

# EXHIBIT U



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Case Number: CGC-04-434884

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ORDER

FRANK CHAVEZ VS. NETFLIX, INC., A FOREIGN CORPORATION et al

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**FILED**  
San Francisco County Superior Court

APR 28 2006

GORDON PARK-LI, Clerk

BY: *Debra 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 ACTION**

Action Filed: September 23, 2004

**ORDER APPROVING SETTLEMENT**

Date: March 22, 2006  
Time: 2:00 p.m.  
Dept.: 514

Pending before the Court is Plaintiff's Motion for Final Approval of a Class Action Settlement (the "Approval Motion"). Having considered the written submissions filed in this matter, as well as the oral arguments of counsel for the Parties and objectors, the Court hereby finds that the proposed settlement, as reflected in the Amended Settlement Agreement, is fair, reasonable, and adequate. The Court, for the purposes of this Order, adopts and incorporates by reference the definitions set forth in Section 2 of the Amended Settlement Agreement. Unless

1 otherwise defined, all terms used herein shall have the same meaning as set forth in  
2 the Amended Settlement Agreement.

3 **I. Background**

4 On October 17, 2005, the Parties, following a mediation before retired  
5 Magistrate Judge Edward Infante, entered a settlement agreement in this consumer  
6 class action. Shortly thereafter, the Plaintiff filed a motion with the Court for  
7 preliminary approval of the settlement.

8 On October 19, 2005, the Court held a public hearing on the motion for  
9 preliminary approval ("Preliminary Approval Hearing"). At the Preliminary  
10 Approval Hearing, the Court requested certain modifications to the settlement.  
11 Following the Preliminary Approval Hearing, and pursuant to the direction of the  
12 Court, the Parties made modifications to their settlement agreement and filed a  
13 revised settlement agreement with the Court on October 25, 2005 (the "Original  
14 Settlement Agreement").

15 On October 27, 2005, after reviewing and considering the Original Settlement  
16 Agreement, the motion for preliminary approval and related filings, and the  
17 arguments and submissions of counsel for the Parties, the Court issued an order  
18 preliminarily approving the settlement, certifying the Class for purposes of  
19 settlement, and directing that notice be given to Class Members pursuant to the  
20 terms of the Original Settlement Agreement.

21 Notice was distributed pursuant to the Court's Preliminary Approval Order  
22 in November 2005. Certain Class Members served and/or filed objections to the  
23 proposed settlement, and the Federal Trade Commission ("FTC") submitted a  
24 Memorandum of Law as Amicus Curiae regarding certain settlement terms. The  
25 Court has reviewed all the objections and the memorandum of the FTC. The  
26 primary objection to the Settlement – and the only objection raised by the FTC –  
27 related to the provision by which the settlement benefit would automatically renew  
28 at the end of the free month (the "auto-renewal feature"), meaning that Class

1 Members who did not take steps to cancel the service at the conclusion of the free  
2 month would be charged for future months. Netflix met with the FTC in January  
3 2006 and, following that meeting, agreed to eliminate the auto-renewal feature  
4 from the Original Settlement Agreement. In the course of the eliminating the auto-  
5 renewal feature from the Original Settlement Agreement, the Parties also agreed to  
6 make other modifications to the Original Settlement Agreement that would address  
7 other issues raised by certain objectors. By order dated February 16, 2006, the  
8 Court set two dates for public hearings on the final approval of the Settlement. On  
9 February 22, 2006, during the first hearing, the Parties informed the Court that they  
10 had reached agreement on a modified settlement that addressed the concerns of the  
11 FTC and many of the objectors. A draft of the modified agreement had been  
12 provided to the Court, the FTC, and many of the objectors prior to (and  
13 immediately following) the hearing. At the hearing, the FTC and several objectors  
14 informed the Court that they believed the proposed modified agreement resolved  
15 their concerns.

