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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARTIN SCHULTHES,
INDIVIDUALLY AND ON BEHALF
OF ALL OTHERS SIMILARLY
SITUATED,

Plaintiff,

vs.

NETFLIX, INC., REED HASTINGS
AND DAVID WELLS,

Defendants.

Filed

FEB 19 2013

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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(15)

CASE No:

CV13- 0712

CLASS ACTION COMPLAINT **EMC**
FOR VIOLATIONS OF THE
FEDERAL SECURITIES LAWS

JURY TRIAL DEMANDED

INTRODUCTION

1. Plaintiff, individually and on behalf of all other persons similarly situated, by plaintiff's undersigned attorneys, for plaintiff's complaint against defendants, alleges the following based upon personal knowledge as to plaintiff and plaintiff's own acts, and upon information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through plaintiff's attorneys,

1 which included, among other things, a review of the defendants' public documents,
2 conference calls and announcements made by defendants, United States Securities
3 and Exchange Commission ("SEC") filings, wire and press releases published by
4 and regarding Netflix, Inc. ("Netflix" or the "Company"), securities analysts'
5 reports and advisories about the Company, and information readily obtainable on
6 the Internet. Plaintiff believes that substantial evidentiary support will exist for the
7 allegations set forth herein after a reasonable opportunity for discovery.
8

9 10 **NATURE AND SUMMARY OF THE ACTION**

11
12 2. Plaintiff brings this securities class action individually and on behalf of
13 purchasers of Netflix common stock between July 3, 2012 and July 24, 2012,
14 inclusive, (the "Class Period") under the Securities Exchange Act of 1934 (the
15 "Exchange Act"), against Netflix and its Chief Executive Officer ("CEO"), Reed
16 Hastings ("Hastings"), and Chief Financial Officer ("CFO"), David Wells
17 ("Wells"), seeking to recover damages caused by defendants' violations of federal
18 securities laws.
19

20
21 3. Netflix is an Internet subscription service that streams TV shows and
22 movies. The Company's subscribers can watch unlimited TV shows and movies,
23 on nearly any Internet-connected screen, and in the United States, subscribers can
24 also receive DVDs delivered to their homes. The Company is organized into two
25 operating segments: United States and International. The Company obtains content
26 from various studios and other content providers through fixed-fee licenses,
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1 revenue sharing agreements and direct purchases. The Company markets its
2 services through various channels, including online advertising and broad-based
3 media, such as television and radio, as well as various partnerships.
4

5 4. Netflix's fastest growing and most important segment is its domestic
6 streaming business. Netflix views the number of paid subscriptions as the key
7 driver of revenues. Accordingly, Netflix's revenue growth is largely correlated to
8 subscriber growth. In this regard, Netflix gave a target of 7 million new subscribers
9 for its domestic streaming segment for the year ended 2012.
10

11
12 5. During the Company's Q1 2012 Earnings Call, on April 23, 2012,
13 defendant Hastings had the following exchange with an analyst regarding the
14 projected 7 million new domestic subscribers:
15

16 Why are you so confident that gross add trends result from
17 seasonality and not slowing growth? How can you be confident
18 in 7 million net additions for the year?

19 6. Defendant Hastings' response was as follows:

20 Well, we had a fantastic Q1, adding nearly 3 million members to
21 our global subscriber base. We had strong results in all of our
22 territories, including the U.S. Our gross adds are consistent with
23 our historic patterns. Our churn is consistent with our historic
24 patterns, and we're feeling very good about the year. If you look
25 at adding 7 million net adds, which is our target for the year, and
26 you compare that to 2010 where we also added 7 million net
27 adds, in 2010, that was 7 million on top of 12 million starting
28 members. This year, that 7 million on top of 22 million starting
members. If the mathematical effect, if that's true, with steady
churn, that in adding 7 million on top of 12 million versus 7
million on top of 22 million, that there will be a significantly
increased seasonality of net additions. So the business is
performing exactly as we had hoped. We are continuing to
execute on all of the key dimensions. But the artifact of having 7
million net adds on 22 million increases the seasonality relative
to 2010, and we tried to demonstrate that or illustrate that in our
appendix showing this phenomenon. So everything is consistent
with what we've been hoping for, and so that's why we feel

1 good about the year, continuing like this. It's probably
2 secondarily all of the macro factors are very good, which is
3 broadband is continuing. We're getting better and better content.
4 Viewing is at record levels, and consumers want click and watch
5 on-demand Netflix Internet television.

