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18 **UNITED STATES DISTRICT COURT**
 19 **NORTHERN DISTRICT OF CALIFORNIA**

<p>21 IN RE ONLINE DVD RENTAL ANTITRUST LITIGATION</p>	<p>Master File No. M:09-CV-2029 PJH MDL No. 2029 Hon. Phyllis J. Hamilton</p>
<p>24 This document relates to: 25 ALL ACTIONS</p>	<p>CONSOLIDATED AMENDED CLASS ACTION COMPLAINT JURY TRIAL DEMANDED</p>

1 NOW COME Plaintiffs, ANDREA RESNICK, BRYAN EASTMAN, AMY LATHAM, MELANIE
2 MISCIOSCIA, STAN MAGEE, MICHAEL OROZCO, LIZA SIVEK, and MICHAEL WIENER, for their Complaint
3 brought under Sections 1 and 2 of the Sherman Antitrust Act, 15 U.S.C. §§ 1-2, and Sections 4 and 16
4 of the Clayton Antitrust Act, 15 U.S.C. §§ 15 & 26, for treble damages and injunctive relief against
5 Defendants Netflix, Inc. (“Netflix”), Wal-Mart Stores, Inc. (“Wal-Mart Stores”), and Wal-Mart.com
6 USA LLC (“Walmart.com”).

7 Based upon personal knowledge, information, and belief, and the investigation of counsel,
8 Plaintiffs allege as follows:

9 **NATURE OF THE ACTION**

10 1. This suit is brought as a class action pursuant to Rule 23 of the Federal Rules of Civil
11 Procedure on behalf of a plaintiff Class, defined more fully below, consisting of all persons and entities
12 that paid a subscription fee to Defendant Netflix to rent DVDs between May 19, 2005 and the date of
13 class certification (the “Class Period”).

14 2. On or before May 19, 2005, Defendants completed and entered into an illegal
15 anticompetitive agreement (the “Market Allocation Agreement”) to divide the markets for sales and
16 online rentals of DVDs in the United States, with the purpose and effect of monopolizing and
17 unreasonably restraining trade, in at least the market for online DVD rentals (the “Online DVD Rental
18 Market”). The mechanics of the Market Allocation Agreement, as set forth herein, allowed Defendant
19 Netflix to charge supracompetitive prices to Plaintiff and other Class members.

20 3. At the beginning of 2005, Defendants Netflix and Walmart.com were competing directly in
21 the Online DVD Rental Market. Walmart.com viewed its relatively new online rental program, “Wal-
22 Mart DVD Rentals,” as a success, expressing considerable optimism about the future growth of the
23 service. In early January 2005, Walmart.com reduced the price of its most popular online DVD rental
24 program, reflecting its plans to expand in that market, which placed further price pressure on Netflix.
25 Facing growing competition from Walmart.com, in January 2005, Netflix CEO Reed Hastings invited
26 Walmart.com CEO John Fleming to dinner for a meeting to discuss their (then) competing businesses.

27 4. Fleming accepted the invitation; that meeting and other communications led to Defendants
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1 entering the Market Allocation Agreement, pursuant to which Walmart.com agreed to exit the Online
2 DVD Rental Market and Netflix agreed not to enter the retail DVD market, but instead to actively
3 promote DVD sales by Wal-Mart Stores and Walmart.com.

4 5. Since entering into the Market Allocation Agreement, neither Wal-Mart Stores nor
5 Walmart.com has rented DVDs online and Netflix has not sold new DVDs. The Market Allocation
6 Agreement served to eliminate all competition (including price competition) between Walmart.com
7 and Netflix in the Online DVD Rental Market, entrench and enhance Defendants' dominant market
8 positions, and otherwise cause harm to competition, including enabling Netflix to charge higher
9 subscription prices for online DVD rentals than it would have had they not entered into the Agreement.
10 Plaintiffs and all other similarly situated consumers did in fact pay and continue to pay higher
11 subscription prices to Netflix than they otherwise would have as a result of Defendants' conduct.

12 PLAINTIFFS

13 6. ANDREA RESNICK is an adult individual who resides in San Francisco, California. During
14 the Class Period, Ms. Resnick directly subscribed to Netflix for her personal, non-commercial use and
15 paid Netflix fees in connection therewith. The subscription fees Ms. Resnick paid to Netflix were
16 supracompetitive; they were greater than she would have paid, but for the antitrust violations alleged
17 herein. Ms. Resnick thereby suffered injury in her property, in the form of overcharges, injury which
18 the antitrust laws are intended to prevent and remedy.

