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11 NETFLIX, INC.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: NETFLIX PRIVACY LITIGATION

Case No. 5:11-cv-00379-EJD

**NETFLIX'S ANSWER TO
CONSOLIDATED CLASS ACTION
COMPLAINT**

1 Defendant Netflix, Inc. (“Netflix”) answers each numbered paragraph of the
2 Consolidated Class Action Complaint filed on September 12, 2011, by plaintiffs Jeff Milans and
3 Peter Comstock (the “Complaint”), on personal knowledge as to its own activities and on
4 information and belief as to the activities of others, as follows:

5 1. Netflix admits that Plaintiff has filed the Complaint against Netflix, and that the
6 Complaint includes the allegations summarized in Paragraph 1. Except as so admitted, Netflix
7 denies the allegations of Paragraph 1.

8 2. Netflix admits that it owns and operates the website www.netflix.com, and that it
9 provides its millions of subscribers with access to motion pictures, television and other visual
10 entertainment (collectively, “entertainment content”) by streaming entertainment content over
11 the Internet to certain Internet-connected TV’s, computers and other devices, and/or by providing
12 such content on DVDs that are shipped to the subscriber by U.S. mail. Except as so admitted,
13 Netflix denies the allegations of Paragraph 2.

14 3. Netflix admits that it maintains records identifying the entertainment content
15 streamed to or received by a subscriber during the course of his or her membership. Except as so
16 admitted, Netflix denies the allegations of Paragraph 3.

17 4. Netflix admits that it maintains records containing its members’ credit card
18 numbers, billing and contact information, and records identifying the entertainment content
19 streamed to or received by a subscriber during the course of his or her membership. Except as so
20 admitted, Netflix denies the allegations of Paragraph 4.

21 5. Netflix admits that it maintains records identifying the entertainment content
22 streamed to or received by a subscriber during the course of his or her membership, and that it
23 uses the information contained in such records after a member cancels his or her account with
24 Netflix. Except as so admitted, Netflix denies the allegations of Paragraph 5.

25 6. Netflix admits that it maintains records containing its members’ credit card
26 numbers, billing and contact information, and records identifying the entertainment content
27 streamed to or received by a subscriber during the course of his or her membership. Except as so
28 admitted, Netflix denies the allegations of Paragraph 6.

1 7. Netflix denies the allegations of Paragraph 7.

2 8. Netflix denies the allegations of Paragraph 8.

3 9. Netflix lacks knowledge and information sufficient to form a belief about the truth
4 of the allegations of Paragraph 9 and on that basis denies such allegations.

5 10. Netflix lacks knowledge and information sufficient to form a belief about the truth
6 of the allegations of Paragraph 10 and on that basis denies such allegations.

7 11. Netflix admits the allegations of Paragraph 11.

8 12. Netflix admits this Court has subject matter jurisdiction over this matter. Netflix
9 denies all other allegations of Paragraph 12.

10 13. Netflix admits this Court has personal jurisdiction over Netflix. Netflix denies all
11 other allegations of Paragraph 13.

12 14. Netflix admits venue is proper in this Court. Netflix denies all other allegations
13 of Paragraph 14.

14 15. Netflix admits the allegations of Paragraph 15.

15 16. Netflix admits that Plaintiffs have accurately quoted the document referenced in
16 Paragraph 16. Except as so admitted, Netflix denies the allegations of Paragraph 16.

17 17. Netflix admits that it has developed an online system to provide its subscribers
18 with access to entertainment content, and that this system allows members to rank the order in
19 which they wish to receive or view certain content. Except as so admitted, Netflix denies the
20 allegations of Paragraph 17.

21 18. Netflix admits that some subscribers to the Netflix service are able to have DVDs
22 physically shipped to the address they register with Netflix. Except as so admitted, Netflix
23 denies the allegations of Paragraph 18.

24 19. Netflix admits the allegations of Paragraph 19.

25 20. Netflix admits that Plaintiffs have accurately quoted the document referenced in
26 Paragraph 20. Except as so admitted, Netflix denies the allegations of Paragraph 20.

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1 21. Netflix admits that it allows its subscribers to keep track of movies and television
2 shows they may wish to watch in the future in what is known as a queue. Except as so admitted,
3 Netflix denies the allegations of Paragraph 21.

