

**General Docket
United States Court of Appeals for the Ninth Circuit**

Court of Appeals Docket #: 11-18034 **Docketed:** 12/22/2011
Nature of Suit: 3410 Antitrust
 Andrea Resnick, et al v. Netflix, Inc., et al
Appeal From: U.S. District Court for Northern California, Oakland
Fee Status: Paid

Case Type Information:

- 1) civil
- 2) private
- 3) null

Originating Court Information:**District:** 0971-4 : [4:09-md-02029-PJH](#)**Court Reporter:** Debra J. Campbell**Court Reporter:** Joan Marie Columbini**Court Reporter:** Connie McCarthy Kuhl**Court Reporter:** Leo T. Mankiewicz**Court Reporter:** Raynee Mercado**Court Reporter:** Diane E. Skillman, Official Court Reporter**Court Reporter:** Lydia Radovich Zinn, Official Court Reporter**Trial Judge:** Phyllis J. Hamilton, District Judge**Date Filed:** 04/13/2009**Date Order/Judgment:**

11/29/2011

Date Order/Judgment EOD:

11/30/2011

Date NOA Filed:

12/20/2011

Date Rec'd COA:

12/21/2011

Prior Cases:

[11-16415](#) **Date Filed:** 06/06/2011 **Date Disposed:** 07/29/2011 **Disposition:** FRAP 42b Dismissal

Current Cases:

	Lead	Member	Start	End
Companion	11-18034	12-16160	05/14/2012	
	11-18034	12-16183	05/16/2012	
	12-15889	12-15957	04/25/2012	
	12-15889	12-15996	04/30/2012	
	12-15889	12-16010	05/01/2012	
	12-15889	12-16038	05/03/2012	
	12-15957	12-15996	04/30/2012	
	12-15957	12-16010	05/01/2012	
	12-15957	12-16038	05/03/2012	
	12-15996	12-16010	05/01/2012	
	12-15996	12-16038	05/03/2012	
	12-16010	12-16038	05/03/2012	
	Consolidated	12-15705	12-15889	05/08/2012
12-15705		12-15957	05/08/2012	
12-15705		12-15996	05/08/2012	
12-15705		12-16010	05/08/2012	
12-15705		12-16038	05/08/2012	
Cross-Appeal	12-16160	12-16183	05/16/2012	
Related	11-18034	12-15705	03/30/2012	
	11-18034	12-15889	04/18/2012	
	11-18034	12-15957	04/25/2012	
	11-18034	12-15996	04/30/2012	
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	12-15889	12-16160	05/14/2012	
	12-15889	12-16183	05/16/2012	
	12-15957	12-16160	05/14/2012	
	12-15957	12-16183	05/16/2012	
	12-15996	12-16160	05/14/2012	
	12-15996	12-16183	05/16/2012	
	12-16010	12-16160	05/14/2012	
	12-16010	12-16183	05/16/2012	
	12-16038	12-16160	05/14/2012	

[12-16038](#)[12-16183](#)

05/16/2012

In re: ONLINE DVD RENTAL ANTITRUST LITIGATION

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In re: ONLINE DVD RENTAL ANTITRUST LITIGATION,

ANDREA RESNICK; BRYAN EASTMAN; AMY LATHAM; MELANIE MISCIOSCIA; STAN MAGEE; MICHAEL OROZCO; LISA SIVEK;
MICHAEL WIENER,

Plaintiffs - Appellants,

v.

NETFLIX, INC.; WAL-MART STORES, INC.; WALMART.COM USA LLC,

Defendants - Appellees.

