a Final Approval Order that is substantially similar to Exhibit 5, or if the Court's Final Approval Order does not become final as a result of an appeal or subsequent proceedings on remand, nothing in this Agreement shall be deemed to prejudice the position of any of the Parties with respect to the Litigation or otherwise, and neither the existence of this Agreement nor its contents shall be admissible in evidence, referred to for any purpose in the Litigation or in any other litigation or proceeding, or be deemed a presumption, concession or admission by Netflix of any fault, liability or wrongdoing, or of the existence of a certifiable class. Notwithstanding the foregoing, the parties retain any and all rights to assert a breach of this Agreement and to use this Agreement in connection with such a claim. Further, notwithstanding the foregoing or any other provision herein to the contrary, the Court may reduce the amount of attorneys' fees and costs to be awarded to Settlement Class Counsel or incentive award to Class Representative without any further action or agreement by the Parties

and without any impact on the remainder of this Agreement.

11.3. The certification of the Class shall be effective only with respect to this settlement of the Litigation. In the event that the Agreement is terminated pursuant to its terms or the Effective Date does not occur for any reason, the certification of the Class shall be vacated, and the Litigation shall proceed as though this Settlement had not been reached and the Class had never been certified.

12. STAY OF PROCEEDINGS

All proceedings in the Litigation, except as necessary to consummate the settlement for which this Agreement provides will be stayed, unless otherwise ordered by the Court.

13. ADDITIONAL PROVISIONS

13.1. The Parties will issue the joint press release attached hereto as Exhibit 6 upon Final Approval. This will be the Parties' only press release concerning the settlement, except that Netflix may issue releases or other announcements reasonably required for SEC or public company reporting purposes. Any other public statements concerning this Agreement shall be limited to the content of the press release.

13.2. This Agreement contains the entire agreement among the Parties hereto and supersedes any prior agreements or understandings between them. All terms of this Agreement are contractual and not mere recitals. The terms are and shall be binding upon each of the Parties hereto, their agents, attorneys, employees, successors, and assigns, and upon all other persons claiming any interest in the subject matter hereto through any of the Parties hereto, including any Class Member.

13.3. This Agreement may be amended or modified only by a written instrument signed

by counsel for all Parties. Amendments and modifications may be made without notice to the Class Members unless the Court requires notice.

13.4. This Agreement shall be subject to, governed by, and construed and enforced pursuant to the laws of the State of California.

13.5. The exhibits to this Agreement are integral parts of the Agreement and Settlement and are hereby incorporated and made a part of this Agreement.

13.6. To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of this Agreement.

13.7. This Agreement shall be deemed executed upon the last date of execution by all of the undersigned counsel.

13.8. This Agreement may be executed in counterparts, each of which shall constitute an original. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals.

13.9. All time periods and dates relating to the approval of this Agreement, attorneys fees and costs and the notification of the classes (but not those relating to the substantive rights of the Parties and Class Members, such as those that are part of the class definition) are subject to approval and change by the Court.

13.10. No part of this Agreement shall be admissible against the Parties in this or any court, administrative or other proceeding, except for a proceeding to enforce the terms of this Agreement in this Court and except as set forth in Section 13.6.

SO AGREED.

Dated: October 25, 2005

PLAINTIFF

By: 
Frank Chavez

NETFLIX, INC.

Dated: October __, 2005

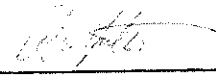
By: _____

Its: _____

Approved as to form:

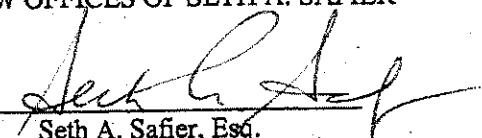
LAW OFFICES OF ADAM GUTRIDE

Dated: October 25, 2005

By: 
Adam Gutride, Esq.
Attorneys for Plaintiff Frank Chavez

LAW OFFICES OF SETH A. SAFIER

Dated: October 21, 2005

By: 
Seth A. Safier, Esq.
Attorneys for Plaintiff Frank Chavez

WILSON SONSINI GOODRICH & ROSATI

Dated: October __, 2005

By: _____
Rodney G. Strickland, Jr.
Attorneys for Defendant, Netflix, Inc.

SO AGREED.

Dated: October __, 2005

Dated: October __, 2005

Approved as to form:

Dated: October __, 2005

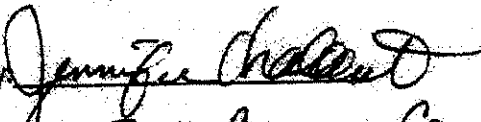
Dated: October __, 2005

Dated: October 25, 2005

PLAINTIFF

By: _____
Frank Chavez

NETFLIX, INC.

By: 
Its: Senior Corporate Counsel

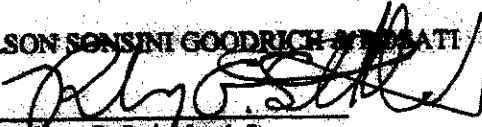
LAW OFFICES OF ADAM GUTRIDE

By: _____
Adam Gutride, Esq.
Attorneys for Plaintiff Frank Chavez

LAW OFFICES OF SETH A. SAFIER

By: _____
Seth A. Safier, Esq.
Attorneys for Plaintiff Frank Chavez

WILSON SONSINI GOODRICH & PATTON

By: 
Rodney G. Strickland, Jr.
Attorneys for Defendant, Netflix, Inc.

FILED
San Francisco County Superior Court

OCT 27 2005

GORDON PARK-LI, Clerk
BY: 
V. MACK Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

**FRANK CHAVEZ, an individual, and
California resident, on behalf of
himself, those similarly situated, and
the general public,**

Plaintiff,

v.

**NETFLIX, INC., a foreign
corporation; and DOES 1 THROUGH
10,**

Defendants

CASE NO. CGC-04-434884

CLASS LITIGATION

Litigation Filed: September 23, 2004

PRELIMINARY APPROVAL ORDER

Date: October 19, 2005

Time: 2:00 pm

Dept.: 514

WHEREAS, a class action lawsuit is pending before this Court entitled
Frank Chavez v. Netflix, Inc., Case No CGC-04-434884 (the "Litigation"); and

WHEREAS, the parties have applied to the Court for an Order approving a settlement of the Litigation in accordance with a Class Action Settlement Agreement dated as of October 17, 2005, which has been entered into by Plaintiff, on behalf of himself and the Settlement Class defined therein, and Defendant; and

WHEREAS, the Court has read and considered the October 17, 2005, Class Action Agreement and its attached exhibits, and has listened to and considered the arguments of counsel for the parties at a hearing held on October 19, 2005 in this matter; and

WHEREAS, in response to the Court's requests, the Parties have modified their settlement agreement and entered into the Class Action Settlement Agreement dated October 25, 2005 ("the Agreement"), a copy of which was provided to the Court with plaintiff's supplemental submission, which the Court has considered, and good cause appearing,

IT IS HEREBY ORDERED AS FOLLOWS:

1. This Order incorporates by reference the definitions set forth in the Agreement. Unless otherwise defined, all terms used herein shall have the same meaning as set forth in the Agreement.