16 On March 8, 2006, the Parties executed the Amended Settlement  
17 Agreement. The Amended Settlement Agreement was served on all objectors on  
18 March 8-9, 2006. On March 22, 2006, the Court held the second hearing on final  
19 approval of the Settlement. At this hearing, the staff of the FTC informed the  
20 Court that the FTC staff had reviewed the Amended Settlement Agreement and the  
21 proposed supplemental notifications to the Class, and that the Amended Settlement  
22 Agreement and notices were acceptable to the Federal Trade Commission. In  
23 addition, counsel for the vast majority of the objectors (including without  
24 limitation counsel for the proposed intervener Alex Pearl and counsel representing  
25 Chris Ambler and 400 other objectors) informed the Court that they supported  
26 approval of the Amended Settlement Agreement. Counsel for fewer than ten  
27 objectors expressed concerns with the Settlement. These objections have been  
28 considered and overruled for the reasons set forth below.

1 The Court has carefully reviewed the Amended Settlement Agreement, the  
2 written submissions of the Parties, and all objections to the Settlement. The Court  
3 concludes that the Settlement is fair, reasonable and adequate. Accordingly, the  
4 Approval Motion is granted.

5 **II. Certification of the Settlement Class, and Adequacy of Class Notice**

6 A Settlement Class is hereby established in this Litigation, pursuant to  
7 Section 382 of the California Code of Civil Procedure and Section 1781 of the  
8 California Civil Code. The definition of this Settlement Class corresponds with  
9 the Settlement Class previously certified for settlement purposes by the Court:

10 **All persons and entities residing in the United States who enrolled**  
11 **in a paid Netflix membership program prior to January 15, 2005.**  
12 **Excluded from being Class Members are Netflix; any entity in**  
13 **which Netflix has a controlling interest; Netflix's directors,**  
14 **officers, employees; Netflix's legal representatives; Judge Mellon**  
15 **and the members of his immediate family; any persons who joined**  
16 **the Netflix service pursuant to a free trial offer but never became**  
17 **paying members of the Netflix service; any persons whose Netflix**  
18 **account was terminated or held due to suspected illegal activity**  
19 **(such as credit card fraud or copyright infringement); and all**  
20 **persons who timely and validly request exclusion from the Class**  
21 **in compliance with the requirements of the Class Notice.**

22 In connection with its decision to certify the Settlement Class, the Court has found  
23 that:

- 24 1. There are approximately 5.5 million persons who were paying  
25 members of Netflix's service prior to January 15, 2005.
- 26 2. There are questions of law and fact common to the Class which, as  
27 to the settlement and the Litigation, predominate over questions  
28 affecting only individual Class Members, including the manner in  
which Netflix marketed and advertised its service.
3. The claims of the Class Representative appear to be typical of the  
claims of the Settlement Class, and Class Counsel and the Class  
Representative do not appear to have been unable to pursue any  
available claims.

1 4. In negotiating and entering into the Original and Amended  
2 Settlement Agreements, and at all other times during the pendency of  
3 this Litigation, the Class Representative and Class Counsel have fairly  
4 and adequately represented and protected the interests of the Settlement  
5 Class.

6 5. A class action is superior to other available methods for the fair and  
7 efficient adjudication of this Litigation and settlement.

8 Class Members shall have forty-five (45) days from the distribution of the  
9 Supplemental Notification (which shall be initiated within 21 days from the later of  
10 the date of this Order or an order awarding attorney's fees and expenses to class  
11 counsel and providing that the total of such awards and awards to objectors shall not  
12 exceed the amount set forth in Section 9 of the Amended Settlement Agreement) to  
13 request exclusion from the Class, as set forth in Section 7 of the Amended  
14 Settlement Agreement and in the Supplemental Notifications ("Opt-Out Deadline").  
15 Netflix shall identify the precise opt-out deadline on the Settlement Website when it  
16 issues the Supplemental Notification. All such opt-out requests must be delivered to  
17 Netflix Opt-Out, P.O. Box #210340, San Francisco, CA 94121-0340. The request  
18 for exclusion must include a written, signed request to be excluded from the Class,  
19 stating (1) the Class Member's name, address, email address, and telephone number  
20 (a) associated with the Netflix account and (b) at the current time, if different, (2)  
21 reference the Litigation (i.e., Chavez v. Netflix, Inc. Case No. CGC-04-434884), (3)  
22 approximately when the Class Member became a Netflix member, if and when the  
23 account was canceled, and what service level(s) the Class Member subscribed to and  
24 (4) that the Class Member wishes to be excluded from the Class.