12/22/2011	<input type="checkbox"/> 1 14 pg, 587.38 KB	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 12/29/2011. Transcript ordered by 01/19/2012. Transcript due 02/21/2012. Appellants Bryan Eastman, Amy Latham, Stan Magee, Melanie Miscioscia, Michael Orozco, Andrea Resnick, Lisa Sivek, Michael Wiener opening brief due 03/29/2012. Appellees Netflix, Inc., Wal-Mart Stores, Inc., Walmart.com USA LLC answering brief due 04/30/2012. Appellant's optional reply brief is due 14 days after service of the answering brief. [8009581] (GR)
12/22/2011	<input type="checkbox"/> 2 3 pg, 4.7 MB	Filed (ECF) notice of appearance of Jonathan M. Jacobson David H. Reichenberg Keith E. Eggleton Maura L. Rees Dylan J. Liddiard Anthony J Weibell for Appellee Netflix, Inc.. Date of service: 12/22/2011. [8010742] (AW)
12/22/2011	<input type="checkbox"/> 3 4 pg, 4.83 MB	Filed (ECF) Appellee Netflix, Inc. Mediation Questionnaire. Date of service: 12/22/2011. [8010755] (AW)
12/22/2011	<input type="checkbox"/> 4	Attorneys Kashan Y. Cauley and Sara Ciarelli Walsh substituted by Attorneys Jonathan M. Jacobson, David Reichenberg, Keith Edward Eggleton, Maura L. Rees, Dylan James Liddiard, and Anthony Weibell. [8010768] (RL)
12/29/2011	<input type="checkbox"/> 5 8 pg, 259.57 KB	Filed (ECF) Appellant Andrea Resnick Mediation Questionnaire. Date of service: 12/29/2011. [8015079] (RGA)
01/03/2012	<input type="checkbox"/> 6 2 pg, 34.27 KB	Filed order MEDIATION (VLS): This case is under consideration for inclusion in the Mediation Program. Within 14 days of the date of this order, counsel for all parties intending to file briefs in this matter are requested to inform Stephen Liacouras, Circuit Mediator, in writing, by email at stephen_liacouras@ca9.uscourts.gov or fax at (415) 355-8566, of their clients' views on whether: the case is appropriate for settlement discussions or mediation; the court can accommodate ongoing settlement discussions or otherwise facilitate settlement of the dispute; and/or the court should schedule a telephonic conference to discuss settlement. This communication will be kept confidential, if requested, from the other parties in the case. This communication shall not be served on the opposing party and shall not be filed with the court. For more detailed information about the Mediation Program and its procedures generally, please see Mediation Program web site: www.ca9.uscourts.gov/mediation . The existing briefing schedule remains in effect pending the determination whether the case will be selected for inclusion in the Mediation Program. [8017798] (BJB)
01/09/2012	<input type="checkbox"/> 7 1 pg, 29.79 KB	Filed (ECF) Appellees Wal-Mart Stores, Inc. and Walmart.com USA LLC Correspondence: Letter re Wal-Mart's settlement of the proceedings from which this appeal arises.. Date of service: 01/09/2012 [8024662] (PWR)
02/06/2012	<input type="checkbox"/> 8 1 pg, 23.08 KB	Filed order MEDIATION (SL): The court has determined that this appeal will not be selected for inclusion in the Mediation Program. [8057137] (SM)
03/30/2012	<input type="checkbox"/> 9	Deleted Incorrect Entry. (SLH)
03/30/2012	<input type="checkbox"/> 10 30 pg, 1.22 MB	Received Appellants notice regarding filing opening brief and excerpts of record under seal. [8125606] (SLH)
03/30/2012	<input type="checkbox"/> 11	Filed UNDER SEAL original and 7 copies of Appellants (Informal: No) opening brief of 65 pages. Served on 03/29/2012. [8125678] (SLH)
03/30/2012	<input type="checkbox"/> 12	Filed Appellants excerpts of record in 7 volumes. (Vols. 4, 5 and 6 UNDER SEAL and redacted) Served on 03/29/2012. [8125720] (SLH)
04/11/2012	<input type="checkbox"/> 13 10 pg, 78.78 KB	Filed (ECF) Errata to Opening Brief ([11] Appellant Brief). Filed by Appellants Bryan Eastman, Amy Latham, Stan Magee, Melanie Miscioscia, Michael Orozco, Andrea Resnick, Lisa Sivek and Michael Wiener. Date of service: 04/11/2012. [8136145] (RGA)
04/24/2012	<input type="checkbox"/> 14 75 pg, 159.71 KB	Submitted (ECF) Answering brief for review. Submitted by Appellee Netflix, Inc.. Date of service: 04/24/2012. [8151123]--[COURT UPDATE: Edited docket text to reflect correct party filers. Resent NDA. 04/24/2012 by RY] (JMJ)
04/25/2012	<input type="checkbox"/> 15	Oral extension of time granted to appellants Bryan Eastman, Amy Latham, Stan Magee, Melanie Miscioscia, Michael Orozco, Andrea Resnick, Lisa Sivek and Michael Wiener. The reply brief is due 5/25/2012. [8152438] (LBS)
04/25/2012	<input type="checkbox"/> 16 2 pg, 82.7 KB	Filed clerk order: The answering brief [14] submitted by Netflix, Inc. is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. [8152643] (SLH)
04/25/2012	<input type="checkbox"/> 17	Filed Appellee Netflix, Inc. supplemental excerpts of record on appeal in 7 volumes. [8152762] (SLH)
04/25/2012	<input type="checkbox"/> 18 1 pg, 44.84 KB	Filed (ECF) Appellants Bryan Eastman, Amy Latham, Stan Magee, Melanie Miscioscia, Michael Orozco, Andrea Resnick, Lisa Sivek and Michael Wiener Correspondence: Clerks Office of the Ninth Circuit Court of Appeals granted Plaintiffs oral request for an extension of time to file a reply brief. Plaintiffs reply brief is now due on Friday, May 25, 2012.. Date of service: 04/25/2012 [8153847] (RGA)