6 (Emphasis added).

7 7. On July 3, 2012, Hastings posted on the Company's public Facebook
8 page that "Netflix monthly viewing exceeded one billion hours for the first time
9 ever in June." That announcement affirmed Hastings' statements of April 23, 2012
10 that the Company was "continuing to execute on all of the key dimensions" and
11 "everything was consistent with what we've been hoping for," leading the market to
12 believe that Netflix was on "target for the year" to achieve the 7 million net
13 additions in domestic subscribers. On July 5, 2012, the Company's stock price
14 skyrocketed to \$81.72 per share, a 13.4 percent increase, with almost 15 million
15 shares traded.

16 8. On July 24, 2012, the Company announced its results for the second
17 quarter 2012. In its letter to Shareholders, defendants touted that the Company had
18 "achieved financial performance in the top half of . . . guidance in nearly every
19 metric, and . . . returned to profitability." What was disconcerting to investors,
20 however, was that the Company had only 530,000 net subscription additions for its
21 domestic streaming business, resulting in total domestic streaming subscriptions of
22 23.94 million. The Company also noted that it may not reach its target of adding 7
23 million domestic streaming subscribers by the end of the year. On this news, the
24

1 Company's stock price plummeted from \$80.39 on July 24, 2012 to a close of
2 \$60.28 per share on July 25, 2012, a 25 percent decrease, on an extremely high-
3 volume of 24.8 million shares.
4

5 JURISDICTION AND VENUE

6 9. The claims asserted herein arise under and pursuant to Sections 10(b)
7 and 20(a) of the Securities Exchange Act (15 U.S.C. §§78j(b) and 78t(a)), and Rule
8 10b-5 promulgated thereunder by the SEC (17 C.F.R. §240.10b-5).
9

10 10. This Court has jurisdiction over the subject matter of this action
11 pursuant to 28 U.S.C. §1331 and §27 of the Exchange Act.
12

13 11. Venue is proper in this Judicial District pursuant to §27 of the
14 Exchange Act, and 28 U.S.C. §1391(b). Many of the acts charged herein, including
15 the preparation and dissemination of materially false and misleading information,
16 occurred in substantial part in this District.
17

18 12. Netflix maintains its principal executive office at 100 Winchester
19 Lane, Los Gatos, California 95032. Certain of the acts and conduct complained of
20 herein, including the dissemination of materially false and misleading information
21 to the investing public.
22

23 13. In connection with the acts, conduct, and other wrongs alleged in this
24 Complaint, defendants, directly or indirectly, used the means and instrumentalities
25 of interstate commerce, including but not limited to, the United States mails,
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1 interstate telephone communications and the facilities of the national securities
2 exchange.

3 4 **PARTIES**

5 14. Plaintiff Martin Schulthes, as set forth in the accompanying
6 certification attached hereto and incorporated by reference herein, purchased
7 Netflix securities at artificially inflated prices during the Class Period and has been
8 damaged by the conduct alleged herein.

9
10 15. Defendant Netflix is a Delaware Corporation whose principal place of
11 business is located at 100 Winchester Circle, Los Gatos, CA 95032.

12
13 16. Defendant Reed Hastings ("Hastings") is, and was at all relevant times
14 Netflix's CEO and Chairman of its Board. Hastings is also Netflix's founder.

15
16 17. Defendant David Wells ("Wells") is, and was at all relevant times,
17 Netflix's CFO and Chief Accounting Officer.

