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NORTHERN DISTRICT OF CALIFORNIA

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

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15 Meghan Mollett and Tracy Hellwig,
individually, on behalf of themselves and all
16 others similarly situated,

) Case No.

17 Plaintiffs,

) CLASS ACTION COMPLAINT FOR
) VIOLATIONS OF:

18 vs.

) 1. THE VIDEO PRIVACY PROTECTION
) ACT, 18 U.S.C. § 2710 *et seq.*; AND
) 2. CALIFORNIA CIVIL CODE § 1799.3

20 NETFLIX, INC., a Delaware corporation,

) JURY TRIAL DEMANDED

21 Defendant(s).
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CLASS ACTION COMPLAINT FOR VIOLATIONS OF: 1. THE VIDEO PRIVACY PROTECTION ACT, 18 U.S.C. § 2710 *et seq.*; AND 2. CALIFORNIA CIVIL CODE § 1799.3

1 Plaintiffs, Meghan Mollett and Tracy Hellwig, on behalf of themselves and all others
2 similarly situated (the "Class", defined below), bring this action for violations of the Video
3 Privacy Protection Act, 18 U.S.C. § 2710 *et seq.* (the "VPPA") and California Civil Code § 1799.3
4 against Netflix, Inc. ("Netflix"). Plaintiffs make the following allegations on information and
5 belief, except as to those paragraphs that pertain to Plaintiffs, which are based on personal
6 knowledge. Plaintiffs' allegations made on information and belief are based upon, *inter alia*, the
7 investigation conducted by their attorneys.

8 NATURE OF THE CLAIM

9 1. This is a nationwide class action brought against Netflix for violations of the
10 VPPA, 18 U.S.C. § 2710 *et seq.* and California Civil Code § 1799.3 on behalf of a class of all
11 persons in the United States who subscribed to Netflix's services and streamed Netflix videos
12 from the Internet through any Netflix ready device including, but not limited to, the XBox 360,
13 Nintendo Wii and PlayStation 3 video game consoles, the Roku set top box, Netflix ready
14 televisions, and/or any Netflix ready DVR, DVD or Blue-ray player at any time from two years
15 prior to the date of the filing of this Complaint through the present.

16 2. Netflix currently provides movies and other video content to its subscribers in two
17 ways: (1) by mailing DVDs or Blue-Ray discs to its subscribers through the U.S. Postal Service
18 with a postage paid return envelope; and (2) through an instant watch feature which allows Netflix
19 subscribers to stream video content provided by Netflix over the Internet.

20 3. Netflix's Internet streaming videos can be viewed by selecting a movie for instant
21 viewing over the Internet on the subscriber's computer or portable computing device such as
22 Apple's iPad.

23 4. Netflix's Internet streaming videos can also be viewed on a subscriber's TV or
24 other display through various devices that have been designed or programmed to stream Netflix
25 video content via the Internet. These devices include, but are not limited to, the XBox 360,
26 Nintendo Wii and the PlayStation 3 video game consoles, the Roku set top box, and certain
27 Netflix ready televisions, DVRs, DVD and Blue-ray players ("NetFlix Ready Devices" or "Netflix
28 Ready Device" when referred to singularly).

1 5. When a subscriber accesses Netflix through a Netflix Ready Device, various
2 categorized lists of videos available for streaming from the Internet which Netflix calls "queues"
3 are automatically displayed on the subscriber's TV or other display.

4 6. Included among the queues that Netflix automatically displays on the subscriber's
5 TV or other display are: (1) a queue titled "Recently Watched," which lists the latest video titles
6 that were viewed through the subscriber's Netflix Ready Device; (2) a queue titled "Instant
7 Queue," which lists video titles that a subscriber has flagged for future viewing; and (3) various
8 queues that list video titles recommended by Netflix to the subscriber based on personal
9 information collected by Netflix regarding the subscriber's tastes, interests, viewing preferences
10 and/or recently watched streaming videos.

11 7. By automatically displaying the above referenced queues on its subscribers'
12 viewing screens without providing subscribers with any option or means to delete, edit, hide or
13 otherwise prohibit others from viewing the queues that identify the subscriber's recently watched
14 videos, viewing preferences, tastes and/or interests, Netflix improperly and knowingly discloses
15 the subscribers' personally identifiable information to everyone with access to the subscriber's
16 entertainment center(s) such as the subscriber's spouse, children, parents, other family members,
17 friends, guests, visitors, roommates, and/or housemates, etc.

