

EXHIBIT 2

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

CITY OF BIRMINGHAM RELIEF AND)
RETIREMENT SYSTEM,)

Plaintiff,)

v.)

REED HASTINGS, DAVID WELLS,)
RICHARD BARTON, A. GEORGE (SKIP)
BATTLE, TIMOTHY HALEY, JAY HOAG,)
LESLIE KILGORE, ANN MATHER, BRAD)
SMITH, ANNE SWEENEY, NEIL HUNT,)
TED SARANDOS, GREG PETERS, and)
DAVID HYMAN,)

Defendants,)

– and –)

NETFLIX INC.,)

Nominal Defendant.)

CASE NO.: 5:18-cv-02107-BLF
DERIVATIVE ACTION
**EXHIBIT B – NOTICE OF PENDENCY
OF PROPOSED SETTLEMENT OF
STOCKHOLDER DERIVATIVE
ACTION**

1 **TO: ALL CURRENT RECORD HOLDERS AND BENEFICIAL OWNERS OF THE**
2 **COMMON STOCK OF NETFLIX INC. (“NETFLIX”) AS OF FEBRUARY 3, 2020**
3 **(“CURRENT NETFLIX STOCKHOLDERS”) (EXCLUDING DEFENDANTS) AND**
4 **THEIR SUCCESSORS-IN-INTEREST**

5 **PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY AS YOUR**
6 **RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THE LITIGATION.**

7 **THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF STOCKHOLDER**
8 **DERIVATIVE ACTIONS AND CLAIMS ASSERTED ON BEHALF OF NETFLIX.**

9 **IF THE COURT APPROVES THE SETTLEMENT AND DISMISSAL OF THE**
10 **ACTIONS, STOCKHOLDERS OF NETFLIX AND NETFLIX WILL BE FOREVER**
11 **BARRED FROM CONTESTING THE APPROVAL OF THE PROPOSED**
12 **SETTLEMENT AND FROM PURSUING THE SETTLED CLAIMS.**

13 **THIS ACTION IS NOT A “CLASS ACTION.” THUS, THERE IS NO COMMON**
14 **FUND UPON WHICH YOU CAN MAKE A CLAIM FOR A MONETARY**
15 **PAYMENT.**

16 **YOU ARE HEREBY NOTIFIED** that the above-captioned consolidated stockholder
17 derivative action (the “Action”) is being settled on the terms set forth in the Stipulation of Settlement,
18 dated as of February 3, 2020 (the “Stipulation”). This Notice is provided by Order of the United
19 States District Court for the Northern District of California (the “Court”). It is not an expression of
20 any opinion by the Court with respect to the truth of the allegations in the Action or the merits of the
21 claims or defenses asserted by or against any party. It is solely to notify you of the terms of the
22 proposed Settlement, and your rights related thereto. The Court has made no findings or
23 determinations concerning the merits of the Action. Capitalized terms not otherwise defined shall
24 have the definitions set forth in the Stipulation.

25 **I. WHY THE COURT HAS APPROVED THE ISSUANCE OF THIS NOTICE**

26 Your rights may be affected by the settlement of the Action. The parties to the Action have
27 agreed upon terms to settle the Action and have signed the Stipulation setting forth those settlement
28 terms.

II. BACKGROUND OF THE ACTION AND SETTLEMENT NEGOTIATIONS

On August 25, 2017, Netflix received a books and records demand pursuant to 8 *Del. C.*
§220 (the “220 Demand”) from Plaintiff City of Birmingham Relief and Retirement Fund
 (“Plaintiff”), dated August 17, 2017, seeking to inspect certain documents.

1 On October 13, 2017, after execution of a Confidentiality and Non-Disclosure Agreement
2 between Nominal Defendant Netflix Inc. (“Netflix” or the “Company”) and Plaintiff, and numerous
3 telephonic discussions, Netflix produced over 1,200 pages of internal, confidential Board-level
4 documents to Plaintiff for inspection in response to the 220 Demand (the “220 Production”).

5 On April 6, 2018, following its comprehensive review of the 220 Production, Plaintiff filed
6 its Verified Shareholder Derivative Complaint (the “Complaint”) in this Court, derivatively on
7 behalf of Netflix, against the Individual Defendants¹ alleging violations of §14(a) of the Securities
8 Exchange Act of 1934 (the “Exchange Act”) and state law claims for breach of fiduciary duty and
9 waste of corporate assets.

