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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

MARTIN DANIELS, derivatively on behalf of NETFLIX, INC., Plaintiff, v. RICHARD BARTON, RODOLPHE BELMER, MATHIAS DÖPFNER, TIMOTHY HALEY, REED HASTINGS, DAVID HYMAN, JAY HOAG, LESLIE KILGORE, STRIVE MASIYIWA, ANN MATHER, SPENCER NEUMANN, GARY PETERS, TED SARANDOS, BRAD SMITH, ANNE SWEENEY, and DOES 1-25, inclusive, Defendants, -and- NETFLIX, INC., a Delaware corporation, Nominal Defendant.	Case No. **STOCKHOLDER DERIVATIVE COMPLAINT FOR BREACH OF FIDUCIARY DUTY, UNJUST ENRICHMENT, AND WASTE OF CORPORATE ASSETS** **<u>DEMAND FOR JURY TRIAL</u>**

Plaintiff Martin Daniels ("Plaintiff"), by and through his undersigned attorneys, brings this Stockholder Derivative Complaint on behalf and for the benefit of Nominal Defendant Netflix, Inc., ("Netflix" or the "Company") against members of the Company's Board of Directors (the "Board") and executive team for breach of fiduciary duty, unjust enrichment, and waste of corporate assets. Plaintiff's allegations are based upon his personal knowledge as to himself and his own acts and, as to all other matters, upon information and belief developed from his attorneys' investigation, which includes, without limitation: (i) review and analysis of public filings made by Netflix and other related parties and non-parties with the United States Securities and Exchange Commission ("SEC"); (ii) review and analysis of press releases and other publications disseminated by Netflix and other related parties and non-parties; (iii) review of news articles, stockholder communications, and postings on Netflix's website concerning the Company's public statements; (iv) publicly available court documents, including documents filed in the related, consolidated securities fraud class action pending in the United States District Court for the Northern District of California, captioned *In re Netflix, Inc. Securities Litigation*, No. 4:22-cv-02672 (the "Securities Class Action"); and (v) review of other publicly available information concerning Netflix.

I. NATURE AND SUMMARY OF THE ACTION

1. Netflix is one of the world's leading streaming entertainment subscription-based service companies. Netflix creates and distributes television series, documentaries, feature films and other entertainment on its streaming platform and allows its members to watch these programs without commercials on an internet-connected device.

2. Netflix's revenues are primarily derived from monthly membership fees relating to streaming content to its members. A primary metric Netflix uses to measure growth is the net number of new paid subscriptions (commonly referred to as "paid net adds") on its platform. Investors see the trend in the number of people paying for the streaming service as the best indicator of future success.

3. Netflix has sold itself to investors as a growth stock similar to Google or Facebook (as examples)—a company that will add tens of millions of customers every year as

people transition from pay TV to internet video. For about a decade, Netflix had delivered on that promise, growing year after year en route to more than 200 million subscribers.

4. However, following a record year in 2020 that saw Netflix add about 36 million subscribers, the Company's subscriber growth slowed significantly in 2021. In the last three months of 2021, Netflix added only 8.3 million subscribers, missing its 8.5 million forecast, and bringing the total subscriber growth for the year to just over 18 million—the lowest annual subscriber gain since 2016. That trend continued into 2022, when Netflix reported it had lost 200,000 subscribers during the first quarter of the year, which was the first time in more than a decade the Company had lost subscribers.

5. Netflix's investors, however, were led to believe otherwise and/or were not informed of the Company's failure to retain subscribers, resulting in decelerating growth and adversely affecting its financial condition. Under these circumstances, Netflix's positive statements about the Company's business, operations, and prospects were materially false and/or misleading and/or lacked a reasonable basis.

6. These revelations subjected the Company to defending itself in the Securities Class Action, which asserts claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") against Netflix and several of its top executives in connection with the Company's false and misleading statements.

7. Despite their knowledge of the facts and information that had an adverse impact on the Company's business, operations and outlook and that the Company's SEC filings did not reflect the aforementioned adverse facts and information and knowing that the Netflix stock was trading at an artificially inflated price as a result, several of the Individual Defendants (defined below), utilizing their knowledge of facts not publicly known, sold significant amounts of their personally held shares of Netflix stock.

8. The Individual Defendants here now face liability to the Company for their multiple breaches of their fiduciary duties to the Company by, *inter alia*: (i) affirmatively making, allowing to be made, and/or failing to correct improper statements in SEC filings relating to the Company's business, operations and prospects; (ii) failing to maintain adequate

controls regarding the Company's financial reporting; (iii) trading in the stock of the Company based on their knowledge of the events described herein; and (iv) such other and further actions described herein.

9. The Board has not, and will not, commence litigation against the Individual Defendants named in this complaint, let alone vigorously prosecute such claims, because they face a substantial likelihood of liability to Netflix for authorizing or failing to correct the false and misleading statements alleged herein, and for failing to correct and/or implement the necessary policies, procedures, and internal controls to prevent the harm to the Company that has occurred. Accordingly, a pre-suit demand upon the Board is a useless and futile act. Thus, Plaintiff rightfully brings this action to vindicate the Company's rights against its wayward fiduciaries and hold them responsible for the damages they have caused to Netflix and its stockholders.

II. JURISDICTION AND VENUE

10. This Court has jurisdiction over all causes of actions asserted herein under Article VI, § 10 of the California Constitution, because this case is a cause not given by statute to other trial courts, as this derivative action is brought pursuant to Section 800 of the California Corporations Code to remedy the Individual Defendants' violations of law.

11. The amount in controversy, exclusive of interest and costs, exceeds the jurisdictional minimum of this Court. Netflix is a corporation that conducts business and maintains its principal headquarters and operations in California. Jurisdiction over all of the Individual Defendants is proper because they conduct business in California, including, but not limited to, engaging in the misconduct alleged herein, and because they have sufficient minimum contacts with California so as to render the exercise of jurisdiction by California courts permissible under traditional notions of fair play and substantial justice. Most of the Individual Defendants are directors of Netflix and attended board meetings in this County in that capacity.

12. Venue is proper in this Court because one or more of the Individual Defendants either resides in or maintains executives offices in this County, a substantial portion of the

transactions and wrongs complained of herein, including the Individual Defendants' primary participation in the wrongful acts detailed herein and aiding and abetting and conspiracy in violation of the fiduciary duties owed to Netflix, occurred in this County, and the Individual Defendants have received substantial compensation in this County by doing business here and engaging in numerous activities that had an effect in this County.

13. A true and correct copy of this complaint was delivered to Netflix before its filing with the Court.

III. PARTIES

Plaintiff

14. Plaintiff Martin Daniels is a current Netflix stockholder and has continuously held shares of Netflix stock since May 2011.

Nominal Defendant

15. Nominal Defendant Netflix is a Delaware corporation with its principal executive offices located at 100 Winchester Circle, Los Gatos, California 95032. The Company's common stock is publicly traded on the NASDAQ under the ticker symbol "NFLX." Netflix has over 444 million shares of common stock outstanding.

Defendants

16. Defendant Reed Hastings ("Hastings") is the co-founder of Netflix and has served as the Company's Co-Chief Executive Officer ("Co-CEO"), President, and Chairperson of the Board since 1997. Netflix paid Hastings compensation totaling $40,823,725 in 2021 and $43,226,024 in 2020.

17. Defendant Ted Sarandos ("Sarandos") has served as the Company's Co-CEO and as a Director on the Board since July 2020, and as the Company's Chief Content Officer since 2000. Netflix paid Sarandos compensation totaling $38,232,164 in 2021 and $39,318,251 in 2020.