18 8. Netflix's automatic disclosure of the streaming video titles viewed by its
19 subscribers and other personally identifiable information of the subscriber to everyone with access
20 to the subscriber's Netflix Ready Device or Devices, is unlawful and constitutes a knowing
21 violation of the VPPA, 18 U.S.C. § 2710 *et seq.*, as set forth in further detail below.

22 **PARTIES**

23 8. Plaintiff Meghan Mollett is a resident of Lansing, Michigan and is a Netflix
24 subscriber who views streaming videos from Netflix on her TV through a Netflix Ready Device,
25 which has and continues to automatically display to others her personally identifiable information
26 as defined by the VPPA, 18 U.S.C. § 2710 *et seq.*

27 9. Plaintiff Tracy Hellwig is a resident of Lancaster, California and is a Netflix
28 subscriber who views streaming videos from Netflix on her TV through a Netflix Ready Device,

1 which has and continues to automatically display to others her personally identifiable information
2 as defined by the VPPA, 18 U.S.C. § 2710 *et seq.*

3 10. Defendant Netflix, Inc. is a Delaware corporation which maintains its headquarters
4 at 100 Winchester Circle, Los Gatos, CA 95032. Founded in 1999, Netflix claims to be the
5 world's largest subscription service streaming movies and TV episodes over the Internet and
6 sending DVDs by mail. Netflix claims to have more than 20 million subscribers, mostly in the
7 U.S., and that more than 48% of its subscribers have watched more than 15 minutes of streaming
8 content as of the fourth quarter of 2009. Netflix is a "video tape service provider" regulated by the
9 VPPA, 18 U.S.C. § 2710 *et seq.*, meaning "any person, engaged in the business ... of rental, sale,
10 or delivery of prerecorded video cassette tapes or similar audio visual materials." *Id.* at
11 § 2710(a)(4).

12 JURISDICTION AND VENUE

13 11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, which
14 confers upon the Court original jurisdiction over all civil actions arising under the laws of the
15 United States, and pursuant to 18 U.S.C. § 2710(c).

16 12. This Court has jurisdiction over Netflix because a substantial portion of the
17 wrongdoing alleged in this Complaint took place in the State of California and because Netflix has
18 its principal place of business in, and is authorized to do business in, the State of California.

19 13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Netflix resides
20 in this District, many of the acts and transactions giving rise to this action occurred in this District
21 and because Netflix is subject to personal jurisdiction in this District.

22 14. **Intradistrict Assignment:** Pursuant to Civil L.R. 3-5(b) and Civil L.R.
23 3-2(c)&(e), assignment of this action to the San Jose Division is appropriate because Netflix
24 resides in Santa Clara County and many of the acts and transactions giving rise to this action
25 occurred in Santa Clara County.

26 FACTUAL ALLEGATIONS

27 15. Netflix launched in or about 1999 as an on-line DVD rental subscription service
28 that delivers DVD rentals directly to its subscribers through the U.S. mail.

1 16. Rather than charging its customers on a per DVD basis, Netflix charges a monthly
2 subscription fee which is priced depending on the specific subscription plan the subscriber
3 chooses.

4 17. Netflix's subscriber plans historically have varied depending on how many DVDs a
5 subscriber was entitled to have checked out at any given time. Prior to 2007, Netflix only offered
6 video content on DVDs delivered through the mail.

7 18. All Netflix subscribers are required to set up a password protected on-line Netflix
8 account which allows the subscriber to manage in a limited way his or her Netflix account via the
9 Internet.

10 19. To order DVDs for home delivery, Netflix subscribers must log on to their Netflix
11 on-line account and create a list of DVDs they want to view, which Netflix refers to as a "queue."
12 Depending on the subscriber's plan, Netflix then mails one or more DVDs to the subscriber based
13 upon the titles listed in the subscriber's queue. When the subscriber returns a DVD to Netflix in
14 the postage paid mailer/envelope provided by Netflix, Netflix then mails out the next available
15 DVD from the subscriber's DVD queue.