10 Plaintiff’s Complaint alleged that the Individual Defendants breached their fiduciary duties
11 in connection with the administration of Netflix’s Performance Bonus Plan from 2015 to 2017 –
12 which, according to Plaintiff, did not comply with §162(m) of the Internal Revenue Code – and
13 violated §14(a) of the Exchange Act by issuing false and misleading proxy statements concealing
14 how the Performance Bonus Plan was structured and implemented.

15 On June 8, 2018, Defendants filed a motion to dismiss the Complaint. Defendants argued,
16 pursuant to Rule 23.1 of the Federal Rules of Civil Procedure (“Rule 23.1”), that the Complaint
17 failed to adequately plead that a pre-suit demand on Netflix’s Board of Directors (the “Board”) was
18 futile. The Individual Defendants further argued, pursuant to Fed. R. Civ. P. 12(b)(6), that the
19 Complaint failed to state any actionable claim for relief under the applicable laws.

20 On February 13, 2019, following briefing and hearing oral argument on Defendants’ motion
21 to dismiss the Complaint, the Court granted Defendants’ motion to dismiss pursuant to Rule 23.1
22 without prejudice. The Court found that Plaintiff had adequately alleged that Netflix had issued
23 misleading proxy statements and the culpable involvement of three members of Netflix’s nine-
24 member Board, but that the Complaint did not contain facts sufficient to implicate a Board majority.
25 The Court granted Plaintiff leave to file an amended complaint.

26
27 ¹ Unless otherwise defined herein, all capitalized terms used herein shall have the same
28 meanings as set those forth in the Stipulation of Settlement, dated as of February 3, 2020 (the
“Stipulation”).

1 In connection with the drafting of Plaintiff's amended complaint, Plaintiff sought the
2 production of unredacted versions of certain documents that were previously produced to Plaintiff
3 in redacted form. Counsel for Plaintiff and Defendants subsequently undertook negotiations on the
4 production of those documents, leading to an in-person meeting during which the contents of the
5 documents were shown to Plaintiff's Counsel without certain redactions subject to a non-waiver
6 agreement, and the parties were able to narrow the number of documents in dispute (the "Contested
7 Documents"). On April 16, 2019, the parties filed a stipulation and proposed order advising the
8 Court of the dispute and asking the Court to extend the deadline for the filing of Plaintiff's amended
9 complaint until 30 days from an order resolving Plaintiff's motion to compel. On April 17, 2019,
10 the Court granted the parties request and directed Plaintiff to make its motion to compel before
11 Magistrate Judge Nathanael Cousins ("Judge Cousins") on or before April 30, 2019. Plaintiff's
12 April 30, 2019 motion to compel was fully briefed by May 17, 2019. On May 21, 2019, Judge
13 Cousins vacated the then-forthcoming May 22, 2019 hearing, finding that the motion was
14 appropriate to decide on the parties' papers.

15 Following briefing on Defendants' motion to dismiss, and while the parties negotiated for
16 the production of the Contested Documents, counsel for Plaintiff and Defendants also undertook
17 negotiations regarding a possible resolution of the Action. As a result of those arm's-length
18 negotiations, Plaintiff and Defendants reached a tentative agreement-in-principle for the resolution
19 of the Action.

20 On October 15, 2019, Plaintiff and Defendants executed a Memorandum of Understanding
21 (the "MOU"), memorializing the terms of their agreement-in-principle to resolve the Action, subject
22 to the approval of the Board.

23 On October 28, 2019, the Board unanimously approved the MOU pursuant to a Unanimous
24 Written Consent.

25 On December 2, 2019, Plaintiff confirmed to Defendants that based upon the documentation
26 and information received and discussions with Defendants' counsel, in addition to Plaintiff's
27 investigation, the Settlement is fair, reasonable, and adequate.

28

1 Following agreement among the Settling Parties to the terms of the Stipulation other than
2 with respect to the amount of any attorneys' fees and expenses to be paid to Plaintiff's Counsel,
3 Plaintiff's Counsel and Defendants separately reached agreement regarding the amount of attorneys'
4 fees and expenses to be paid to Plaintiff's Counsel. Defendants agreed that they will not oppose any
5 such application for fees and expenses, provided that the award of attorneys' fees and expenses shall
6 not exceed \$800,000 in the aggregate. Plaintiff and Defendants did not discuss the appropriateness
7 of any amount of attorneys' fees and expenses at any time before February 3, 2020, and the Settling
8 Parties understood at all times that the Settlement was not contingent upon agreement or payment
9 of any attorneys' fees and expenses to Plaintiff's Counsel.