2. The Court preliminarily certifies the Settlement Class, for settlement purposes only, consisting of:

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 the Class Notice.

The Litigation is certified as a class action for purposes of settlement only, pursuant to Section 382 of the California Code of Civil Procedure and Section 1781 of the California Civil Code. If the Agreement is not approved by the Court or does not become effective for any reason, the Agreement and any class certification herein shall be terminated.

3. The proposed settlement set forth in the Agreement is hereby preliminarily approved as being within the range of reasonableness such that notice thereof should be given to the Settlement Class. The Court finds that the proposed settlement results from extensive arms-length negotiations, including mediation before Judge Edward Infante (Ret.) at JAMS, between counsel for the parties and only after counsel conducted a thorough examination and review of the relevant law, facts and allegations to assess the merits of Plaintiff's claims.

4. The Court preliminarily approves Plaintiff Frank Chavez as class representative, and preliminarily approves Plaintiff's attorneys, Adam Gutride, the Law Offices of Adam Gutride, and Seth A. Safier, the Law Offices of Seth A. Safier, as Settlement Class Counsel in this Litigation.

5. A final hearing (the "Settlement Hearing") shall be held before this Court on January 18, 2006, at 2:00 p.m. to determine: (1) whether the proposed settlement of the Litigation as set forth in the Settlement Agreement is just, fair, reasonable and adequate for the Class and should be granted final approval; (2) whether certification of the Class should be made final; (3) whether the Court should enter the proposed judgment dismissing the Litigation with prejudice; (4) whether the Court should award Plaintiff's Counsel attorneys' fees and costs in the amount set forth in the Settlement Agreement; and (5) whether the Court should award Plaintiff \$2,000 for his time and effort in the Litigation. The Settlement Hearing may be postponed, adjourned, or rescheduled by the Court without further notice to the Settlement Class.

6. The Court approves as to form and content the Notice of Class Action and Proposed Settlement (the "Long Form Notice"), in the form of Exhibit A to this Order, and the Summary (Email) Notice of Class Action and Proposed Settlement (the "Summary Notice"), in the form of Exhibit B to this Order. The Court finds that the Long Form Notice and Summary Notice are written in plain English and are readily understandable by Class Members. The Court finds that the Long Form Notice and Summary Notice fairly apprise the Class Members: (1) of the pendency of the Litigation; (2) of their right to exclude themselves from the Class and the proposed settlement; (3) that any judgment will bind all Class

Members who do not request exclusion; and (4) that any Class Member may object to the settlement.

7. The Court finds that the method of publication of the Summary Notice to the Settlement Class in the form and manner and in accordance with the timing set forth in the Agreement is the best notice practicable under the circumstances, and shall constitute valid, due and sufficient notice to all Class Members in the Settlement Class, and that such notice complies with California Code of Civil Procedure § 382, the Constitution of the State of California, the Constitution of the United States and all other applicable laws.

8. The Court approves for submission to the Settlement Class the online Claim Form Process as described in the Agreement.

9. Defendant is ordered to deliver the Summary Notice to all Class Members in the form and in accordance with the timing set forth in the Agreement.

10. Any person legally entitled to object to the approval of the proposed settlement may appear at the Settlement Hearing and object to the proposed settlement or any part thereof. However, objections to the proposed settlement shall be heard, and any papers or briefs submitted in support of said objections shall be considered by the Court (unless the Court in its discretion shall otherwise direct), only if, on or before January 5, 2006, said objectors have filed with the Court written notice of their intention to appear and all papers and briefs they

propose to discuss at the Settlement Hearing, including a written statement setting forth: (1) the name, address, email address, and telephone number (a) associated with the Class Member's Netflix account and (b) at the current time, if different, (2) a reference this Litigation (i.e., Chavez v. Netflix, Inc., Case No. CGC-04-434884), (3) approximately when the Class Member became a Netflix member, if and when the account was canceled, and what service level(s) the Class Member subscribed to and (4) the objection/intervention, comments and supporting arguments, and cause copies thereof to be actually delivered by January 5, 2006 (or mailed via first class mail on or before December 28, 2005), to the following:

Counsel for Plaintiff

**THE LAW OFFICES OF ADAM
GUTRIDE**
Adam Gutride, Esq.
835 Douglass Street
San Francisco, CA 94114

Counsel for Defendant

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

THE LAW OFFICES OF SETH SAFIER
Seth A. Safier, Esq.
6467 California
San Francisco, California 94121

11. All requests for exclusion from the Settlement Class must be delivered to Netflix Opt-Out, 5654 Geary Blvd., #210511, San Francisco, CA 94121 by January 6, 2006 or if mailed, post-marked on or before December 28, 2005. The request for exclusion must include a written, signed request to be excluded from the Class, stating (1) the Class Member's name, address, email address, and

telephone number (a) associated with the Netflix account and (b) at the current time, if different, (2) a reference to the Litigation (i.e., Chavez v. Netflix, Inc., Case No. CGC-04-434884), (3) approximately when the Class Member became a Netflix member, if and when the account was canceled, and what service level(s) the Class Member subscribed to and (4) that the Class Member wishes to be excluded from the Class.

12. No later than three days prior to the Settlement Hearing, counsel for the parties shall file a joint status report on the number of opt-outs. The parties' counsel shall also file any supplemental briefs in support of the settlement by that date.

13. To the extent permitted by law, pending final determination of whether the settlement contained in the Agreement should be approved, neither Plaintiff nor any member of the Settlement Class either directly, indirectly, representatively, or in any other capacity shall commence or prosecute, nor cause to be commenced or prosecuted, any litigation or proceeding in any court or tribunal asserting any of the Released Claims against Defendants, or any of them, unless such member of the Settlement Class shall have sought and received leave from this Court on such terms as are just, including, without limitation, being required to file a request for exclusion from the Settlement Class.

