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12 [Additional counsel on signature page.]

13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
SAN JOSE DIVISION

16 CITY OF BIRMINGHAM RELIEF AND) CASE NO.: 5:18-cv-02107-BLF
17 RETIREMENT SYSTEM,)
18) DERIVATIVE ACTION
Plaintiff,)
19) **STIPULATION OF SETTLEMENT**
v.)
20)
REED HASTINGS, DAVID WELLS,)
21)
RICHARD BARTON, A. GEORGE (SKIP))
22)
BATTLE, TIMOTHY HALEY, JAY HOAG,)
23)
LESLIE KILGORE, ANN MATHER, BRAD)
SMITH, ANNE SWEENEY, NEIL HUNT,)
24)
TED SARANDOS, GREG PETERS, and)
25)
DAVID HYMAN,)
26)
Defendants,)
27)
– and –)
28)
NETFLIX INC.,)
Nominal Defendant.)

1 This Stipulation of Settlement, dated as of February 3, 2020 (the “Stipulation”), is made and
2 entered into by and between Plaintiff City of Birmingham Relief and Retirement System
3 (“Plaintiff”), on behalf of itself and derivatively on behalf of Nominal Defendant Netflix, Inc.
4 (“Netflix” or the “Company”), and Defendants Reed Hastings, David Wells, Richard Barton, A.
5 George (Skip) Battle, Timothy Haley, Jay Hoag, Leslie Kilgore, Ann Mather, Brad Smith, Anne
6 Sweeney, Neil Hunt, Ted Sarandos, Greg Peters, and David Hyman (collectively, the “Individual
7 Defendants” and with Netflix, “Defendants”). This Stipulation is intended by the parties to fully,
8 finally, and forever resolve, discharge, and settle the Released Claims, as defined herein, upon Court
9 approval and subject to the terms and conditions hereof.

10 **I. BACKGROUND OF THE ACTION AND SETTLEMENT NEGOTIATIONS**

11 On August 25, 2017, Netflix received a books and records demand pursuant to 8 *Del. C.*
12 §220 (the “220 Demand”) from Plaintiff, dated August 17, 2017, seeking to inspect certain
13 documents.

14 On October 13, 2017, after execution of a Confidentiality and Non-Disclosure Agreement
15 between Netflix and Plaintiff, and numerous telephonic discussions, Netflix produced over 1,200
16 pages of internal, confidential Board-level documents to Plaintiff for inspection in response to the
17 220 Demand (the “220 Production”).

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

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

28

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

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

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

26 Following briefing on Defendants’ motion to dismiss, and while the parties negotiated for
27 the production of the Contested Documents, counsel for Plaintiff and Defendants also undertook
28 negotiations regarding a possible resolution of the Action. As a result of those arm’s-length

1 negotiations, Plaintiff and Defendants reached a tentative agreement-in-principle for the resolution
2 of the Action.

3 On October 15, 2019, Plaintiff and Defendants executed a Memorandum of Understanding
4 (the “MOU”), memorializing the terms of their agreement-in-principle to resolve the Action, subject
5 to the approval of the Board.

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

8 On December 2, 2019, Plaintiff confirmed to Defendants that based upon the documentation
9 and information received and discussions with Defendants’ counsel, in addition to Plaintiff’s
10 investigation, the Settlement is fair, reasonable, and adequate.

11 Following agreement among the Settling Parties to the terms of this Stipulation, other than
12 with respect to the amount of any attorneys’ fees and expenses to be paid to Plaintiff’s Counsel,
13 Plaintiff’s Counsel and Defendants separately reached agreement regarding the amount of attorneys’
14 fees and expenses to be paid to Plaintiff’s Counsel. Defendants agreed that they will not oppose any
15 such application for fees and expenses, provided that the award of attorneys’ fees and expenses shall
16 not exceed \$800,000 in the aggregate. Plaintiff and Defendants did not discuss the appropriateness
17 of any amount of attorneys’ fees and expenses at any time before February 3, 2020, and the Settling
18 Parties understood at all times that the Settlement was not contingent upon agreement or payment
19 of any attorneys’ fees and expenses to Plaintiff’s Counsel.