4 22. Netflix admits that a queue is a list of entertainment content, selected and
5 organized by the subscriber. Except as so admitted, Netflix denies the allegations of Paragraph
6 22.

7 23. Netflix admits that it stores its former subscribers' queues, contact information,
8 and records identifying the entertainment content streamed to or received by a subscriber during
9 the course of his or her membership, after subscribers cancel their accounts. Except as so
10 admitted, Netflix denies the allegations of Paragraph 23.

11 24. Netflix admits that it maintains records identifying the entertainment content
12 streamed to or received by a subscriber during the course of his or her membership, and the
13 ratings (if any) that the subscriber has given to any such content. Except as so admitted, Netflix
14 denies the allegations of Paragraph 24.

15 25. Netflix admits that it maintains records identifying the entertainment content
16 streamed to or received by a subscriber during the course of his or her membership, and that it
17 retains such records after a customer has closed his or her account with Netflix. Except as so
18 admitted, Netflix denies the allegations of Paragraph 25.

19 26. Netflix admits that Plaintiffs have accurately quoted the document referenced in
20 Paragraph 26. Except as so admitted, Netflix denies the allegations of Paragraph 26.

21 27. Netflix lacks knowledge and information sufficient to form a belief about the truth
22 of the allegations of Paragraph 27 and on that basis denies such allegations.

23 28. Netflix lacks knowledge and information sufficient to form a belief about the truth
24 of the allegations of Paragraph 28 and on that basis denies such allegations.

25 29. Netflix lacks knowledge and information sufficient to form a belief about the truth
26 of the allegations of Paragraph 29 and on that basis denies such allegations.

27 30. Netflix denies the allegations of Paragraph 30.

28 31. Netflix denies the allegations of Paragraph 31.

1 32. Netflix denies the allegations of Paragraph 32.

2 33. Netflix admits that Plaintiffs have partially quoted the statute referenced in
3 Paragraph 33. Except as so admitted, Netflix denies the allegations of Paragraph 33.

4 34. Netflix denies the allegations of Paragraph 34.

5 35. Netflix denies the allegations of Paragraph 35.

6 36. Netflix denies the allegations of Paragraph 36.

7 37. Netflix denies the allegations of Paragraph 37.

8 38. Netflix lacks knowledge and information sufficient to form a belief about the truth
9 of the allegations of Paragraph 38 and on that basis denies such allegations.

10 39. Netflix admits that the document referenced in Paragraph 39 was issued by the
11 FTC. Except as so admitted, Netflix denies all allegations of Paragraph 39.

12 40. Netflix denies the allegations of Paragraph 40.

13 41. Netflix denies the allegations of Paragraph 41.

14 42. Netflix lacks knowledge and information sufficient to form a belief about the truth
15 of the allegations of Paragraph 42 and on that basis denies such allegations.

16 43. Netflix lacks knowledge and information sufficient to form a belief about the truth
17 of the allegations of Paragraph 43 and on that basis denies such allegations.

18 44. Netflix denies the allegations of Paragraph 44.

19 45. Netflix admits that Plaintiffs have brought this case as a class action, allegedly on
20 behalf of the class identified in this Paragraph. Except as so admitted, Netflix denies the
21 allegations of Paragraph 45.

22 46. Netflix denies the allegations of Paragraph 46.

23 47. Netflix denies the allegations of Paragraph 47.

24 48. Netflix denies the allegations of Paragraph 48.

25 49. Netflix lacks knowledge and information sufficient to form a belief about the truth
26 of the allegations of Paragraph 49 and on that basis denies such allegations.

27 50. Netflix denies the allegations of Paragraph 50.

28 51. Netflix denies the allegations of Paragraph 51.

1 52. Netflix incorporates by reference its responses to Paragraphs 1 through 51.

2 53. Netflix admits that it is a “video tape service provider” under the VPPA with
3 respect to its DVD service. Except as so admitted, Netflix denies the allegations of Paragraph
4 53.

5 54. Netflix admits that Plaintiffs have partially quoted the statute referenced in
6 Paragraph 54. Except as so admitted, Netflix denies the allegations of Paragraph 54.