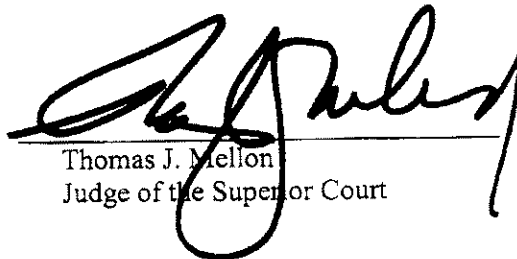
14. The Agreement and settlement are not to be deemed admissions of

wrongdoing, liability or fault by Defendants, or a finding of the validity of any claims in the Litigation. The Agreement and settlement are not a concession by the parties and to the extent permitted by law, neither the Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received in evidence in any pending or future civil, criminal, or administrative Litigation or proceeding, except in a proceeding to enforce the Agreement or Final Approval, or to defend against the assertion of the Released Claims, or as otherwise required by law.

15. This Order shall be vacated, and shall be without prejudice to the rights of the parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order if, for any reason, the Agreement is terminated pursuant to Section 11.1 thereof or the Effective Date does not occur. In such event, the Litigation shall proceed as though the Settlement Class had never been certified and the Defendants will not be deemed to have consented to certification of any class and will retain all rights to fully object to or oppose any motion for class certification.

IT IS SO ORDERED.

Dated: Oct 27, 2005


Thomas J. Mellon
Judge of the Superior Court

NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT
("NOTICE")

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.

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"). This Notice explains the nature of the Litigation, general terms of a proposed settlement, and informs you of your legal rights and obligations. Unless otherwise set forth, this Notice incorporates by reference the definitions set forth in the Class Action Settlement Agreement which you can review at www.netflixsettlement.com.

Frank Chavez ("Plaintiff") filed a class action lawsuit against Netflix, Inc. ("Defendant" or "Netflix") on behalf of the Class described above. Plaintiff alleged that Defendant did not perform in accordance with certain statements made in its marketing materials, including statements concerning "unlimited" DVD rentals and "one-day delivery." Defendant denies Plaintiff's allegations, further denies any wrongdoing and any liability whatsoever and believes it has many defenses to all of the claims asserted by Plaintiff. Defendant believes that its marketing and advertising complied in all respects with the law and that no Class Members, including the Plaintiff, have sustained any damages or injuries related to its actions or omissions.

Plaintiff's Counsel have investigated and evaluated the claims asserted in the Litigation and have determined that the settlement detailed herein is fair, reasonable and adequate. All parties recognize and acknowledge the uncertainty, risks, difficulties, delays and expenses involved in litigation.

Judge Thomas J. Mellon of the San Francisco Superior Court (also referred to as the "Court") has determined that this Litigation should proceed as a class action, for purposes of settlement only, with Plaintiff as the representative of the Class, and has granted preliminary approval of this settlement.

II. Class Members.

The Court has conditionally 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. If this settlement is finally approved by the Court, Netflix has agreed to provide Class Members who timely and accurately complete the online Claim Form Process at www.netflixsettlement.com with the applicable "Class Benefit" described below. Your eligibility for the benefits is based on your membership status as of October 19, 2005.

1. 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 month 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. Those Current Subscribers Class Members enrolled in the 8 DVDs at-a-time unlimited program shall be entitled to receive one month of a 9 DVDs at-a-time unlimited program and will return to the 8 DVDs at-a-time unlimited program at the end of the upgraded month. For all but the 8 DVDs at-a-time subscribers, the upgraded service shall renew automatically (following an email reminder) at the end of the upgraded month at Netflix's regular subscription rate for the upgraded program, unless and until the Class Member cancels the service or modifies his or her subscription.
2. 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). The service shall renew automatically (following an email reminder) at the end of the free month at the level chosen by the Former Subscriber Class Member at Netflix's regular subscription rate, unless and until the Class Member cancels the service or modifies his or her subscription.

A Current Subscriber Class Member who cancels the service following October 19 but prior to receiving the Class Benefit shall be entitled to the Class Benefit described in paragraph (1) 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.

A Former Subscriber Class Member who re-joins the Netflix service following October 19 but prior to receipt of the Class Benefit shall be entitled to the Class Benefit described in paragraph (2), above, 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 six-month period described in paragraph IV.C. below.

B. In addition, if this settlement is finally approved by the Court, 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.netflixsettlement.com.

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.netflixsettlement.com no later than thirty days after Final Approval. Class Members who do not do so prior to thirty days after Final Approval will not be eligible to receive the Class Benefit. Class Members must complete the online Claim Form Process by (1) providing the name, postal address, telephone number, e-mail address and password associated with their Netflix account; (2) acknowledging their status as a current or former member, as applicable, (3) confirming they have not received or accepted duplicative offers; and (4) attesting, under penalty of perjury, that they have read and agreed to the terms of this settlement, specifically including the release, and that the information 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. Each Current Subscriber Class Member who timely and accurately completes the Claim Form Process will receive an upgrade to his or her service level automatically on a particular billing date for the Current Subscriber Class Member's account within 90 days following the Effective Date. This date will be determined by Netflix and notified to the Current Subscriber Class Member by email. 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 six-month period through the Netflix sign-up process (which requires confirmation of account information and entry of a valid credit or debit card number). Any Former Subscriber Class Member who owes Netflix money as a result of his or her prior membership (e.g., for unreturned disks or unpaid membership fees) shall remain liable to Netflix, and Netflix shall have the right to charge said Former Subscriber Class Member for any unpaid amounts upon receipt of the Class Member's payment information. Netflix will act in good faith to resolve any disputes with Former Subscriber Class Members regarding unpaid amounts.

C. Receipt of Benefit. The Class Benefit will not be made available to any Class Member until the Effective Date, as described in the Class Action Settlement Agreement. In addition, the Class Benefit will only be available during the time periods described above (on the identified billing date during a 90 day period for Current Subscriber Class Members, and one time during a six-month period for Former Subscriber Class Members).

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.

If the Court approves this settlement, it 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 Defendant and each of its past or present officers, directors, employees, agents,

representatives, parents, subsidiaries, affiliates, and each of its predecessors, successors, heirs and assigns 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 or could have been alleged or is otherwise referred to 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.

Plaintiff's Counsel have not received payments for their services, nor have they been reimbursed for any out-of-pocket expenses, in connection with this Litigation. If the Court approves this settlement, Plaintiff's Counsel will ask the Court to award, and Defendant has agreed to pay, up to \$2,528,000 in attorney's fees and costs. Additionally, Plaintiff's Counsel will ask the Court to award, and 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.