18
19 18. The defendants named in ¶¶ 16-17 are sometimes referred to herein as
20 the "Individual Defendants."

21 **CONTROL PERSONS**

22
23 19. The Individual Defendants, because of their positions with the
24 Company, possessed the power and authority to control the contents of Netflix's
25 quarterly reports, press releases and presentations to securities analysts, money and
26 portfolio managers and institutional investors, *i.e.*, the market. Each defendant was
27 provided with copies of the Company's reports and press releases alleged herein to
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1 be misleading prior to or shortly after their issuance, and had the ability and
2 opportunity to prevent their issuance, or cause them to be corrected. Because of
3 their positions and access to material non-public information available to them but
4 not to the public, each of these defendants knew that the adverse facts specified
5 herein had not been disclosed to and were being concealed from the public, and that
6 the positive representations that were being made were then materially false and
7 misleading. The Individual Defendants are liable for the false statements pleaded
8 herein, as those statements were each "group-published" information, the result of
9 the collective actions of the Individual Defendants.
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13 20. As alleged herein, each of the defendants acted with scienter in that
14 each defendant knew or recklessly disregarded that the public documents and
15 statements issued or disseminated in the name of the Company were materially
16 false and misleading or omitted to state facts necessary in order to make the
17 statements made, in light of the circumstances under which they were made, not
18 misleading. Each defendant knew that such statements or documents would be
19 issued or disseminated to the investing public and knowingly and substantially
20 participated or acquiesced in the making, issuance or dissemination of such
21 statements or documents as a primary violation of the federal securities laws. By
22 virtue of their receipt or reckless disregard of information reflecting the true facts
23 regarding Netflix, their control over and/or receipt and/or modification of Netflix's
24 materially misleading statements, and/or their other associations with the Company,
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1 each defendant was privy to confidential information concerning Netflix and
2 knowingly or recklessly participated in the fraudulent scheme and conduct alleged
3 herein.
4

5 **DEFENDANTS' FRAUDULENT STATEMENTS**

6 21. The Class Period begins on July 3, 2012, when Hastings posted on the
7 Company's public Facebook page: "Congrats to Ted Sarandos, and his amazing
8 content licensing team. Netflix monthly viewing exceeded one billion hours for the
9 first time ever in June." On July 5, 2012, the Company's stock price skyrocketed
10 from \$72.04 to a close of \$81.72 per share, a 13.4 percent increase, with almost 15
11 million shares traded.
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13

14 22. Defendant Hastings' statement, made 3 days after the quarter end, led
15 the market to believe that Netflix was on target to achieve the 7 million net
16 additions in domestic subscribers. Indeed, on July 4, 2012, neowin.net reported
17 that, "[r]eaching a new record of viewing hours might mean that Netflix has
18 successfully added a large number of new subscribers since the events of summer
19 2011."
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22 23. On July 11, 2012, Marketwatch published an article stating that the 1
23 billion viewing hours "lends credibility to the [Netflix] management's ambitious
24 domestic-streaming subscriber targets of 7 million for 2012," wrote analyst So
25 Young Lee, of SunTrust Robinson Humphrey, in a note.
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1 24. A J.P. Morgan analyst report dated July 19, 2012, titled "Thoughts Into
2 2Q Earnings; Expecting Strong Quarter w/Focus on 2H12 Domestic Streaming Sub
3 Guidance," noted that the "[a]nalysis of CEO comments suggests streaming
4 subs[criptions] at the high end of guidance," and "Record Viewing Hours in June
5 Suggest Solid 2Q Subs[criptions.]" As a result, J.P. Morgan was "modeling 2Q
6 ending domestic streaming subscriptions of 24.05M vs. guidance of 23.6-24.2M.
7 Unbeknownst to shareholders at the time of the July 3, 2012 Facebook post,
8 defendants failed to disclose the following facts which they knew at the time, or
9 should have known that:

13 (a) The Company would report, in the second quarter of 2012, subscriber
14 growth significantly lower than analysts' expectations; and

16 (b) Based on the available data, it would be challenging for the Company
17 to achieve the projected 7 million new domestic streaming subscribers.