19 7. BRYAN EASTMAN is an adult individual who resides in Washington, DC. During the Class
20 Period, Mr. Eastman directly subscribed to Netflix for his personal, non-commercial use and paid
21 Netflix fees in connection therewith. The subscription fees Mr. Eastman paid to Netflix were
22 supracompetitive; they were greater than he would have paid, but for the antitrust violations alleged
23 herein. Mr. Eastman thereby suffered injury in his property, in the form of overcharges, injury which
24 the antitrust laws are intended to prevent and remedy.

25 8. AMY LATHAM is an adult individual who resides in Bristow, Virginia. During the Class
26 Period, Ms. Latham directly subscribed to Netflix for her personal, non-commercial use and paid
27 Netflix fees in connection therewith. The subscription fees Ms. Latham paid to Netflix were

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1 supracompetitive; they were greater than she would have paid, but for the antitrust violations alleged
2 herein. Ms. Latham thereby suffered injury in her property, in the form of overcharges, injury which
3 the antitrust laws are intended to prevent and remedy.

4 9. STAN MAGEE is an adult individual who resides in Issaquah, Washington. During the Class
5 Period, Mr. Magee directly subscribed to Netflix for his personal, non-commercial use and paid Netflix
6 fees in connection therewith. The subscription fees Mr. Magee paid to Netflix were supracompetitive;
7 they were greater than he would have paid, but for the antitrust violations alleged herein. Mr. Magee
8 thereby suffered injury in his property, in the form of overcharges, injury which the antitrust laws are
9 intended to prevent and remedy.

10 10. MELANIE MISCIOSCIA is an adult individual who resides in Medford, Massachusetts.
11 During the Class Period, Ms. Miscioscia directly subscribed to Netflix for her personal, non-
12 commercial use and paid Netflix fees in connection therewith. The subscription fees Ms. Miscioscia
13 paid to Netflix were supracompetitive; they were greater than she would have paid, but for the antitrust
14 violations alleged herein. Ms. Miscioscia thereby suffered injury in her property, in the form of
15 overcharges, injury which the antitrust laws are intended to prevent and remedy.

16 11. MICHAEL OROZCO is an adult individual who resides in San Mateo, California. During the
17 Class Period, Mr. Orozco directly subscribed to Netflix for his personal, non-commercial use and paid
18 Netflix fees in connection therewith. The subscription fees Mr. Orozco paid to Netflix were
19 supracompetitive; they were greater than he would have paid, but for the antitrust violations alleged
20 herein. Mr. Orozco thereby suffered injury in his property, in the form of overcharges, injury which
21 the antitrust laws are intended to prevent and remedy.

22 12. LIZA SIVEK is an adult individual who resides in Milford, Connecticut. During the Class
23 Period, Ms. Sivek directly subscribed to Netflix for her personal, non-commercial use and paid Netflix
24 fees in connection therewith. The subscription fees Ms. Sivek paid to Netflix were supracompetitive;
25 they were greater than she would have paid, but for the antitrust violations alleged herein. Ms. Sivek
26 thereby suffered injury in her property, in the form of overcharges, injury which the antitrust laws are
27 intended to prevent and remedy.

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1 13. MICHAEL WIENER is an adult individual who resides in Philadelphia, Pennsylvania. During
2 the Class Period, Mr. Wiener directly subscribed to Netflix for his personal, non-commercial use and
3 paid Netflix fees in connection therewith. The subscription fees Mr. Wiener paid to Netflix for renting
4 DVDs were supracompetitive; they were greater than he would have paid, but for the antitrust
5 violations alleged herein. Mr. Wiener thereby suffered injury in his property, in the form of
6 overcharges, injury which the antitrust laws are intended to prevent and remedy.