16 20. Due to the large number of DVD titles available from Netflix – currently over
17 100,000 titles – Netflix provides its subscribers with a search feature through their on-line account
18 whereby they can search Netflix's library of DVDs by title, by actor, by director, by genre, etc.

19 21. Netflix also uses a proprietary recommendation service that uses predictive
20 software to analyze personal information collected by Netflix from each subscriber through
21 questionnaires, movie ratings or reviews provided by the subscriber and/or the list of DVDs
22 previously viewed by the subscriber to make personalized video recommendations that are unique
23 to each subscriber.

24 22. Netflix's personalized DVD recommendations are posted by Netflix in each
25 subscriber's on-line account and are sorted into various queues that are categorized based on the
26 subscriber's taste preferences and/or previously viewed DVDs.

27 23. Each queue generally includes the title of each video included in the queue, an
28 image of the DVD cover art for each listed video, a written description of the video content and

1 the Motion Picture Association of America (“MPPA”) rating for each video.

2 24. Netflix also provides its subscribers with a complete list of the subscriber’s DVD
3 rental history of titles previously shipped to the subscriber.

4 25. As each subscriber’s on-line Netflix account is password protected, the subscriber’s
5 personal information therein, including their past DVD rental history, was, and is, generally kept
6 private and secure unless the subscriber decides to share any of their private information with
7 others.

8 26. In January 2007, Netflix announced that it was rolling out a new feature that would
9 allow subscribers to instantly watch movies, television series and other video content streamed
10 from the Internet on their personal computers and that Netflix intended to broaden the distribution
11 capability of this service to multiple platforms over time.

12 27. Netflix added this new streaming Internet feature to every subscription plan at no
13 additional cost although Netflix initially placed limits on the number of hours a subscriber could
14 stream Internet videos for viewing on their computer in any given month based on the subscriber’s
15 particular DVD plan.

16 28. In January 2008, Netflix announced that it anticipated developing a set-top box
17 device or other devices in conjunction with consumer electronics manufacturers that would enable
18 Netflix’s instant-watching feature to be viewed directly on subscribers’ televisions.

19 29. According to Reed Hastings, Netflix’s co-founder and CEO, ever since Netflix
20 began offering streaming videos for viewing on a personal computer in January of 2007, it has
21 been Netflix’s goal “to be ubiquitous on whatever device gets the Internet to the TV.” See Press
22 Release, Netflix, Inc., *Netflix Announces Multiple Partners to Instantly Stream Movies and TV*
23 *Episodes from Netflix to the TV* (January 7, 2010) (available at [http://netflix.mediaroom.com/
24 index.php?s=43&item=343](http://netflix.mediaroom.com/index.php?s=43&item=343)).

25 30. While Netflix started off exclusively as a DVD-by-mail rental company, Netflix
26 now primarily considers itself as an Internet streaming video company. Starting sometime in the
27 last quarter of 2010, the amount of content viewed by Netflix subscribers streamed over the
28 Internet surpassed the amount of content viewed on DVDs received through the mail, and for the

1 first time Netflix spent more money to acquire streaming content than DVDs. See Press Release,
2 Netflix, Inc., *Netflix Launches U.S. Subscription Plan for Streaming Movies & TV Shows over the*
3 *Internet for \$7.99 a Month* (November 22, 2010) (available at [http://netflix.mediaroom.com/](http://netflix.mediaroom.com/index.php?s=43&item=376)
4 [index.php?s=43&item=376](http://netflix.mediaroom.com/index.php?s=43&item=376)).

5 31. Every subscription plan currently offered by Netflix includes the instant watch
6 feature which provides every subscriber with the ability to watch videos streamed over the
7 Internet.

8 32. Netflix streaming video can currently be watched on a subscriber's TV or other
9 display through a variety of Netflix Ready Devices such as Microsoft's Xbox 360, Nintendo's Wii
10 and Sony's PlayStation 3 video game consoles, an array of Blu-ray disc players, Internet-
11 connected TVs, home theater systems, digital video recorders and Internet video players.

12 33. In order to activate a Netflix Ready Device, the subscriber must first obtain a code
13 that is outputted by the Netflix Ready Device and then register that code with Netflix via the
14 subscriber's on-line Netflix account. Once the subscriber's Netflix Ready Device has been
15 activated by Netflix, anyone with access to the subscriber's Netflix Ready Device can view
16 Netflix Internet streamed videos directly on the subscriber's TV or other display.