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

22 **II. CLAIMS OF PLAINTIFF AND BENEFITS OF SETTLEMENT**

23 Plaintiff believes that the claims asserted in the Action have merit, and Plaintiff’s entry into
24 this Stipulation and Settlement is not intended to be, and shall not be construed as, an admission or
25 concession concerning the relative strength or merit of the claims alleged in the Action.
26 Nevertheless, Plaintiff recognizes and acknowledges the expense and length of continued legal
27 proceedings necessary to prosecute the Action through trial and the appeals process. Plaintiff’s
28 Counsel has taken into account the uncertain outcome and the risk of any litigation, especially in

1 complex litigations, such as the Action, as well as the difficulties and delays inherent in such
2 litigation. Moreover, Plaintiff's Counsel recognizes the substantial immediate benefits afforded to
3 the Company following its adoption of the well-crafted corporate governance reforms referenced
4 herein – all of which are intended to remediate the alleged wrongdoing at issue in the Action, prevent
5 the alleged wrongdoing from occurring again in the future, and increase accountability on the part
6 of the Board to Netflix stockholders.

7 Plaintiff's Counsel's position is supported by its extensive investigation, including, *inter*
8 *alia*: (i) reviewing Netflix's press releases, public statements, U.S. Securities and Exchange
9 Commission ("SEC") filings, securities analyst reports, and advisories about Netflix; (ii) reviewing
10 media reports about Netflix; (iii) researching the applicable law with respect to the claims alleged in
11 the Action and the potential defenses thereto; (iv) preparing and filing a derivative Complaint;
12 (v) conducting preliminary damages analyses; (vi) participating in informal conferences with
13 Defendants' counsel regarding the specific facts of the Action, perceived strengths and weaknesses
14 of the Action, and other issues in an effort to facilitate negotiations and conducting research into
15 Netflix's corporate governance structure in order to make a settlement demand; (vii) opposing
16 Defendants' motion to dismiss and participating in oral argument before the Court; (viii) reviewing
17 the 220 Production; and (ix) negotiating this Settlement with Defendants. Based on Plaintiff's
18 Counsel's thorough review and analysis of the relevant facts, allegations, defenses, and controlling
19 legal principles, Plaintiff's Counsel believes that the Settlement set forth in this Stipulation is fair,
20 reasonable, and adequate and confers substantial benefits upon Netflix and its stockholders. Based
21 upon Plaintiff's Counsel's evaluation, Plaintiff has determined that the Settlement is in the best
22 interests of Netflix and its stockholders and has agreed to settle the Action upon the terms and subject
23 to the conditions set forth herein.

24 **III. INDIVIDUAL DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

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

1 violations of law or breached any duty owed to Plaintiff, Netflix, or its stockholders. Nonetheless,
2 the Individual Defendants have concluded that further proceedings would be protracted and
3 expensive and have determined that it is desirable that the claims against them be settled on the terms
4 reflected in this Stipulation. The Individual Defendants and Netflix are entering into this Settlement
5 because it will eliminate the uncertainty, distraction, disruption, burden, risk, and expense of further
6 litigation, and without admitting any wrongdoing or liability whatsoever. Netflix acknowledges that
7 Plaintiff's actions were a primary cause for implementing the corporate governance enhancements.
8 Netflix believes that the Settlement is fair, reasonable, adequate, and in the best interests of Netflix
9 and its stockholders.

10 Neither this Stipulation nor any of its terms or provisions, nor entry of the Judgment, nor
11 any document or exhibit referred or attached to this Stipulation, nor any action taken to carry out
12 this Stipulation, is, may be construed as, or may be used as evidence of the validity of any of the
13 Released Claims or an admission by or against Defendants of any fault, wrongdoing, or concession
14 of liability whatsoever.

15 **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

16 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, between Plaintiff
17 and Defendants, by and through their undersigned counsel, in consideration of the benefits flowing
18 to the Settling Parties from the Settlement, and subject to the approval of the Court pursuant Rule
19 23.1, that the claims asserted in the Action and the Released Claims shall be finally and fully
20 compromised, settled, and released, and the Action shall be dismissed with prejudice and with full
21 preclusive effect, upon and subject to the terms and conditions of this Stipulation, as set forth below.

22 **1. Definitions**

23 As used in this Stipulation, the following terms have the meanings specified below:

24 1.1. "Compensation Committee" means the Compensation Committee of the Board.

25 1.2. "Court" means the U.S. District Court for the Northern District of California, San
26 Jose Division.

1 1.3. “Current Netflix Stockholders” means all current record holders and beneficial
2 owners of the common stock of Netflix Inc. as of February 3, 2020, and their successors-in-interest,
3 excluding Defendants.

4 1.4. “Disclosure Committee” means the Disclosure Committee of the Board.

5 1.5. “Effective Date” means the first date by which all of the events and conditions
6 specified in ¶6.1 hereof have occurred and have been met.