7 **DEFENDANTS**

8 **NETFLIX**

9 14. Defendant Netflix is a Delaware corporation headquartered at 100 Winchester Circle, Los
10 Gatos, California, 95032. Netflix is publicly traded on the NASDAQ under the symbol NFLX. Its
11 revenues earned from engaging in interstate commerce exceed \$1 billion annually. Through its
12 website, www.netflix.com, Netflix rents DVDs directly to consumers nationwide by charging monthly
13 subscription fees, which entitle customers to rent DVDs pursuant to various subscription plans. Netflix
14 has possessed a market share of at least 75% of the Online DVD Rental Market in the United States, as
15 defined herein, at all times during the Class Period.

16 **WAL-MART**

17 15. **Wal-Mart Stores.** Defendant Wal-Mart Stores is the largest retailer in the United States.
18 Wal-Mart Stores is a Delaware corporation headquartered at 702 S.W. 8th Street, Bentonville,
19 Arkansas, 72716. Wal-Mart Stores is publicly traded on the New York Stock Exchange under the
20 symbol WMT. Its revenues earned from engaging in interstate and foreign commerce approach \$400
21 Billion annually. Through its retail stores and its website, www.walmart.com, Wal-Mart Stores sells
22 new DVDs directly to consumers nationwide. Wal-Mart Stores sells far more DVDs than any other
23 retailer in the United States, accounting for about 40% of all new DVDs sold to consumers
24 domestically. During fiscal years 2005-2008 combined, it and Walmart.com had revenues in excess of
25 \$25 billion from selling DVDs to consumers. Prior to the Market Allocation Agreement, Wal-Mart
26 Stores' wholly-owned subsidiary Walmart.com competed with Netflix in the Online DVD Rental
27 Market through the "Wal-Mart DVD Rentals" service, which was available on www.walmart.com.

1 **16. Walmart.com.** Defendant Walmart.com is a California Limited Liability Company with
2 offices at 7000 Marina Boulevard, Brisbane, California, 94005. Its corporate registration with the
3 California Secretary of State (as of May 18, 2009) lists its address as 702 S.W. 8th St., Bentonville, AR
4 72716—the same address as Wal-Mart Stores. It is the online component of Wal-Mart Stores’ retail
5 empire that is the leading seller of new DVDs in the United States.

6 **17.** Prior to the conspiracy alleged herein, Walmart.com was also a major competitor of Netflix
7 in the Online DVD Rental Market through the “Wal-Mart DVD Rentals” service, which was available
8 on www.walmart.com. While its financials are not publicly reported by Wal-Mart Stores,
9 Walmart.com is ranked as the 14th largest online retailer in the United States. Walmart.com sells new
10 DVDs directly to consumers nationwide. Consumers who purchase DVDs via www.walmart.com may
11 have them either mailed or otherwise delivered to them directly, or may pick them up at a Wal-Mart
12 Stores retail location via Walmart.com’s and Wal-Mart Stores’ “Site to Store” program.

13 **18. Wal-Mart Stores and Walmart.com.** Walmart.com and Wal-Mart Stores are, in essence,
14 operated as a single commercial enterprise and hold themselves out to the public as such, by which
15 Walmart.com is an internet sales channel for Wal-Mart Stores, rather than being an independent
16 business entity. Wal-Mart Stores is the registrant of the www.walmart.com domain name that is used
17 to sell products and services by Walmart.com. Likewise, Wal-Mart Stores is the registrant of
18 www.walmartdvdrentals.com. Wal-Mart Stores’ Chief Marketing Officer John Fleming has explained
19 the relationship between Wal-Mart Stores and Walmart.com as follows:

20 Walmart.com was set up as a separate company, with outside investors and with Wal-
21 Mart owning a majority. The idea was that Walmart.com was going to tap into
22 customers Wal-Mart didn’t have and, in doing so, would defend our position as the
23 world’s largest retailer. We saw very quickly that this wasn’t how customers viewed
24 the online channel. Within six months, Wal-Mart bought back the outside interest.

25 **19. Wal-Mart Stores’ Active Participation in the Conspiracy.** Wal-Mart Stores was actively
26 involved in the conspiracy alleged herein, as alleged more specifically below. For purposes of these
27 allegations, both Wal-Mart Stores and Walmart.com are active participants in the conspiracy and each
28 is liable for the unlawful conduct alleged herein, with each, among other things, participating in, and

1 benefiting from, the Market Allocation Agreement. Moreover, Wal-Mart Stores directed, ratified,
2 approved, supported, and otherwise aided and abetted Walmart.com's violations of law.