18 25. Defendants intentionally misrepresented the impact of the 1 billion
19 hours of viewing on subscriber growth and those misrepresentations remained
20 uncorrected during the Class Period.

22 **THE TRUTH EMERGES**

23 26. On July 24, 2012, Netflix released its second quarter 2012 financial
24 results. The Company's letter to Shareholders begins: "In Q2, we achieved
25 financial performance in the top half of our guidance in nearly every metric, and
26 have returned to profitability." Total domestic streaming subscriptions, however,
27
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1 ended at 23.94M on the low end of the Company's guidance, adding only around
2 half a million new domestic subscribers during the quarter. The company also
3 admitted that it may miss growth targets. For the third quarter, the Company
4 targeted 1 million to 1.8 million new domestic subscribers, but if Netflix misses the
5 "high end of that range," said the letter, "it would be challenging to achieve" the
6 year-end target of 7 million new subscribers.
7

8
9 27. On these July 24, 2012 disclosures, Netflix's stock price dropped 25%,
10 from a close of \$80.39 per share on July 24, 2012 to a close of \$60.28 per share on
11 July 25, 2012, on massive trading volume of 24.8 million shares. The \$60.28
12 closing price was the lowest price over the previous 52-week period.
13

14 28. A July 24, 2012 article in the Los Angeles Times reported that Netflix
15 stock fell in after-hours trading "Despite the . . . firm's growing revenue and profit
16 in its second-quarter results announced Tuesday, Wall Street seemed most
17 concerned about a warning from Netflix that it may not reach a previously stated
18 goal of adding 7 million domestic streaming subscribers by the end of the year."
19 The article went on to say that "The shares jumped early this month . . . after
20 Hastings said Netflix usage hit a new high of more than 1 billion hours in June,
21 raising Wall Street's hopes about the company's growth."
22

23
24 29. A July 25, 2012 Los Angeles Times article reported that, many
25 analysts had slashed estimates, and reported to their clients that they "expressed
26 skepticism about . . . [the Company's] stated goal of 7 million new domestic"
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1 subscribers. The article quoted Anthony Wible of Janney Capital Markets stating
2 ““We believe Netflix faces risks tied to competition, a slowdown in sub growth,
3 global expansion that will offset profitability for years, and cannibalization of the
4 high margin DVD business.””
5

6 30. At all relevant times, the material misrepresentation and omissions
7 made on July 3, 2012 directly or proximately caused, or were a substantial
8 contributing cause of, the damages sustained by plaintiff and other members of the
9 Class. As described herein, during the Class Period, defendants made or caused to
10 be made a materially misleading statement and omissions about Netflix’s
11 Company’s business, future prospects and growth potential. The material
12 misstatement and omissions had the cause and effect of creating in the market an
13 unrealistic assessment of the Company’s business, future prospects and growth
14 potential, thus causing Netflix’s common stock to be artificially and materially
15 inflated during the Class Period. Defendants’ false and misleading statement and
16 omissions of adverse material facts during the Class Period resulted in plaintiff and
17 other members of the Class purchasing Netflix stock at artificially inflated prices,
18 thus causing the damages complained of herein.
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24 **LOSS CAUSATION**

25 31. During the Class Period, as detailed herein, the defendants made false
26 and misleading statements and engaged in a scheme to deceive the market and a
27 course of conduct that artificially inflated the price of Netflix common stock and
28

1 operated as a fraud or deceit on Class Period purchasers of Netflix common stock
2 by misrepresenting the Company's business and prospects. When the defendants'
3 prior misrepresentations and fraudulent conduct became apparent to the market, the
4 price of Netflix common stock fell precipitously, as the artificial inflation came out
5 of the price over time. As a result of their purchases of Netflix common stock
6 during the Class Period, plaintiff and other members of the Class suffered economic
7 loss, i.e., damages, under the federal securities laws.