An 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. Other than as set forth in Section VIII.B. below, 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 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 Plaintiff's Counsel. You, however, will not be charged for the services or expenses of Plaintiff's Counsel. You must comply with the Claims Process and Deadline requirements described above to receive the Class Benefit.

Plaintiff's Counsel include the following attorneys and law firms, who will serve as Plaintiff's co-lead counsel:

THE LAW OFFICES OF ADAM GUTRIDE
Adam Gutride, Esq.
835 Douglass Street
San Francisco, CA 94114

THE LAW OFFICES OF SETH SAFIER
Seth A. Safier, Esq.
6467 California
San Francisco, California 94121

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 this settlement is approved by Judge Mellon and the 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 this settlement is not granted final approval, or this settlement is granted final approval but the 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.

3. 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 heirs, 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 delivered to Netflix Opt-Out 5654 Geary Blvd., #210511, San Francisco, CA 94121, by January 6, 2006, or if mailed, post-marked on or before December 28, 2005. 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.

C. Intervene In The Litigation And/Or Object to the Settlement. You have the right to intervene in the Litigation and object to, or comment on, this settlement, award of attorneys' fees and cost or payment to the Plaintiff as set forth in Section VIII.B., below.

VIII. Final Settlement Hearing and Settlement Objections.

A. Settlement Hearing.

On January 18 at 2 p.m., a public Settlement Hearing will be held before Judge Mellon in Department 514 of the San Francisco Superior Court, located at 400 McAllister Street, San Francisco,

California. The Settlement Hearing will determine: (1) whether this settlement of the Litigation as set forth in the Class Action Settlement Agreement is just, fair, reasonable and adequate for the Class and should be granted final approval; (2) whether certification of the Class should be made final; (3) whether the Court should enter the proposed judgment dismissing the Litigation with prejudice; (4) whether the Court should award Plaintiff's Counsel attorneys' fees and costs in the amount set forth in the Class Action Settlement Agreement, or some lesser amount; and (5) whether the Court should award Plaintiff \$2,000 for his time and effort in the Litigation. You are not required to attend the Settlement Hearing.

B. Objection Procedure and Deadline.

1. If you are a Class Member, you have the right to intervene in or object to this settlement. To do so, you must submit a written statement setting forth: (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 this 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) your objection/intervention, comments and supporting arguments to:

Clerk of the San Francisco Superior Court, Room 103
San Francisco Superior Court
400 McAllister Avenue
San Francisco, CA 94111

You must also mail or otherwise deliver identical copies of your written submission to Plaintiff's Counsel and Netflix's Counsel at the addresses set forth above. Your written objection or request to intervene must be received by the Court by January 5, 2006. Your submission to the Court must include a certification that you have caused identical copies to be delivered to Plaintiff's Counsel and Netflix's Counsel on or before January 5, 2006 (or mailed to them via first class mail on or before December 28, 2005). You cannot object or request to intervene if you have opted out of the class. Only those that remain in the Class may object to this settlement or request to intervene.

2. You may also attend the Settlement Hearing either in person or through an attorney retained by you at your own expense. You may ask to be heard by Judge Mellon at the Settlement Hearing. In order to be heard, however, you must have submitted a written objection or request to intervene in compliance with paragraph (1), above **and** include in your comments a statement that you intend to appear and wish to be heard at the Settlement Hearing.

IX. Additional Information and Important Dates.

A. Additional Information.

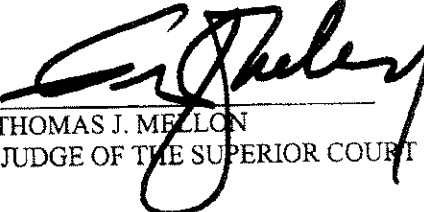
The description of the Litigation set forth in this notice is general and does not cover all of the issues and proceedings thus far. If you have additional questions you can contact Plaintiff's Counsel or see the complete file by visiting the office of the Clerk of the Court in Department 103 of the 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.

- **January 6, 2006 is the deadline to Opt-Out of this settlement (December 28, 2005 if mailed)**
- **January 5, 2006 is the deadline for filing an Intervention/Objection.**
- **January 18, 2006 is the Final Hearing Date.**
- **Thirty Days After the Final Hearing Date 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: October 27, 2005

By: Order of the San Francisco Superior Court


THOMAS J. MELLON
JUDGE OF THE SUPERIOR COURT

From: info@netflix.com

Subject: Notice of Class Action Settlement. Please Read.

You are receiving this notice because you were a paid Netflix member before January 15, 2005. Under a proposed class action settlement, you may be eligible to receive a free benefit from Netflix.

A class action lawsuit entitled Chavez v. Netflix, Inc. was filed in San Francisco Superior Court (case number CGC-04-434884) on September 23, 2004. The lawsuit alleges that Netflix failed to provide “unlimited” DVD rentals and “one day delivery” as promised in its marketing materials. Netflix has denied any wrongdoing or liability. The parties have reached a settlement that they believe is in the best interests of the company and its subscribers.

Netflix will provide eligible subscribers with the benefit described below, if the settlement is approved by the Court.

- **Current Netflix Members:** If you enrolled in a paid membership before January 15, 2005 and were a member on October 19, 2005, you are eligible to receive a free one-month upgrade in service level. For example, if you are on the 3 DVDs at-a-time program, you will be upgraded to the 4 DVDs at-a-time program for one month. There will be no price increase during the upgraded month. (If you cancel your membership after October 19, 2005 and before you receive the upgrade, you will have to rejoin to get the upgrade.)
- **Former Netflix Members:** If you enrolled in a paid membership before January 15, 2005 but were not a member on October 19, 2005, you are eligible to receive a free one-month Netflix membership on your choice of the 1, 2 or 3 DVDs at-a-time unlimited program. (If you rejoin after October 19, 2005 but before you receive the free one-month membership, you will receive a credit for the free month when it becomes available.)

These benefits will be provided after the Effective Date as defined in the Settlement Agreement. Your eligibility for the benefits is based on your membership status as of October 19, 2005. The full Settlement Agreement is available for review at www.netflixsettlement.com.

You have four options to respond to the proposed settlement. You have until December 28, 2005 to make your decision:

Option 1. Sign Up For The Benefit As Part Of The Settlement

To receive the benefit, you must complete the online registration process no later than February 17, 2006, at www.netflixsettlement.com. By signing up for the benefit, you waive your right to bring a separate lawsuit against Netflix concerning the Released Claims (as defined in the Settlement Agreement found at www.netflixsettlement.com).