10 As a result of these negotiations, the Settling Parties reached an agreement to settle the
11 Action upon the terms and conditions set forth in the Stipulation.

12 **III. TERMS OF THE PROPOSED DERIVATIVE SETTLEMENT**

13 As a result of the filing, prosecution, and settlement of the Action, Plaintiff obtained relief
14 for Netflix by causing Netflix's Board to agree to adopt and/or maintain for a period of no less than
15 four years from the Effective Date of the Settlement certain corporate governance enhancements.
16 The corporate governance enhancements include, *inter alia*: (1) enhancements of Netflix's
17 management Disclosure Committee; (2) enhanced bonus-related disclosures about regular, annual
18 bonus compensation; (3) retention of compensation and tax consultant(s) to assist the Compensation
19 Committee in identifying risks associated with those bonuses; (4) legal advice from Netflix's
20 General Counsel's Office about regulatory compliance related to compensation; (5) training for
21 directors on compensation-related issues and compliance; and (6) additional compensation-related
22 actions. The full text of the Corporate Governance Reforms is set forth in the Stipulation.

23 Additionally, Netflix has acknowledged that Plaintiff's actions were a primary cause for
24 implementing the corporate governance enhancements.

25 The Settlement also provides for the entry of judgment dismissing the Action on the merits
26 with prejudice, and the release of the Released Claims, which, as detailed in the Stipulation,
27 collectively mean any and all claims for relief (including Unknown Claims, as defined in ¶1.22 of
28 the Stipulation), rights, demands, suits, matters, causes of action, or liabilities, known or unknown,

1 whether or not concealed or hidden, asserted or unasserted (including, without limitation, claims for
2 damages, interest, attorneys' fees, costs, disgorgement, constructive trust, breach of duty of care
3 and/or breach of duty of loyalty or good faith, breach of contract, fraud, negligence, gross
4 negligence, negligent misrepresentation, insider trading, mismanagement, misconduct, waste of
5 corporate assets, abuse of control, unjust enrichment, or violations of statutes, rules, or regulations,
6 whether based on federal, state, local, statutory, or common law or any other law, rule, or regulation),
7 that: (i) have been asserted in the Action; or (ii) could have been asserted in the Action by Plaintiff,
8 Netflix, or by any Netflix stockholder derivatively on behalf of Netflix, against each and every
9 Defendant and the Released Persons, arising out of or based upon the facts, transactions, events,
10 occurrences, acts, disclosures, statements, omissions, or failures to act that were alleged or referred
11 to in the Complaint; or (iii) any claims in connection with, based upon, arising out of, or relating to
12 the Settlement, but excluding any claims to enforce the Settlement set forth in this Stipulation.
13 Expressly excluded from the term "Released Claims" and any release provided by this Settlement
14 are: (i) any claims to enforce the Settlement; and (ii) any claims by Defendants or any other insured
15 to enforce their rights under any contract or policy of insurance.

16 **IV. REASONS FOR THE SETTLEMENT**

17 The Settling Parties have determined that it is desirable and beneficial that the Action, and
18 all of the disputes related thereto, be fully and finally settled in the manner and upon the terms and
19 conditions set forth in the Stipulation.

20 **A. Why Did Plaintiff Agree to Settle?**

21 Plaintiff and its counsel believe the claims asserted in the Action have merit. Plaintiff's
22 entry into the Stipulation and Settlement is not intended to be, and shall not be construed as, an
23 admission or concession concerning the relative strength or merit of the claims alleged. Nonetheless,
24 Plaintiff and its counsel have concluded it is desirable that the Action be fully and finally settled in
25 the manner and upon the terms and conditions set forth in the Stipulation. In so doing, Plaintiff and
26 its counsel recognize the expense and length of continued proceedings necessary to prosecute the
27 Action against the Individual Defendants through trial and any appeal(s). Plaintiff and its counsel
28 also have taken into account the uncertain outcome and the risk of any litigation, especially in

1 complex actions, such as the Action, as well as the difficulties and delays inherent in such litigation.
2 Plaintiff and its counsel also are mindful of the inherent problems of proof of, and possible defenses
3 to, the claims asserted in the Action. Based on their investigation and evaluation (as detailed below),
4 Plaintiff and its counsel have determined that the Settlement set forth in the Stipulation is in the best
5 interest of Netflix and its stockholders.

