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May 31, 2007

BY E-FILING

The Honorable Judge William Alsup
 United States District Court
 Northern District of California
 450 Golden Gate Avenue
 Courtroom 9, 19th Floor
 San Francisco, CA 94102-3483

Re: *Netflix v. Blockbuster*, Case No. C-06-2361 WHA (JCS)

Dear Judge Alsup:

On June 30, 2006, this Court issued its Case Management Order providing, "The last date to file dispositive motions shall be **JUNE 14, 2007**." This date has never been extended. The Order also stated, "No dispositive motions shall be heard more than 35 days *after* this deadline . . . the parties must adhere to the 35-day track in order to avoid pressure on the trial date." Thirty-five days after June 14 is July 19.

Yesterday, Blockbuster's counsel sought a July 19 hearing and were told by Dawn Toland, the docket clerk, that you will not be available until August 2. She advised us to schedule the hearing for that date. We informed Netflix's counsel of that date to ensure their availability. Netflix has indicated that it also plans to file summary judgment motions.

In the attached letter, Netflix's counsel stated that they are available for the August 2 hearing. However, they oppose a hearing date on August 2 because it is not within thirty-five days of June 14.

Blockbuster is not seeking an extension of the hearing date. The only reason a later hearing date would be required is because of the Court's calendar.

Netflix's solution, requiring Blockbuster to file its summary judgment motions early, with only two weeks remaining to the deadline, and in the middle of expert depositions, is not feasible.

Blockbuster is willing to have the hearing on shortened time to accommodate the Court's schedule, if necessary.

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The Honorable Judge William Alsup
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Blockbuster therefore seeks an order from the Court setting a hearing date and briefing schedule for motions for summary judgment in this matter.

We appreciate Your Honor's assistance.

Respectfully submitted,

/s

Mary T. Huser

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May 31, 2007

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Re **Netflix v. Blockbuster, USDC, Northern District Case No. C 06 2361 WHA**

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May 31, 2007

VIA FACSIMILE

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San Francisco, CA 94111-4067

Re: *Netflix, Inc. v. Blockbuster, Inc., Case No. C-06-2361 WHA*

Dear Adrienne:

Thank you for your call of yesterday to discuss the issue of summary judgment scheduling in this case.

As promised, I have looked into whether Netflix has a conflict with a hearing on August 2, and it appears that although some members of the team have a conflict with that date, Netflix could go forward with a hearing then.

However, as we discussed yesterday, Netflix does not believe that Judge Alsup's order permits a summary judgment hearing to be scheduled as late as August 2. His case management order is extremely clear on the matter: it states that "[n]o dispositive motions shall be heard more than 35 days" after June 14, 2007, and warns that "if any party waits until the last day to file," the parties "must adhere to the 35-day track in order to avoid pressure on the trial date." Case Management Order ¶ 12 (emphasis added). Judge Alsup was also quite clear when he granted Blockbuster's request for an extra week in the expert discovery schedule that no further delays in the schedule would be permitted. Moreover, delaying the summary judgment hearing until little more than two weeks before the pre-trial conference would put just the sort of pressure on the trial date that Judge Alsup's Case Management Order seeks to avoid. Therefore, given Judge Alsup's apparent lack of availability on July 19, Blockbuster should file its summary judgment motion prior to the last day upon which such motions may be filed, and notice it for a date prior to July 19 upon which Judge Alsup is available.

Netflix accordingly intends to oppose any request that the summary judgment hearing be held later than July 19. Please advise me prior to any communications that Blockbuster intends to have with Judge Alsup's Chambers on this scheduling issue so that I may participate in any such call and make clear Netflix's position that any delay in the summary judgment hearing schedule would be inappropriate.

Adrienne L. Taclas, Esq.
May 31, 2007
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Thank you for your attention to this matter, and please do not hesitate to contact me should you wish to discuss it further.

Sincerely,



Eugene M. Paige