10 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

11
12 32. Plaintiff brings this action as a class action pursuant to Federal Rules
13 of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all persons
14 who purchased the common stock of Netflix during the Class Period and who were
15 damaged thereby. Excluded from the Class are defendants, the officers and
16 directors of the Company at all relevant times, members of their immediate families
17 and their legal representatives, heirs, successors or assigns and any entity in which
18 defendants have or had a controlling interest.

19
20
21 33. The members of the Class are so numerous that joinder of all members
22 is impracticable. Throughout the Class Period, Netflix's securities were actively
23 traded on the NASDAQ. While the exact number of Class members is unknown to
24 plaintiff at this time and can only be ascertained through appropriate discovery,
25 plaintiff believes that there are at least hundreds of members in the proposed Class.
26
27 Members of the Class may be identified from records maintained by Netflix or its
28

1 transfer agent and may be notified of the pendency of this action by mail, using a
2 form of notice customarily used in securities class actions.

3
4 34. Plaintiff's claims are typical of the claims of the members of the Class,
5 as all members of the Class are similarly affected by defendants' wrongful conduct
6 in violation of federal law that is complained of herein.

7
8 35. Plaintiff will fairly and adequately protect the interests of the members
9 of the Class and has retained counsel competent and experienced in class and
10 securities litigation.

11
12 36. Common questions of law and fact exist as to all members of the Class
13 and predominate over any questions solely affecting individual members of the
14 Class. Among the questions of law and fact common to the Class are:

15
16 (a) whether the federal securities laws were violated by defendants'
17 acts as alleged herein;

18
19 (b) whether statements made by defendants to the investing public
20 during the Class Period misrepresented material facts about the business, operations
21 and management of Netflix; and

22
23 (c) to what extent the members of the Class have sustained damages
24 and the proper measure of damages.

25
26 37. A class action is superior to all other available methods for the fair and
27 efficient adjudication of this controversy since joinder of all members is
28 impracticable. Furthermore, as the damages suffered by individual Class members

1 may be relatively small, the expense and burden of individual litigation make it
2 impossible for members of the Class to redress individually the wrongs done to
3 them. There will be no difficulty in the management of this action as a class action.
4

5 **Applicability of Presumption of Reliance:**
6 **Fraud-on-the-Market Doctrine**

7 38. At all relevant times, the market for Netflix's common stock was an
8 efficient market for the following reasons, among others:

9 (a) Netflix's stock met the requirements for listing, and is listed and
10 actively traded on the NASDAQ, a highly efficient and automated market;

11 (b) As a regulated issuer, Netflix filed periodic public reports with the
12 SEC and the NASDAQ;
13

14 (c) Netflix regularly communicated with public investors via established
15 market communication mechanisms, including through regular disseminations of
16 press releases on the national circuits of major newswire services and through
17 other wide-ranging public disclosures, such as communications with the financial
18 press and other similar reporting services;
19

20 (d) Netflix was followed by several securities analysts employed by
21 major brokerage firms who wrote reports that were distributed to the sales force
22 and certain customers of their respective brokerage firms during the Class
23 Period. Each of these reports was publicly available and entered the public
24 marketplace; and
25
26
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1 (e) Unexpected material news about Netflix was rapidly reflected and
2 incorporated into the Company's stock price during the Class Period.
3

4 39. As a result of the foregoing, the market for Netflix's common stock
5 promptly digested current information regarding Netflix from all publicly available
6 sources and reflected such information in Netflix's stock price. Under these
7 circumstances, all purchasers of Netflix's common stock during the Class Period
8 suffered similar injury through their purchase of Netflix's common stock at
9 artificially inflated prices, and a presumption of reliance applies.
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FIRST CLAIM
Violation of Section 10(b) Of
The Exchange Act Against and Rule 10b-5
Promulgated Thereunder Against All Defendants

40. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

41. This claim is brought against Netflix and all of the Individual Defendants.

42. During the Class Period, defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (1) deceive the investing public, including plaintiff and other Class members, as alleged herein; and (2) cause plaintiff and other members of the Class to purchase Netflix's common stock at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

43. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business that operated as a fraud and deceit upon the purchasers of the Company's common stock in an effort to maintain artificially high market prices for Netflix's common stock in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. All defendants are sued either as primary

1 participants in the wrongful and illegal conduct charged herein or as controlling
2 persons as alleged below.