17 34. Unlike broadcast television programming, Netflix Internet streaming video service
18 does not offer channels of commercial video programming to choose from. Instead, Netflix
19 viewers must specifically choose a title they want to watch from the thousands of movies, TV
20 episodes and various other streaming video content offered by Netflix.

21 35. In order to help subscribers find available Netflix streaming videos of interest to
22 instantly watch on their TVs or other displays, Netflix provides subscribers with an on screen
23 "search by title" feature.

24 36. Netflix also adopted the queue feature it previously developed for recommending
25 DVDs to its subscribers via their online accounts in order to recommend available streaming video
26 titles to subscribers who watch Netflix on a TV or other display through a Netflix Ready Device.

27 37. However, in making the transition from being a DVD rental service to also
28 becoming a provider of Internet streaming video content that can be ordered and watched directly

1 on a subscriber's TV or other display through a Netflix Ready Device, Netflix no longer limits the
2 display of the subscriber's personal and private information, such as the video titles the subscriber
3 has ordered from Netflix, to the subscriber's on-line account. Instead, Netflix now automatically
4 displays the subscriber's streaming video queues directly onto the subscriber's TV or other
5 display, thereby allowing all who watch Netflix with the subscriber or who otherwise have access
6 to the subscriber's home entertainment center to view the subscriber's private, personally
7 identifiable information contained in the various queues.

8 38. For example, one of the streaming video queues provided by Netflix and
9 automatically displayed on the subscriber's TV or other display when Netflix is viewed through a
10 Netflix Ready Device is a compilation of streaming videos titles that the subscriber has tagged for
11 later viewing. Netflix refers to this queue as the "Instant Queue". On information and belief, this
12 is the only queue that Netflix allows the subscriber to add or delete video titles from at will.

13 39. All remaining streaming video queues are compiled by Netflix as opposed to the
14 subscriber, and the subscriber is unable to delete, hide or lock any of those queues or delete any
15 video title listed in such video queues to prevent the disclosure of the subscriber's personally
16 identifiable information to others with access to the subscriber's TV or other display.

17 40. Another streaming video queue compiled by Netflix and automatically displayed
18 on the subscriber's TV or other display is a queue titled "Recently Watched" that lists the most
19 recent streaming video titles previously viewed through the subscriber's Netflix Ready Device.

20 41. Netflix also provides queues listing recommended video titles that a subscriber
21 might enjoy based on the list of recently watched videos. These queues are labeled "Like [name
22 of recently viewed title]."

23 42. Netflix also displays a queue titled "Top Picks for [first name of subscriber]" which
24 lists streaming videos Netflix believes will interest the subscriber based on Netflix's analysis of
25 the subscriber's personal information it has collected.

26 43. Each of these above-referenced queues contains protected, personally identifiable
27 information and other private information of the subscriber.

28 44. Netflix has failed to implement appropriate security measures to prevent the

1 disclosure of its subscribers' personally identifiable information to others even though Netflix at
2 all relevant times knew, or should have known, that the viewers of its streaming video on a
3 subscriber's TV or other display would not be limited to Netflix's subscribers, but would include
4 others such as its subscribers' spouses, children, parents, guests, friends, housemates, and/or
5 roommates, etc.

6 45. Every time a Netflix Ready Device is turned on to view Netflix streaming videos
7 on the subscriber's TV or other display, Netflix automatically displays the various queues
8 compiled by Netflix, including those that disclose personally identifiable information of the
9 subscriber on the subscriber's TV or other display without providing the subscriber the means to
10 restrict others from viewing the subscriber's personally identifiable information.

11 46. Netflix could easily protect the personally identifiable information of its
12 subscribers by providing its subscribers with the option to delete, hide, edit or lock any queues that
13 disclose any personal information that the subscriber would like to keep private, or by allowing
14 the subscriber to delete certain titles from the queues (like the subscriber is allowed to do in the
15 "Instant Queue") or by simply removing all queues which identify a subscriber's previously
16 watched videos, tastes and/or preferences altogether from the TV or other display and making
17 such queues only available in the subscriber's password-protected on-line account.