7 1.6. “Fee Awards” shall have the meaning defined in ¶5.1 hereof.

8 1.7. “Final” means when the last of the following, with respect to the Judgment approving
9 this Stipulation, substantially in the form attached hereto as Exhibit D, shall have occurred: (i) the
10 expiration of the time to file a notice of appeal from the Judgment; or (ii) if an appeal has been filed,
11 the court of appeal has either affirmed the Judgment or dismissed that appeal and the time for any
12 reconsideration or further appellate review has passed; or (ii) if a higher court has granted further
13 appellate review, that court has either affirmed the underlying Judgment or affirmed the court of
14 appeal’s decision affirming the Judgment or dismissing the appeal. Any proceeding or order, or any
15 appeal or petition for review, pertaining solely to any claim for attorneys’ fees and expenses in the
16 Action shall not in any way delay or preclude the Judgment from becoming Final within the meaning
17 of this paragraph.

18 1.8. “Final Approval Order” means an order by the Court granting final approval of the
19 Settlement, substantially in the form attached hereto as Exhibit D.

20 1.9. “General Counsel’s Office” means Netflix’s in-house legal department.

21 1.10. “Judgment” means the judgment to be entered by the Court in the Action upon final
22 approval of the Settlement, substantially in the form attached hereto as Exhibit D.

23 1.11. “Named Executive Officers” means the individuals referred to as Named Executive
24 Officers in Netflix’s Schedule 14A filed with the SEC on an annual basis.

25 1.12. “Netflix” means Nominal Defendant Netflix Inc., including, but not limited to, its
26 predecessors, successors, subsidiaries, affiliates, divisions, and assigns.

27 1.13. “Person” means an individual, corporation, limited liability corporation, professional
28 corporation, partnership, limited partnership, limited liability partnership, association, joint stock

1 company, estate, legal representative, trust, unincorporated association, government or any political
2 subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors,
3 successors, parents, subsidiaries, representatives, or assignees.

4 1.14. "Plaintiff" means City of Birmingham Relief and Retirement System, together with
5 any of its respective agents, heirs, assigns, predecessors, and/or successors.

6 1.15. "Plaintiff's Counsel" means Scott+Scott Attorneys at Law LLP and any counsel that
7 has appeared of record or rendered legal services to Plaintiff in connection with the Action.

8 1.16. "Related Persons" means each of the Defendants' past or present agents, officers,
9 directors, attorneys, accountants, auditors, advisors, insurers, co-insurers, reinsurers, spouses,
10 immediate family members, heirs, executors, personal representatives, estates, administrators, trusts,
11 predecessors, successors, and assigns, or other individual or entity in which any Defendant has a
12 controlling interest, and each and all of their respective past and present officers, directors,
13 employees, agents, affiliates, parents, subsidiaries, divisions, attorneys, accountants, auditors,
14 advisors, insurers, co-insurers, re-insurers, heirs, executors, personal representatives, estates,
15 administrators, trusts, predecessors, successors, and assigns.

16 1.17. "Released Claims" shall collectively mean any and all claims for relief (including
17 Unknown Claims, as defined in ¶1.22 hereof), rights, demands, suits, matters, causes of action, or
18 liabilities, known or unknown, whether or not concealed or hidden, asserted or unasserted (including,
19 without limitation, claims for damages, interest, attorneys' fees, costs, disgorgement, constructive
20 trust, breach of duty of care and/or breach of duty of loyalty or good faith, breach of contract, fraud,
21 negligence, gross negligence, negligent misrepresentation, insider trading, mismanagement,
22 misconduct, waste of corporate assets, abuse of control, unjust enrichment, or violations of statutes,
23 rules, or regulations, whether based on federal, state, local, statutory, or common law or any other
24 law, rule, or regulation), that: (i) have been asserted in the Action; or (ii) could have been asserted
25 in the Action by Plaintiff, Netflix, or by any Netflix stockholder derivatively on behalf of Netflix,
26 against each and every Defendant and the Released Persons, arising out of or based upon the facts,
27 transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act that were
28 alleged or referred to in the Complaint; or (iii) any claims in connection with, based upon, arising

1 out of, or relating to the Settlement, but excluding any claims to enforce the Settlement set forth in
2 this Stipulation. Expressly excluded from the term “Released Claims” and any release provided by
3 this Settlement are: (i) any claims to enforce the Settlement; and (ii) any claims by Defendants or
4 any other insured to enforce their rights under any contract or policy of insurance.

5 1.18. “Released Persons” means each and all of the Defendants and their Related Persons.