3 20. Wal-Mart Stores had a strong motive to conspire with Netflix. In addition to its interests as
4 the 100% owner of Walmart.com, Wal-Mart Stores had further incentives to enter into the Market
5 Allocation Agreement, since it obtains substantial revenues from sales of new DVDs, as well as store
6 traffic resulting in the sales of other goods, which would have been threatened by Netflix's entry into
7 new DVD sales, and which were enhanced by Netflix's promotion of Wal-Mart Stores and
8 Walmart.com through the Market Allocation Agreement.

9 21. In a letter submitted in connection with a prior antitrust case brought against Netflix by
10 other plaintiffs for other alleged violations of law, an assistant general counsel of Wal-Mart Stores,
11 referring specifically to Wal-Mart Stores, wrote of "Wal-Mart's decision to discontinue renting
12 DVDs." Moreover, it was Wal-Mart Stores that announced in part the Market Allocation Agreement,
13 which identifies Wal-Mart Stores, in the "About" section of the press release. The announcement
14 quoted John Fleming, at the time both the Chief Marketing Officer of Wal-Mart Stores and the
15 outgoing CEO of Walmart.com still overseeing Walmart.com operations, regarding the Agreement. It
16 explained that Walmart.com's DVD sales are in fact Wal-Mart Stores' "online movie sales business,"
17 and that, more generally, Wal-Mart Stores' "[o]nline merchandise sales are available at
18 www.walmart.com."

19 22. Whenever this Complaint refers to a statement or transaction of any corporation or entity,
20 the allegation means that the corporation or entity acted by or through its directors, members, partners,
21 officers, employees, affiliates, or agents, while engaged in the management, direction, control, or
22 conduct of the corporation's or entity's business and acting within its scope of authority.

23 JURISDICTION AND VENUE

24 23. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332(d) & 1337
25 and 15 U.S.C. §§ 1-2, 15 & 26.

26 24. Venue is proper in this District pursuant to 28 U.S.C. §§ 15, 22 & 26 and pursuant to 28
27 U.S.C. § 1391(b), (c) & (d), because at all times relevant to the Complaint: (a) Defendants transacted

1 business, were found, or acted through subsidiaries or agents present in this District; (b) a substantial
2 part of the events at issue in Plaintiffs' claims occurred in this District; and (c) a substantial portion of
3 the affected interstate trade and commerce described below has been carried out in this District.

4 25. This Court has personal jurisdiction over Defendants because, *inter alia*, Netflix and
5 Walmart.com are headquartered in this State and each of the Defendants has transacted business,
6 maintained continuous and systemic contacts, purposefully availed itself of the benefits of doing
7 business, and committed acts in furtherance of the alleged conspiracy in this State.

8 INTERSTATE TRADE AND COMMERCE

9 26. Defendants' conduct has taken place within the flow of, and substantially affected the
10 interstate commerce of, the United States. By way of example, Defendants have sold and/or rented
11 DVDs throughout the United States, involving hundreds of millions or billions of dollars in interstate
12 commerce, and used the instrumentalities of interstate commerce, including interstate wires and the
13 U.S. mail, to sell and/or to rent DVDs throughout the United States.

14 RELEVANT MARKET

15 27. For those claims that may require market definition, the Relevant Market for purposes of
16 these allegations during the Class Period at least is: the rental of DVDs online by subscription for
17 delivery by mail in the United States (the "Online DVD Rental Market"). At all relevant times, Netflix
18 has been a competitor in the Relevant Market. Prior to entering into the Market Allocation Agreement,
19 Defendants Wal-Mart Stores and Walmart.com competed in the Relevant Market.

20 28. The Market Allocation Agreement, however, is *per se* illegal and requires no allegation of
21 market definition.

22 29. Plaintiffs also allege, in the alternative, that the Market Allocation Agreement is
23 anticompetitive and illegal under the Rule of Reason.

24 30. Among other facts alleged herein, the Defendants' conduct ended competition between
25 direct competitors in the Online DVD Rental Market, conferred market and monopoly power upon
26 Netflix in that market and has no pro-competitive benefits.