18 47. Netflix's automatic disclosure of its subscribers' recently viewed streaming video
19 titles and other personally identifiable information to everyone with access to the subscribers'
20 Netflix Ready Devices constitutes a knowing violation of the VPPA, 18 U.S.C. § 2710 *et seq.*

21 CLASS ACTION ALLEGATIONS

22 48. Plaintiffs bring this action on behalf of themselves and as a class action, pursuant to
23 the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf
24 of a class of similarly situated individuals defined as:

25 All natural persons residing in the U.S., Puerto Rico and any U.S. territories who
26 subscribed to Netflix and streamed Netflix videos from the Internet to their
27 televisions through any Netflix Ready Device including, but not limited to, the
28 XBox 360, Nintendo Wii, or PlayStation 3 video game consoles, the Roku set top
box, any Netflix ready televisions, and/or any Netflix ready DVR, DVD or Blue-
ray players at any time from two years prior to the date of the filing of this
Complaint through the present (the "Class").

1 49. Excluded from the Class are Defendant and its subsidiaries and affiliates; all
2 persons who make a timely election to be excluded from the Class; governmental entities; the
3 judges to whom this case is assigned and any immediate family members thereof; and Plaintiffs'
4 counsel and Class counsel. Plaintiffs reserve the right to modify or amend this Class definition, as
5 appropriate.

6 50. Certification of Plaintiffs' claims for classwide treatment is appropriate because
7 Plaintiffs can prove the elements of their claims on a classwide basis using the same evidence as
8 would be used to prove those elements in individual actions alleging the same claims.

9 51. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members of the
10 Class are so numerous that individual joinder of all Class members is impracticable. Plaintiffs are
11 informed and believe that there are potentially thousands, if not millions, of individuals that
12 stream Netflix videos from the Internet instantly to their TV or other display through a Netflix
13 Ready Device. The precise number of Class members and their addresses are unknown to
14 Plaintiffs, but may be ascertained from Netflix's books and records. Class members may be
15 notified of the pendency of this action by recognized, Court-approved notice dissemination
16 methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

17 52. **Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2)**
18 **and 23(b)(3).** This action involves common questions of law and fact, which predominate over
19 any questions affecting individual Class members. Personally identifiable information of Class
20 members was compiled by Netflix and disclosed to third parties in violation of federal law.
21 Furthermore, common questions of law and fact, include, without limitation:

- 22 a) whether Netflix engaged in the conduct as alleged herein;
23 b) whether Netflix's practices violate applicable law;
24 c) whether Plaintiffs and the other members of the Class are entitled to
25 actual, statutory, punitive or other forms of damages, and other
26 monetary relief and, if so, in what amount(s); and
27 d) whether Plaintiffs and the other members of the Class are entitled to
28

1 equitable relief, including but not limited to injunctive relief and
2 restitution.

3 **53. Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs' claims are
4 typical of the claims of the other members of the Class because, among other things, all Class
5 members were comparably injured through the uniform misconduct described above and were
6 subject to Netflix's unwarranted and unauthorized violations of their personal privacy.

7 **54. Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).**
8 Plaintiffs are adequate Class representatives because their interests do not conflict with the
9 interests of the other members of the Class they seek to represent; they have retained counsel
10 competent and experienced in complex class action litigation; and Plaintiffs intend to prosecute
11 this action vigorously. The Class's interests will be fairly and adequately protected by Plaintiffs
12 and their counsel.

13 **55. Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).**
14 Netflix has acted or refused to act on grounds generally applicable to Plaintiffs and the other
15 members of the Class, thereby making appropriate final injunctive relief and declaratory relief, as
16 described below, with respect to the members of the Class as a whole.

17 **56. Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is
18 superior to any other available means for the fair and efficient adjudication of this controversy,
19 and no unusual difficulties are likely to be encountered in the management of this class action.
20 The damages or other financial detriment suffered by Plaintiffs and the other members of the
21 Class are relatively small compared to the burden and expense that would be required to
22 individually litigate their claims against Netflix, so it would be impracticable for Class members
23 to individually seek redress for Netflix's wrongful conduct. Even if the Class members could
24 afford individual litigation, the court system could not. Individualized litigation creates a
25 potential for inconsistent or contradictory judgments, and increases the delay and expense to all
26 parties and the court system. By contrast, the class action device presents far fewer management
27 difficulties, and provides the benefits of single adjudication, economy of scale, and
28 comprehensive supervision by a single court.