6 1.19. “Settlement” means the settlement contemplated by this Stipulation.

7 1.20. “Settlement Hearing” means the final hearing at which the Court will determine,
8 among other matters, whether the terms of the Settlement should be approved, whether a final
9 judgment should be entered, and whether to approve the Fee Awards (as defined in ¶5.1 hereof)
10 pursuant to Rule 23.1.

11 1.21. “Settling Parties” means, collectively, each of the Defendants, Plaintiff, on behalf of
12 itself and derivatively on behalf of Netflix, Netflix, and Netflix stockholders. “Settling Party”
13 means, individually, any of the Settling Parties.

14 1.22. “Stipulation” means this Stipulation of Settlement, dated as of February 3, 2020.

15 1.23. “Unknown Claims” means any Released Claim(s) that Plaintiff, the Individual
16 Defendants, Netflix, or any Netflix stockholder do not know or suspect to exist in his, her, or its
17 favor at the time of the release of the Released Persons, including claims which, if known by him,
18 her, or it, might have affected his, her, or its settlement with and release of the Released Persons, or
19 might have affected his, her, or its decision not to object to this Settlement. In this regard, with
20 respect to the Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date,
21 Plaintiff, the Individual Defendants, and Netflix shall expressly waive, and each Netflix stockholder
22 shall be deemed to have, and by operation of the Judgment shall have, expressly waived, the
23 provisions, rights, and benefits conferred by §1542 of the California Civil Code and any law of any
24 state or territory of the United States or any other state, sovereign, or jurisdiction, or any principle
25 of common law that is similar, comparable, or equivalent to §1542 of the California Civil Code,
26 which provides:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
28 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE

1 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
2 DEBTOR OR RELEASED PARTY.

3 Plaintiff, the Individual Defendants, Netflix, and Netflix stockholders acknowledge that they
4 may hereafter discover facts in addition to or different from those which he, she, or it now knows or
5 believes to be true with respect to the subject matter of the Released Claims, but, upon the Effective
6 Date, each Plaintiff, Individual Defendant, and Netflix shall expressly settle and release, and each
7 Netflix stockholder shall be deemed to have, and by operation of the Judgment shall have, fully,
8 finally, and forever settled and released, any and all Released Claims, known or unknown, suspected
9 or unsuspected, contingent or non-contingent, whether or not concealed or hidden, that now exist,
10 or heretofore have existed, upon any theory of law or equity now existing or coming into existence
11 in the future. The Settling Parties acknowledge, and each Netflix stockholder shall be deemed by
12 operation of the Judgment to have acknowledged, that the foregoing waiver was separately
13 bargained for and agreed upon with the express intention of releasing Unknown Claims and is a key
14 element of the Settlement of which this release is a part.

15 **2. Terms of the Settlement**

16 2.1. Netflix and the Board will implement the following corporate governance
17 enhancements, which will remain in place for at least four years:

18 2.1.1. Enhancements of the Disclosure Committee. Netflix currently has a
19 management Disclosure Committee. Netflix agrees that it will maintain the existence of this
20 Committee and that this Committee will take the following affirmative steps with respect to
21 Netflix's disclosures relating to compensation matters. The Disclosure Committee will:
22 (i) review draft disclosures related to compensation matters in Netflix's proxy (the
23 Compensation Discussion and Analysis section) to ensure, to the extent possible, that the
24 proxy does not inaccurately characterize Netflix's compliance with federal and/or state law
25 and discloses all material information related to compensation to Named Executives Officers
26 and/or directors; (ii) receive input from experienced outside counsel on the draft proxy
27 disclosures and Disclosure Committee's annual report to the full Board; and (iii) issue an
28

1 annual report to the full Board on the accuracy and completeness of Netflix’s compensation
2 proxy disclosures.

3 2.1.2. Enhanced Bonus-Related Disclosures. Netflix’s compensation disclosures
4 shall include, to the extent applicable, the following general information with respect to any
5 regular bonuses associated with annual compensation paid or proposed to be paid to Named
6 Executives Officers and/or directors: (i) Netflix’s bonus philosophy; (ii) the process by
7 which bonus decisions are made; (iii) significant changes in bonus policies or philosophy;
8 (iv) any material impact of bonus decisions, programs, or payouts on Netflix’s financial,
9 legal, and compliance risk; and (v) the justification and reasoning for any bonus awards.