1 31. "DVD," as defined herein, refers to a Digital Video Disc or Blu-ray Disc containing
2 commercially recorded entertainment programs for personal viewing. DVDs are the primary medium
3 by which movies and other recorded entertainment are distributed in the United States. Revenues on
4 DVDs far exceed those generated from box office receipts. In addition, DVDs have become a
5 particularly lucrative means for the distribution of previously aired television programs, surpassing
6 even television syndication rights as a revenue stream in many instances. As defined herein, "DVD"
7 does not refer to blank Digital Video Discs, which are used to store or record data.

8 32. At all relevant times, there have been no reasonably interchangeable substitutes for the
9 service of online DVD rentals, which is differentiated, from both the demand and the supply side, from
10 other methods of DVD distribution channels, as well as other methods of entertainment content
11 delivery.

12 33. In the Online DVD Rental Market, for a monthly subscription fee, a consumer may rent
13 DVDs from an online service provider, such as Netflix, Blockbuster Online, or (prior to its exit from
14 this market) Wal-Mart DVD Rentals. Within any given plan, the consumer pays the subscription fee
15 regardless of how many DVDs he or she rents per month. Thus, even a consumer who does not rent a
16 DVD for months still is charged the subscription fee; Netflix CEO Reed Hastings has called this the
17 "gym membership effect." To rent DVDs, consumers fill out a rental "queue" in their online profile,
18 listing in order of preference the DVDs they wish to rent. The DVDs are then sent to the consumer's
19 home via U.S. mail. To return the DVD and receive the next DVD in the queue, the consumer inserts
20 the DVD in a prepaid envelope provided with the rental and mails it back; the service provider then
21 mails the next available movie in the queue to the consumer.

22 34. From the consumer's perspective, online DVD rentals are a differentiated service that is not
23 reasonably interchangeable with in-store video rental. In video rental from stores, consumers drive to
24 or otherwise arrive at the store, find (or do not find) what they are looking for, and, for the most part,
25 pay on a per-DVD basis for their selection(s). After the designated rental period, usually depending
26 upon the release date of the DVD, the consumer returns the selection or potentially incurs late fees.
27 During the Class Period as alleged herein, these late fees have accounted for as much as 20% of the

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1 revenues in traditional video rental stores; there are no late fees or due dates in the Online DVD Rental
2 Market.

3 35. There are numerous other practical indicia of the Online DVD Rental Market being a
4 relevant product market, distinct from other forms of video rental, including:

5 **A. Price Competition.** No direct price competition exists between online DVD
6 rental and other forms of video rental, whether in-store, kiosk, video-on-demand, or video
7 downloading, which are not reasonably interchangeable with online DVD rental. For example, online
8 DVD rentals generally are priced on a monthly subscription basis. Within any given plan, the
9 subscription rate is independent of the number of DVDs the customer actually rents in a month. In-
10 store DVD rentals, kiosks, and downloading generally are priced on a pay-per-view basis. Also,
11 changes in the price of online rentals do not closely track changes in the price of in-store rentals. The
12 pricing of online DVD rentals is generally nationwide in scope and is not affected by local in-store
13 prices and competition. As a result, the pricing of online DVD rentals would generally be the same to
14 a customer, regardless of whether the nearest rental store is two minutes or two hours away. Online
15 DVD rentals generally offer additional services, such as movie reviews, customer-specific
16 recommendations based on viewing and preference history, and other metrics of popularity. The cross-
17 elasticity of demand between these products and services is such that a small but significant non
18 transitory increase in price (“SSNIP”) would not cause consumers to switch from online DVD rental to
19 in-store rental or any other arguable method of DVD or video distribution, and *vice versa*.

20 **B. Functional Differences.** Online DVD rentals fundamentally differ from in-
21 store rentals in that (1) they do not require travel to a store (including a second trip to return the DVD
22 and potentially multiple trips if the store does not have the DVD in stock at the right time), (2) are
23 available to anyone with a postal address, regardless of proximity to a store, (3) are primarily
24 subscription-based services, and (4) provide a much wider selection of titles than can a bricks-and-
25 mortar store—the library of titles available from online service providers has grown over time, now
26 ranging near 100,000 DVDs—often twenty to one-hundred times the selection of titles stocked (not to
27 mention available) at any single video rental store. For these reasons, among others, online and in-

1 store DVD rentals are not reasonably interchangeable. Likewise, other modes of video distribution,
2 such as kiosk, video-on-demand, and downloading, among other forms, are not reasonably
3 interchangeable with online DVD rentals for a number of reasons, including relative selection and
4 convenience for consumers, pricing, as well as, from the supply perspective, licensing considerations
5 and technological limitations.