FIRST CAUSE OF ACTION

**Violation of the Video Privacy Protection Act - 18 U.S.C. § 2710 *et seq.*
(On Behalf of Plaintiffs and the Class)**

1
2
3 57. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as
4 though fully stated herein.

5 58. The VPPA prohibits a video tape service provider from knowingly disclosing
6 personally identifiable information of any consumer of such provider to any person except under
7 limited exceptions not applicable here.

8 59. Netflix is a "video tape service provider" as defined by the VPPA because it is
9 "engaged in the business, in or affecting interstate or foreign commerce, of rental, sale or delivery
10 of prerecorded video cassette tapes or similar audio visual materials." 18 U.S.C. § 2710(a)(4).

11 60. Plaintiffs are "consumers," as defined by the VPPA, because each was a "renter,
12 purchaser, or subscriber of goods or services from a video tape service provider." 18 U.S.C.
13 § 2710(a)(1).

14 61. The VPPA defines "personally identifiable information" as that which "identifies a
15 person as having requested or obtained specific video materials or services from a video tape
16 service provider." 18 U.S.C. § 2710(a)(3).

17 62. As previously described above, when Netflix Internet streaming videos are viewed
18 on subscribers' TVs or other displays via a Netflix Ready Device, Netflix automatically displays
19 various queues that contain and disclose the subscribers' personally identifiable information such
20 as subscribers' recently watched videos, tastes and preferences.

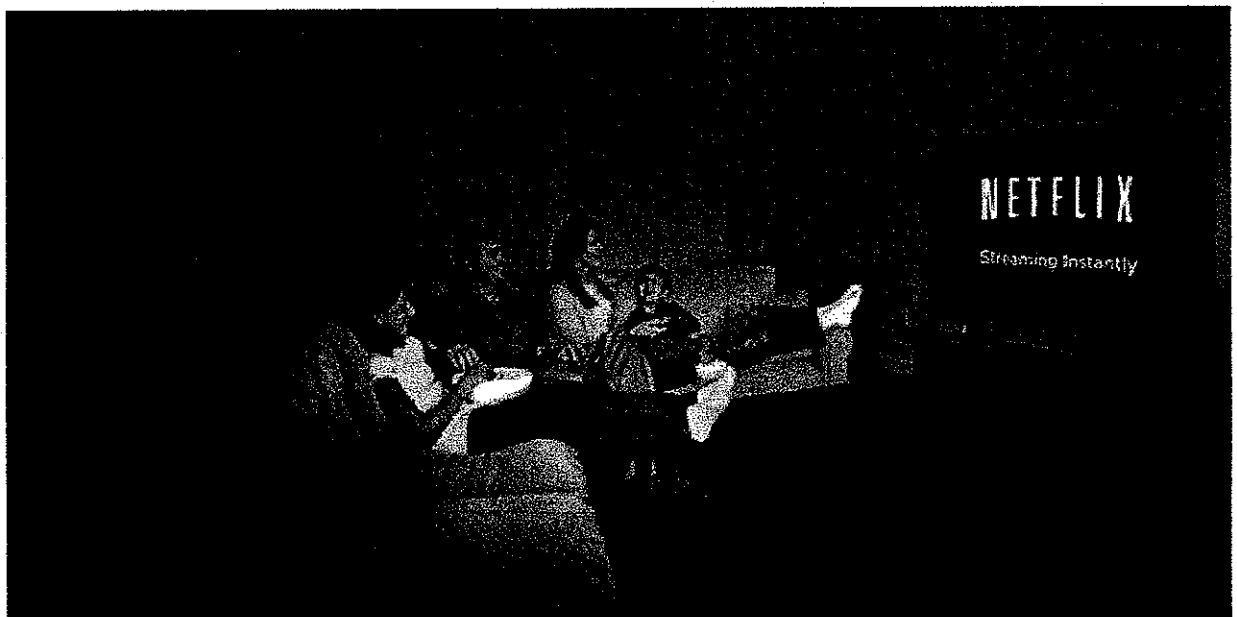
21 63. By automatically displaying queues containing personally identifiable information
22 of its subscribers directly on their TVs or other displays without providing subscribers with a way
23 to preclude others from accessing the protected information, Netflix knowingly discloses
24 personally identifiable information of its subscribers to everyone with access to the subscribers'
25 entertainment center such as the subscriber's spouses, children, other relatives, household
26 members, friends, guests, roommates and/or housemates, etc.