3
4 44. Defendants, individually and in concert, directly and indirectly, by the
5 use, means or instrumentalities of interstate commerce and/or of the mails, engaged
6 and participated in a continuous course of conduct to conceal adverse material
7 information about the business, operations and future prospects of Netflix as
8 specified herein.

9
10 45. These defendants employed devices, schemes and artifices to defraud,
11 while in possession of material adverse non-public information and engaged in acts,
12 practices, and a course of conduct as alleged herein in an effort to assure investors
13 of Netflix's value and performance and continued substantial growth, which
14 included the making of, or participation in the making of, untrue statements of
15 material facts and omitting to state material facts necessary in order to make the
16 statements made about Netflix and its business operations and future prospects in
17 the light of the circumstances under which they were made, not misleading, as set
18 forth more particularly herein, and engaged in transactions, practices and a course
19 of business that operated as a fraud and deceit upon the purchasers of Netflix's
20 common stock during the Class Period.

21
22 46. Each of the Individual Defendants' primary liability, and controlling
23 person liability, arises from the following facts: (1) the Individual Defendants were
24 high-level executives, directors, and/or agents at the Company during the Class

1 Period and members of the Company's management team or had control thereof;
2 (2) each of these defendants, by virtue of his or her responsibilities and activities as
3 a senior officer and/or director of the Company, was privy to and participated in the
4 creation, development and reporting of the Company's financial condition; (3) each
5 of these defendants enjoyed significant personal contact and familiarity with the
6 other defendants and was advised of and had access to other members of the
7 Company's management team, internal reports and other data and information
8 about the Company's finances, operations, and sales at all relevant times; and
9 (4) each of these defendants was aware of the Company's dissemination of
10 information to the investing public which they knew or recklessly disregarded was
11 materially false and misleading.

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16 47. Defendants had actual knowledge of the misrepresentations and
17 omissions of material facts set forth herein, or acted with reckless disregard for the
18 truth in that they failed to ascertain and to disclose such facts, even though such
19 facts were available to them. Such defendants' material misrepresentations and/or
20 omissions were done knowingly or recklessly and for the purpose and effect of
21 concealing Netflix's operating condition and future business prospects from the
22 investing public and supporting the artificially inflated price of its common stock.
23
24 As demonstrated by defendants' overstatements and misstatements of the
25 Company's financial condition throughout the Class Period, defendants, if they did
26 not have actual knowledge of the misrepresentations and omissions alleged, were
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1 reckless in failing to obtain such knowledge by deliberately refraining from taking
2 those steps necessary to discover whether those statements were false or
3 misleading.
4

5 48. As a result of the dissemination of the materially false and misleading
6 information and failure to disclose material facts, as set forth above, the market
7 price of Netflix's common stock was artificially inflated during the Class Period.
8 In ignorance of the fact that market prices of Netflix's publicly-traded common
9 stock were artificially inflated, and relying directly or indirectly on the false and
10 misleading statements made by defendants, or upon the integrity of the market in
11 which the common stock trades, and/or on the absence of material adverse
12 information that was known to or recklessly disregarded by defendants but not
13 disclosed in public statements by defendants during the Class Period, Plaintiff and
14 the other members of the Class acquired Netflix common stock during the Class
15 Period at artificially high prices and were or will be damaged thereby.
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20 49. At the time of said misrepresentations and omissions, Plaintiff and
21 other members of the Class were ignorant of their falsity, and believed them to be
22 true. Had Plaintiff and the other members of the Class and the marketplace known
23 the truth regarding Netflix's financial results, which were not disclosed by
24 defendants, Plaintiff and other members of the Class would not have purchased or
25 otherwise acquired their Netflix common stock, or, if they had acquired such
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1 common stock during the Class Period, they would not have done so at the
2 artificially inflated prices that they paid.