10 2.1.3. Retention of Compensation and Tax Consultant(s). With respect to the use
11 of any regular bonuses associated with annual compensation paid or proposed to be paid to
12 Named Executive Officers and/or directors, the Compensation Committee shall retain an
13 independent compensation and tax consultant(s) (the “Compensation Consultant”) to assist
14 the Compensation Committee in carrying out its duties, including identifying possible risks
15 associated with any regular bonuses associated with annual compensation and related
16 disclosures by Netflix. More specifically, the Compensation Consultant will be retained to
17 support the work of the Compensation Committee with respect to evaluation and design of
18 any regular bonuses associated with annual compensation paid or proposed to be paid to
19 Named Executive Officers and/or directors, including providing input on performance
20 measures and targets and compensation methods, conditions and criteria, and quantitative
21 target ranges.

22 2.1.4. Enhancement of General Counsel’s Office Related to Legal Advice on
23 Regulatory Compliance. Netflix shall designate a member of the General Counsel’s Office
24 (either the general counsel or a deputy) to serve as the designated internal legal counsel with
25 respect to regulatory issues concerning compensation paid to Named Executive Officers
26 and/or directors. The individual so designated will consult with the Compensation
27 Committee on at least an annual basis concerning relevant regulatory issues pertaining to
28 Netflix’s compensation paid to Named Executive Officers and/or directors and shall advise

1 the Compensation Committee concerning Netflix's regulatory compliance or advise that
2 additional resources (such as external counsel with relevant expertise) are warranted to
3 ensure Netflix's compliance with applicable regulations.

4 2.1.5. Training for Directors. Netflix will, within 12 months of Settlement
5 approval, provide a training session for the Compensation Committee overseen by Netflix's
6 General Counsel Office that will include, but not be limited to, industry trends in the design
7 of compensation plans, avoidance of legal and regulatory pitfalls in designing and
8 implementing performance plans, methods of stockholder engagement on compensation
9 policies, including the utilization of a "Say-on-Pay" stockholder proxy vote, stockholder
10 evaluation of compensation plans, and other methods of engaging stockholders on Netflix
11 compensation philosophy and policies, as well as peer practices for compensation plans.
12 Netflix also will, within 12 months of Settlement approval, provide a training session to the
13 Board, overseen by Netflix's General Counsel Office, regarding the responsibilities of
14 publicly traded companies and their directors and officers under the Generally Accepted
15 Accounting Principles ("GAAP"), Sarbanes-Oxley Act of 2002, Securities Exchange Act of
16 1934, Securities Act of 1933, public company reporting and compliance requirements, and
17 other topics that are appropriate for, or of interest to, the compliance of public companies
18 with applicable laws.

19 2.1.6. Additional Compensation-Related Actions. With respect to the use of any
20 regular bonuses associated with annual compensation paid or proposed to be paid to the
21 Named Executive Officers and/or directors, the Compensation Committee shall review the
22 compensation philosophy, compensation metrics and amounts, and the results of shareholder
23 Say-on-Pay votes in prior year(s) before using any such bonus compensation.

24 **3. Settlement Procedure and Notice**

25 3.1. Promptly after the full execution of this Stipulation, Plaintiffs shall submit this
26 Stipulation and its exhibits to the Court and apply for an order, substantially in the form attached
27 hereto as Exhibit A, requesting preliminary approval of the Settlement set forth in this Stipulation
28 (the "Preliminary Approval Order") and approval for the publication of the Notice of Pendency of

1 Proposed Settlement of Stockholder Derivative Action (the “Notice”) and Summary Notice of
2 Pendency of Proposed Settlement of Stockholder Derivative Action (the “Summary Notice”),
3 substantially in the forms attached hereto as Exhibits B-C, requesting: (i) preliminary approval of
4 the Settlement set forth in this Stipulation; (ii) approval of the form and manner of providing notice
5 of the Settlement to Current Netflix Stockholders; and (iii) a date for the final hearing at which the
6 Court will determine, among other matters, whether the terms of the Settlement should be approved,
7 whether a final judgment should be entered, and whether to approve the Fee Awards (the “Settlement
8 Hearing”), pursuant to Rule 23.1.

9 3.2. Within ten business days of the issuance of the Preliminary Approval Order, Netflix
10 shall cause the Notice to be given in the following manner: (i) disclosure of the terms of the
11 Settlement through the filing of a Form 8-K with the SEC, attaching the Notice; (ii) publication of
12 the Summary Notice in *Investors’ Business Daily*; and (iii) posting a copy of the Notice on Netflix’s
13 investor relations website. All costs in providing the Notice specified herein will be paid by Netflix.
14 The Settling Parties believe the content and manner of the Notice, as set forth in this paragraph,
15 constitutes adequate and reasonable notice to Current Netflix Stockholders pursuant to applicable
16 law and due process. At least seven calendar days prior to the Settlement Hearing, Defendants’
17 counsel shall file with the Court an appropriate affidavit or declaration with respect to the filing and
18 posting of the Notice and Summary Notice.