Option 2. Do Nothing

If you do not wish to receive the benefit, do nothing. You will not receive the benefit but will remain a Class Member. You therefore waive your right to bring a separate lawsuit against Netflix concerning the Released Claims.

Option 3. Exclude Yourself From the Class

To exclude yourself from the class, you must mail a letter by December 28, 2005.

By excluding yourself, you preserve your right to bring a lawsuit against Netflix concerning the Released Claims. However, you will not get the benefit described above.

Option 4. Make An Objection To The Settlement In Court

To object to the settlement, you must file legal papers in the San Francisco Superior Court by January 5, 2006.

To receive your benefit, you must register by February 17, 2006 as described above in Option 1. You will not receive any other reminders to register for the benefit. If you have registered for the benefit and your eligibility is confirmed, then you will be provided additional information by email following the Effective Date as defined in the Settlement Agreement.

After the benefit period ends, the new or upgraded level of service will continue automatically (following an email reminder) and you will be billed accordingly, unless you cancel or modify your subscription. You can cancel or modify your subscription at any time.

In addition, if the settlement is approved by the Court, Netflix will modify portions of its Terms of Use. Netflix also will refer to its Terms of Use in certain advertisements.

To get more information about the settlement and procedures, and to take options 1, 3 or 4, visit www.netflixsettlement.com.

[EXHIBIT 5]

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 _____, 2006. Class Members who do not do so prior to _____ 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 _____, 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 _____, 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 \$_____, 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. Additionally, Defendant has agreed to pay, and the Court has awarded 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 delivered to Netflix Opt-Out 5654 Geary Blvd., #210511, San Francisco, CA 94121, by _____, 2006, or if mailed, post-marked on or before _____ 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.

- _____, 2006 is the deadline to Opt-Out of this settlement (_____, 2006 if mailed).

- _____, 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: _____

By: Order of the San Francisco Superior Court

HONORABLE JUDGE THOMAS J. MELLON

[EXHIBIT 6]

From: info@netflix.com

Subject: Amendment to Class Action Settlement. New Chance to Get Class Benefit.

You are receiving this notice because you were a paid Netflix member before January 15, 2005. Under a class action settlement, you may be eligible to receive a free month of service or a free one-month upgrade from Netflix. You may recall receiving a similar notice in November 2005. Since that time, the parties have modified the settlement and have extended the time by which you may sign-up for the benefit. Most importantly, under the amended settlement, 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 Settlement Agreement with the Original Settlement Agreement, the Parties have posted a comparison at www.netflix.com/settlement.

This settlement arises from a class action lawsuit entitled Chavez v. Netflix, Inc. that was filed in San Francisco Superior Court (case number CGC-04-434884) on September 23, 2004. The lawsuit alleges that Netflix failed to provide “unlimited” DVD rentals and “one day delivery” as promised in its marketing materials. Netflix has denied any wrongdoing or liability. The parties have reached, and the Court has approved, a settlement that they believe is in the best interests of the Class Members. Under the terms of the amended settlement, Netflix will provide eligible subscribers with the benefit described below.

- **Current Netflix Members:** If you enrolled in a paid membership before January 15, 2005 and were a member as of October 19, 2005, you are eligible to receive a free one-month upgrade in service level. For example, if you are on the 3 DVDs at-a-time program, you will be upgraded to the 4 DVDs at-a-time program for one month. There will be no price increase during the upgraded month. The upgrade in service level will automatically end after one month and your subscription will return to the previous service level, unless you choose to continue at the higher service level and pay the regular subscription rate for that level after the upgraded month.
- **Former Netflix Members:** If you enrolled in a paid membership before January 15, 2005 but were not a member as of October 19, 2005, you are eligible to receive a free one-month Netflix membership on your choice of the 1, 2 or 3 DVDs at-a-time unlimited program. Your subscription will automatically end after one month, unless you choose to continue your membership and pay the regular subscription rate after the free month. If you do not choose to continue the service, you must 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).

The settlement was approved by the Court on March __, 2006. These benefits will be provided after 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. Your eligibility for the benefits is based on your membership status as of October 19, 2005. Pursuant to the terms of the settlement, in addition to providing the benefit described above, Netflix will modify portions of its Terms of Use. Class Members are subject to the revised Terms of Use, available at www.netflix.com/termsfuse. Netflix also will refer to its Terms of Use in certain advertisements.

Netflix has also agreed to pay up to \$2,528,000, and the Court has awarded \$_____, in attorneys' fees and costs to counsel for members of the Settlement Class, including Class Counsel and counsel for all objectors, intervenors, and proposed intervenors. The Amended Settlement Agreement is available for review at www.netflix.com/settlement.

You have three options to respond to the amended settlement. You have until _____, 2006 to make your decision.

Option 1. Sign Up For One Month of Free Membership or Free Upgraded Service As Part Of The Settlement

To receive the benefit, you must complete the online registration process no later than _____, 2006, at www.netflix.com/settlement. By signing up for the benefit, you waive your right to bring a separate lawsuit against Netflix concerning the Claims Released By The Class (as defined in the Settlement Agreement found at www.netflix.com/settlement).

Option 2. Do Nothing

If you do not wish to receive the benefit, do nothing. You will not receive the benefit but will remain a Class Member. You therefore waive your right to bring a separate lawsuit against Netflix concerning the Claims Released By The Class.

Option 3. Exclude Yourself From the Class

To exclude yourself from the class, you must mail a letter by _____, 2006. See Section VII.B. of the Amended Long Form Notice at www.netflix.com/settlement for information about the required contents of the letter and the mailing address. By excluding yourself, you preserve your right to bring a lawsuit against Netflix concerning the Claims Released By The Class. However, you will not get the benefit described above.

To receive your benefit, you must register by _____, 2006 as described above in Option 1. You will not receive any other reminders to register for the benefit. If you have registered for the benefit and your eligibility is confirmed, then you will be provided additional information by email following the Effective Date as defined in the Amended Settlement Agreement.

To get more information about the settlement and procedures, and to take options 1 or 3, visit www.netflix.com/settlement.

[EXHIBIT 7]

From: info@netflix.com

Subject: Amendment to Class Action Settlement.