6 **C. Public and Industry Perceptions.** The online rental market is recognized as a
7 distinct market by the public and the industry, including by Defendants. For example, Defendants
8 have confirmed and recognized the existence of a discrete online rental market. In September 2008,
9 Netflix spokesman Steve Swasey told the Wall Street Journal that other types of rental services, such
10 as kiosk and in-store rentals, do not present a direct competitive threat to Netflix explaining, “We see
11 kiosks as competing with video stores. They’re very new-release centric—that’s all they offer—and
12 that’s what the stores offer. You’re still going to a destination to pick it up, you have to return it, and
13 you pay by the day.” Mr. Swasey acknowledged that while video downloads may be a competitive
14 force in the future, “[m]ainstream consumers are still happy with DVDs, and probably will be for five
15 to 10 years.”

16 36. With DVD being the dominant medium for years to come, the entry of this technology is
17 not timely enough to be considered a competitive force in the relevant market. Indeed, Netflix CEO
18 Reed Hastings maintains that DVDs will be the dominant medium for movies for perhaps as long as
19 the gasoline engine. He thus has predicted that the competitive threat of internet downloading to online
20 DVD rental is like that of hydrogen powered cars to gasoline powered cars—inconsequential for many
21 years to come.

22 37. As recently as April 24, 2009, during Netflix’s First Quarter conference call with financial
23 analysts, Hastings said that online DVD and Blu-ray rental will “continue to grow for many years,”
24 without regard to any advances in video downloading or other modes of content delivery. Hastings
25 went to explain that the “key takeaway” is that “there is still a lot of growth in rental by mail. The
26 studios clearly have a vested interest in extending the life of DVD and Blu-ray and that’s good for
27 Netflix as well.” Indeed, Hastings observed video kiosks pose no serious competitive threat to Online

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1 DVD Rental, explaining that “Despite kiosk growth . . . we had a record quarter and we expect to have
2 a record year because our differentiators continue to be our vast selection—over 100,000 titles—the
3 convenience of mail and streaming, that you don’t have to drive anywhere to receive or return a Netflix
4 disk, and our unlimited rentals for one flat fee.” He also observed that by year’s end, in-store rentals,
5 video streaming and DVD sales would be even less of a competitive threat than video kiosks.

6 38. Online DVD rentals are also a separate market from DVD sales. The pricing of DVD sales
7 and online DVD rentals are very different. For example, the price to buy a new DVD depends heavily
8 on how popular it is, including whether it is a new release or how successful the title originally was at
9 the box office or on television. By contrast, online DVD renters generally charge based on a
10 subscription fee, regardless of whether the consumer is renting popular or obscure DVDs. The
11 industry and the public perceive online DVD rentals as separate from DVD sales, whether in-store or
12 online. The factors motivating a consumer to buy a DVD are different from those that lead to renting a
13 DVD. The former generally applies to DVDs that the consumer intends to view (either personally, or
14 their family or friends) numerous times. The latter generally applies to DVDs that the consumer
15 intends to view once and then return. DVDs sold at retail have other distinguishing characteristics,
16 such as packaging and special features not available with rentals, which are delivered unadorned in
17 envelopes. In addition, the fact of whether a DVD is new or used is not an issue in rental, but is a
18 significant factor in sales, for used DVDs are sold at a significant discount to their new counterparts.
19 DVD sales and online rentals also are not reasonably interchangeable for consumers intending to
20 collect physical DVDs or to give a DVD as a gift. The cross-elasticity of demand between these
21 products and services is such that a SSNIP would not cause consumers to switch from online renting to
22 purchasing DVDs, and *vice versa*.

23 39. The Geographic Market for the Online DVD Rental Market is the United States. The
24 United States is the only area of effective competition where buyers can turn for alternative sources of
25 supply of Online DVD Rental services. Among other things, shipping costs and transglobal
26 differences in DVD data encoding make it neither practical nor feasible for entities located in other
27 countries to rent DVDs to U.S. consumers.

