

**NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT**  
**("NOTICE")**

TO: ALL PERSONS AND ENTITIES RESIDING IN THE UNITED STATES WHO ENROLLED IN A PAID NETFLIX MEMBERSHIP PROGRAM PRIOR TO JANUARY 15, 2005.

**THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ THE COMPLETE NOTICE CAREFULLY.**

**I. Purpose of this Notice.**

There is now pending in the San Francisco Superior Court a class action lawsuit entitled Frank Chavez v. Netflix, Inc., Case No. CGC-04-434884 (the "Litigation"). This Notice explains the nature of the Litigation, general terms of a proposed settlement, and informs you of your legal rights and obligations. Unless otherwise set forth, this Notice incorporates by reference the definitions set forth in the Class Action Settlement Agreement which you can review at [www.netflixsettlement.com](http://www.netflixsettlement.com).

Frank Chavez ("Plaintiff") filed a class action lawsuit against Netflix, Inc. ("Defendant" or "Netflix") on behalf of the Class described above. Plaintiff alleged that Defendant did not perform in accordance with certain statements made in its marketing materials, including statements concerning "unlimited" DVD rentals and "one-day delivery." Defendant denies Plaintiff's allegations, further denies any wrongdoing and any liability whatsoever and believes it has many defenses to all of the claims asserted by Plaintiff. Defendant believes that its marketing and advertising complied in all respects with the law and that no Class Members, including the Plaintiff, have sustained any damages or injuries related to its actions or omissions.

Plaintiff's Counsel have investigated and evaluated the claims asserted in the Litigation and have determined that the settlement detailed herein is fair, reasonable and adequate. All parties recognize and acknowledge the uncertainty, risks, difficulties, delays and expenses involved in litigation.

Judge Thomas J. Mellon of the San Francisco Superior Court (also referred to as the "Court") has determined that this Litigation should proceed as a class action, for purposes of settlement only, with Plaintiff as the representative of the Class, and has granted preliminary approval of this settlement.

**II. Class Members.**

The Court has conditionally ruled that the Litigation may be maintained on behalf of the following:

All persons and entities residing in the United States who enrolled in a paid Netflix membership program prior to January 15, 2005.

Excluded from being Class Members are Netflix; any entity in which Netflix has a controlling interest; Netflix's directors, officers, employees; Netflix's legal representatives; Judge Mellon and the members of his immediate family; any persons who joined the Netflix service pursuant to a free trial offer but never became paying members of the Netflix service; any persons whose

Netflix account was terminated or held due to suspected illegal activity (such as credit card fraud or copyright infringement); and all persons who timely and validly request exclusion from the Class in compliance with the requirements of this notice.

Non-excluded persons and entities that fall within the foregoing definition are referred to as "Class Members."

### **III. Settlement Benefit For Class Members.**

A. If this settlement is finally approved by the Court, Netflix has agreed to provide Class Members who timely and accurately complete the online Claim Form Process at [www.netflixsettlement.com](http://www.netflixsettlement.com) with the applicable "Class Benefit" described below. Your eligibility for the benefits is based on your membership status as of October 19, 2005.

1. Subscribers who were enrolled in a paid membership prior to January 15, 2005 and had an active membership as of October 19, 2005 are eligible to receive one month of a free one-level upgrade in service (e.g., from 3 DVDs at-a-time to 4 DVDs at-a-time) without a change in the existing subscription price during the upgraded month. The service to be upgraded shall be the Current Subscriber Class Member's service level as of the date his or her upgraded month begins. Current Subscriber Class Members enrolled in the 2 DVDs at-a-time capped program will be entitled to receive a 2 DVDs at-a-time unlimited program for one month. Those Current Subscribers Class Members enrolled in the 8 DVDs at-a-time unlimited program shall be entitled to receive one month of a 9 DVDs at-a-time unlimited program and will return to the 8 DVDs at-a-time unlimited program at the end of the upgraded month. For all but the 8 DVDs at-a-time subscribers, the upgraded service shall renew automatically (following an email reminder) at the end of the upgraded month at Netflix's regular subscription rate for the upgraded program, unless and until the Class Member cancels the service or modifies his or her subscription.
2. Subscribers who were enrolled in a paid membership prior to January 15, 2005 and no longer had an active membership as of October 19, 2005 are eligible to receive a free one-month Netflix membership of either the 1, 2 or 3 DVDs at-a-time unlimited program (at the Former Subscriber Class Member's election). The service shall renew automatically (following an email reminder) at the end of the free month at the level chosen by the Former Subscriber Class Member at Netflix's regular subscription rate, unless and until the Class Member cancels the service or modifies his or her subscription.

