

ALSCHULER GROSSMAN LLP
ATTORNEYS AT LAW

WILLIAM J. O'BRIEN
ATTORNEY AT LAW
wobrien@alschuler.com
Direct Dial: 310-255-9033
Direct Fax: 310-907-2033

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January 5, 2007

BY ELECTRONIC FILING

Honorable Joseph C. Spero
United States Magistrate Judge
United States Courthouse
450 Golden Gate Avenue
Courtroom A, 15th Floor
San Francisco, CA 94102-3483

Re: Netflix v. Blockbuster
U.S. District Court Case No: C 06-02361 WHA (JCS)
Joint Letter Regarding Issues on Pending Discovery Motions

Dear Judge Spero:

After extensive negotiations, Plaintiff and Counterdefendant, Netflix, Inc., and Defendant and Counterclaimant, Blockbuster Inc., have succeeded in resolving all but two of the issues in contention in the three discovery motions that were filed November 3, 2006, and are currently scheduled for hearing on January 12, 2007. The parties' agreements on the other issues are set forth in the Stipulation Regarding Discovery Disputes that was filed on December 15, 2006.¹

The two issues remaining for decision both relate to Netflix's Motion for Protective Order as to certain Blockbuster document subpoenas to third parties. The remaining issues are:

1. Netflix's motion for a protective order directed to Categories 16 and 17 of Blockbuster's document subpoenas to NBC Universal, Yahoo!, Sony Pictures, Paramount Pictures, The Walt Disney Company, Warner Bros., Best Buy, Fox Entertainment, AOL, and Microsoft (collectively, the "Studio and Internet Subpoenas"); and

2. Netflix's motion for a protective order directed to Blockbuster's Subpoena to the Gutride Safire law firm, which was counsel for the plaintiff in Chavez v. Netflix, a class-action lawsuit against Netflix in the San Francisco Superior Court.

¹ A corrected version of that Stipulation was filed on December 19, and the Court entered an Order pursuant to the corrected Stipulation on December 20.

THE WATER GARDEN

1620 26TH STREET • FOURTH FLOOR • NORTH TOWER • SANTA MONICA, CA 90404-4060
TELEPHONE: 310-907-1000 • www.agsk.com • FACSIMILE: 310-907-2000

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Since filing the Stipulation Regarding Discovery Disputes, the parties have continued to discuss possible resolution of these two remaining issues. The parties have exchanged proposals and made progress towards that end. There now appears to be a serious prospect of reaching a further agreement that would resolve the remaining issues and eliminate the need for any further Court proceedings on the pending discovery motions. Additionally, even if a complete resolution is not achieved – as hoped -- the parties may succeed in further narrowing the issues. However, the negotiations now in progress are likely to require a few more days.

With the status of the remaining issues and the parties' positions in flux, Netflix and Blockbuster believe that deferring briefing of the remaining issues for a few days would increase the chances of a negotiated resolution. The parties jointly request the Court's indulgence in permitting them to either submit a stipulation resolving all remaining issues by Wednesday, January 10, 2007, or to set forth by letter on that date any remaining issues and the parties' respective positions, along with a submission of their respective proposed orders.

The parties and their counsel thank the Court for its assistance.

Respectfully submitted,

/S/

Eugene M. Paige
of Kecker & Van Nest LLP
Attorneys for Netflix, Inc.

/S/

William J. O'Brien
of Alschuler Grossman LLP
Attorneys for Blockbuster Inc.

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