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12 *Attorneys for Defendant Netflix, Inc.*

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION

17 IN RE ONLINE DVD RENTAL) Master File No.: 4:09-md-2029 PJH (JCS)
18 ANTITRUST LITIGATION) MDL No. 2029
19)
20) Hon. Phyllis J. Hamilton
21)
22) **NETFLIX'S RESPONSE TO**
23) **PLAINTIFFS' OBJECTIONS TO**
24) **NETFLIX'S BILL OF COSTS RE:**
25) **THE NETFLIX SUBSCRIBER**
26) **ACTIONS**

21 THIS DOCUMENT RELATES TO ALL)
22 ACTIONS EXCEPT:)
23)
24) *Pierson v. Walmart.com USA LLC, Wal-Mart*
25) *Stores, Inc. and Netflix, Inc., No. 09-cv-2163*
26) *(N.D. Cal.);*
27)
28) *Levy, et al. v. Walmart.com USA LLC, Wal-Mart*
29) *Stores, Inc. and Netflix, Inc., No. 09-cv-2296*
30) *(N.D. Cal.)*

1 Netflix, Inc. (“Netflix”) respectfully submits this response to the objections filed by
2 Plaintiffs on December 19, 2011 (ECF No. 551) under Civil Local Rule 54-2 to Netflix’s Bill of
3 Costs Re: the Netflix Subscriber Actions (ECF No. 549). Netflix reserves the right to make
4 additional arguments in connection with any subsequent motion for review of costs taxed.

5 Plaintiffs’ objections brief is divided into six sections. Sections I and II of Plaintiffs’
6 objections brief do not contain any specific objections. Sections III and IV include Plaintiffs’
7 additional and recycled objections to the categories of costs already awarded by the Court in its
8 prior order awarding costs to Netflix (ECF No. 515). Section V includes Plaintiffs’ objections to
9 costs purportedly rejected by Judge Hamilton in her prior order. Section VI does not contain any
10 objections to specific costs, but instead makes policy arguments intended for Judge Hamilton and
11 not to be considered by the Clerk.

12 With respect to the objections described in Sections III and IV of Plaintiffs’ brief, these
13 objections should be rejected because, as Plaintiffs concede, the Court already reviewed and
14 approved these costs (or costs of an identical nature) when they were submitted by Netflix in
15 connection with the Blockbuster subscriber actions. *See* ECF No. 551 at 1; ECF No. 515 (Court
16 order awarding \$700,084.79 in costs to Netflix and approving a 50% apportionment of the total
17 costs between the Blockbuster subscriber plaintiffs and Netflix subscriber plaintiffs); ECF No.
18 399 (prior bill of costs and supporting invoices submitted in connection with the Blockbuster
19 subscriber actions). Because Judge Hamilton has already approved all of the costs objected to in
20 Sections III and IV of Plaintiffs’ brief (or costs identical in nature to these costs), these costs are
21 properly taxed against the Netflix Subscriber Plaintiffs. Any additional objections that Plaintiffs
22 have with respect to these costs should not be considered by the Clerk but should rather be left
23 for Judge Hamilton’s determination because to deny these costs would be inconsistent with the
24 Court’s prior ruling. *See* ECF No. 515.

25 With respect to the objections described in Section V of Plaintiffs’ brief, Plaintiffs failed
26 to raise these objections during their meet and confer with Netflix prior to filing their objections.
27 Consequently, these objections are improper. Even so, had Plaintiffs properly brought these
28 objections to the attention of Netflix, Netflix would have made some adjustments to its bill of

1 costs to correct inadvertent errors. Accordingly, the bill of costs should be adjusted as follows to
2 maintain consistency with the Court's prior order awarding costs (even though Netflix maintains
3 its position that the law does in fact permit recovery of these costs as well as the other categories
4 of costs incurred by Netflix that the Court disallowed in its prior order awarding costs to
5 Netflix):

6 1. The portion of the charges listed on the 10/12/2010 invoice from American Legal
7 Reprographics (ECF No. 549-4 at 51) attributable to OCR, approximately \$176.17, was
8 erroneously included in the bill and should be stricken.

9 2. A single charge of \$260.00 on the 11/17/2010 invoice from Digital Evidence
10 Group for a videotape deposition (ECF No. 549-3 at 21) was erroneously included in the bill and
11 should be stricken.