A Current Subscriber Class Member who cancels the service following October 19 but prior to receiving the Class Benefit shall be entitled to the Class Benefit described in paragraph (1) above, but only in the event that Current Subscriber re-joins the service as a paying member prior to or on the date such Current Subscriber's Class Benefit would otherwise begin, as described in paragraph IV.C. below.

A Former Subscriber Class Member who re-joins the Netflix service following October 19 but prior to receipt of the Class Benefit shall be entitled to the Class Benefit described in paragraph (2), above, except that those Former Subscriber Class Members who re-join on a subscription plan other than the 1, 2 or 3 DVDs at-a-time unlimited program will receive a discount off of their regular subscription rate for one month in an amount equal to the then-current 3 DVDs at-a-time unlimited program price during the six-month period described in paragraph IV.C. below.

B. In addition, if this settlement is finally approved by the Court, Netflix has agreed to modify portions of its Terms of Use and direct consumers to the Terms of Use in certain of its advertisements. A copy of the revised Terms of Use is available at [www.netflixsettlement.com](http://www.netflixsettlement.com).

#### **IV. Claims Process and Deadline.**

A. Claim Form Process. In order to receive the Class Benefit, Class Members must accurately complete the online Claim Form Process at [www.netflixsettlement.com](http://www.netflixsettlement.com) no later than thirty days after Final Approval. Class Members who do not do so prior to thirty days after Final Approval will not be eligible to receive the Class Benefit. Class Members must complete the online Claim Form Process by (1) providing the name, postal address, telephone number, e-mail address and password associated with their Netflix account; (2) acknowledging their status as a current or former member, as applicable, (3) confirming they have not received or accepted duplicative offers; and (4) attesting, under penalty of perjury, that they have read and agreed to the terms of this settlement, specifically including the release, and that the information provided is correct. All Class Members must inform Netflix of any changes in their registration information, including their name, postal address, telephone number, e-mail address and password associated with their Netflix account in order to receive the notices described herein. Netflix is not responsible for providing the Class Benefit to any Class Member who does not receive the redemption email or Class Benefit due to changed account information that has not been provided to Netflix in a timely manner.

B. Redemption of Benefit. Each Current Subscriber Class Member who timely and accurately completes the Claim Form Process will receive an upgrade to his or her service level automatically on a particular billing date for the Current Subscriber Class Member's account within 90 days following the Effective Date. This date will be determined by Netflix and notified to the Current Subscriber Class Member by email. Former Subscriber Class Members who timely and accurately complete the Claim Form Process will receive by electronic mail following the Effective Date instructions for redeeming the benefit described above in Section III.A.(2). Former Subscriber Class Members may redeem the benefit one time during the subsequent six-month period through the Netflix sign-up process (which requires confirmation of account information and entry of a valid credit or debit card number). Any Former Subscriber Class Member who owes Netflix money as a result of his or her prior membership (e.g., for unreturned disks or unpaid membership fees) shall remain liable to Netflix, and Netflix shall have the right to charge said Former Subscriber Class Member for any unpaid amounts upon receipt of the Class Member's payment information. Netflix will act in good faith to resolve any disputes with Former Subscriber Class Members regarding unpaid amounts.

C. Receipt of Benefit. The Class Benefit will not be made available to any Class Member until the Effective Date, as described in the Class Action Settlement Agreement. In addition, the Class Benefit will only be available during the time periods described above (on the identified billing date during a 90 day period for Current Subscriber Class Members, and one time during a six-month period for Former Subscriber Class Members).

Excluded persons and entities are not eligible to receive the Class Benefit. Only one Class Benefit is available for each Class Member.