18. Defendant Spencer Neumann ("Neumann") has served as the Company's Chief Financial Officer ("CFO") since January 2019. Netflix paid Neumann compensation totaling $12,510,696 in 2021 and $12,939,151 in 2020.

19. Defendant Gregory Peters ("Peters") has served as the Company's Chief Operating Officer ("COO") since July 2020 and Chief Product Officer since 2017. Netflix paid Peters compensation totaling $20,371,393 in 2021 and $20,805,995 in 2020.

20. Defendant David Hyman ("Hyman") has served as the Company's Chief Legal Officer and Secretary since 2002. Netflix paid Hyman compensation totaling $10,177,573 in 2021 and $10,469,347 in 2020.

21. Defendant Jay Hoag ("Hoag") is the Chairperson of the Board's Nominating and Governance Committee and has served as a Director of Netflix since 1999.

22. Defendant Ann Mather ("Mather") is the Chairperson of the Board's Audit Committee and has served as a Director of Netflix since 2010.

23. Defendant Timothy Haley ("Haley") is the Chairperson of the Board's Compensation Committee and has served as a Director of Netflix since 1998.

24. Defendant Leslie Kilgore ("Kilgore") has served as a Director of Netflix since 2012 and is a member of the Board's Audit Committee. Kilgore formerly served as the Company's Chief Marketing Officer from 2000 to 2012.

25. Defendant Strive Masiyiwa ("Masiyiwa") has served as a Director of Netflix since 2020 and is a member of the Board's Nominating and Governance Committee.

26. Defendant Richard Barton ("Barton") has served as a Director of Netflix since 2002 and is a member of the Board's Audit Committee.

27. Defendant Rodolphe Belmer ("Belmer") served as a Director of Netflix from January 2018 to October 2022, during which time he was a member of the Board's Compensation Committee.

28. Defendant Mathias Döpfner ("Döpfner") has served as a Director of Netflix since 2018 and is a member of the Board's Compensation Committee.

29. Defendant Brad Smith ("Smith") has served as a Director of Netflix since March 2015 and is a member of the Board's Nominating and Governance Committee.

30. Defendant Anne Sweeney ("Sweeney") has served as a Director of Netflix since 2015 and is a member of the Board's Compensation Committee.

31. Defendants Barton, Belmer, Döpfner, Haley, Hastings, Hyman, Hoag, Kilgore, Masiyiwa, Mather, Neumann, Peters, Sarandos, Smith, and Sweeney are referred to herein as the "Individual Defendants."

32. Defendants Hastings, Hyman, Neumann, Peters, and Sarandos collectively are referred to herein as the "Officer Defendants."

33. Defendants Barton, Belmer, Döpfner, Haley, Hastings, Hoag, Kilgore, Masiyiwa, Mather, Sarandos, Smith, and Sweeney are referred to herein as the "Director Defendants."

34. Defendants Barton, Kilgore, and Mather collectively are referred to herein as the "Audit Committee Defendants."

35. Defendants Belmer, Döpfner, Haley, and Sweeney collectively are referred to herein as the "Compensation Committee Defendants."

36. Defendants Hoag, Masiyiwa and Smith collectively are referred to herein as the "Nominating and Governance Committee Defendants."

37. Defendants Peters, Hoag, Mather, Sarandos, and Hyman are referred to herein as the "Insider Selling Defendants."

IV. SUBSTANTIVE ALLEGATIONS

A. Company Background and Business Model

38. Founded in 1997, Netflix is currently the largest streaming entertainment service in the world, offering a vast catalogue of movies, television shows, gaming, and other media.

39. Originally a DVD mail order rental company, Netflix quickly moved from a per DVD rental model to a subscription service. In 2007, the Company launched its streaming media service. A month after launching the streaming service, Netflix had delivered over a billion DVDs to customers. While Netflix still has a DVD subscription arm, its principal business is in streaming services.

40. From 2007 to 2022, Netflix significantly expanded in terms of programming, which now includes previously released movies and television programs, the Company's own original content and gaming. As of December 2021, Netflix had over 200 million paying

subscriber households, in at least 190 countries, and had over 15,000 different titles globally which were available for streaming. Because of its extensive content and ease of use, Netflix is regularly touted by consumer magazines as the best streaming service to use. According to Netflix, it "redefined how people watch video entertainment."

41. Netflix's financial success hinges upon keeping existing customers signed on to its subscription streaming service and expanding its subscriber base. In its January 29, 2020, Form 10-K Annual Report ("2020 10-K"), Netflix stated: "Our core strategy is to grow our streaming membership business globally within the parameters of our operating margin target. We are continuously improving our members' experience by expanding our streaming content with a focus on a programming mix of content that delights our members and attracts new members."

42. According to its 2020 10-K, Netflix had approximately 89 million subscribers in 2016 and increased its subscribers to 110 million in 2017. In 2018, Netflix had over 139 million subscribers. The Company continued that steady growth in 2019 with 167 million subscribers.

43. In 2020, the worldwide COVID-19 pandemic abruptly and significantly changed the way consumers worldwide were able to access entertainment. As most countries put restrictions on what kinds of businesses could remain open and be frequented by customers, and as consumers of movie theaters and other outside of the home entertainment options significantly restricted their own movement because of the pandemic, home entertainment consumption increased correspondingly.

44. During 2020, when the pandemic closures were at their height, Netflix gained a record 37 million customers, representing a 31% increase from 2019's paid net additional subscribers for a total of over 203 million.

45. In January 2021, the Company reported its fourth quarter 2020 financial results, noting that paid streaming memberships increased over 23% over the prior year, with revenue 1% higher than forecasted.

B. The Individual Defendants Caused the Company to Issue Materially False and Misleading Statements

46. On January 19, 2021, the Company reported its fourth quarter 2020 financial results, stating in relevant part:

> Average paid streaming memberships increased 23% year over year in Q4, while average revenue per membership was flat year over year both on a reported and foreign exchange (F/X) neutral basis. Revenue was 1% higher than our guidance forecast, as paid net adds exceeded our 6.0m projection by 2.5m. Operating margin of 14.4% (a 600bps increase from Q4'19) also came in above our guidance, due to higher-than-expected revenue. EPS of $1.19 vs. $1.30 a year ago included a $258m non-cash unrealized loss from F/X remeasurement on our Euro denominated debt.
>
> For the full year, our 37m paid net additions represented a 31% increase from 2019's 28m paid net adds. We're becoming an increasingly global service with 83% of our paid net adds in 2020 coming from outside the UCAN region. Our EMEA region accounted for 41% of our full year paid net adds, while APAC was the second largest contributor to paid net additions with 9.3m (up 65% year over year).

47. During an earnings call that day, Defendant Hastings claimed that consumers are "interested and willing to pay more for more content because they're hungry for great stories," and that they would "get that content" by going to other platforms in addition to Netflix. When an analyst posited that the addition of new streaming services "expands the pie . . . for streaming in general" and could "accelerate growth," Defendant Peters responded, "I think you're right."

48. In its April 20, 2021, Form 8-K filing, Netflix noted: "The extraordinary events of Covid-19 led to unprecedented membership growth in 2020... we ended 2020 with a bigger membership and revenue base than we would otherwise have had, contributing to record Q1'21 revenues."

49. Even though countries were dropping COVID-19 restrictions and fewer people were getting their entertainment solely in their homes, and notwithstanding new streaming services having launched and others expanding their customer bases, Defendant Neumann assured investors that the "business remains healthy" despite "noise in the near term."