12 3. The duplicate expedited deposition charges of \$1543.50 on 2/21/2011 and of
13 \$1417.50 on 2/28/2011 listed on the invoices from Discovery Works Global (ECF No. 549-3 at
14 35-36) were erroneously included in the bill and should be stricken.

15 4. In addition, to avoid litigation over trivial amounts in dispute, Netflix will agree
16 to strike the portion of the charges listed on the invoices from Plaintiffs' court reporting services
17 vendor, Digital Evidence Group, (ECF No. 549-3 at 2-22) that are attributable to 5 and 3-day
18 transcript fees (though Netflix disagrees that these costs were unnecessary and not recoverable
19 under the law). Plaintiffs' calculations, however, are incorrect because they exclude the apparent
20 \$1.50 per page portion of the transcript charge for the electronic RASCI copy of the transcript,
21 previously awarded in the prior bill of costs, which constitutes the additional "one copy" that
22 Netflix is entitled to recover under Civil Local Rule 54-3(c). *See Pierson v. Ford Motor Co.*, No.
23 06-6503 PJH, 2010 U.S. Dist. LEXIS 14661, at *9-10 (N.D. Cal. Feb. 2, 2010) (Hamilton, J.)
24 ("the word 'copy' in the local rule refers to a 'copy' of the 'original,' whatever form that may
25 take"). The following table of corrected calculations reflects that \$3,410.15 should be deducted
26 from the bill of costs for 5 and 3-day transcript fees:
27
28

<i>Deponent</i>	<i>Cost Charged</i>	<i>Pages</i>	<i>Cost at \$2.95/page</i>	<i>RASCII at \$1.50/page</i>	<i>Revised Total</i>	<i>Difference</i>
Kilgore	\$ 1,892.00	344	\$ 1,014.80	\$ 516.00	\$ 1,530.80	\$ 361.20
Stabingas	\$ 1,039.50	189	\$ 557.55	\$ 283.50	\$ 841.05	\$ 198.45
Susman	\$ 1,192.60	268	\$ 790.60	\$ 402.00	\$ 1,192.60	\$ -
Ordoover	\$ 1,519.80	298	\$ 879.10	\$ 447.00	\$ 1,326.10	\$ 193.70
Nave	\$ 951.50	173	\$ 510.35	\$ 259.50	\$ 769.85	\$ 181.65
Becker	\$ 1,089.00	198	\$ 584.10	\$ 297.00	\$ 881.10	\$ 207.90
McCarthy	\$ 1,237.50	225	\$ 663.75	\$ 337.50	\$ 1,001.25	\$ 236.25
Savage	\$ 632.50	115	\$ 339.25	\$ 172.50	\$ 511.75	\$ 120.75
Fleming v. 1	\$ 1,848.00	308	\$ 908.60	\$ 462.00	\$ 1,370.60	\$ 477.40
Fleming v. 2	\$ 247.50	55	\$ 162.25	\$ 82.50	\$ 244.75	\$ 2.75
Swint	\$ 726.00	132	\$ 389.40	\$ 198.00	\$ 587.40	\$ 138.60
Thompson	\$ 308.00	56	\$ 165.20	\$ 84.00	\$ 249.20	\$ 58.80
Crawford	\$ 830.50	151	\$ 445.45	\$ 226.50	\$ 671.95	\$ 158.55
Kirincich	\$ 1,160.50	211	\$ 622.45	\$ 316.50	\$ 938.95	\$ 221.55
Sevick	\$ 836.00	152	\$ 448.40	\$ 228.00	\$ 676.40	\$ 159.60
Kilgore	\$ 1,050.50	191	\$ 563.45	\$ 286.50	\$ 849.95	\$ 200.55
Hunt	\$ 1,309.00	238	\$ 702.10	\$ 357.00	\$ 1,059.10	\$ 249.90
Vazquez	\$ 643.50	117	\$ 345.15	\$ 175.50	\$ 520.65	\$ 122.85
Hanssens	\$ 627.00	114	\$ 336.30	\$ 171.00	\$ 507.30	\$ 119.70
Grand Total:					\$ 3,410.15	

In sum, the deposition transcript subtotal on the bill of costs should be reduced by \$6,631.15, from \$41,750.02 to \$35,118.87, and the document subtotal on the bill of costs should be reduced by \$176.17, from \$702,990.09 to \$702,813.92, for a resulting total bill of \$737,932.79.

Dated: December 29, 2011

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By: /s/ Jonathan M. Jacobson

Attorneys for Defendant Netflix, Inc.