27 64. While the VPPA allows a video tape service provider to disclose personally
28 identifiable information concerning any consumer to that consumer, Netflix knew, or should have

1 known, at all times relevant hereto that the disclosure of its subscribers' personally identifiable
2 information automatically on its subscribers' TVs or other displays every time Netflix is watched
3 through a Netflix Ready Device would not be limited to its subscribers but would also be made to
4 others such as the subscribers' spouses, children, other relatives, household members, friends,
5 guests, roommates and/or housemates, etc.

6 65. Netflix markets its instant streaming services as entertainment that subscribers can
7 share with their families, friends and others. For example, in a press release announcing that
8 Netflix could now be streamed through the Nintendo Wii gaming console, Netflix stated, "The
9 launch of Netflix on Wii gives people the opportunity to gather with friends and family for a
10 movie and game night." See Press Release, Netflix, Inc., *Thousands of Movies & TV Episodes*
11 *From Netflix Now Available via Nintendo's Wii Console* (April 12, 2010) (available at
12 <http://netflix.mediaroom.com/index.php?s=43&item=354>).

13 66. Likewise, many of the images used in Netflix's advertisements for its instant
14 streaming to television service depict social groups of families and/or friends gathered around the
15 TV watching Netflix together as a social unit as opposed to a single subscriber watching Netflix
16 alone (as illustrated in the below picture widely used by Netflix in Internet advertisements).



1 67. Netflix's disclosures of its subscribers' personally identifiable information as
2 alleged above:

- 3 a) were not limited to Netflix's subscribers, but instead were, and
4 continue to be, knowingly made to others with access to the
5 subscribers' Netflix Ready Devices;
- 6 b) were, and continue to be, made without the informed written consent
7 of the subscribers given at the time the disclosures were sought;
- 8 c) were, and continue to be, made without Netflix having first provided
9 subscribers with the opportunity, in a clear and conspicuous manner,
10 to prohibit such disclosures;
- 11 d) were not limited to the name and address of the subscribers, failed to
12 provide subscribers with the opportunity, in a clear and conspicuous
13 manner, to prohibit such disclosure, and included the titles and
14 descriptions of the video material;
- 15 e) were not made in the "ordinary course of business" which, as
16 defined by the VPPA (18 U.S.C. § 2710(a)(2)), is limited to "only
17 debt collection activities, order fulfillment, request processing, and
18 the transfer of ownership;"
- 19 f) were not made pursuant to a court order; and
- 20 g) were not made to a law enforcement agency pursuant to a warrant.

21 68. As alleged herein, Netflix has knowingly disclosed and continues to knowingly
22 disclose personally identifiable information of Plaintiffs and class members in violation of the
23 VPPA.

24 69. In recent public filings, Netflix has acknowledged that privacy concerns could limit
25 Netflix's ability to leverage its subscribers' data and that the disclosure of or unauthorized access
26 to subscriber data could subject Netflix to litigation and adversely impact Netflix's business and
27 reputation. Specifically Netflix stated that:

28 In the ordinary course of business and in particular in connection with providing
our personal movie recommendations, we collect and utilize data supplied by our

1 subscribers. We currently face certain legal obligations regarding the manner in
2 which we treat such information. Other businesses have been criticized by privacy
3 groups and governmental bodies for attempts to link personal identities and other
4 information to data collected on the Internet regarding users' browsing and other
5 habits. Increased regulation of data utilization practices, including self-regulation as
6 well as increased enforcement of existing laws, could have an adverse effect on our
7 business. In addition, if unauthorized access to our subscriber data were to occur or
8 if we were to disclose data about our subscribers in a manner that was
9 objectionable to them, our business reputation could be adversely affected, and we
10 could face potential legal claims that could impact our operating results.

11 *See* Netflix, Inc., Annual Report (Form 10-K) at 16 (Feb. 22, 2010).

12 70. Despite the VPPA's strict prohibition against the disclosure of personally
13 identifiable information and Netflix's knowledge that improper disclosure of its subscribers'
14 private information could subject Netflix to legal claims and impact its operating results, Netflix's
15 privacy policy does not even address the disclosure of information that identifies a subscriber as
16 having requested or obtained specific video materials or services from Netflix.