#### **V. Dismissal of Litigation, Entry of Judgment and Release of Claims.**

If the Court approves this settlement, it will enter a judgment that will dismiss the Litigation on the merits and with prejudice as to all Class Members. All Class Members who do not validly and timely request to be excluded from this settlement shall be forever barred from prosecuting their own lawsuits and shall be deemed to have released Defendant and each of its past or present officers, directors, employees, agents,

representatives, parents, subsidiaries, affiliates, and each of its predecessors, successors, heirs and assigns from any and all claims, rights, demands, actions, causes of action, suits, debts, liens, contracts, liabilities, agreements, costs, expenses or losses of any kind whatsoever that any Class Member has or may claim to have against such persons which are based upon, arising out of, or in any way relating to any of the acts, omissions or other conduct that has been alleged or could have been alleged or is otherwise referred to in the Litigation, including but not limited to all claims relating to the advertising or description of Netflix's service arising from all media (e.g., its website or advertisements), practices relating to service allocation or inventory management and any claims for malicious prosecution or sanctions. All Class Members shall be deemed to have waived any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code or any comparable statutory or common law provision of any other jurisdiction with respect to the released claims. Section 1542 reads as follows:

Certain Claims Not Affected By General Release: A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Although the releases granted under this settlement are not general releases, all Class Members nonetheless expressly acknowledge that they are waiving the protections of Section 1542 and of any comparable statutory or common law provision of any other jurisdiction.

#### **VI. Attorneys' Fees and Costs.**

Plaintiff's Counsel have not received payments for their services, nor have they been reimbursed for any out-of-pocket expenses, in connection with this Litigation. If the Court approves this settlement, Plaintiff's Counsel will ask the Court to award, and Defendant has agreed to pay, up to \$2,528,000 in attorney's fees and costs. Additionally, Plaintiff's Counsel will ask the Court to award, and Defendant has agreed to pay, Plaintiff \$2,000 for his time and effort related to the Litigation. Finally, Netflix has agreed to pay for all costs associated with this settlement including the class notice, costs of administering the settlement and providing the Class Benefit.

An award of attorneys' fees and costs and the payment to the Plaintiff will be paid separately from, and will not reduce, the Class Benefit provided under this settlement. Other than as set forth in Section VIII.B. below, Class Members will not be personally liable for any attorneys' fees and costs or payment to the Plaintiff.

#### **VII. Rights and Options of Class Members.**

##### **A. Remain a Class Member.**

1. If you do not request exclusion from the Class, you will remain a Class Member. Your interests in connection with this settlement will be represented by Plaintiff and Plaintiff's Counsel. You, however, will not be charged for the services or expenses of Plaintiff's Counsel. You must comply with the Claims Process and Deadline requirements described above to receive the Class Benefit.

Plaintiff's Counsel include the following attorneys and law firms, who will serve as Plaintiff's co-lead counsel:

THE LAW OFFICES OF ADAM GUTRIDE  
Adam Gutride, Esq.  
835 Douglass Street  
San Francisco, CA 94114

THE LAW OFFICES OF SETH SAFIER  
Seth A. Safier, Esq.  
6467 California  
San Francisco, California 94121

Netflix is represented in the Litigation by:

WILSON, SONSINI, GOODRICH & ROSATI  
Keith E. Eggleton, Esq.  
Rodney G. Strickland, Esq.  
650 Page Mill Road  
Palo Alto, California 94304-1050

2. If this settlement is approved by Judge Mellon and the judgment becomes final, you will be eligible for to the Class Benefit described in Section III, above, provided you timely and accurately complete the online Claim Form Process. If this settlement is not granted final approval, or this settlement is granted final approval but the judgment does not become final, the certification of the Class will be vacated and the Litigation will continue as if no proposed settlement has been reached.

3. As a Class Member, you will be bound by any judgment or other disposition of the Litigation, even if you do not submit a claim or take advantage of any of the Class Benefits. Furthermore, you and your heirs, executors, administrators, representatives, agents, partners, successors and assigns will be deemed to have agreed to the terms of this settlement and the release set forth in Section V, above.

**B. Opt-Out of the Settlement.** You have the right to opt-out of this settlement. If you opt-out of this settlement, you will not be bound by or subject to any judgment or settlement of the Litigation. If you opt-out, however, you will also not be entitled to receive the Class Benefit. If you wish to opt-out, you must submit a written, signed request to opt-out, stating (1) your name, address, email address, and telephone number (a) associated with your Netflix account and (b) at the current time, if different, (2) a reference the Litigation (i.e., Chavez v. Netflix, Inc., Case No. CGC-04-434884), (3) approximately when you became a Netflix member, if and when you canceled, and what service level(s) you subscribed to and (4) that you wish to opt-out of the Class. Requests to opt-out must be delivered to Netflix Opt-Out 5654 Geary Blvd., #210511, San Francisco, CA 94121, by January 6, 2006, or if mailed, post-marked on or before December 28, 2005. If you do not submit a timely opt-out request that complies with these requirements, your opt-out request will be deemed invalid and you will not be excluded from the Class.