25 Any persons who properly requested exclusion from the Settlement Class  
26 during the First Claims Period do not need to do so again in order to be excluded.  
27 Those persons who elected to opt-out during the First Claims Period will be  
28 allowed to rejoin the Settlement Class by accepting the Class Benefit; such

1 acceptance shall be deemed to be an express revocation of the previous request for  
2 exclusion from the Settlement Class.

3 The identity of any persons who have validly and timely requested exclusion  
4 from the Settlement Class shall be set forth in the Exclusions from Settlement  
5 Class, which is to be filed with the Court no later than fifteen (15) days after the  
6 Opt-Out Deadline.

7 The Court reaffirms its Order of October 27, 2005 and finds that the  
8 Summary Notice to the Settlement Class of the pendency of this Litigation and of  
9 this Settlement constituted the best notice practicable under the circumstances to  
10 all persons within the definition of the Settlement Class, and fully complied with  
11 the requirements of due process and all other applicable laws. The Court further  
12 finds that the Supplemental Notification regarding the terms of the Amended  
13 Settlement Agreement constitutes the best notice practicable under the  
14 circumstances to all persons within the definition of the Settlement Class, and fully  
15 complies with the requirements of due process and all other applicable laws. The  
16 Summary Notice and Supplemental Notifications provide a hyperlink to the  
17 Settlement Website and specifically instruct class members to visit the website "to  
18 get more information about the settlement and procedures." The Settlement  
19 Website home page provides links to (a) the Long Form Notice, and informs Class  
20 Members that the Long Form Notice "describes the case and the rights to Class  
21 Members"; (b) the Amended Settlement Agreement and a comparison showing the  
22 changes from the Original Settlement Agreement; (c) "Important Dates and  
23 Information"; and (d) a Frequently Asked Questions page that directs Class  
24 Members to specific sections of the Long Form Notice. This Notice program fairly  
25 apprises members of the class of the terms of the Settlement and of the options that  
26 are open to them in connection with these proceedings, and is well within the range  
27 of reasonableness that accompanies the Court's broad discretion as to the manner  
28



1 of giving notice to class members. See *7-Eleven Owners for Fair Franchising v.*  
2 *Southland Corp.*, 85 Cal App 4th 1135, 1164 (2000).

3 **III. Approval of Settlement**

4 The Court finds that the terms of the Settlement, as set forth in the Amended  
5 Settlement Agreement, are fair, reasonable, and adequate to the Class Members.  
6 Under Rule 1859 of the California Rules of Court, the settlement of a class action  
7 requires approval of the court after notice and hearing. Cal. R. Ct. 1859(a) and (f).  
8 Before granting final approval, the court must first conduct an inquiry into the  
9 fairness of the proposed settlement, Cal. R. Ct. 1859(g), and must determine that  
10 the settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.  
11 App. 4<sup>th</sup> 1794, 1800-01 (1996). The Court has broad discretion in making this  
12 determination. *7-Eleven*, 85 Cal. App. 4<sup>th</sup> at 1146.