19 3.3. Within ten business days of the issuance of the Preliminary Approval Order,
20 Plaintiff’s Counsel shall post a copy of the Notice on the website maintained by Plaintiff’s Counsel.
21 At least seven calendar days prior to the Settlement Hearing, Plaintiff’s Counsel shall file with the
22 Court an appropriate affidavit or declaration with respect to the posting of the Notice.

23 **4. Mutual Releases**

24 4.1. Except as set forth in ¶4.4 hereof, upon the Effective Date, Plaintiff, on its own behalf
25 and derivatively on behalf of Netflix, Netflix, and each of Netflix’s stockholders (solely in their
26 capacity as Netflix stockholders) shall be deemed to have, and by operation of the Judgment shall
27 have, fully, finally, and forever released, relinquished, and discharged the Released Claims,
28

1 including Unknown Claims, against the Released Persons. Nothing herein shall in any way impair
2 or restrict the rights of any of the Settling Parties to enforce the terms of this Stipulation.

3 4.2. Upon the Effective Date, Plaintiff, on its own behalf and derivatively on behalf of
4 Netflix and each of Netflix's stockholders (solely in their capacity as Netflix stockholders), will be
5 forever barred and enjoined from commencing, instituting, or prosecuting any of the Released
6 Claims (including Unknown Claims) or any action or other proceeding against any of the Released
7 Persons based on the Released Claims or any action or proceeding arising out of, related to, or in
8 connection with the settlement or resolution of the Action, provided that nothing herein shall in any
9 way impair or restrict the rights of any Settling Party to enforce the terms of this Stipulation.

10 4.3. Upon the Effective Date, each of the Defendants and their Released Persons shall be
11 deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released,
12 relinquished, and discharged Plaintiff and Plaintiff's Counsel from all claims (including Unknown
13 Claims) arising out of, relating to, or in connection with the institution, prosecution, assertion,
14 settlement or resolution of the Action or the Released Claims. Nothing herein shall in any way
15 impair or restrict the rights of the Settling Parties to enforce the terms of this Stipulation.

16 4.4. Nothing in this Stipulation constitutes or reflects a waiver or release of: (i) any rights
17 or claims of Netflix pursuant to any contract(s) or agreement(s) with any Individual Defendant;
18 (ii) any rights or claims of the Individual Defendants pursuant to any contract(s) or agreement(s)
19 with Netflix, including, but not limited to, any rights or claims pertaining to indemnification or
20 advancement of expenses; (iii) any rights or claims of the Individual Defendants to indemnification
21 or advancement of expenses arising from the Netflix's articles of incorporation, bylaws or
22 applicable law; and (iv) any rights or claims of Defendants with respect to their insurers and/or the
23 insurers' Related Persons, including, but not limited to, any rights or claims under any directors' and
24 officers' liability insurance or other applicable insurance coverage maintained by Netflix.

25 **5. Plaintiff's Counsel's Fee and Expense Award**

26 5.1. Defendants acknowledge and agree that Plaintiff's Counsel is entitled to an award
27 of attorneys' fees and expenses. Plaintiff's Counsel also intends to apply for an incentive award to
28 Plaintiff in the amount of \$10,000. Subject to the terms and conditions of this Stipulation and any