50. On the April 20, 2021, earnings call, Defendant Neumann stated that while the environment had become more competitive, he did not express any concern about Netflix's prospects, noting that the industry is "intensely competitive, but it always has been."

51. On July 20, 2021, Netflix announced its second quarter 2021 financial results, stating in relevant part:

> Revenue growth was driven by an 11% increase in average paid streaming memberships and 8% growth in average revenue per membership (ARM). ARM rose 4%, excluding a foreign exchange (FX) impact of +$277m. Operating margin of 25.2% expanded 3 percentage points compared with the year ago quarter. EPS of $2.97 vs. $1.59 a year ago included a $63m non-cash unrealized loss from FX remeasurement on our Euro denominated debt.
>
> The pandemic has created unusual choppiness in our growth and distorts year-over-year comparisons as acquisition and engagement per member household spiked in the early months of COVID. In Q2'21, our engagement per member household was, as expected, down vs. those unprecedented levels but was still up 17% compared with a more comparable Q2'19. Similarly, retention continues to be strong and better than pre-COVID Q2'19 levels, even as average revenue per membership has grown 8% over this two-year period, demonstrating how much our members value Netflix and that as we improve our service we can charge a bit more.
>
> We added 1.5m paid memberships in Q2, slightly ahead of our 1.0m guidance forecast. The APAC region represented about two-thirds of our global paid net adds in the quarter. As expected, Q2 paid memberships in the UCAN region were slightly down sequentially (-0.4m paid net adds). We believe our large membership base in UCAN coupled with a seasonally smaller quarter for acquisition is the main reason for this dynamic. This is similar to what we experienced in Q2'19 when our UCAN paid net adds were -0.1m; since then we've added nearly 7.5m paid net adds in UCAN.

52. Speaking at the earnings call that day, Defendant Neumann attributed the "choppiness" in growth to the after-effect of the "big pull forward in 2020" and reassured investors that the "***business is performing well***." Neumann emphasized that Netflix was "roughly 20% penetrated in broadband homes," and with 800 million to 900 million worldwide that could potentially buy a Netflix subscription there was no reason why Netflix could not "be in all or most of those homes over time if we're doing our job." In the United States and Canada, Neumann said that only 26% of viewing consumption was through a streaming service, within which Netflix was only 7% of consumption.

53. On October 19, 2021, Netflix announced its third quarter 2021 financial results in a letter to shareholders that stated, in relevant part:

> After a lighter-than-normal content slate in Q1 and Q2 due to COVID-related production delays in 2020, we are seeing the positive effects of a stronger slate in the second half of the year. In Q3, we grew revenue 16% year over year to $7.5 billion, while operating income rose 33% vs. the prior year quarter to $1.8 billion. We added 4.4m paid net adds (vs. 2.2m in Q3'20) to end the quarter with 214m paid memberships. We're very excited to finish the year with what we expect to be our strongest Q4 content offering yet, which shows up as bigger content expense and lower operating margins sequentially.
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> * * *
>
> We under-forecasted paid net adds for the quarter (4.4m actual vs. our 3.5m projection), while ending paid memberships of 214m was within 0.4% of our forecast. For the second consecutive quarter, the APAC region was our largest contributor to membership growth with 2.2m paid net adds (half of total paid net adds) as we are continuing to improve our service in this region. In EMEA, paid net adds of 1.8m improved sequentially vs. the 188k in Q2 as several titles had a particularly strong impact. The UCAN and LATAM regions grew paid memberships more slowly. These regions have higher penetration of broadband homes although we believe we still have ample runway for growth as we continue to improve our service.
>
> As a reminder, the quarterly guidance we provide is our actual internal forecast at the time we report and we strive for accuracy. For Q4'21, we forecast paid net adds of 8.5m, consistent with Q4'20 paid net additions. For the full year 2021, we forecast an operating margin of 20% or slightly better. This means that Q4'21 operating margin will be approximately 6.5% compared with 14% in Q4'20. The year over year decline in operating margin is due mostly to our backloaded big content release schedule in this Q4, which will result in a roughly 19% year over year increase in content amortization for Q4'21 (compared with ~8% growth year to date).

54. Netflix held a conference call that day to discuss the financial results with analysts and investors. During the call, Defendant Neumann stated that "throughout the quarter, ***the business remained healthy*** as it had been throughout the year with ***churn at low levels***, down prior to the comparable periods both in 2020 and two years ago pre-COVID in 2019." Defendant Neumann also stated that management "expect[ed] to continue in terms of that ***healthy retention*** and then this kind of acceleration as we get past those initial market reopenings with COVID [and] past the COVID pull forwarding into the strength of our slate . . . ."

55. The above statements in ¶¶46-54 were materially misleading because they failed to disclose:

a. the Company was experiencing difficulty retaining customers;

b. the Company's growth was decelerating; and

c. that as a result of the foregoing, the Company's financial results were being adversely affected.

C. The Board Authorizes a $5 Billion Stock Repurchase

56. In March 2021, the Board authorized the repurchase of up to $5 billion of Netflix common stock, with no expiration date for that repurchase (the "Stock Repurchase Program").

57. Between March 2021 and December 31, 2021, the Company had repurchased 1,182,410 shares of artificially inflated common stock for an aggregate amount of $600 million pursuant to the Stock Repurchase Program.

D. The Truth Gradually Emerges

58. On January 20, 2022, after the market closed, Netflix finally disclosed that it had "slightly over-forecasted paid net adds in Q4." In a letter to shareholders, Netflix announced:

> We slightly over-forecasted paid net adds in Q4 (8.3m actual compared to the 8.5m paid net adds in both the year ago quarter and our beginning of quarter projection). For the full year 2021, paid net adds totaled 18m vs 37m in 2020. Our service continues to grow globally, with more than 90% of our paid net adds in 2021 coming from outside the UCAN region.
>
> Nonetheless, our UCAN region added 1.2m paid memberships in Q4'21 (vs. 0.9m last year), marking ***our strongest quarter of member growth*** in this region since the early days of COVID-19 in 2020. In APAC, we increased paid memberships by 2.6m (vs. 2.0m in the year ago quarter) with strong growth in both Japan and India. EMEA was our largest contributor to paid net adds in Q4 (3.5m vs. 4.5m in the prior year period) and the region delivered record quarterly revenue, exceeding $2.5 billion for the first time. LATAM paid net adds totaled 1.0m vs. 1.2m last year.
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> * * *
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> For Q1'22, we forecast paid net adds of 2.5m vs. 4.0m in the year ago quarter. Our guidance reflects a more back-end weighted content slate in Q1'22 (for example, *Bridgerton* S2 and our new original film *The Adam Project* will both be launching in March). In addition, while ***retention and engagement remain***

> ***healthy***, acquisition growth has not yet re-accelerated to pre-Covid levels. We think this may be due to several factors including the ongoing Covid overhang and macro-economic hardship in several parts of the world like LATAM.
>
> *   *   *
>
> Consumers have always had many choices when it comes to their entertainment time - competition that has only intensified over the last 24 months as entertainment companies all around the world develop their own streaming offering. While this added competition may be affecting our marginal growth some, ***we continue to grow in every country and region in which these new streaming alternatives have launched***. This reinforces our view that the greatest opportunity in entertainment is the transition from linear to streaming and that with under 10% of total TV screen time in the US, our biggest market, Netflix has tremendous room for growth if we can continue to improve our service.

59. Further, Netflix stated that "competition intensified over the last 24 months as entertainment companies all around the world develop[ed] their own streaming offerings." Netflix touted its growth "in every country and region in which these new streaming alternatives have launched" but noted that "this added competition may be affecting our marginal growth some."