13 A presumption of fairness exists where (1) the settlement is reached through  
14 arm's length bargaining; (2) investigation and discovery are sufficient to allow  
15 counsel and the court to act intelligently; (3) counsel is experienced in similar  
16 litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal. App. 4<sup>th</sup> at  
17 1800-01. The Court finds that each of these factors is present here and that the  
18 proposed Settlement is entitled to a presumption of fairness. Consistent with the  
19 Court's conclusion that the Settlement is fair, reasonable, and adequate, the Court  
20 notes that as of March 22, 2006, 268,961 Current Subscriber Class Members and  
21 149,302 Former Subscriber Class Members had registered for the Class Benefit.  
22 This level of participation is by any measure extraordinarily high.

23 The Court finds that the Class Benefit to be provided by Defendant, as set  
24 forth in Section 4 of the Amended Settlement Agreement, is fair, reasonable and  
25 adequate. In reaching this conclusion the Court has considered the Parties'  
26 submissions and arguments regarding (1) the strength of plaintiff's case; (2) the  
27 risk, expense, complexity and likely duration of further litigation; (3) the risk of  
28 maintaining class action status through trial; (4) the amount offered to each Class

1 Member in settlement; (5) the extent of discovery completed and the stage of the  
2 proceedings; (6) the experience and views of counsel; and (7) the reaction of the  
3 class members to the proposed settlement. *See 7-Eleven*, 85 Cal. App. 4<sup>th</sup> at 1146.  
4 The Court finds that each of these factors support approval of the Amended  
5 Settlement.

6 The Court has carefully reviewed the objections to the proposed Settlement  
7 and Amended Settlement Agreement. The principal objection, and many other  
8 objections, have been mooted by the execution of the Amended Settlement  
9 Agreement. The concerns raised by the objectors have not convinced the Court  
10 that the Settlement is not entitled to a presumption of fairness, and all objections  
11 are hereby overruled on the merits. Even without the presumption, the Court  
12 would find that the Settlement is fair, reasonable, and adequate.

13 With respect to the objection that Former Subscriber Class Members are  
14 receiving a more valuable benefit than Current Subscriber Class Members, the  
15 Court finds that the difference is "rationally based on legitimate considerations."  
16 *7-Eleven*, 85 Cal. App. 4<sup>th</sup> at 1162. In negotiating the Settlement, the Parties took  
17 into account that Current Subscriber Class Members would be faced with  
18 additional defenses and difficulties of proof. The Court finds this to be a legitimate  
19 consideration and that it is rationally reflected in the terms of the Settlement. *See*  
20 *7-Eleven*, 85 Cal. App. 4<sup>th</sup> at 1162; *Wershba v. Apple Computer, Inc.*, 91 Cal. App.  
21 4<sup>th</sup> 224 (2001); *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1146 (8th Cir. 1999);  
22 *Follansbee v. Discover Fin. Servs.*, No. 99 C 3827, 2000 WL 804690, at \*3 (N.D.  
23 Ind. 2000); *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 131 (S.D.N.Y.  
24 1997).

25 The Court also concludes that the proposed process for informing Class  
26 Members of the Amended Settlement is fair and reasonable and comports with the  
27 Rules of Court, the Civil Code, and constitutional requirements of due process.  
28 Class Members who did not complete the Claim Form Process during the First

1 Claims Period will receive notice of the Amended Settlement Agreement and  
2 another opportunity to complete the Claim Form Process. All Class Members also  
3 will have another opportunity to opt-out. Any Class Member who previously  
4 properly requested exclusion from the Original Settlement Agreement will be  
5 permitted to withdraw his or her opt-out and claim the Class Benefit.