You are receiving this notice because you have registered to receive a free month of Netflix service or free one-month upgrade in connection with the settlement of a class action lawsuit, Chavez v. Netflix. You may recall receiving a notice of that settlement in November 2005. Since that time, the parties have modified the terms of the settlement. Under the amended settlement, you will still receive your free one-month membership if you are an eligible former Netflix member. However, your membership will end automatically after one month unless you choose to continue your service and pay the regular subscription rate after the free month. Former members who do not choose to continue the service must 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). Likewise, you will still receive your free upgraded membership if you are an eligible current Netflix member. However, your upgraded membership will return to your previous service level after one month unless you choose to continue the upgraded service and pay the regular subscription rate for that level after the upgraded month. Additional changes to the settlement are reflected in the Amended Settlement Agreement. If you wish to compare the Amended Agreement with the Original Agreement, the Parties have posted a comparison at www.netflix.com/settlement.

Because the settlement has been modified, you have a chance to change your previous decision to participate in it. **If you still want to receive the free membership or free upgraded membership, you do not have to do anything.** If you have changed your mind, and now want to exclude yourself from the class, you have until _____, 2006 to do so. To summarize, your options are:

Option 1. Receive The Benefit

To receive the benefit, you do not need to do anything. Netflix has received your completed registration and will notify you when the benefit is ready. The free service or free upgraded service will automatically terminate at the end of the free month, unless you choose to continue it.

Option 2. Exclude Yourself From the Class

To exclude yourself from the class, you must mail a letter by _____, 2006. See Section VII.B. of the Amended Long Form Notice at www.netflix.com/settlement for information about the required contents of the letter and the mailing address. By excluding yourself, you preserve your right to bring a lawsuit against Netflix concerning the Claims Released By The Class. However, you will not get the benefit for which you previously registered.

The settlement was approved by the Court on March __, 2006. The class benefit will be provided after 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. Pursuant to the terms of the settlement, in addition to providing the benefit described above, Netflix will modify portions of its Terms of Use. Netflix also will refer to its Terms of Use in certain advertisements. Class Members are subject to the revised Terms of Use, available at www.netflix.com/termsfuse. Netflix has also agreed to pay up to \$2,528,000, and the Court has awarded \$_____, in attorneys' fees and costs to counsel for members of the Settlement Class, including Class Counsel and counsel for all objectors, intervenors and proposed intervenors.

To get more information about the settlement and procedures, and to take option 2, visit www.netflix.com/settlement.

[EXHIBIT 8]

From: info@netflix.com

Subject: Amendment to Class Action Settlement. New Chance To Get Class Benefit.

You are receiving this notice because you have chosen to exclude yourself from a class action lawsuit entitled Chavez v. Netflix. You may recall receiving a notice in November 2005 describing the terms of a proposed settlement. Since that time, the parties have modified the settlement. You should review the changes to see if you want to remain excluded from the settlement, or if you now want to claim the free month of service or a free one-month upgrade.

Under the amended settlement, 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 Agreement, the Parties have posted a comparison at www.netflix.com/settlement.

As a reminder, this class action lawsuit was filed in San Francisco Superior Court (case number CGC-04-434884) on September 23, 2004. The lawsuit alleges that Netflix failed to provide “unlimited” DVD rentals and “one day delivery” as promised in its marketing materials. Netflix has denied any wrongdoing or liability. Under the terms of the amended settlement, Netflix will provide eligible subscribers with the Class Benefit described below.

- **Current Netflix Members:** If you enrolled in a paid membership before January 15, 2005 and were a member as of October 19, 2005, you are eligible to receive a free one-month upgrade in service level. For example, if you are on the 3 DVDs at-a-time program, you will be upgraded to the 4 DVDs at-a-time program for one month. There will be no price increase during the upgraded month. The upgrade in service level will automatically end after one month and your subscription will return to the previous service level, unless you choose to continue at the higher service level and pay the regular subscription rate for that level after the upgraded month.
- **Former Netflix Members:** If you enrolled in a paid membership before January 15, 2005 but were not a member as of October 19, 2005, you are eligible to receive a free one-month Netflix membership on your choice of the 1, 2 or 3 DVDs at-a-time unlimited program. Your subscription will automatically end after one month, unless you choose to continue your membership and pay the regular subscription rate after the free month. If you do not choose to continue the service, you must 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).

The settlement was approved by the Court on March __, 2006. These benefits will be provided after 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. Your eligibility for the benefits is based on your membership status as of October 19, 2005. Pursuant to the terms of the settlement, in addition to providing the benefit described above, Netflix will modify portions of its Terms of Use. Class Members are subject to the revised Terms of Use, available at www.netflix.com/termsfuse. Netflix also will refer to its Terms of Use in certain advertisements.

Netflix has also agreed to pay up to \$2,528,000, and the Court has awarded \$_____, in attorneys' fees and costs to counsel for members of the Settlement Class, including Class Counsel and counsel for all objectors, intervenors, and proposed intervenors. The Amended Settlement Agreement is available for review at www.netflix.com/settlement.

You have two options to respond to the amended settlement. You have until _____, 2006 to make your decision.

Option 1. Sign Up For One Month of Free Membership or Free Upgraded Service As Part Of The Settlement

To receive the benefit, you must complete the online registration process no later than _____, 2006, at www.netflix.com/settlement. During the registration process, you will be required to acknowledge that your decision to receive the Class Benefit revokes your previous decision to exclude yourself from the class and that by signing up for the benefit, you waive your right to bring a separate lawsuit against Netflix concerning the Claims Released By The Class (as defined in the Amended Settlement Agreement found at www.netflix.com/settlement).

Option 2. Do Nothing and Remain Excluded From the Class

To remain excluded from the class, you do not have to do anything. You will preserve your right to bring a lawsuit against Netflix concerning the Claims Released By The Class. However, you will not get the benefit described above.

To revoke your previous request for exclusion and receive the benefit, you must register by _____, 2006 as described above in Option 1. You will not receive any other reminders to register for the benefit. If you have registered for the benefit and your eligibility is confirmed, then you will be provided additional information by email following the Effective Date as defined in the Amended Settlement Agreement.

To get more information about the settlement and procedures, and to take option 1, visit www.netflix.com/settlement.

How Our Service Works

Netflix is an online subscription movie rental service providing its members with access to a comprehensive library of motion picture, television and other filmed entertainment. Our most popular subscription plan allows subscribers to have three titles out at the same time, with no due dates, late fees or shipping charges. We offer a number of other subscription plans, including special promotional plans or subscriptions with limitations on the number of movies rentable during a month. Under all plans, subscribers select titles at our Web site, receive them on DVD by U.S. mail and return them using prepaid mailers. After a title is returned, we mail the next available title.

Below is a description concerning the operation of our service and we reserve the right in our sole and absolute discretion to make changes from time to time and without notice in how we operate our service.