60. The next day after this belated disclosure, on January 21, 2022, the Company's stock price fell $110.75 per share, closing at $397.50 per share in unusually heavy volume.

61. Netflix held a conference call that same day to discuss the financial results with analysts and investors. Defendant Neumann stated during that call that "***overall, the business was healthy. Retention was strong. Churn was down***." Defendant Neumann further stated that "***acquisition was growing***, just not growing quite as fast as we were perhaps hoping or forecasting," which was "probably a bit of just overall COVID overhang that's still happening . . . [and] some macroeconomic strain in some parts of the world."

62. On January 27, 2022, Netflix filed its 2021 Form 10-K with the SEC ("2021 10-K"). Therein, the Company provided the following risk disclosures:

> **If our efforts to attract and retain members are not successful, our business will be adversely affected**.
>
> We have experienced significant membership growth over the past several years. Our penetration and growth rates vary between the jurisdictions where we provide our service. In countries where we have been operating for many years

or where we are highly penetrated, our membership growth is slower than in newer or less penetrated countries. Our ability to continue to attract and retain members will depend in part on our ability to consistently provide our members in countries around the globe with compelling content choices, effectively drive conversation around our content and service, as well as provide a quality experience for choosing and enjoying TV series, documentaries, feature films and mobile games. Furthermore, the relative service levels, content offerings, pricing and related features of competitors to our service may adversely impact our ability to attract and retain memberships. Competitors include other entertainment video providers, such as MVPDs, and streaming entertainment providers (including those that provide pirated content), video gaming providers, as well as user-generated content, and more broadly other sources of entertainment that our members could choose in their moments of free time.

If consumers do not perceive our service offering to be of value, including if we introduce new or adjust existing features, adjust pricing or service offerings, or change the mix of content in a manner that is not favorably received by them, we may not be able to attract and retain members. We have recently expanded our entertainment video offering to include games. If our efforts to develop and offer games are not valued by our current and future members, our ability to attract and retain members may be negatively impacted. We may, from time to time, adjust our membership pricing, our membership plans, or our pricing model itself, which may not be well-received by consumers, and which may result in existing members canceling our service or fewer new members joining our service. In addition, many of our members rejoin our service or originate from word-of-mouth advertising from existing members. If our efforts to satisfy our existing members are not successful, we may not be able to attract members, and as a result, our ability to maintain and/or grow our business will be adversely affected. Members cancel our service for many reasons, including a perception that they do not use the service sufficiently, the need to cut household expenses, availability of content is unsatisfactory, competitive services provide a better value or experience and customer service issues are not satisfactorily resolved. Membership growth is also impacted by seasonality, with the fourth quarter historically representing our greatest growth, as well as the timing of our content release schedules. We must continually add new memberships both to replace canceled memberships and to grow our business beyond our current membership base. While we currently permit multiple users within the same household to share a single account for non-commercial purposes, if multi-household usage is abused or if our efforts to restrict multi-household usage are ineffective, our ability to add new members may be hindered and our results of operations may be adversely impacted. If we do not grow as expected, given, in particular, that our content costs are largely fixed in nature and contracted over several years, we may not be able to adjust our expenditures or increase our (per membership) revenues commensurate with the lowered growth rate such that our margins, liquidity and results of operation may be adversely impacted. If we are unable to successfully compete with current and new competitors in providing compelling content, retaining our existing memberships and attracting new memberships, our business will be adversely affected.

63. On April 19, 2022, after the market closed, Netflix reported that it had ***lost*** over 200,000 total subscriptions during the first quarter of 2022 instead of acquiring the projected 2.5 million new subscriptions and the 4.0 million in the first quarter of 2021. Netflix was losing subscribers, rather than gaining them as it had projected. Specifically, in a letter to shareholders, Netflix explained:

> ***Paid net additions were -0.2m compared against our guidance forecast of 2.5m and 4.0m in the same quarter a year ago***. The suspension of our service in Russia and winding-down of all Russian paid memberships resulted in a -0.7m impact on paid net adds; excluding this impact, paid net additions totaled +0.5m. The main challenge for membership growth is continued soft acquisition across all regions. ***Retention was also slightly lower relative to our guidance forecast***, although it remains at a very healthy level (we believe among the best in the industry). Recent price changes are largely tracking in-line with our expectations and remain significantly revenue positive.
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> * * *
>
> As a reminder, the quarterly guidance we provide is our actual internal forecast at the time we report. ***For Q2'22, we forecast paid net additions of -2.0m vs. +1.5m in the year ago quarter. Our forecast assumes our current trends persist (such as slow acquisition and the near term impact of price changes) plus typical seasonality (Q2 paid net adds are usually less than Q1 paid net adds).*** We project revenue to grow approximately 10% year over year in Q2, assuming roughly a mid-to-high single digit year over year increase in ARM on a F/X neutral basis. We still target a 19%-20% operating margin for the full year 2022, assuming no material swings in F/X rates from when we set this goal in January of 2022.

64. Furthermore, Netflix told its shareholders in an April 19, 2022 letter that it was "not growing revenue as fast as we'd like." While Netflix stated that "COVID clouded the picture by significantly increasing our growth in 2020, leading us to believe that most of our slowing growth in 2021 was due to the COVID pull forward," Netflix's slowing revenue was due to four factors:

a. The uptake of connected TVs, the adoption of on-demand entertainment, and data costs;

b. Netflix passwords being shared with over 100m additional households, including over 30m in the United States and Canada;

c. Competition for viewing "as traditional entertainment companies realized streaming is the future, many new streaming services have also launched"; and

d. Macro factors, including sluggish economic growth, inflation, geopolitical events, and continued COVID disruptions.

65. Through these disclosures, Netflix revealed that it had lost subscribers for the first time in more than 10 years. The results and weak outlook led to a wave of downgrades from Wall Street on fears over the Company's long-term growth potential.

66. On this news, on April 20, 2022, Netflix's share price fell $122.42, or over 35%, to close at $226.19 per share on unusually heavy volume.

67. On April 20, 2022, CNBC described Netflix as "the worst-performing stock of 2022 in the S&P 500, down 62.5% year-to-date."

68. The above statements in ¶¶58-59, 61 were materially misleading because they failed to disclose that:

a. the Company was experiencing difficulty retaining customers;

b. the Company's growth was decelerating; and

c. as a result of the foregoing, the Company's financial results were being adversely affected.

69. The above statements in ¶62 were materially misleading because the "risk disclosures" failed to disclose that the specific risks that it contemplated had already materialized by the time the disclosure was made and the disclosure made it appear that the risks contemplated could materialize at some point in the future.

V. INSIDER TRADING

70. While many of Netflix's shareholders lost considerable sums with the shares declining over 62% at one point, many of the Netflix insiders were able to sell their shares at artificially high prices and avoid the staggering losses suffered by the Company's other shareholders. During 2021, as Netflix was touting its growth and positive financial forecast, certain corporate insiders elected to sell shares of their Netflix stock.