04/30/2012	<input type="checkbox"/>	19	Received 7 paper copies of Answering brief [14] filed by Netflix, Inc.. [8157877] (SD)
04/30/2012	<input type="checkbox"/>	23	Received Appellee Netflix, Inc. 7 copies of the answering brief on DVD disc format. (RECORDS) [8164790] (WP)
05/03/2012	<input type="checkbox"/>	20	COURT DELETED INCORRECT/DUPLICATE ENTRY. Re-filed correctly as a Notice of Errata. Correct Entry: [24] . Notice about deletion sent to case participants registered for electronic filing. Original Text: Filed (ECF) Appellee Netflix, Inc. citation of supplemental authorities. Date of service: 05/03/2012. [8163721] (JMJ)
05/03/2012	<input type="checkbox"/>	21	Filed (ECF) Appellees Wal-Mart Stores, Inc. and Walmart.com USA LLC Correspondence: Letter to Court re removal from case. Date of service: 05/03/2012 [8164477] (ERC)
		1 pg, 10.55 KB	
05/04/2012	<input type="checkbox"/>	22	Terminated Ellinor C. Coder for Walmart.com USA LLC and Wal-Mart Stores, Inc. in 11-18034 [8164752] (CW)
05/07/2012	<input type="checkbox"/>	24	Filed (ECF) Errata to Answering Brief ([14] Brief Submitted for Review (ECF Filing)). Filed by Appellee Netflix, Inc.. Date of service: 05/07/2012. [8167113] (JMJ)
		8 pg, 241.3 KB	
05/25/2012	<input type="checkbox"/>	25	Submitted (ECF) Reply brief for review. Submitted by Appellants Bryan Eastman, Amy Latham, Stan Magee, Melanie Miscioscia, Michael Orozco, Andrea Resnick, Lisa Sivek and Michael Wiener. Date of service: 05/25/2012. [8191549] (RGA)
		52 pg, 644.39 KB	
05/29/2012	<input type="checkbox"/>	26	Filed (ECF) Appellee Netflix, Inc. Correspondence: dates unavailable for oral argument. Date of service: 05/29/2012 [8193321] (JMJ)
		1 pg, 68.08 KB	
05/29/2012	<input type="checkbox"/>	27	Filed clerk order: The reply brief [25] submitted by appellants is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. [8193807] (SLH)
		2 pg, 82.73 KB	
05/29/2012	<input type="checkbox"/>	28	Filed Appellants supplemental excerpts of record on appeal in 1 volume. [8196387] (SLH)
05/31/2012	<input type="checkbox"/>	29	Received 7 paper copies of Reply brief [25] filed by Appellants. [8197492] (SD)
06/04/2012	<input type="checkbox"/>	30	Filed (ECF) Appellants Bryan Eastman, Amy Latham, Stan Magee, Melanie Miscioscia, Michael Orozco, Andrea Resnick, Lisa Sivek and Michael Wiener Correspondence: dates unavailable for oral argument. Date of service: 06/04/2012 [8200056] (RGA)
		1 pg, 820.01 KB	
06/14/2012	<input type="checkbox"/>	31	Filed (ECF) Appellee Netflix, Inc. citation of supplemental authorities. Date of service: 06/14/2012. [8215444] (JMJ)
		21 pg, 342.6 KB	