**C. Intervene In The Litigation And/Or Object to the Settlement.** You have the right to intervene in the Litigation and object to, or comment on, this settlement, award of attorneys' fees and cost or payment to the Plaintiff as set forth in Section VIII.B., below.

#### **VIII. Final Settlement Hearing and Settlement Objections.**

##### **A. Settlement Hearing.**

On January 18 at 2 p.m., a public Settlement Hearing will be held before Judge Mellon in Department 514 of the San Francisco Superior Court, located at 400 McAllister Street, San Francisco,

California. The Settlement Hearing will determine: (1) whether this settlement of the Litigation as set forth in the Class Action Settlement Agreement is just, fair, reasonable and adequate for the Class and should be granted final approval; (2) whether certification of the Class should be made final; (3) whether the Court should enter the proposed judgment dismissing the Litigation with prejudice; (4) whether the Court should award Plaintiff's Counsel attorneys' fees and costs in the amount set forth in the Class Action Settlement Agreement, or some lesser amount; and (5) whether the Court should award Plaintiff \$2,000 for his time and effort in the Litigation. You are not required to attend the Settlement Hearing.

**B. Objection Procedure and Deadline.**

1. If you are a Class Member, you have the right to intervene in or object to this settlement. To do so, you must submit a written statement setting forth: (1) your name, address, email address, and telephone number (a) associated with your Netflix account and (b) at the current time, if different, (2) a reference this Litigation (i.e., Chavez v. Netflix, Inc., Case No. CGC-04-434884), (3) approximately when you became a Netflix member, if and when you canceled, and what service level(s) you subscribed to and (4) your objection/intervention, comments and supporting arguments to:

Clerk of the San Francisco Superior Court, Room 103  
San Francisco Superior Court  
400 McAllister Avenue  
San Francisco, CA 94111

You must also mail or otherwise deliver identical copies of your written submission to Plaintiff's Counsel and Netflix's Counsel at the addresses set forth above. Your written objection or request to intervene must be received by the Court by January 5, 2006. Your submission to the Court must include a certification that you have caused identical copies to be delivered to Plaintiff's Counsel and Netflix's Counsel on or before January 5, 2006 (or mailed to them via first class mail on or before December 28, 2005). You cannot object or request to intervene if you have opted out of the class. Only those that remain in the Class may object to this settlement or request to intervene.

2. You may also attend the Settlement Hearing either in person or through an attorney retained by you at your own expense. You may ask to be heard by Judge Mellon at the Settlement Hearing. In order to be heard, however, you must have submitted a written objection or request to intervene in compliance with paragraph (1), above **and** include in your comments a statement that you intend to appear and wish to be heard at the Settlement Hearing.

**IX. Additional Information and Important Dates.**

**A. Additional Information.**

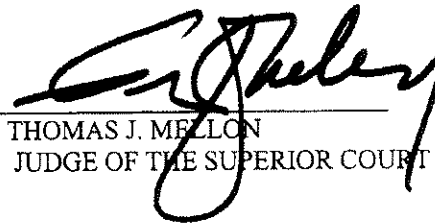
The description of the Litigation set forth in this notice is general and does not cover all of the issues and proceedings thus far. If you have additional questions you can contact Plaintiff's Counsel or see the complete file by visiting the office of the Clerk of the Court in Department 103 of the San Francisco Superior Court, located at 400 McAllister Street, San Francisco, California. The Clerk will make the file relating to the Litigation available to you for inspection and copying at your own expense.

**B. Deadlines and Dates to Remember.**

- **January 6, 2006 is the deadline to Opt-Out of this settlement (December 28, 2005 if mailed)**
- **January 5, 2006 is the deadline for filing an Intervention/Objection.**
- **January 18, 2006 is the Final Hearing Date.**
- **Thirty Days After the Final Hearing Date is the deadline to complete the Class Benefit Claim Process.**
- **Availability of Class Benefit: By email notice following the Effective Date (see IV.C. above).**

Dated: October 27, 2005

By: Order of the San Francisco Superior Court

  
THOMAS J. MELLON  
JUDGE OF THE SUPERIOR COURT