71. For example, the following chart reflects insider transactions during this time period:

Name	Date	Shares Sold	Average Price Sold	Total Value of Shares Sold
Gregory K. Peters	11/17/2021	7,058	$700.00	$4,940,600.00
Jay C. Hoag	11/17/2021	2,472	$700.19	$1,730,869.68
Jay C. Hoag	11/5/2021	7,212	$654.51	$4,720,326.12
Gregory K. Peters	10/25/2021	6,721	$675.00	$4,536,675.00
Gregory K. Peters	10/21/2021	7,329	$650.00	$4,763,850.00
David A. Hyman	10/4/2021	18,116	$620.00	$11,231,920.00
Gregory K. Peters	10/4/2021	6,455	$625.00	$4,034,375.00
Theodore A. Sarandos	10/4/2021	69,707	$625.00	$43,566,875.00
Ann Mather	9/7/2021	809	$600.00	$485,400.00
Gregory K. Peters	9/7/2021	6,941	$600.00	$4,164,600.00
Jay C. Hoag	8/11/2021	8,960	$513.41	$4,600,153.60

72. As a result of the false and misleading disclosures and failures to disclose as set forth above, these insider stock sales by the Insider Selling Defendants occurred at artificially inflated share prices not truly reflective of the Company's value, which the Insider Selling Defendants knew when they made the sales.

VI. DAMAGES TO THE COMPANY

73. As a direct and proximate result of the Individual Defendants' misconduct, Netflix has been and will continue to be seriously harmed. Such harm includes, but is not limited to: (i) legal costs incurred in connection with the defense of the Securities Class Action; (ii) accounting, regulatory, and other costs due to an increased scrutiny of the Company's statements concerning its projections and business outlook; (iii) any funds paid to settle or fund a judgment entered or that may be entered in the Securities Class Actions; (iv) costs incurred in

connection with the Company's repurchases of its common stock at artificially inflated prices as a result of the material misstatements and omissions detailed herein; and (v) costs incurred from compensation and benefits paid to the Individual Defendants who have breached their duties to Netflix.

74. In addition, Netflix's business, goodwill, and reputation with its business partners, regulators, and shareholders have been gravely impaired. The Company's failure to disclose problems that it knew or should have known that it had with subscriber retention, business expansion, subscription account sharing, and financial outlook and the specter of inside trading have irrevocably diminished the Company.

75. For at least the foreseeable future, Netflix will suffer from what is known as the "liar's discount," a term applied to the stock of companies who have been implicated in misleading the investing public, such that Netflix's ability to raise equity capital or debt on favorable terms in the future is now and will continue to be impaired. The Company stands to incur higher marginal costs of capital and debt because of the misconduct.

VII. DUTIES OF THE INDIVIDUAL DEFENDANTS

A. Fiduciary Duties

76. By reason of their positions as officers and/or directors of Netflix and because of their responsibility to control the business and corporate affairs of the Company, the Individual Defendants owed, and owe, the Company and its stockholders the fiduciary obligations of good faith, loyalty, due care, and candor and were, and are, required to use their utmost ability to control and manage the Company in a just, honest, fair, and equitable manner.

77. Each Individual Defendant owed, and owes, the Company and its stockholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company, as well as the highest obligations of fair dealing and not to act in furtherance of their personal interest or benefit.

78. In *Gantler v. Stephens*, 965 A.2d 695, 708–09 (Del. 2009), the Delaware Supreme Court concluded that the "officers of Delaware corporations, like directors, owe fiduciary duties of care and loyalty, and that the fiduciary duties of officers are the same as those

of directors." The officers of a Delaware corporation are "expected to pursue the best interests of the company in good faith (*i.e.*, to fulfill their duty of loyalty) and to use the amount of care that a reasonably prudent person would use in similar circumstances (*i.e.*, to fulfill their duty of care)." *Hampshire Grp., Ltd. v. Kuttner*, CIV.A.. No. 3607-VCS, 2010 WL 2739995, at *11 (Del. Ch. July 12, 2010).

79. Because of their positions of control and authority as officers and/or directors of Netflix, the Individual Defendants were able to, and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein. Because of their advisory, executive, managerial, and directorial positions with Netflix, each of the Individual Defendants had knowledge of material, nonpublic information regarding the Company. In addition, as officers and/or directors of a publicly held company, the Individual Defendants had a duty to promptly disseminate accurate and truthful information regarding the Company's business, operations, and prospects so that the market price of the Company's stock would be based on truthful and accurate information.

80. At all times relevant hereto, each of the Individual Defendants was the agent of each of the other Individual Defendants and of Netflix and was at all times acting within the course and scope of such agency.

81. To discharge their duties, the officers and directors of Netflix were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the Company. By virtue of such duties, the officers and directors of Netflix were required to, among other things:

a. Exercise good faith to ensure that the affairs of the Company were conducted in an efficient, business-like manner so as to make it possible to provide the highest quality performance of their business;

b. Exercise good faith to ensure that the Company was operated in a diligent, honest, and prudent manner and complied with all applicable federal and state laws, rules, regulations and requirements, and all contractual obligations, including acting only within the scope of its legal authority;

c. Maintain and implement an adequate, functioning system of internal controls, such that the affairs and operations of Netflix are conducted in accordance with all applicable laws, rules, and regulations;

d. When put on notice of problems with the Company's business practices and operations, exercise good faith in taking appropriate action to correct the misconduct and prevent its recurrence;

e. Maintain and implement an adequate, functioning system of internal controls, such that the affairs and operations of Netflix are conducted in accordance with all applicable laws, rules, and regulations; and

f. Truthfully and accurately inform and guide investors and analysts with respect to the business operations of the Company.

82. Additionally, as a part of their duties of care and loyalty, the Individual Defendants had a fiduciary duty to disclose all material information whenever they voluntarily chose to speak to Netflix shareholders, or the market generally, about the business of the corporation. *Pfeffer v. Redstone*, 965 A.2d 676, 684 (Del. 2009) ("Corporate fiduciaries can breach their duty of disclosure under Delaware law . . . by making a materially false statement, by omitting a material fact, or by making a partial disclosure that is materially misleading.") (citation omitted); *Malone v. Brincat*, 722 A.2d 5, 9 (Del. 1998) ("directors who knowingly disseminate false information that results in corporate injury or damage to an individual stockholder violate their fiduciary duty, and may be held accountable in a manner appropriate to the circumstances"); *Zirn v. VLI Corp*., 681 A.2d 1050, 1056 (Del. 1996) ("[D]irectors are under a fiduciary obligation to avoid misleading partial disclosures. The law of partial disclosure is likewise clear: 'Once defendants travel[] down the road of partial disclosure . . . they . . . [have] an obligation to provide the stockholders with an accurate, full, and fair characterization of those historic events.'") (citation omitted); *Lynch v. Vickers Energy Corp*., 383 A.2d 278, 281 (Del. 1977) (holding the defendants breached their fiduciary duty of candor when they failed to disclose material information to minority shareholders to whom they owed a fiduciary duty).

83. As the Delaware Supreme Court explained in *In re Tyson Foods, Inc. Consol. S'holder Litig*., No. 1106-CC, 2007 WL 2351071, at *4 (Del. Ch. Aug. 15, 2007), "[w]hen . . . directors communicate with shareholders, they also must do so with complete candor":

> Loyalty. Good faith. Independence. Candor. These are words pregnant with obligation. The Supreme Court did not adorn them with half-hearted adjectives. Directors should not take a seat at the board table prepared to offer only

conditional loyalty, tolerable good faith, reasonable disinterest or formalistic candor.

B. Audit Committee Duties

84. In addition to the duties discussed above with respect to all of the Individual Defendants, the Audit Committee Defendants owed specific duties to Netflix under the Audit Committee Charter ("Audit Charter").