7 55. Netflix denies the allegations of Paragraph 55.

8 56. Netflix denies the allegations of Paragraph 56.

9 57. Netflix denies the allegations of Paragraph 57.

10 58. Netflix denies the allegations of Paragraph 58.

11 59. Netflix denies the allegations of the first sentence of Paragraph 59. Netflix admits
12 that Plaintiffs seek the relief identified in the second sentence of Paragraph 59, but deny that
13 Plaintiffs are entitled to such relief or any other relief.

14 60. Netflix incorporates by reference its responses to Paragraphs 1 through 59.

15 61. Netflix denies the allegations of Paragraph 61.

16 62. Netflix admits the allegations of Paragraph 62

17 63. Netflix denies the allegations of Paragraph 63.

18 64. Netflix admits that Plaintiffs seek the relief identified in Paragraph 64, but deny
19 that Plaintiffs are entitled to such relief or any other relief.

20 65. Netflix incorporates by reference its responses to Paragraphs 1 through 64.

21 66. Netflix admits that the UCL was intended to protect consumer and competitors by
22 promoting fair competition. Except as so admitted, Netflix denies the allegations of Paragraph
23 66.

24 67. Netflix admits that Plaintiffs’ general summary of the UCL of the first two
25 sentences of Paragraph 67 is generally accurate. Except as so admitted, Netflix denies the
26 allegations of Paragraph 67.

27 68. Netflix denies the allegations of Paragraph 68.

28 69. Netflix denies the allegations of Paragraph 69.

1 70. Netflix denies the allegations of Paragraph 70.

2 71. Netflix admits that Plaintiffs seek the relief identified in Paragraph 71, but deny
3 that Plaintiffs are entitled to such relief or any other relief.

4 **AFFIRMATIVE DEFENSES**

5 Netflix asserts the following affirmative defenses to Plaintiffs' Complaint and each claim
6 therein. Netflix also reserves all defenses available under the Federal Rules of Civil Procedure
7 and the laws of the State of California, and any other defenses, at law or in equity, that may now
8 exist or in the future be available based on discovery and further factual investigation in this
9 case.

10 **FIRST AFFIRMATIVE DEFENSE**

11 The Complaint fails to state facts sufficient to constitute a claim for relief for any of the
12 claims alleged, or for any other claim for relief.

13 **SECOND AFFIRMATIVE DEFENSE**

14 The VPPA does not provide a private right of action to enforce alleged violations of 18
15 U.S.C. Section 2710(e).

16 **THIRD AFFIRMATIVE DEFENSE**

17 Plaintiffs' claims under the UCL are barred, in whole or in part, because Plaintiffs and/or
18 persons allegedly represented by Plaintiffs lack standing to assert any or all of the purported
19 causes of action alleged in the Complaint either individually or in a representative capacity.
20 Alternatively, Plaintiffs and/or persons allegedly represented do not meet the requirements for
21 bringing suit under the UCL.

22 **FOURTH AFFIRMATIVE DEFENSE**

23 The statutory damages scheme set forth in the VPPA is unconstitutionally excessive, barred
24 by the Fifth and/or Eighth Amendments to the Constitution, and violates due process.

25 **FIFTH AFFIRMATIVE DEFENSE**

26 Plaintiffs' claims are barred, in whole or in part, because Plaintiffs and/or persons allegedly
27 represented by Plaintiffs consented to the acts complained of herein, and/or are estopped from
28 asserting said claims as a result of their conduct.

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SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the statute of limitations. Specifically, Plaintiff and/or members of the class Plaintiffs claim to represent did not bring this action within two years from the date of the actions complained of or the date of discovery.

PRAYER FOR RELIEF

WHEREFORE, Netflix requests:

- (a) That Plaintiffs take nothing by way of their Complaint;
- (b) That judgment be entered in favor of Netflix and against Plaintiffs, and that Plaintiffs' action be dismissed in its entirety with prejudice; and
- (c) For other such relief as the Court shall deem just and proper.

Dated: October 12, 2011

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Rodney G. Strickland, Jr.
Rodney G. Strickland, Jr.

Attorneys for Defendant
NETFLIX, INC.