06/19/2012	<input type="checkbox"/>	32	Filed (ECF) Appellants Bryan Eastman, Amy Latham, Stan Magee, Melanie Miscioscia, Michael Orozco, Andrea Resnick, Lisa Sivek and Michael Wiener citation of supplemental authorities. Date of service: 06/19/2012 [8220099]--[COURT UPDATE: Attached corrected letter. Edited docket text to reflect content of filing. 06/21/2012 by RY] (RGA)
		7 pg, 92.53 KB	
06/20/2012	<input type="checkbox"/>	33	Filed (ECF) Appellants Bryan Eastman, Amy Latham, Stan Magee, Melanie Miscioscia, Michael Orozco, Andrea Resnick, Lisa Sivek and Michael Wiener Correspondence: dates unavailable for oral argument. Date of service: 06/20/2012 [8221713]--[COURT UPDATE: Attached corrected letter. Resent NDA. 06/21/2012 by RY] (RGA)
		1 pg, 56.23 KB	
06/25/2012	<input type="checkbox"/>	34	Filed (ECF) Appellee Netflix, Inc. Correspondence: parties combined list of dates unavailable for oral argument. Date of service: 06/25/2012 [8225820] (JMJ)
		2 pg, 79.88 KB	
07/30/2012	<input type="checkbox"/>	35	Filed (ECF) Appellee Netflix, Inc. Correspondence: parties revised, combined list of dates unavailable for oral argument. Date of service: 07/30/2012 [8268559] (JMJ)
		2 pg, 80.78 KB	
08/02/2012	<input type="checkbox"/>	36	Filed (ECF) Appellee Netflix, Inc. Correspondence: parties further revised, combined list of dates unavailable for oral argument. Date of service: 08/02/2012 [8272135] (JMJ)
		2 pg, 81.11 KB	
08/22/2012	<input type="checkbox"/>	37	Filed (ECF) Appellants Bryan Eastman, Amy Latham, Stan Magee, Melanie Miscioscia, Michael Orozco, Andrea Resnick, Lisa Sivek and Michael Wiener citation of supplemental authorities. Date of service: 08/22/2012. [8294714] (RGA)
		15 pg, 2.07 MB	
08/23/2012	<input type="checkbox"/>	38	Filed (ECF) Appellee Netflix, Inc. citation of supplemental authorities. Date of service: 08/23/2012. [8296447] (JMJ)
		2 pg, 36.11 KB	
11/09/2012	<input type="checkbox"/>	39	Filed (ECF) Appellants Bryan Eastman, Amy Latham, Stan Magee, Melanie Miscioscia, Michael Orozco, Andrea Resnick, Lisa Sivek and Michael Wiener Correspondence: Dates unable to appear for oral argument. Date of service: 11/09/2012 [8395159] (RGA)
		1 pg, 853.41 KB	
11/09/2012	<input type="checkbox"/>	40	Filed (ECF) Appellee Netflix, Inc. Correspondence: dates unavailable for oral argument in 2013. Date of service: 11/09/2012 [8395944] (JMJ)
		1 pg, 68.53 KB	
03/15/2013	<input type="checkbox"/>	41	Filed (ECF) Appellee Netflix, Inc. Correspondence: dates unavailable for oral argument through August 2013. Date of service: 03/15/2013 [8551814] (JMJ)
		1 pg, 163.47 KB	