17 71. For example, Netflix's Privacy Policy only addresses personal information which
18 Netflix defines as "... information that can be used to identify and contact you, specifically your
19 name, postal delivery address, e-mail address, payment method (e.g., credit card, debit card, or
20 other payment method accepted on our website) and telephone number, as well as other
21 information when such information is combined with your personal information." *See Privacy*
22 *Policy*, Netflix, Inc. (last updated on September 24, 2010) <http://www.netflix.com/PrivacyPolicy>.

23 72. Plaintiffs and members of the Class have suffered harm as a result of Netflix's
24 violations of the VPPA.

25 73. The VPPA provides that "[a] video tape service provider who knowingly discloses,
26 to any person, personally identifiable information concerning any consumer of such provider shall
27 be liable to the aggrieved person," who "may bring a civil action in a United States district court."

28 18 U.S.C. § 2710(b)(1)&(c)(1). The court may award:

"(A) actual damages but not less than liquidated damages in an amount of \$2,500;

(B) punitive damages;

(C) reasonable attorneys' fees and other litigation costs reasonably incurred; and

(D) such other preliminary and equitable relief as the court determines to be appropriate."

18 U.S.C. § 2710(c)(2).

1 74. Pursuant to 18 U.S.C. § 2710, Plaintiffs and the other members of the Class are
2 entitled to actual damages, but no less than liquidated damages in the amount of \$2,500 for each
3 aggrieved Plaintiff or Class member, punitive damages, costs and reasonable attorneys' fees and
4 such other preliminary and equitable or declaratory relief as may be appropriate.

5 **SECOND CAUSE OF ACTION**
6 **Violation of California Civil Code § 1799.3**
7 **(On Behalf of Plaintiffs and the Class)**

8 75. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as
9 though fully stated herein.

10 76. California Civil Code § 1799.3(a) provides: "No person providing video recording
11 sales or rental services shall disclose any personal information or the contents of any record,
12 including sales or rental information, which is prepared or maintained by that person, to any
13 person, other than the individual who is the subject of the record, without the written consent of
14 that individual."

15 77. None of the exemptions provided by California Civil Code § 1799.3(b) apply.

16 78. California Civil Code § 1799.3(c) provides, "Any willful violation of this section
17 shall be subject to a civil penalty not to exceed five hundred dollars (\$500) for each violation,
18 which may be recovered in a civil action brought by the person who is the subject of the records."

19 79. California Civil Code § 1799.3(e) provides that "[t]he penalty provided by this
20 section is not an exclusive remedy, and does not affect any other relief or remedy provided by
21 law." Therefore, in addition to the relief provided by the VPPA, Plaintiffs and the other members
22 of the Class are entitled to recover a civil penalty of \$500 for each violation.

23 **REQUEST FOR RELIEF**

24 WHEREFORE, Plaintiffs, individually and on behalf of the Class, respectfully request:

25 A. the Court certify the Class pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3), and
26 adjudge Plaintiffs to be adequate representatives thereof;

27 B. the Court enter an Order requiring Defendant to pay Plaintiffs' and the other Class
28 members' actual damages (including multiple damages) or statutory damages, whichever is
greater, and civil penalties;

1 C. the Court enter an Order requiring Defendant to pay Plaintiffs and the other Class
2 members punitive damages;

3 D. the Court enter an Order awarding declaratory and injunctive relief as permitted by
4 law or equity, including: enjoining Defendant from continuing the unlawful practices set forth
5 above; directing Defendant to modify its queues displayed on its subscribers' TVs or other
6 displays through Netflix Ready Devices so that its subscribers' personally identifiable information
7 is no longer automatically displayed on the subscribers' TVs or other displays or by otherwise
8 allowing subscribers to control what personally identifiable information, if any, is displayed;

9 E. the Court enter an Order awarding Plaintiffs and the other members of the Class
10 their expenses and costs of suit, including reasonable attorneys' fees, to the extent provided by
11 law; and

12 F. for such other relief as may be just and proper.

13 **JURY DEMAND**

14 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all
15 claims in this Complaint so triable.

16 DATED: April 4, 2011

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