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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**

6 *IN RE: NETFLIX PRIVACY*
7 *LITIGATION*

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) Case No. 5:11-cv-00379-EJD
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) Honorable Edward J. Davila
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) **[PROPOSED] FINAL JUDGMENT AND**
10 **ORDER OF DISMISSAL WITH**
11 **PREJUDICE.**

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13 Pending before the Court is Plaintiffs’ Motion for Final Approval of Class Action
14 Settlement and Award of Attorneys’ Fees, Expenses, and Incentive Award (Dkt. 190) (the
15 “Motion”). The Court, having reviewed the papers filed in support of and in opposition to the
16 Motion, heard argument of counsel, and good cause appearing therein, Plaintiffs’ Motion is
17 hereby GRANTED and it is hereby ORDERED, ADJUDGED, and DECREED THAT:

18 1. Terms and phrases in this Order shall have the same meaning as ascribed to them
19 in the Parties’ April 30, 2012 Class Action Settlement Agreement (the “Settlement Agreement”).

20 2. This Court has jurisdiction over the subject matter of this action and over all
21 Parties to the Action, including all Settlement Class Members.

22 3. On July 5, 2012, this Court granted Preliminary Approval of the Settlement
23 Agreement and preliminarily certified a settlement class consisting of:

24 All Subscribers as of the date of entry of Preliminary Approval. Excluded from the
25 Settlement Class are the following: (i) the Settlement Administrator, (ii) the Mediator,
26 (iii) any respective parent, subsidiary, affiliate or control person of the Defendant or its
27 officers, directors, agents, servants, or employees as of the date of filing of the Action,
28 (iv) any judge presiding over the Action and the immediate family members of any such

1 Person(s), (v) persons who execute and submit a timely request for exclusion, and (vi) all
2 persons who have had their claims against Defendant fully and finally adjudicated or
3 otherwise released.

4 (Dkt. 80 at 2.)

5 4. Attached hereto and incorporated into this Order as Appendix 1 is a schedule of
6 all such persons who have timely and validly requested to be excluded from the Settlement
7 Class.

8 5. This Court now affirms certification of the Settlement Class and gives final
9 approval to the settlement and finds that the Settlement Agreement is fair, reasonable, adequate,
10 and in the best interests of the Settlement Class. The complex legal and factual posture of this
11 case, and the fact that the Settlement Agreement is the result of arms' length negotiations
12 presided over by a neutral mediator support this finding. The Class Representatives and Class
13 Counsel adequately represented the Settlement Class for purposes of entering into and
14 implementing the Settlement Agreement. Accordingly, the Settlement Agreement is hereby
15 finally approved in all respects, and the Parties are hereby directed to perform its terms.

16 6. The Court-approved Notice Plan to the Settlement Classes, as set forth in the
17 Preliminary Approval Order on July 5, 2012, was the best notice practicable under the
18 circumstances and included comprehensive nationwide newspaper publication, website
19 publication, and direct e-mail notice. The Notice Plan has been successfully implemented and
20 satisfies the requirements of Federal Rule of Civil Procedure 23 and Due Process.

21 7. The Court finds that the Defendant properly and timely notified the appropriate
22 state and federal officials of the Settlement Agreement, pursuant to the Class Action Fairness Act
23 of 2005 ("CAFA"), 28 U.S.C. § 1715. The Court has reviewed the substance of Defendant's
24 notice and accompanying materials, and finds that they complied with all applicable
25 requirements of CAFA.

26 8. Subject to the terms and conditions of the Settlement Agreement, this Court
27 hereby dismisses the action on the merits and with prejudice.

28 9. Upon the Effective Date of this settlement, Plaintiffs and each and every

1 Settlement Class Member, fully, finally, completely and forever, release, acquit and discharge
2 each released Party from any and all Released Claims, except that Released Claims shall not
3 extend to claims that are asserted in the case of *Mollett v. Netflix, Inc.*, No.: 5:11-cv-01629-EJD
4 as of the date of the Settlement Agreement.

5 10. Upon the Effective Date, the above release of claims and the Settlement
6 Agreement will be binding on, and have *res judicata* and preclusive effect in all pending and
7 future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and all other
8 Settlement Class Members, Releasing Parties, and their heirs, executors, and administrators,
9 successors, and assigns. All Settlement Class Members who have not been properly excluded
10 from the Settlement Class are hereby permanently barred and enjoined from filing, commencing,
11 prosecuting, intervening in, or participating (as class members or otherwise) in any lawsuit or
12 other action in any jurisdiction based on or arising out of the Released Claims.

13 11. Netflix is hereby ordered to implement and comply with Sections 2.1 and 2.2 of
14 the Settlement Agreement regarding the injunctive relief made available to the Settlement Class
15 Members.

16 12. The Court awards to Settlement Class Counsel \$_____ as
17 attorneys' fees and costs.

18 13. The Court awards to the Class Representatives and named-Plaintiffs in the
19 Related Actions \$_____ as an Incentive Award for their roles in this case and
20 the Related Actions.

21 14. Defendant shall pay the Fee Award and Incentive Award pursuant to and in the
22 manner provided by the terms of the Settlement Agreement.

23 15. Except as otherwise set forth in this Order, the Parties shall bear their own costs
24 and attorneys' fees.

25 16. This Court hereby directs entry of this Final Judgment based upon the Court's
26 finding that there is no just reason for delay of enforcement or appeal of this Final Judgment
27 notwithstanding the Court's retention of jurisdiction to oversee implementation and enforcement
28 of the Settlement Agreement.

1 17. This Final Judgment and order of dismissal with prejudice, the Settlement
2 Agreement, the settlement that it reflects, and any and all acts, statements, documents, or
3 proceedings relating to the Settlement Agreement are not, and shall not be construed as, or used
4 as an admission or concession by or against the Parties with respect to any fault, wrongdoing, or
5 liability, or of the validity of any Claim or defense, or of the existence or amount of damages, or
6 that the consideration to be given under the Settlement Agreement represents an amount equal to,
7 less than or greater than the amount that could have or would have been recovered after trial.

8 18. The Parties, without further approval from the Court, are hereby permitted to
9 agree and to adopt such amendments, modifications, and expansions of the Settlement
10 Agreement and its implementing documents (including all exhibits to the Settlement Agreement)
11 so long as they are consistent in all material respects with the Final Judgment and do not limit the
12 rights of Settlement Class Members.

13 19. Without affecting the finality of this Final Judgment in any way, this Court hereby
14 retains continuing jurisdiction over, *inter alia*, (a) implementation, enforcement, and
15 administration of the Settlement Agreement, including any releases in connection therewith; (b)
16 resolution of any disputes concerning class membership or entitlement to benefits under the
17 terms of the Settlement Agreement; and (c) all Parties hereto, for the purpose of enforcing and
18 administering the Settlement Agreement and the Action until each and every act agreed to be
19 performed by the Parties has been performed pursuant to the Settlement Agreement.

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22 **IT IS SO ORDERED.**

23 Dated this _____ day of _____, 2012
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HONORABLE EDWARD J. DAVILA
27 UNITED STATES DISTRICT COURT
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