6 Plaintiff's Counsel conducted an extensive investigation, including, *inter alia*: (1) reviewing
7 Netflix's press releases, public statements, U.S. Securities and Exchange Commission ("SEC")
8 filings, securities analyst reports, and advisories about Netflix; (2) reviewing media reports about
9 Netflix; (3) researching the applicable law with respect to the claims alleged in the Action and the
10 potential defenses thereto; (4) preparing and filing a derivative Complaint; (5) conducting
11 preliminary damages analyses; (6) participating in informal conferences with Defendants' counsel
12 regarding the specific facts of the Action, the perceived strengths and weaknesses of the Action, and
13 other issues in an effort to facilitate negotiations and conducting research into Netflix's corporate
14 governance structure in order to make a settlement demand; (7) opposing Defendants' motion to
15 dismiss and participating in oral argument before the Court; (8) reviewing the 220 Production; and
16 (9) negotiating the Settlement with Defendants.

17 Based on Plaintiff's Counsel's thorough review and analysis of the relevant facts,
18 allegations, defenses, and controlling legal principles, Plaintiff's Counsel believes that the
19 Settlement set forth in the Stipulation is fair, reasonable, and adequate and confers substantial
20 benefits upon Netflix and its stockholders. Based upon Plaintiff's Counsel's evaluation, Plaintiff
21 has determined that the Settlement is in the best interests of Netflix and its stockholders and has
22 agreed to settle the Action upon the terms and subject to the conditions set forth herein.

23 **B. Why Did Defendants Agree to Settle?**

24 The Individual Defendants have denied, and continue to deny, each and all of the claims,
25 charges of wrongdoing, or liability against them arising out of the conduct, statements, acts, or
26 omissions alleged, or that could have been alleged, in the Action. The Individual Defendants have
27 denied, and continue to deny, that they have committed, threatened, or attempted to commit any
28 violations of law or breached any duty owed to Plaintiff, Netflix, or its stockholders. Nonetheless,

1 the Individual Defendants have concluded that further proceedings would be protracted and
2 expensive and have determined that it is desirable that the claims against them be settled on the terms
3 reflected in the Stipulation. The Individual Defendants and Netflix are entering into the Settlement
4 because it will eliminate the uncertainty, distraction, disruption, burden, risk, and expense of further
5 litigation, without admitting any wrongdoing or liability whatsoever.

6 **V. PLAINTIFF'S COUNSEL'S FEE AND EXPENSE AWARD AND PLAINTIFF'S**
7 **INCENTIVE AWARD**

8 Plaintiff's Counsel have not received any payment for their work in connection with the
9 Action, nor have they been reimbursed for out-of-pocket expenses. After negotiating the substantive
10 terms of the Settlement, Plaintiff's Counsel and Defendants separately reached agreement regarding
11 the amount of attorneys' fees and expenses to be paid to Plaintiff's Counsel. Defendants have agreed
12 that they will not oppose any such application for fees and expenses, provided that the award of
13 attorneys' fees and expenses shall not exceed \$800,000 in the aggregate (the "Fee and Expense
14 Award"), subject to Court approval. In addition, Plaintiff's Counsel and Defendants agreed that
15 Plaintiff's Counsel may apply to the Court for an award of \$10,000 for Plaintiff (the "Incentive
16 Award"), subject to Court approval, in recognition of Plaintiff's participation and effort in the
17 prosecution of the Action, and that Defendants will not oppose any such application.

18 **VI. SETTLEMENT HEARING**

19 Pursuant to an Order of the Court, a hearing will be held on June 25, 2020, at 1:30 p.m.,
20 before the Honorable Beth Labson Freeman in Courtroom 3 of the U.S. District Court for the
21 Northern District of California, located at 280 South 1st Street, , 5th Floor, San Jose, California
22 95113 (the "Settlement Hearing"), for the purpose of determining: (1) whether to approve the
23 Settlement as fair, reasonable, adequate, and in the best interest of Netflix and the Current Netflix
24 Stockholders; (2) whether to dismiss the Action and whether the releases set forth in the Stipulation
25 should be made full and final; (3) whether this Notice and the Summary Notice provided to Current
26 Netflix Stockholders conformed with Court rules and due process; (4) whether the Court should
27 approve Plaintiff's Counsel's request for a Fee and Expense Award in an aggregate amount of
28 \$800,000; and (5) whether the Court should approve Plaintiff's request for an Incentive Award in

1 the amount of \$10,000, as well as such other matters as may properly come before the Court. If the
2 Settlement is approved, Current Netflix Stockholders will be subject to and bound by the provisions
3 of the Stipulation, the releases contained therein, and by all orders, determinations, and judgments,
4 including the Final Approval Order entered in the Action concerning the Settlement.