07/12/2013	<input type="checkbox"/> 42 2 pg, 255.09 KB	Filed (ECF) Appellee Netflix, Inc. Correspondence: dates unavailable for oral argument through October 2013. Date of service: 07/12/2013 [8701710] (JMJ)
08/23/2013	<input type="checkbox"/> 43 1 pg, 85.19 KB	Sent Notice requesting electronic excerpts in 14 days. [8754555] (SOS)
08/26/2013	<input type="checkbox"/> 44 1821 pg, 170.13 MB	Submitted (ECF) supplemental excerpts of record. Submitted by Appellee Netflix, Inc.. Date of service: 04/20/2012. [8756062] (AW)
08/26/2013	<input type="checkbox"/> 45 1 pg, 166.41 KB	Filed (ECF) Appellee Netflix, Inc. Correspondence: Electronically filed Supplemental Excerpts of Record per Court's Request of 8-23-2013. Date of service: 08/26/2013 [8756238] (AW)
08/27/2013	<input type="checkbox"/> 46 870 pg, 50.59 MB	Submitted (ECF) excerpts of record. Submitted by Appellants Bryan Eastman, Amy Latham, Stan Magee, Melanie Miscioscia, Michael Orozco, Andrea Resnick, Lisa Sivek and Michael Wiener. Date of service: 03/29/2012. [8758331]--[COURT UPDATE: Removed FER Vol. 1 (refiled separately; see entry [47]). Resent NDA. 08/27/2013 by RY] (RGA)
08/27/2013	<input type="checkbox"/> 47 54 pg, 3.46 MB	COURT ENTERED FILING. Submitted (ECF) further excerpts of record. Submitted by Appellants Bryan Eastman, Amy Latham, Stan Magee, Melanie Miscioscia, Michael Orozco, Andrea Resnick, Lisa Sivek and Michael Wiener. Date of service: 05/29/2012. [8758411] (RY)
09/04/2013	<input type="checkbox"/> 48 16 pg, 330.25 KB	Filed (ECF) Appellee Netflix, Inc. citation of supplemental authorities. Date of service: 09/04/2013. [8767507] (JMJ)
09/10/2013	<input type="checkbox"/> 49 3 pg, 117.06 KB	Filed (ECF) Appellants Bryan Eastman, Amy Latham, Stan Magee, Melanie Miscioscia, Michael Orozco, Andrea Resnick, Lisa Sivek and Michael Wiener citation of supplemental authorities. Date of service: 09/10/2013. [8776528] (RGA)
09/13/2013	<input type="checkbox"/> 50	Terminated participation of Court Reporter James Jonathan Yeomans in this case. [8782351] (ASW)
09/24/2013	<input type="checkbox"/> 51 9 pg, 442.28 KB	Notice of Oral Argument on Monday, December 2, 2013 - 9:00 AM - Courtroom 2, 3rd Floor - James R. Browning US Courthouse - San Francisco, CA. Please return ACKNOWLEDGMENT OF HEARING NOTICE form to: SAN FRANCISCO Office. Please open attached documents to view details about your case. [8794376] [11-18034, 12-16160, 12-16183] (RB)
09/24/2013	<input type="checkbox"/> 52 1 pg, 29.5 KB	Filed (ECF) Acknowledgment of hearing notice. Location: San Francisco. Filed by Attorney Mr. Robert G. Abrams for Appellants Andrea Resnick, Bryan Eastman, Amy Latham, Melanie Miscioscia, Stan Magee, Michael Orozco, Lisa Sivek and Michael Wiener. [8795350]--[COURT UPDATE: replaced PDF (case number), resent notice. 09/24/2013 by ASW] (RGA)
09/24/2013	<input type="checkbox"/> 53 1 pg, 151.81 KB	Filed (ECF) Acknowledgment of hearing notice. Location: San Francisco. Filed by Attorney Dylan James Liddiard for Appellee Netflix, Inc.. [8795401] (DJI)
09/24/2013	<input type="checkbox"/> 54 1 pg, 121.83 KB	Filed (ECF) Acknowledgment of hearing notice. Location: San Francisco. Filed by Attorney Mr. Jonathan M. Jacobson for Appellee Netflix, Inc.. [8795407] (DJI)