- ~~Rent As Many DVDs As You Want~~

- The Number of DVD You Can Rent

Most of our subscribers rent between 3-11 movies per month. The number of DVDs that you rent will vary based on a number of factors (See "Allocation, Delivery and Return of Rented DVDs" below), ~~including the chosen subscription plan.~~ We provide a number of different subscription plans to accommodate a variety of movie watching preferences. Click on the "Your Account" link, located at the top of the pages of the Netflix Web site and see "View Membership Terms" for details on the various plans we offer. In our unlimited plans, we do not establish a monthly limit on the number of DVDs you can rent, however, the actual number of DVDs you rent in any month will vary based on a number of factors (See "Allocation, Delivery and Return of Rented DVDs" below).

- Delivery In About One Business Day Speed

We utilize a nationwide network of local distribution centers to send and receive DVDs you have selected to rent through the U.S. Postal Service. We have located these centers in such a manner as to provide fast and efficient delivery to our subscribers. Based on performance data from the U.S. Postal Service and our own analysis, we have determined the large majority of our subscribers are able to receive their movies in about one business day following our shipment of the requested movie from their local distribution center. Please note that not all deliveries will be from your local distribution center. The delivery times you encounter will vary based on a number of factors (See "Allocation, Delivery and Return of Rented DVDs" below). We will send you an e-mail letting you know when we have received a returned movie, and we will also send you another e-mail letting you know when we have shipped your next DVD, including the anticipated time of delivery.

- No Due Dates or Late Fees

Provided you continue to be a paying subscriber of our service, you may keep the DVDs delivered to you as long as you like. We do not impose any required return dates (other than upon cancellation of the service). Given that we have no required return dates, we do not charge any late fees. You will be required to return the movies within 7 days following any cancellation of the service or be subject to charge for unreturned DVDs. Also, you may be charged for movies that you lose. As an additional member benefit, we will replace the occasional lost DVD free of charge. However, in the rare event that the number of lost DVDs on your account becomes excessive, as we may determine in our sole and absolute discretion, we will notify you that your account has been placed on hold for review and may

charge your Payment Method for the estimated cost of the lost DVD(s). We will alert you of any potential charges prior to charging your Payment Method.

- Your Queue

Movies that you select to rent will be placed into your own rental queue. You may add movies or adjust the queue at anytime. Click the "Queue" tab to make adjustments, review requested movies or to see which movies you currently have out. We will determine which movies to send you based on the movies in your queue and the priority in which you have listed them. We endeavor to ship to you the movies listed highest in your queue; however when availability is limited, we may ship you movies lower on your queue. At the time a movie is added to your rental queue, we will let you know of its availability. A message indicating availability as "now"; "short wait"; "long wait" or "very long wait" will appear as you have selected a movie and it will also be stated in your queue so you can monitor availability. To see how we define these availability measures, click [here](#). [\[here\] \[LINK TO MEMBER FAQ #105\]](#). [The availability you experience may vary based on a number of factors \(See Allocation, Delivery and Return of Rented DVDs" below\)](#). Adjustments made to your queue may not immediately impact your next shipment. In certain instances you may have adjusted your queue before you have received a shipment message when in fact a shipment was already processed. The adjustments will, however, impact subsequent shipments.

- [Allocation, Delivery and Return of Rented DVDs](#)

We reserve the right to allocate and ship DVDs ~~to you among our subscribers~~ in any manner that we, in our sole and absolute discretion, determine. In addition, we will, in our sole and absolute discretion, determine the quantity of DVDs we purchase for any particular title and the level of staffing and number of shipments to be processed at each distribution center. As a result, we may not always send you the ~~first choice~~ [top choices](#) from your queue, and we may not ship out your next DVD on the same day that we receive one from you. ~~Our~~ [At present, our](#) goal is to ship you the DVDs listed highest in your queue. ~~We~~ [Also, we currently](#) try to ship you DVDs from the distribution center closest to you so that you get movies quickly. Often, on the same day that we receive a DVD from you, we will ship the next available DVD from your queue. In certain instances, your next available DVD will not ship until ~~the next~~ [at least one](#) business day following our receipt of your returned movie. This can occur, for example, when your top choices are not available to you from your closest distribution center or the number of shipments to be processed by the distribution center on that day has been exceeded. When this happens, your DVD will [likely](#) ship on the next business day and may come from an alternate distribution center.

In determining priority for shipping and inventory allocation, we give priority to those members who receive the fewest DVDs through our service. As a result, those subscribers who receive the most movies may experience [that \(i\) the shipment of their next available DVDs occurs at least one business day shipping following return of their previously viewed movie \(ii\) delivery takes longer, as the shipments may not be processed from their local distribution center and \(iii\) they](#) receive movies lower in their queue more often than our other subscribers.

Other factors that may affect delivery times, include, but are not limited to, (i) the distance between the distribution center from which your DVD was shipped and your delivery address, (ii) the timing of your placement or adjustment of movies in your queue and (iii) ~~circumstances~~ impacting delivery by the U.S. Postal Service.

We do not process returns or deliveries on Saturdays, Sundays or Holidays. We make no guaranty as to the shipping and delivery of DVDs and may, in our sole and absolute discretion, change our business practice regarding allocation, delivery and shipping, without notice. We may from time to time revise these Terms of Use but we will not necessarily provide you with notice of the revisions. It is up to you to review the Terms of Use frequently to determine if there have been changes.

We will send you an e-mail letting you know when we have received a returned movie, and we will also send you another e-mail letting you know when we have shipped your next DVD, including the anticipated time of delivery.

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5 SUPERIOR COURT OF THE STATE OF CALIFORNIA
6 COUNTY OF SAN FRANCISCO
7

8 **FRANK CHAVEZ, an individual, and**
9 **California resident, on behalf of**
10 **himself, those similarly situated, and**
11 **the general public,**

12 **Plaintiff,**

13 **v.**

14 **NETFLIX, INC., a foreign**
15 **corporation; and DOES 1 THROUGH**
16 **10,**

17 **Defendants**

CASE NO. CGC-04-434884

CLASS ACTION

Action Filed: September 23, 2004

[PROPOSED] FINAL JUDGMENT

18 This Final Judgment is entered in connection with the Amended Settlement
19 Agreement dated March ____, 2006 and the exhibits thereto (“Amended Settlement Agreement”),
20 attached hereto as Exhibit A, and this Court’s Order Approving Settlement dated _____, 2006
21 (“Order Approving Settlement”), attached hereto as Exhibit B.

