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NORTHERN DISTRICT OF CALIFORNIA

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10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA

12 PETER COMSTOCK, individually and on  
 13 behalf of all others similarly situated,

*Plaintiff,*

v.

16 NETFLIX, INC., a Delaware corporation,  
 17

*Defendant.*

Case No. CV 11-1218 HRL

CLASS ACTION

BY FAX

COMPLAINT FOR:

- (1) Violations of the Video Privacy Protection Act, 18 U.S.C. § 2710;
- (2) Violations of California's Customer Records Act, Cal. Civ. Code § 1798.80;
- (3) Violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200;
- (4) Unjust Enrichment; and
- (5) Breach of Fiduciary Duty.

DEMAND FOR JURY TRIAL

COMPLAINT

1 Plaintiff PETER COMSTOCK, by and through his attorneys, upon personal knowledge  
2 as to himself and his own acts, and upon information and belief as to all other matters, complains  
3 and alleges as follows:

#### 4 INTRODUCTION

5 1. This Class Action Complaint stems from Defendant Netflix, Inc.'s ("Netflix")  
6 unlawful retention of Plaintiff's personally identifiable information, including his credit card  
7 information, billing address, and video programming history, for more than one (1) year after  
8 Plaintiff canceled his Netflix membership.

9 2. With over 10 million subscribers, Netflix is one of the biggest companies  
10 operating in the online movie rental space, offering online video delivery, as well as, an online  
11 video rental service of both DVD and Blu-ray Discs delivered through the mail.

12 3. Netflix keeps comprehensive digital records of every streaming video and every  
13 video rental ordered by each of its subscribers.

14 4. Consequently, Defendant purposefully retains confidential information regarding  
15 both payment and video viewing habits for millions of individuals—even after their  
16 subscriptions are cancelled. Such retention violates state and federal laws.

#### 17 INTRADISTRICT ASSIGNMENT

18 5. Defendant Netflix Inc.'s principle executive offices and headquarters are located  
19 in this District at 100 Winchester, Los Gatos, CA 95032. Intra-district assignment to the San Jose  
20 Division is proper.

#### 21 PARTIES

22 6. Plaintiff is a citizen of Virginia.

23 7. Defendant Netflix, Inc., is a Delaware corporation headquartered at 100  
24 Winchester, Los Gatos, California 95032. Netflix does business throughout every state of the  
25 United States, and in Canada.





1 affect individual members of the Class. Common questions for the Class include but are not  
2 limited to the following:

- 3 a) Whether Netflix unlawfully retained its former subscribers' personally  
4 identifiable information and video programming viewing histories;
- 5 b) Whether Netflix benefits from that unlawful data retention;
- 6 c) Whether Netflix's conduct violates the Video Privacy Protection Act, 18  
7 U.S.C. §§ 2710, *et seq.*;
- 8 d) Whether Netflix's conduct violates the California Records Act, Cal. Civ.  
9 Code § 1798.80;
- 10 e) Whether Netflix's conduct violates California's Unfair Competition law,  
11 Cal. Bus. & Prof. Code §§ 17200, *et seq.*;
- 12 f) Whether Netflix has been unjustly enriched; and,
- 13 g) Whether Netflix breached its fiduciary duties owed to Plaintiff and the  
14 Class.

15 23. **Typicality:** The factual and legal bases of Netflix's liability to Plaintiff and to the  
16 other members of the Class are the same and resulted in injury to Plaintiff and all of the other  
17 members of the Class. Plaintiff and the other members of the Class have all suffered harm as a  
18 result of Netflix's wrongful conduct.

19 24. **Adequate Representation:** Plaintiff will fairly and adequately represent and  
20 protect the interests of the Class members, and has retained counsel competent and experienced  
21 in complex class actions. Plaintiff has no interest antagonistic to those of the Class and  
22 Defendant has no defenses unique to Plaintiff.

23 25. **Predominance and Superiority:** This class action is appropriate for certification  
24 because class proceedings are superior to all other available methods for the fair and efficient  
25 adjudication of this controversy, since joinder of all members is impracticable. The damages  
26 suffered by the individual members of the Class will likely be relatively small, especially given  
27

1 the burden and expense of individual prosecution of the complex litigation necessitated by  
2 Defendant's actions. It would be virtually impossible for the individual members of the Class to  
3 obtain effective relief from Defendant's misconduct. Even if members of the Class themselves  
4 could sustain such individual litigation, it would still not be preferable to a class action, because  
5 individual litigation would increase the delay and expense to all parties due to the complex legal  
6 and factual controversies presented in this Complaint. By contrast, a class action presents far  
7 fewer management difficulties and provides the benefits of single adjudication, economy of  
8 scale, and comprehensive supervision by a single court. Economies of time, effort, and expense  
9 will be fostered and uniformity of decisions will be ensured.