09/30/2013	<input type="checkbox"/> 55 6 pg, 245.45 KB	Filed (ECF) Appellant Andrea Resnick and Appellee Netflix, Inc. Joint Motion for miscellaneous relief [JOINT Motion for Additional Time for Oral Argument]. Date of service: 09/30/2013. [8803010]--[COURT UPDATE: Attached corrected motion (case number). Resent NDA. 10/01/2013 by RY] (TAS)
10/22/2013	<input type="checkbox"/> 56 2 pg, 34.91 KB	Filed clerk order (Deputy Clerk: BJB): Due to the recusal of the panel assigned, these cases are removed from the December 2, 2013, San Francisco calendar. The parties will be notified of reassignment in due course. [8831792] [11-18034, 12-16160, 12-16183, 12-15705, 12-15889, 12-15957, 12-15996, 12-16010, 12-16038] (BJB)
11/12/2013	<input type="checkbox"/> 58 1 pg, 85.19 KB	Sent Notice requesting electronic excerpts in 14 days. [8859355] (SOS)
12/03/2013	<input type="checkbox"/> 59 9 pg, 466.55 KB	Notice of Oral Argument on Thursday, February 13, 2014 - 9:30 AM - Courtroom 3, 3rd Floor - James R. Browning US Courthouse - San Francisco, CA. Please return ACKNOWLEDGMENT OF HEARING NOTICE form to: SAN FRANCISCO Office. Please open attached documents to view details about your case. [8887059] [11-18034, 12-16160, 12-16183] (RB)
12/04/2013	<input type="checkbox"/> 60 2 pg, 227.38 KB	Filed (ECF) Acknowledgment of hearing notice. Location: San Francisco. Filed by Mr. Jonathan M. Jacobson for Appellee Netflix, Inc. and Dylan James Liddiard for Appellee Netflix, Inc.. [8887921] (AW)
12/04/2013	<input type="checkbox"/> 61 1 pg, 29.18 KB	Filed (ECF) Acknowledgment of hearing notice. Location: San Francisco. Filed by Attorney Mr. Robert G. Abrams for Appellants Andrea Resnick, Bryan Eastman, Amy Latham, Melanie Miscioscia, Stan Magee, Michael Orozco, Lisa Sivek and Michael Wiener. [8888243] (RGA)
12/24/2013	<input type="checkbox"/> 62	Terminated Matthew W. Ruan for Michael Wiener, Lisa Sivek, Andrea Resnick, Michael Orozco, Melanie Miscioscia, Stan Magee, Amy Latham and Bryan Eastman in 11-18034 (no longer with firm) [8915653] (RY)
01/21/2014	<input type="checkbox"/> 63 3 pg, 36.6 KB	Filed clerk order (Deputy Clerk: WL): The parties' joint motion for enlargement of allotted oral argument time is granted. Each side will have twenty-three minutes for oral argument of the summary judgment appeal (No. 11-18034) and seven minutes for oral argument of the costs appeal (Nos. 12-16160 and 12-

16183), for a total of thirty minutes of oral argument time per side. The oral arguments for these two appeals will be conducted seriatim. [8945455] [11-18034, 12-16160, 12-16183] (WL)

02/07/2014 [64](#)
3 pg, 262.42 KB

Filed (ECF) Appellee Netflix, Inc. citation of supplemental authorities. Date of service: 02/07/2014. [8969697] (JMJ)

02/10/2014 [65](#)
3 pg, 71.62 KB

Filed (ECF) Appellants Bryan Eastman, Amy Latham, Stan Magee, Melanie Miscioscia, Michael Orozco, Andrea Resnick, Lisa Sivek and Michael Wiener citation of supplemental authorities. Date of service: 02/10/2014. [8973160]--[COURT UPDATE: Attached corrected letter. Resent NDA. 02/11/2014 by RY] (RGA)

02/10/2014 [66](#)
3 pg, 268.15 KB

Filed (ECF) Appellee Netflix, Inc. citation of supplemental authorities. Date of service: 02/10/2014. [8973404] (JMJ)

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