1 other Order of the Court, Defendants have agreed: (i) that they will not oppose Plaintiff's Counsel's
2 application for fees and expenses, provided that the award of attorneys' fees and expenses shall not
3 exceed \$800,000 in the aggregate (the "Fee and Expense Award"); and (ii) to pay Plaintiff an award
4 of \$10,000 in recognition of Plaintiff's participation and effort in the prosecution of the Action (the
5 "Incentive Award" and with the Fee and Expense Award, the "Fee Awards"). Plaintiff's Counsel
6 may apply for the Fee Awards only in this Court and shall make no application for attorneys' fees
7 or expenses, or an incentive award for Plaintiff, in any other jurisdiction. The Fee Awards shall
8 constitute final and complete payment for Plaintiff's Counsel's fees and expenses that have been
9 incurred or will be incurred in connection with the Action. The Fee Awards shall be paid into an
10 escrow account controlled by Plaintiff's Counsel (the "Pre-Hearing Escrow Account") within five
11 days of entry of the Preliminary Approval Order by the Court and shall be immediately releasable
12 from the Pre-Hearing Escrow Account upon entry of the Final Approval Order by the Court,
13 notwithstanding any collateral attacks on the Settlement, including, without limitation, any
14 objections or appeals, subject to Plaintiff's Counsel's timely provision of the requisite payment
15 information, including wire instructions and a completed Form W-9, and to the following conditions:
16 (i) if the Court approves the Fee Awards that are less than the total funds paid into the Pre-Hearing
17 Escrow Account or otherwise reduces the Fee Awards, the remaining funds shall be immediately
18 releasable from the Pre-Hearing Escrow Account to Netflix; and (ii) if, after payment of the Fee
19 Award, the Settlement is reversed, vacated, or modified on appeal or by collateral attack, within ten
20 business days of notice thereof, Plaintiff and/or Plaintiff's Counsel shall make appropriate refunds
21 or repayments to the Pre-Hearing Escrow Account. Except as otherwise provided herein, each of
22 the Settling Parties shall bear his, her, or its own fees and costs and neither Netflix, the Individual
23 Defendants, nor any other Released Person shall have any obligations with respect to Plaintiff's
24 Counsel's fees and/or expenses beyond the Fee Awards.

25 5.2. Any failure of the Court to approve a request for the Fee Awards, in whole or in part,
26 shall not affect the remainder of the Settlement.

27 5.3. No fees or expenses shall be paid to Plaintiff's Counsel or Plaintiff pursuant to the
28 Settlement in the absence of approval by the Court of a complete release of all Released Persons,

1 substantially in the form of §4 herein. This section shall be immediately binding on the Settling
2 Parties.

3 5.4. Except as provided in ¶5.1 of this Stipulation, Defendants shall have no obligation
4 to pay or reimburse any fees, expenses, costs, or damages alleged or incurred by Plaintiff, Netflix
5 stockholders, or their attorneys, experts, advisors, or representatives with respect to the Released
6 Claims.

7 **6. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination**

8 6.1. The Settlement shall be conditioned on the occurrence of all of the following events:

9 6.1.1. Court approval of the Settlement, following dissemination of Notice to
10 stockholders and the Settlement Hearing;

11 6.1.2. entry of the Final Approval Order, substantially in the form attached hereto
12 as Exhibit D;

13 6.1.3. entry of the Judgment in the Action, providing for dismissal of the Action
14 with prejudice and the grant of the release of the Released Claims, substantially in the form
15 attached hereto as Exhibit D;

16 6.1.4. dismissal with prejudice of the Action without the award of any damages,
17 costs, fees, or the grant of any further relief to any party, except as provided in §5 of this
18 Stipulation; and

19 6.1.5. the passing of the date upon which the Judgment becomes Final.

20 6.2. If any of the conditions specified in ¶6.1 are not met, then this Stipulation shall be
21 deemed canceled and terminated unless Plaintiff's Counsel and counsel for Defendants mutually
22 agree in writing to proceed with this Stipulation.

23 6.3. Any proceeding, appeal, or petition pertaining solely to the Fee Awards, or reversal
24 or modification thereof, shall not operate to terminate, modify, or cancel this Stipulation or affect or
25 delay the Effective Date or the finality of the Judgment approving this Stipulation and the Settlement
26 of the Action.

27 6.4. If for any reason the Effective Date does not occur, or if this Stipulation is in any
28 way canceled, terminated, or fails to become Final in accordance with its terms: (i) the payments to

1 Plaintiff's Counsel pursuant to ¶5.1 shall be returned and repaid to the payor within 30 calendar days
2 of the event that triggered the repayment obligation; (ii) the Settling Parties shall be restored to their
3 respective positions as of the date immediately preceding the full execution of this Stipulation; and
4 (iii) all negotiations, proceedings, documents prepared, and statements made in connection herewith
5 shall be without prejudice to the Settling Parties, shall not be deemed or construed to be an admission
6 by a Settling Party of any act, matter, or proposition and shall not be used in any manner for any
7 purpose in the Action or in any other action or proceeding. In such event, the terms and provisions
8 of this Stipulation shall have no further force and effect with respect to the Settling Parties and shall
9 not be used in the Action or in any other proceedings for any purpose, and any Judgment or other
10 order entered in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro*
11 *tunc*.

12 7. Miscellaneous Provisions

13 7.1. The Settling Parties: (i) acknowledge that it is their intent to consummate this
14 Stipulation; and (ii) agree to act in good faith and cooperate to take all reasonable and necessary
15 steps to expeditiously implement the terms and conditions of this Stipulation.