85. Among other things, the Audit Charter charges the Audit Committee Defendants with certain responsibilities and duties, which include:

> a. The Committee reviews and discusses with management and the independent auditors the annual audited and quarterly unaudited financial statements and related disclosures included in the Company's quarterly earnings releases and in the Company's periodic reports on Form 10-K and 10-Q.
>
> b. The Committee discusses with management, the senior internal audit executive and the independent auditors the adequacy and effectiveness of the Company's disclosure controls and procedures, the adequacy and effectiveness of the Company's internal control over financial reporting, and the Company's risk assessment and risk management policies, including cybersecurity, legal and financial risks.
>
> c. Providing oversight and monitoring of the activities of Company management, including without limitation, the chief financial officer and principal accounting officer and controller, the Company's internal audit function and the independent auditors with respect to the Company's financial reporting and compliance process.

86. The Company's 2021 10-K states, with respect to the role of the Board in risk oversight, "The Board is responsible for overseeing our risk management process. The Board will focus on our general risk management strategy, the most significant risks facing us, and oversee the implementation of risk mitigation strategies by management. Our Audit Committee is also responsible for discussing our policies with respect to risk assessment and risk management."

87. While all Audit Committee Defendants must be "financially literate" in accordance with SEC and NASDAQ requirements, Defendant Mather was designated by the Company as meeting the requirements of a "Financial Expert" as defined by SEC regulations. Thus, she had all of the following attributes: (i) an understanding of Generally Accepted

Accounting Principles (GAAP) and financial statements; (ii) an ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves; (iii) experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can be reasonably be expected to be raised by the registrant's financial statements or experience actively supervising one or more persons engaged in such activities; (iv) an understanding of internal controls and procedures for financial reporting; and (v) an understanding of all Audit Committee functions.

88. Each of the Audit Committee Defendants had extensive knowledge about financial matters from their professional experience or service on other public company boards.

C. Nominating and Governance Committee Duties

89. In addition to the duties discussed above with respect to all of the Individual Defendants, the Nominating and Governance Committee Defendants owed specific duties to Netflix under the Nominating and Governance Committee Charter ("NGC Charter"). Among other things, the NGC Charter charges the Nominating and Governance Committee Defendants with the following authority and responsibilities, in relevant part:

> a. Recommending policies and procedures regarding corporate governance, and reporting to the Board on corporate governance policies, practices, and procedures.
>
> b. Recommending to the Board, as appropriate, policies, procedures and practices regarding corporate governance for the Company.
>
> c. Overseeing the Board's self-evaluation process to help assure and enhance its performance, with a focus on, among other things, the Board's effectiveness.

VIII. CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION

90. In committing the wrongful acts alleged herein, Defendants have pursued, or joined in the pursuit of, a common course of conduct and have acted in concert with and conspired with one another in furtherance of their common plan or design. In addition to the wrongful conduct alleged herein giving rise to primary liability, Defendants further aided and abetted and/or assisted each other in breaching their respective duties.

91. During all times relevant hereto, Defendants, collectively and individually, initiated a course of conduct that was designed to and did, among other things, deceive the investing public including stockholders of Netflix. In furtherance of this plan, conspiracy, and course of conduct, Defendants, collectively and individually, took the actions set forth herein.

92. Defendants engaged in a conspiracy, common enterprise, and/or common course of conduct. During this time, Defendants caused and/or allowed the improper conduct described herein.

93. The purpose and effect of Defendants' conspiracy, common enterprise, and/or common course of conduct was, among other things, to disguise Defendants' breaches of fiduciary duty, waste of corporate assets, unjust enrichment, and to conceal adverse information concerning the Company's business, operations, and future prospects.

94. Defendants accomplished their conspiracy, common enterprise, and/or common course of conduct by causing the Company to purposefully or recklessly engage in the improper conduct described herein. Because Defendants' actions occurred under the authority of the Board, each Defendant was a direct, necessary, and substantial participant in the conspiracy, common enterprise, and/or common course of conduct complained of herein.

95. Each Defendant aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions to substantially assist the commission of the wrongdoing complained of herein, each Defendant acted with knowledge of the primary wrongdoing, substantially assisted in the accomplishment of that wrongdoing, and was aware of his or her overall contribution to and furtherance of the wrongdoing.

IX. DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

96. Plaintiff brings this action derivatively in the right and for the benefit of Netflix to redress injuries suffered, and to be suffered, by Netflix as a direct result of the Individual Defendants' breaches of fiduciary duty, unjust enrichment, and waste of corporate assets. Netflix is named as a "Nominal Defendant" solely in a derivative capacity.

97. Plaintiff will adequately and fairly represent the interests of Netflix in enforcing and prosecuting its rights.

98. Plaintiff has continuously been a shareholder of Netflix at all times relevant to the wrongdoing complained of herein and is a current Netflix shareholder.

99. At all times relevant hereto, Netflix's Board consisted of twelve (12) members, the Director Defendants. As shown above, despite having knowledge of facts and information which rendered its SEC filings and public statements false and/or misleading, Netflix failed to correct the same in a timely manner. Further, as set forth above, numerous insiders, with knowledge that the SEC filings and public statements described above were false and/or misleading, traded in Netflix stock at an inflated share price in dereliction of their duties of care and loyalty to Netflix shareholders.

100. Plaintiff has not made any demand on the Board to institute this action because, for the reasons set forth herein, such a demand would be a futile and useless act.

Co-CEOs – Defendants Hastings and Sarandos

101. Defendants Hastings and Sarandos fall under the NASDAQ's definition of directors who are not independent. According to the NASDAQ's rules regarding listing, a director is not independent if he or she is, or has been within the last three years, an employee or an executive officer of the listed company.

102. Because Hastings is Netflix's current Co-CEO and President of the Company, he is not independent.

103. Likewise, Defendant Sarandos may not be considered independent as he serves as the Co-CEO and Chief Content Creator of Netflix.

104. The Company's 2022 Proxy Statement is silent as to whether Defendants Hastings and Sarandos are "independent" as defined by the NASDAQ rules.

105. Furthermore, Defendants Hastings and Sarandos are not independent because their principal occupations are their employment with Netflix.

106. As President and Co-CEO of Netflix beginning in 1997, Defendant Hastings received significant compensation from the Company as described herein. Accordingly, Defendant Hastings lacks independence from the other members of the Board due to his interest in maintaining his executive position.

107. As Chief Content Creator of Netflix since 2000 and Co-CEO of Netflix beginning in July 2020, Defendant Sarandos received significant compensation from the Company as described herein. Accordingly, Defendant Sarandos lacks independence from the other members of the Board due to his interest in maintaining his executive position.

108. Additionally, both Defendants Hastings and Sarandos are named defendants in the Related Securities Class Actions and making a demand on them amounts to Defendants Hastings and Sarandos investigating themselves for their own alleged wrongdoing.

109. This lack of independence renders Defendants Hastings and Sarandos incapable of impartially considering a demand to commence and vigorously prosecute this action.

Demand is Excused as to the Insider Selling Defendants (Hoag, Mather, and Sarandos)

110. Defendants Hoag, Mather, and Sarandos are each directly interested based on their challenged, illicit insider sales, pursuant to which they received direct financial benefits not shared with all other Netflix shareholders, and they each are likewise interested based on a substantial likelihood of liability for breaching their fiduciary duties of loyalty and good faith, and unjust enrichment as a result of their challenged stock sales.

111. Based on their suspicious insider sales, pursuant to which they each received direct financial benefits not shared with all other Netflix shareholders, Defendants Hoag, Mather, and Sarandos are not disinterested directors and demand is not required of any of them.

112. As a result, any demand on the Insider Selling Defendants would be a useless and futile act.

Demand is Excused as to Defendant Kilgore

113. Defendant Kilgore served as the Chief Marketing Officer of Netflix from 2000-2012.

114. During her time as Chief Marketing Officer, Defendant Kilgore worked closely with Defendants Hastings, Hoag, Hyman, and Peters.