10       26.   **Policies Generally Applicable to the Class:** This class action is also appropriate  
11 for certification because Defendant has acted or refused to act on grounds generally applicable to  
12 the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief  
13 with respect to the Class as a whole. Defendant's policies challenged herein apply to and affect  
14 all members of the Class uniformly, and Plaintiff's challenge of these policies hinges on  
15 Defendant's conduct, not on facts or law applicable only to Plaintiff.

16                           **COUNT I: Violations of the Video Privacy Protection Act**  
17                                   **18 U.S.C. §§ 2710, et seq.**  
18                                   **(On Behalf of Plaintiff and the Class)**

19       27.   Plaintiff incorporates the foregoing allegations as if fully set forth herein.

20       28.   Netflix is a "video tape service provider" as defined by the Video Privacy  
21 Protection Act ("VPPA"), because it "engage[s] in the business, in or affecting interstate or  
22 foreign commerce, of rental, sale, or delivery of prerecorded video cassette tapes or similar audio  
23 visual materials." 18 U.S.C. § 2710(a)(4).

24       29.   Under the VPPA, "video tape service provider[s]" must "destroy personally  
25 identifiable information as soon as practicable, but no later than one year from the date the  
26 information is no longer necessary for the purpose for which it was collected." 18 U.S.C. §  
27 2710(e).

1           30. By failing to destroy former subscribers' personally identifiable information as  
2 soon as practicable from the date the information was no longer necessary for the purpose for  
3 which it was collected, Netflix violated 18 U.S.C. § 2710(e).

4           31. Consequently, and in violation of § 2710, Plaintiff and the Class have suffered  
5 injuries. Plaintiff, on his own behalf and on behalf of the Class, seeks an order enjoining  
6 Defendant's conduct described above and awarding herself and the Class the maximum statutory  
7 and punitive damages available under 18 U.S.C. § 2710(c).

8                           **COUNT II: Violations of California's Customer Records Act**  
9                                   **Cal. Civ. Code § 1798.80**  
   **(On Behalf of Plaintiff and the Class)**

10           32. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

11           33. The California Customer Records Act requires that businesses take all reasonable  
12 steps to destroy or arrange to destroy a customer's records within its custody or control that  
13 contain personal information that is no longer to be retained by the business. Cal. Civ. Code  
14 § 1798.81.

15           34. Businesses have wide discretion in the manner of destruction -- they may destroy  
16 records by erasure or modification such that records are unreadable or undecipherable. Cal. Civ.  
17 Code § 1798.81(b)-(c).

18           35. Because Netflix failed to erase or adequately modify its former customers'  
19 records, it has violated Cal. Civ. Code § 1798.81.

20           36. Accordingly, and pursuant to Cal. Civ. Code § 1798.84, Plaintiff and the Class  
21 seek damages, including statutory damages of \$3,000 per violation, and injunctive relief.  
22 Plaintiff and the Class also seek attorneys' fees pursuant to Cal. Code Civ. Proc. § 1021.5, as  
23 well as such other and further relief as the Court deems just and proper.

24                           **COUNT III: Violation of California's Unfair Competition Law**  
25                                   **Cal. Bus. & Prof. Code §§ 17200, et seq.**  
   **(On Behalf of Plaintiff and the Class)**

26           37. Plaintiff incorporates the foregoing allegations as if fully set forth herein.  
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1 subscribers' personally identifiable information and video program viewing histories—except as  
2 strictly necessary for contact information;

3 D. Award damages, including statutory damages of \$2,500 per violation under the  
4 Video Privacy Protection Act, 18 U.S.C. § 2710(c); \$3,000 per violation under the California  
5 Consumer Records Act, Cal. Civ. Code § 1798.84(c); and, punitive damages where applicable, to  
6 Plaintiff and the Class in an amount to be determined at trial;

7 E. Award Plaintiff and the Class their reasonable litigation expenses and attorneys'  
8 fees;

9 F. Award Plaintiff and the Class pre- and post-judgment interest, to the extent  
10 allowable; and

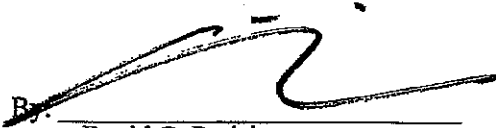
11 G. Award such other and further relief as equity and justice may require.

12 **JURY TRIAL**

13 Plaintiff demands a trial by jury for all issues so triable.

14 Respectfully submitted,

15 Dated: March 11, 2011

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18 David C. Parisi  
19 Attorneys for Plaintiff Peter Comstock and  
20 the putative class  
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