3
4 50. By virtue of the foregoing, defendants have violated Section 10(b) of
5 the Exchange Act, and Rule 10b-5 promulgated thereunder.

6
7 51. As a direct and proximate result of defendants' wrongful conduct,
8 Plaintiff and the other members of the Class suffered damages in connection with
9 their respective purchases and sales of the Company's common stock during the
10 Class Period.

11
12 52. This action was filed within two years of discovery of the fraud and
13 within five years of each plaintiff's purchases of securities giving rise to the cause
14 of action.

15
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17 **SECOND CLAIM**
18 **Violation of Section 20(a) Of**
19 **The Exchange Act Against the Individual Defendants**

20 53. Plaintiff repeats and realleges each and every allegation contained
21 above as if fully set forth herein.

22
23 54. The Individual Defendants acted as controlling persons of Netflix
24 within the meaning of Section 20(a) of the Exchange Act as alleged herein. By
25 virtue of their high-level positions, agency, and their ownership and contractual
26 rights, participation in and/or awareness of the Company's operations and/or
27 intimate knowledge of the false financial statements filed by the Company with the
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1 SEC and disseminated to the investing public, the Individual Defendants had the
2 power to influence and control, and did influence and control, directly or indirectly,
3 the decision-making of the Company, including the content and dissemination of
4 the various statements that plaintiff contends are false and misleading. The
5 Individual Defendants were provided with or had unlimited access to copies of the
6 Company's reports, press releases, public filings and other statements alleged by
7 Plaintiff to have been misleading prior to and/or shortly after these statements were
8 issued and had the ability to prevent the issuance of the statements or to cause the
9 statements to be corrected.
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13 55. In particular, each defendant had direct and supervisory involvement
14 in the day-to-day operations of the Company and, therefore, is presumed to have
15 had the power to control or influence the particular transactions giving rise to the
16 securities violations as alleged herein, and exercised the same.
17

18 56. As set forth above, Netflix and the Individual Defendants each violated
19 Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this
20 Complaint.
21

22 57. By virtue of their positions as controlling persons, the Individual
23 Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct
24 and proximate result of defendants' wrongful conduct, Plaintiff and other members
25 of the Class suffered damages in connection with their purchases of the Company's
26 common stock during the Class Period.
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1 58. This action was filed within two years of discovery of the fraud and
2 within five years of each Plaintiff's purchases of securities giving rise to the cause
3 of action.
4

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiff prays for relief and judgment, as follows:
7

8 (a) Determining that this action is a proper class action, designating
9 Plaintiff as class representative under Rule 23 of the Federal Rules of Civil
10 Procedure and Plaintiff's counsel as Class Counsel;
11

12 (b) Awarding compensatory damages in favor of Plaintiff and the
13 other Class members against all defendants, jointly and severally, for all damages
14 sustained as a result of defendants' wrongdoing, in an amount to be proven at trial,
15 including interest thereon;
16

17 (c) Awarding Plaintiff and the Class their reasonable costs and
18 expenses incurred in this action, including counsel fees and expert fees; and
19

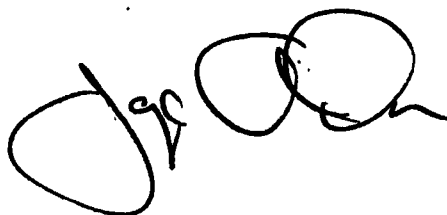
20 (d) Awarding such other and further relief as the Court may deem
21 just and proper.
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JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: February 15, 2013

Respectfully submitted,



ROSENFARB LAW FIRM

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