5 Pending final determination of whether the Settlement should be approved, no Current
6 Netflix Stockholder, either directly, representatively, derivatively, or in any other capacity shall
7 commence or prosecute against any of the Released Persons any action or proceeding in any court,
8 administrative agency, or other tribunal asserting agency asserting any of the Released Claims.

9 **VII. RIGHT TO ATTEND THE SETTLEMENT HEARING**

10 You may enter an appearance in this Action, at your own expense, individually or through
11 counsel of your choice. If you do not enter an appearance, your interests, as stockholders of Netflix,
12 will be represented by Plaintiff's Counsel. If you want to object at the Settlement Hearing, then you
13 must first comply with the procedures for objecting, which are set forth below. The Court has the
14 right to change the hearing date or time without further notice. Thus, if you are planning to attend
15 the Settlement Hearing, you should confirm the date and time with Plaintiff's Counsel (see below)
16 before going to the Court. If you have no objection to the Settlement, you do not need to appear at
17 the Settlement Hearing or take any other action.

18 **VIII. THE PROCEDURES FOR OBJECTING TO THE SETTLEMENT**

19 Any Current Netflix Stockholder who wishes to object to the Settlement and/or show cause
20 why it should not be approved, why Judgment should or should not be entered thereon, or why the
21 Fee Awards should not be awarded shall state all reasons for the objection(s) and shall also: (1) state
22 the case name and number: *City of Birmingham Relief and Retirement System v. Hastings*, Case No.
23 5:18-cv-02107-BLF; (2) provide proof of current ownership of Netflix stock, as well as documentary
24 evidence of when such stock ownership was acquired; (3) clearly identify any and all evidence that
25 would be presented at the Settlement Hearing in connection with such objection(s); and (4) include
26 a proof of service signed under penalty of perjury.

27 All objections and accompanying materials shall be filed and served, and if done so by mail,
28 postmarked, at least 21 calendar days prior to the Settlement Hearing, as follows: (1) filed with the

1 Clerk of the Court, U.S. District Court for the Northern District of California, 280 South 1st Street,
2 San Jose, California 95113; and (2) served by first class U.S. Mail on counsel for the Settling Parties
3 at the following addresses:

4 For Defendants:

5 Keith Eggleton
6 WILSON SONSINI GOODRICH
& ROSATI, P.C.
7 650 Page Mill Road
Palo Alto, CA 94304

For Plaintiff:

Thomas L. Laughlin, IV
SCOTT+SCOTT ATTORNEYS AT LAW LLP
The Helmsley Building
230 Park Avenue, 17th Floor
New York, NY 10169

8 Any Current Netflix Stockholder wishing to be heard at the Settlement Hearing is required
9 to include a notice of intention to appear at the Settlement Hearing together with his, her, or its
10 written objection. Only stockholders who have filed with the Court and served on the Settling
11 Parties' counsel valid and timely written notices of objection and accompanying materials will be
12 entitled to be heard at the hearing, unless the Court orders otherwise.

13 Any Current Netflix Stockholder who does not make his, her, or its objection in the manner
14 provided in this Notice shall be deemed to have waived such objection and shall forever be
15 foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed
16 Settlement, as set forth in the Stipulation, and Fee Awards.

17 **IX. HOW TO OBTAIN ADDITIONAL INFORMATION**

18 This Notice summarizes the Stipulation. It is not a complete statement of the events of the
19 Actions or the terms of the Settlement contained in the Stipulation.

20 You may inspect the Stipulation and other papers in the Actions at the Clerk of the Court,
21 U.S. District Court for the Northern District of California, 280 South 1st Street, San Jose, California
22 95113, at any time during regular business hours of each business day. The Clerk's office will not
23 mail copies to you. In addition, this Notice can be viewed on Netflix's investor relations website at:
24 <https://www.netflixinvestor.com>. The Notice was also filed as part of a Form 8-K with the SEC.
25 Inquiries regarding the proposed Settlement also may be made to Plaintiff's Counsel, as indicated
26 above.

27 **THIS NOTICE HAS BEEN APPROVED BY ORDER OF THE UNITED STATES**
28 **DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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**PLEASE DO NOT CONTACT THE COURT OR
CLERK'S OFFICE REGARDING THIS NOTICE.**