22 1. The Court, for purposes of this Final Judgment, adopts the definitions set forth in the
23 Amended Settlement Agreement.

24 2. The Court has jurisdiction over the subject matter of this proceeding and all parties in this
25 proceeding, including all members of the Settlement Class

26 3. The Parties are directed to implement the provisions of the Amended Settlement
27 Agreement and Netflix is hereby ordered to:
28

1 a. Continue to use the modifications made to the Terms of Use shown on Exhibit 9 to
2 the Amended Settlement Agreement.

3 i. Include the language in advertisements produced after the Effective Date
4 described in section 3.2 of the Amended Settlement Agreement.

5 b. The requirements in paragraphs (a) and (b) shall remain in place for two years from
6 the Effective Date subject to revisions by Netflix to reflect changes to its product
7 offering, processes, or other changes in its business.
8

9 4. The terms of the Amended Settlement Agreement and of this Final Judgment shall be
10 forever binding on Plaintiff, all Class Members and Netflix and those terms shall have res judicata,
11 collateral estoppel, and all other preclusive effect in all pending and future claims, lawsuits or
12 other proceedings maintained by or on behalf of any such persons, to the extent those claims,
13 lawsuits or other proceedings are encompassed by the Releases set forth in section 8 of the
14 Amended Settlement Agreement. As of the Effective Date, Plaintiff and the Settlement Class
15 shall be deemed conclusively to have fully, finally and forever settled and released any and all of
16 the Claims Released By The Class, and Defendant shall be deemed conclusively to have fully,
17 finally and forever settled and released any and all of the Claims Released By Netflix. Plaintiff
18 and the Settlement Class, as well as their counsel and all others acting in concert with them, are
19 permanently barred and enjoined from commencing, instituting or prosecuting, in any capacity, or
20 causing to be commenced, instituted or prosecuted, any action or proceeding in any court or
21 tribunal that involves or asserts any of the Claims Released By The Class against the Netflix
22 Released Parties, or any of them. Netflix, as well as its counsel and all others acting in concert
23 with them, are permanently barred and enjoined from commencing, instituting or prosecuting, in
24 any capacity, or causing to be commenced, instituted or prosecuted, any action or proceeding in
25 any court or tribunal that involves or asserts any of the Claims Released By Netflix against
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1 Plaintiff, Class Counsel, Class Members, or any of them.

2 5. All persons who have properly excluded themselves from the Settlement Class are not
3 bound by the Releases set forth in the Amended Settlement Agreement nor by paragraph 4 above.
4 The identities of those persons who have properly excluded themselves from the Settlement Class
5 are identified in the Exclusions from Settlement Class filed on _____, 2006, attached hereto as
6 Exhibit C.
7

8 6. Each party to the settlement, including any objectors, interveners and/or proposed
9 interveners, shall bear its own costs and the fees and expenses of its counsel, except as directed in
10 this Court's Order Regarding Attorney Fees Application dated _____, 2006 ("Attorney Fees
11 Order").
12

13 7. The Amended Settlement Agreement, Order Approving Settlement, Attorney Fees Order,
14 and this Final Judgment are not admissions of wrongdoing, liability or fault by Defendant, or a
15 finding of the validity of any claims in the Litigation or any wrongdoing or violation of law by
16 Defendant. The Amended Settlement Agreement and settlement are not a concession by the
17 Parties and to the extent permitted by law, neither this Final Judgment, nor the Amended
18 Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or
19 proceedings connected with it, nor any actions required to be performed by this Final Judgment or
20 the Amended Settlement Agreement, shall be offered as evidence or received in evidence in any
21 pending or future civil, criminal, or administrative action or proceeding, except in a proceeding
22 before this Court to consummate or to enforce the Amended Settlement Agreement or Final
23 Judgment, or defend against the assertion of the Released Claims, or as otherwise required by law.
24

25 8. The Court retains jurisdiction over the parties to enforce the terms of this Final Judgment,
26 the Attorney Fees Order, and the terms of the Amended Settlement Agreement. However, there
27 being no just reason for delay, this Final Judgment is final and appealable.
28

1 9. The Litigation, and all claims contained therein, as against Defendant is dismissed on the
2 merits and with prejudice.

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IT IS SO ORDERED.

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Dated: _____, 2006

Honorable Judge Thomas J. Mellon

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Consumer Class Action Lawsuit Settled

LOS GATOS, Calif. – XXX. XX, 2005 – The Law Offices of Adam Gutride and the Law Offices of Seth A. Safier and Netflix Inc. today announced the final approval of an out-of-court settlement of a consumer class action lawsuit filed against the Company in Superior Court for San Francisco, California.

The lawsuit was filed on September 23, 2004, and alleged a number of claims arising out of the Netflix service and its advertising. The parties agree that the settlement approved today is in the best interest of the Company and its DVD rental customers. Netflix denies any wrongdoing or liability.

Under the terms of the settlement, existing Netflix subscribers as of January 14, 2005 will be eligible to receive a free one month upgrade to the next level program, and former subscribers prior to January 14, 2005 will be entitled to receive a free one month membership. To view details of the settlement, or to sign up for the free subscription or upgrade, visit [www._____.com](http://www.netflix.com).

[EXHIBIT 12]

1. Class Counsel \$2,327,635.00;
2. Counsel for Objector and Proposed Intervenor Alex Pearl (Kohn, Swift & Graf, P.C.; Sheller, Ludwig & Badey, P.C.) \$50,000.00;
3. Counsel for Objector Mark Schallert (Trial Lawyers for Public Justice; Chavez & Gertler, LLP) \$62,500.00;
4. Counsel for Objector and Proposed Intervenor Fran Setzer (JoBeth Halper Litigation Group; Bonnett Fairborn Friedman & Balint, PC; Susan D. Natrass, PC) \$14,000.00;
5. Counsel for Chris Ambler's Group of 400 Objectors (Hoffman & Lazear; Blim & Edelson, LLC; The Jacobs Law Firm, Chtd.) \$45,000.00;
6. Counsel for Objectors Lisa Adatto et al. (Law Offices of Andrew Kierstead; Law Office of Phil Goldsmith; Paul & Sugerman, PC) \$10,365.00;
7. Counsel for Objector Susan Woram (Steven N. Williams, P.C.) \$7,500.00;
8. Counsel for Objectors William Campos and Maria Elena Moya (The Erlich Law Firm; Ortega Medina & Associates) \$6,000.00; and
9. Counsel for Objector G.A. Wimberly (Offerman & King, L.L.P) \$5,000.00.