MARKET AND MONOPOLY POWER

1
2 40. At all relevant times, Netflix dominated the Online DVD Rental Market. Netflix has had an
3 approximate market share of 75% in the Online DVD Rental Market, and is far and away the market
4 leader in the Online DVD Rental Market. As a result of this market share, Netflix has had, and
5 continues to have, market and monopoly power in the Online DVD Rental Market; it has the power to
6 control prices or exclude competition in this Relevant Market.

7 41. Netflix also has the power to control prices or exclude competition in the Relevant Market
8 for other reasons. Specifically, Netflix (a) set subscription prices well in excess of marginal costs, (b)
9 enjoyed high profit margins thereon, (c) sold such subscriptions generally in excess of the competitive
10 price, and (d) would not, with a SSNIP for its online DVD rental subscriptions (or not reducing its
11 prices to match Blockbuster's lower prices during the Class Period), lose sufficient sales to make such
12 a price increase unprofitable.

13 42. Netflix's market and monopoly power is strengthened by the significant barriers to entry in
14 the Relevant Market. There have been no significant market entrants in the nearly four years since the
15 announcement of the Market Allocation Agreement, which increased those barriers. Online DVD
16 rental is highly capital intensive. A firm must operate on a large scale to be successful. It requires the
17 possession of a significant number of shipping facilities strategically located throughout the United
18 States to ensure timely delivery. It also requires stocking an extensive inventory of DVDs to maintain
19 the selection of titles that consumers demand. As Netflix CEO Reed Hastings observed, "When you
20 think about the barriers to entry to this business, it is subtle because it appears easy. A kid can open a
21 website. But the barriers to profitability are very large." Hastings further noted that "opening a
22 website that does rental is easy. What's hard is [creating] the scale to be able to do it profitably."
23 These barriers are far greater now that they were when Netflix began. Netflix was able to enter on a
24 much smaller scale but a new entrant today would need a much larger scale of operations.

25 43. Since the implementation of the Market Allocation Agreement, the Online DVD Rental
26 Market has been overwhelmingly comprised of only two firms: Netflix and Blockbuster, which
27 possesses nearly all of the remaining 25% of the Online DVD Rental Market that Netflix does not

1 control. Blockbuster's presence does not preclude Netflix's monopoly and market power. Reed
2 Hastings has stated that Blockbuster actually "works very well for us" because it creates "a lot of
3 press" but, from a competitive perspective, it has a "relatively not strong balance sheet and [is] in the
4 business in a small way." A few minor firms have shares of less than 1-2% of the market. During
5 fiscal years 2005-2008 combined, Netflix earned more than \$5 Billion in revenues and nearly \$2
6 Billion in gross profit from renting DVDs to consumers—a margin of nearly 40%. As a result of
7 Netflix's market and monopoly power alleged herein, its subscription fees have been higher than they
8 otherwise would have been.

9 44. Further evidence of Netflix's market and monopoly power is reflected in the
10 anticompetitive effects alleged herein.

11 THE ILLEGAL AGREEMENT

12 45. **Pre-Agreement Competition in the Online DVD Rental Market.** In early 2005, Netflix
13 was coming off a year in which competition was growing and its stock price had dropped
14 precipitously. It faced increasing competition from Wal-Mart DVD Rentals and from Blockbuster
15 Online, the latter of which had just entered the Online DVD Rental Market.

16 46. By mid-2004, Netflix was charging \$21.99 for its most popular subscription rental plan.
17 Blockbuster entered the online market in earnest in August, at first charging \$19.99 but then reducing
18 its price in November to \$17.49 for its similar plan. After that, the Wal-Mart DVD Rentals rate was
19 reduced from \$18.86 to \$17.36. In the wake of these price cuts, Netflix reduced its prices by nearly
20 20% to \$17.99 per month. After that, Blockbuster further decreased its price to \$14.99—20% below
21 Netflix's already reduced price and more than 40% below the price Netflix was charging just months
22 earlier.

23 47. Meanwhile, Wal-Mart Stores and its wholly-owned subsidiary Walmart.com, which had
24 established themselves as the leader in new DVD sales, were facing increasing competition from in-
25 store and online channels of distribution in new DVD sales, including competition from Amazon.com.
26 At the time, Netflix was a significant potential additional competitor, since it had a subscriber base of
27 millions of customers who were also known to be prolific DVD buyers, and the sales and profits of

1 Wal-Mart Stores and Walmart.com stood to suffer if Netflix began selling new DVDs to these
2 customers. Conversely, Wal-Mart Stores and Walmart.com stood to gain significant additional sales
3 and profits and to gain further market share in the sale of new DVDs if these customers were to make
4 their purchases of new DVDs from them instead.