6 The Court finds and concludes that there is no reason to provide Class  
7 Members an additional opportunity to object and/or intervene. The Court finds  
8 that the Amended Settlement Agreement improves or enhances the settlement  
9 benefit as compared to the Original Settlement Agreement, without imposing any  
10 substantial additional burden on Class Members. The Court has considered, and  
11 rejects, the contentions that Class Members have been prejudiced by (1) the  
12 increase from 90 to 180 days of the period in which Netflix may provide the Class  
13 Benefit to Current Subscribers, (2) the notification that Former Subscribers will be  
14 charged according to Netflix's standard policies if they fail to return DVDs after  
15 the expiration of their memberships (currently \$20 per DVD), or (3) any other  
16 changes between the Original Settlement Agreement and the Amended Settlement  
17 Agreement. There is no reason to believe that additional meritorious objections  
18 could be made to the Amended Settlement Agreement that were not made to the  
19 Original Settlement Agreement or not made since service on objectors of the  
20 Amended Settlement Agreement on March 8-9, 2006. Other courts have held in  
21 similar circumstances that it is not necessary to provide another opportunity to  
22 object to an amended settlement, and that any due process concerns are addressed  
23 by providing merely another opportunity to opt out. *See Nilsen v. York County* (D.  
24 Maine 2005) 382 F. Supp. 2d 206, 218 ("If the parties decide to amend the  
25 settlement to remove the cause for my disapproval, I would require a new  
26 opportunity for female class members who have filed claims to opt out. Because  
27 the class-wide settlement notice in this case already satisfied the requirements of  
28 Rule 23(e)(1)(B), as I discussed above, I would require notice of the amendment

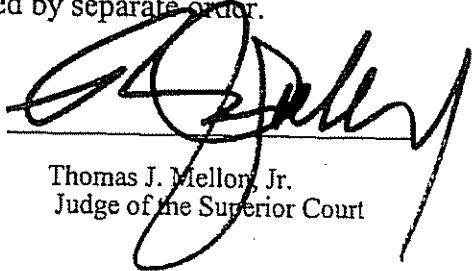
1 and the opt-out right only to female class members who have already filed claims,  
2 because they are the only class members who would be negatively affected by such  
3 an amendment.”) citing *In re Integra Realty Res., Inc.* (10th Cir. 2001) 262 F.3d  
4 1089, 1111 (holding that the district court did not abuse its discretion by failing to  
5 notify class members of a new right to opt out because the right to opt out “merely  
6 expanded the rights of class members” and did not create “a risk that unfavorable  
7 terms would be forced upon some class members”); *Manners v. Am. Gen. Life Ins.*  
8 Co. (M.D. Tenn. Aug. 11, 1999) 1999 U.S. Dist. LEXIS 22880 (finding that notice  
9 of settlement amendments was unnecessary because the amendments enhanced the  
10 relief provided to the class members and the original notice satisfied constitutional  
11 standard).

12 Accordingly, the Court approves the Settlement as set forth in the Amended  
13 Settlement Agreement and grants Plaintiff’s Approval Motion. Netflix is hereby  
14 ordered to initiate delivery of the Supplemental Summary Notices described in,  
15 and pursuant to the terms of, Section 5.1 of the Amended Settlement Agreement.  
16 The Parties are ordered to file a joint status report by June 30, 2006 updating the  
17 Court on the number of Class Members who have registered for the Class Benefit  
18 and providing the Court with a final list of Class Members who have opted out of  
19 the Class. Upon the filing of this joint status report, the Parties may apply for  
20 judgment to be entered.

21 No ruling is made herein as to any party’s or objector’s motion for attorneys’  
22 fees or expenses, which shall be addressed by separate order.

23 IT IS SO ORDERED.

24  
25 Dated: April <sup>25</sup> 2006

  
Thomas J. Mellory, Jr.  
Judge of the Superior Court

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**SUPERIOR COURT OF CALIFORNIA  
County of San Francisco**

FRANK CHAVEZ, et al,

Plaintiff(s)

vs.

NETFLIX, INC., et al,

Defendant(s)

Case Number: CGC-04-434884

**CERTIFICATE OF MAILING**  
(CCP 1013a (4))

I, Vicki Mack, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On April 28, 2006, I served the attached ORDER APPROVING SETTLEMENT by placing a copy thereof in a sealed envelope, addressed as follows:

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

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

and, I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA. 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: April 28, 2006

GORDON PARK-LI, Clerk

By:



Vicki Mack, Deputy Clerk