16 7.2. Pending the Effective Date of this Stipulation or the termination of the Stipulation
17 according to its terms, Plaintiff and Current Netflix Stockholders are barred and enjoined from
18 commencing, prosecuting, instigating, continuing directly, representatively, derivatively or in any
19 other capacity, or in any way participating in the commencement or prosecution of any action
20 asserting any Released Claims against any of the Released Persons.

21 7.3. The Settling Parties intend the Settlement to be a final and complete resolution of all
22 disputes between Plaintiff and Defendants with respect to the Action. The Settlement compromises
23 claims that are contested and shall not be deemed an admission by any Settling Party as to the merits
24 of any claim, allegation, or defense. The Settling Parties agree that the parties and their respective
25 counsel at all times during the course of the Action complied with the applicable rules, including,
26 without limitation, Fed. R. Civ. P. 11. The Settling Parties further agree that the claims are being
27 settled voluntarily after consultation with competent legal counsel.

28

1 7.4. Neither this Stipulation nor the Settlement, nor any act performed or document
2 executed pursuant to or in furtherance of this Stipulation or the Settlement: (i) is, may be deemed to
3 be, or may be offered, attempted to be offered, or used in any way by the Settling Parties or any
4 other Person as a presumption, a concession or an admission of, or evidence of any fault,
5 wrongdoing, or liability of the Defendants or of the validity of any Released Claims; or (ii) is
6 intended by the Settling Parties to be offered or received as evidence or used by any other Person in
7 any civil, criminal, administrative, or other proceeding whatsoever, including before any court,
8 administrative agency, or other tribunal. The Released Persons may file this Stipulation and/or the
9 Judgment in any action brought against them in order to support a defense or counterclaim based on
10 principles of *res judicata*, collateral estoppel, full faith and credit, release, good faith settlement,
11 judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar
12 defense or counterclaim.

13 7.5. The exhibits to this Stipulation are material and integral parts hereof and are fully
14 incorporated herein by this reference.

15 7.6. This Stipulation may be amended or modified only by a written instrument signed
16 by or on behalf of all Settling Parties or their respective successors-in-interest.

17 7.7. This Stipulation and the exhibits attached hereto constitute the entire agreement
18 among the Settling Parties and no representations, warranties, or inducements have been made to
19 any Settling Party concerning this Stipulation or any of its exhibits other than the representations,
20 warranties, and covenants contained and memorialized in such documents.

21 7.8. In the event that there exists a conflict or inconsistency between the terms of this
22 Stipulation and terms of any exhibit hereto, the terms of this Stipulation shall prevail.

23 7.9. In construing this Stipulation, no presumption shall be made against any Settling
24 Party on the basis that it was a drafter of this Stipulation.

25 7.10. Plaintiff represents and warrants that it has not assigned any rights, claims, or causes
26 of action that were asserted or could have been asserted in connection with, under, or arising out of
27 any of the claims being settled or released herein.
28

1 7.11. Each counsel or other Person executing this Stipulation or its exhibits on behalf of
2 any Settling Party hereby warrants that such Person has the full authority to do so.

3 7.12. Except as otherwise provided herein, each Settling Party shall bear its own costs and
4 expenses.

5 7.13. This Stipulation may be executed in one or more counterparts, including by signature
6 transmitted by facsimile or e-mailed PDF files. Each counterpart, when so executed, shall be deemed
7 to be an original, and all such counterparts together shall constitute the same instrument.

8 7.14. This Stipulation and the Settlement shall be binding upon, and inure to the benefit
9 of, the successors and assigns of the Settling Parties and Released Persons.

10 7.15. The Court shall retain jurisdiction with respect to the implementation and
11 enforcement of the terms of this Stipulation, and the Settling Parties submit to the jurisdiction of the
12 Court for purposes of implementing and enforcing the Settlement embodied in this Stipulation.

13 7.16. This Stipulation and the exhibits attached hereto shall be considered to have been
14 negotiated, executed, and delivered, and to be wholly performed, in the State of California, and the
15 rights and obligations of the parties to this Stipulation shall be construed and enforced in accordance
16 with, and governed by, the internal substantive laws of the State of California, without giving effect
17 to that State's choice-of-law principles.

18 7.17. All agreements during the course of the Action regarding the confidentiality of
19 information, including in connection with the 220 Demand, shall survive this Stipulation.

20 IN WITNESS WHEREOF, the Settling Parties have caused this Stipulation to be executed
21 by their duly authorized attorneys.

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