115. Defendant Kilgore's longstanding professional ties to Defendants Hastings, Hoag, Hyman, and Peters prevents her from independently considering a demand.

116. Further, during Defendant Kilgore's tenure, she oversaw conduct at the company directly related to the type of misconduct at issue here, which involves account sharing and representations about continued growth in the number of paying subscribers.

117. Accordingly, Defendant Kilgore is not disinterested. The lack of independence renders Defendant Kilgore incapable of impartially considering a demand to commence and vigorously prosecute this action.

Demand is Excused as to Defendant Smith

118. Defendant Smith has served as the Vice Chair and President of Microsoft since 2021, and previously held high-level positions at Microsoft beginning in 1993, including as the company's general counsel beginning in 2002.

119. Defendant Smith has a longstanding business relationship with Defendant Hastings, which precludes him from acting in an independent and disinterested manner. For example, Defendant Hastings served on Microsoft's board from 2007 to 2012. Accordingly, Defendant Smith's role at Microsoft was subject to the oversight of Defendant Smith in his capacity as a Microsoft board member. To the extent that Defendant Smith owed his continuing employment with Microsoft to Defendant Hastings and has close professional ties with Defendant Hastings, he cannot act independently because he remains beholden to Defendant Hastings. Therefore, demand upon Defendant Smith is futile.

Demand is Excused as to the Audit Committee Defendants (Barton, Kilgore, and Mather)

120. The Audit Committee Defendants at all relevant times, had specifically defined duties to properly oversee: (i) the integrity of the Company's publicly reported financial statements, press releases, and guidance; (ii) its system of internal, financial, and administrative controls; and (iii) the Company's compliance with legal and regulatory requirements, including risk management policies and consumer privacy violation risks. Thus, the Audit Committee Defendants were responsible for knowingly or recklessly allowing and failing to correct the improper conduct detailed herein.

121. For these reasons, the Audit Committee Defendants face a substantial likelihood of liability for their breach of fiduciary duties, making any demand upon them futile.

Demand is Excused as to the Nominating and Governance Committee Defendants (Hoag, Masiyiwa, and Smith)

122. The Nominating and Governance Committee Defendants have extensive, high-level experience in corporate governance and business. Defendant Hoag is a venture capital investor. Defendant Masiyawa is the founder of a global telecommunications company. Defendant Smith has served as the Vice Chair and President of Microsoft since 2021. All three of these Defendants have served on public company boards and/or are affiliated with other companies with subscription services and, thus, knew or reasonably should have known of the problems that Netflix was facing as described above with respect to shared accounts and non-paying customers. Further, due to their experience, the Nominating and Governance Committee Defendants knew or reasonably should have known how critical the accuracy of public disclosures is a public company, that it is vitally important that insiders do not trade shares on non-public knowledge, and that members of a board take immediate steps when improper or unlawful corporate conduct occurs. Thus, the Nominating and Governance Committee Defendants were responsible for knowingly or recklessly allowing and failing to correct the improper conduct detailed herein

123. For these reasons, the Nominating and Governance Committee Defendants face a substantial likelihood of liability for their breaches of fiduciary duties, making any demand upon them futile.

Demand Is Excused as to the Director Defendants Because They Face a Substantial Likelihood of Liability

124. The Director Defendants executed a Power of Attorney handing over to Defendant Hastings and Defendant Neumann their authority and capacity to "…sign any and all amendments to [Netflix's Annual] Report, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission…"

125. As a result of executed Power of Attorney, the Director Defendants face a substantial likelihood of liability for the misstatements in the Company's Annual Report for the years 2020 and 2021.

126. Accordingly, all members of the Demand Board face a substantial likelihood of liability for their breaches of fiduciary duty and violations of state and federal law, making any demand upon them futile.

Demand is Excused for Additional Reasons

127. Defendants Neumann, Hastings, Sarandos and Peters are named as defendants in the Securities Class Action, which alleges they violated Sections 10(b) and 20(a) of the Exchange Act, by affirmatively making false and/or misleading statements and thereby causing members of the putative class in the Securities Class Action to purchase Netflix's securities at artificially inflated prices. These federal securities violations also constitute breaches of these Defendants' fiduciary duties.

128. Demand is also futile because the Board is dominated and controlled by Defendant Hastings because of his immense influence as founder of the company and long tenure as CEO and Chairperson.

129. Defendant Hastings has served as the Co-CEO and Chairperson of the Board since 1997 and he is undeniably the most influential, significant and wealthy individual at Netflix, with his net worth reported by Forbes to be more than $2 billion in 2022, and he ranks among the most influential and significant business leaders in the United States, if not the world. In 2020, Fortune rated Hastings as the fourth most important businessperson of the year, bested only by Elon Musk and two others. In 2021, Variety considered him one of the most influential entertainment leaders and icons. Defendant Hastings was one of TIME's 100 in 2021, which is a list of the individuals Time Magazine considers the most important people in the world.

130. The Director Defendants are likewise conflicted and unable to pursue the Company's claims against the Officer Defendants. Any effort to directly prosecute such claims against the Officer Defendants for their direct roles in the violations of applicable law

carried out in Netflix's name would necessarily expose the Board's own culpability for the very same conduct. In other words, given that the Board was required to be regularly informed concerning the Company's public reporting, outlook, controls, and employment decisions with respect to the Company's most senior officers, any effort by the Board to hold the Officer Defendants liable would lead the Officer Defendants to defend on the ground that their own conduct was consistent with corporate policy and practice, as established by and known to the Board.

131. Moreover, the acts complained of constitute violations of the fiduciary duties owed by Netflix's officers and directors, and these acts are incapable of ratification. Despite having knowledge of the claims and causes of action raised by Plaintiff, the Board has failed and refused to seek to recover on behalf of the Company for any of the wrongdoing alleged by Plaintiff herein.

X. CLAIMS FOR RELIEF

COUNT I

Breaches of Fiduciary Duties
(Against the Officer Defendants)

132. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

133. The Officer Defendants owed fiduciary duties to Netflix and its stockholders. By reason of their positions as fiduciaries to the Company, the Officer Defendants owed duties of good faith, loyalty, candor, and truthful disclosure. In addition, the Officer Defendants have specific fiduciary duties as defined by the Company's corporate governance documents, including its Code of Business Conduct and Ethics, and principles that, had they been discharged in accordance with the Officer Defendants' obligations, would have prevented the misconduct and the consequent harm to the Company.

134. The Officer Defendants violated these duties by issuing, causing to be issued, or otherwise allowing the material omissions and misrepresentations described herein.

135. The Officer Defendants consciously breached their fiduciary duties and violated their corporate responsibilities in at least the following ways: affirmatively making, allowing to be made, and/or failing to correct improper statements in SEC filings relating to the Company's operations and financial outlook.

136. As a direct and proximate result of the Officer Defendants' breaches of their fiduciary obligations, Netflix has sustained and continues to sustain significant damages, including direct monetary damages, exposure to liability in the Securities Class Action, and a loss of goodwill in the capital markets. As a result of the misconduct alleged herein, these defendants are liable to the Company. Accordingly, the Officer Defendants are liable to the Company.

137. In breach of their fiduciary duties owed to Netflix, the Individual Defendants willfully participated in and caused the Company to expend unnecessarily its corporate funds, rendering them personally liable to the Company for breaching their fiduciary duties.

138. No adequate remedy at law exists for Plaintiff by and on behalf of the Company.

<u>COUNT II</u>

Breaches of Fiduciary Duties
(Against the Director Defendants)

139. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

140. The Director Defendants owed Netflix fiduciary obligations. By reason of their fiduciary relationships, the Director Defendants specifically owed and owe Netflix the highest obligation of good faith, fair dealing, loyalty, and due care in the administration of the affairs of the Company, including, without limitation, the oversight of the Company's compliance with state and federal privacy laws, rules, and regulations, as well as the duty of candor and truthful disclosure with respect to their public statements.

141. The Director Defendants also owed and owe Netflix fiduciary duties under Delaware corporation law, which impose broad obligations on Defendants vis-a-vis the corporation and its individual stockholders.

142. In addition, the Director Defendants have specific fiduciary duties as defined by the Company's corporate governance documents, and the charters of various Board committees, and principles that, had they been discharged in accordance with the Director Defendants' obligations, would have prevented the misconduct and the consequent harm to the Company.

143. Each Director Defendant violated his or her fiduciary duties by consciously causing, or consciously failing to prevent the Company from engaging in, the improper acts complained of herein.

144. The Director Defendants consciously breached their fiduciary duties and violated their corporate responsibilities in at least the following ways:

a. Failing to maintain an adequate system of oversight, accounting controls and procedures, disclosure controls, and other internal controls, which were necessary to prevent or promptly correct the improper statements made on the Company's behalf;

b. Affirmatively making, allowing to be made, and/or failing to correct improper statements in SEC filings relating to the Company's operations and financial outlook;

c. Failing to ensure the Company's compliance with relevant legal and regulatory requirements, including, but not limited to, requirements imposed under privacy laws as well as state and federal securities laws;

d. Awarding Netflix's senior executives lavish compensation packages, and paying the Officer Defendants substantial sums, despite their responsibility for the Company's willful misconduct;

e. Causing Netflix to purchase $600 million of stock at prices artificially inflated by Defendants' conduct; and

f. Reappointing the same Audit Committee Defendants who had failed in their duties to the Audit Committee.

145. As a direct and proximate result of the Director Defendants' breaches of their fiduciary obligations, Netflix has sustained significant damages. Accordingly, the Director Defendants are liable to the Company.

146. No adequate remedy at law exists for Plaintiff by and on behalf of the Company.

COUNT III

Breaches of Fiduciary Duties
(Against the Insider Selling Defendants)

147. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

148. At the time the Insider Selling Defendants sold their Netflix stock, they were in possession of material, adverse, non-public information concerning the Company, and they sold their stock on the basis of that information.

149. The material, adverse, non-public information at issue—which concerned the Company's financial condition, future business prospects, revenue growth, and the sufficiency of its Company's internal controls—was a proprietary asset belonging to the Company that must be used to benefit the Company and all its shareholders on equal terms. Instead, the Insider Selling Defendants misappropriated this information entirely for their own benefit.

150. At the time of their stock sales, the Insider Selling Defendants knew the truth about the Company's financial condition, its future business prospects, and account sharing hindering Company growth.

151. The Insider Selling Defendants' sales of stock while in possession and control of this material, adverse, non-public information was a breach of their fiduciary duties of loyalty and good faith.

152. Since the use of the Company's proprietary information for their own gain constitutes a breach of the Insider Selling Defendants' fiduciary duties, the Company is entitled to the imposition of a constructive trust on any profits the Insider Selling Defendants obtained thereby.

153. As a result of their misconduct, the Insider Selling Defendants are liable to the Company.

154. Plaintiff, on behalf of Netflix, has no adequate remedy at law.

COUNT IV

Unjust Enrichment
(Against the Individual Defendants)

155. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

156. By their wrongful acts and omissions, the Individual Defendants were unjustly enriched at the expense of and to the detriment of Netflix. The Individual Defendants were unjustly enriched as a result of the compensation and officer and director remuneration they received while breaching their fiduciary duties.

157. Plaintiff, as a stockholder and representative of Netflix, seeks restitution from these defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits, and other compensation obtained by these defendants, and each of them, from their wrongful conduct and fiduciary breaches.

158. Plaintiff, on behalf of Netflix, has no adequate remedy at law.

COUNT V

Waste of Corporate Assets
(Against the Individual Defendants)

159. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

160. The wrongful conduct alleged regarding the issuance of false and misleading statements was continuous, connected, and on-going throughout the period where the wrongdoing described herein occurred. It resulted in continuous, connected, and on-going harm to the Company.

161. As a result of the misconduct described above, the Individual Defendants wasted corporate assets by paying excessive compensation, bonuses, and other payments to its directors and certain of its executive officers and awarding self-interested stock options to certain officers and directors, incurring potentially millions of dollars of legal liability and/or legal costs to defend and resolve allegations of unlawful conduct in the Related Securities Class Actions.

162. Plaintiff, on behalf of Netflix, has no adequate remedy at law.

XI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment on behalf of Netflix, as follows:

A. Finding that a stockholder demand on the Board would have been a futile and useless act, that Plaintiff may maintain this action on behalf of Netflix, and that Plaintiff is an adequate representative of the Company;

B. Finding that the Individual Defendants breached their fiduciary duties to the Company, were unjustly enriched, and wasted corporate assets;

C. Finding against all of the Individual Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of the Individual Defendants' breaches of fiduciary duties, unjust enrichment, and waste of corporate assets;

D. Directing Netflix to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect Netflix and its stockholders from a repeat of the damaging events described herein, including, but not limited to, putting forward for stockholder vote, resolutions for amendments to the Company's Bylaws or Articles of Incorporation and taking such other action as may be necessary to place before stockholders for a vote of the following corporate governance policies:

1. a proposal to appropriately test, and then strengthen, the Company's internal operational control functions and the Board's supervision of operations and compliance with applicable state and federal laws and regulations;
2. a proposal to develop and implement procedures for greater stockholder input into the policies and guidelines of the Board;
3. a proposal to appropriately test, and then strengthen, the Company's disclosure controls to ensure that all material information is adequately and timely disclosed to the SEC and public;
4. a proposal to control insider selling and conflicts of interest;

5. a proposal to enhance and/or augment the audit, risk and compliance committees of the Board to oversee internal controls and compliance processes;

6. a proposal to ensure that the Chief Compliance, Risk and Legal Officer(s) and other company leadership have (a) necessary subject matter and regulatory expertise; (b) direct reporting authority to the Board; and (c) adequate autonomy and resources to carry out their responsibilities;

7. a proposal to review and implement revised codes of conduct, policies and procedures, training, integrity hotlines, auditing and monitoring processes and procedures;

8. a proposal to review and implement the confidential reporting structure and investigative process of complaints within the company; and

9. a provision to permit the stockholders of Netflix to nominate at least three new candidates for election to the Board;

E. Finding against each of the Individual Defendants in favor of Netflix for the amount of damages sustained by Netflix, jointly and severally, in an amount to be determined at trial, together with pre- and post-judgment interest at the maximum legal rate allowable by law;

F. Awarding to Netflix restitution from the Individual Defendants, and each of them, and ordering disgorgement of all profits, benefits, and other compensation obtained by the Individual Defendants;

G. Directing the Individual Defendants to establish, maintain, and fully fund effective corporate governance and compliance programs to ensure that Netflix's directors, officers, and employees do not engage in wrongful or illegal practices;

H. Granting appropriate equitable and/or injunctive relief to remedy the Individual Defendants' misconduct, as permitted by law;

I. Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

J. Granting such other and further relief as the Court may deem just and proper.

XII. JURY TRIAL DEMANDED

Plaintiff demands a trial by jury.

Dated: November 7, 2022

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