5 **48. Walmart.com's success and plans for the online DVD rental business prior to the**
6 **Agreement.** From its beginnings in 2003 through the January 2005 dinner, Walmart.com trumpeted
7 the success of its online DVD rental service. As early as November 2003, Cynthia Lin, a
8 spokeswoman for Walmart.com, observed that "Customers have really been responsive to the
9 convenience of ordering online. . . . There's definitely a large appetite for this." And, in February
10 2004, Walmart.com said it was "seeing superb growth" in Wal-Mart DVD Rentals. By April 2004,
11 Walmart.com said its gains in monthly subscribers were "exceeding expectations." On October 24,
12 2004, only a few months prior to the January dinner, Kevin Swint, Walmart.com's director of
13 entertainment and photo said that Wal-Mart DVD Rentals had "grown beyond our expectations" and
14 that "We're really bullish about this service . . . and our customers are enthusiastic."

15 **49.** The recognition of the potential of its DVD rental business also was reflected in the
16 dramatic expansion of Wal-Mart DVD Rentals during 2004 by the doubling of its capacity and
17 expressions of plans to continue that expansion in 2005. During 2004, for instance, Wal-Mart DVD
18 Rentals expanded its DVD selection from 13,000 titles to 20,000 and doubled the number of
19 distribution centers from 7 to 14. In December 2004, Amy Colella, a spokeswoman for Walmart.com,
20 said that the business was going to add even more distribution centers the following year. As Colella
21 explained on December 29, 2004: "It's a viable business for us, with growth potential." During a
22 January 7, 2005 interview, within days of the January dinner of CEOs Hastings and Fleming,
23 Walmart.com CEO John Fleming told CNBC that Wal-Mart DVD Rentals was among its "very good
24 businesses that we're focused on developing over the next year or two."

25 **50. The Wal-Mart DVD Rentals Price Cut.** On that same day, January 7, 2005, Wal-Mart
26 DVD Rentals dropped the price on its most popular DVD rental plan significantly—to \$12.97 per
27 month—creating further price pressure on Netflix to reduce its DVD rental prices. In order to respond

1 to the increased competition, Netflix would have been forced to lower its prices and thereby reduce its
2 profits. This increased competition was not good news for Netflix. “Since its core business is online
3 DVD rentals, Netflix might have been the company most threatened by Wal-Mart’s push into the
4 sector,” as one industry publication then noted. That publication further explained, “Because of its
5 size, buying power and agreements with movie distributors, Wal-Mart could have put significant
6 pricing pressure on Netflix over time, analysts said.” This growing price disparity plainly was not
7 good news for Netflix, even though it was for consumers.

8 **51. The January Dinner Meeting.** Faced with this increasing competition, Reed Hastings, the
9 Chairman and CEO of Netflix, called John Fleming, then the CEO of Walmart.com, and invited him to
10 dinner to discuss their companies’ (then) competing businesses. Fleming accepted the invitation; they
11 met in January 2005, “started talking about how we could work together” (according to Hastings), and
12 embarked upon a scheme that would result in the Market Allocation Agreement.

13 **52. Hastings’ Subsequent “Prediction.”** On April 21, 2005, in Netflix’s First Quarter
14 earnings call with financial analysts, held after the January dinner, but less than one month prior to the
15 public announcement of the Market Allocation Agreement, Hastings made plain the motive for Netflix
16 to conspire with Wal-Mart Stores and Walmart.com:

17 In terms of profitability over the coming years, the key issue is the number of major
18 competitors. If there are only two major players, Blockbuster and Netflix, the
19 profitability may be substantial like other two-firm entertainment markets. If, on the
20 other hand, Amazon, Wal-Mart, Blockbuster and Netflix are all major competitors in
21 online rental, then the profits would likely be small.

22 Hastings went on to “predict” on that conference call:

23 [T]he likely case is [that] online rental becomes a two-firm market over the coming
24 years.

25 **53. The Public Announcement.** On May 19, 2005, shortly after Fleming had been promoted
26 by Wal-Mart Stores from his position at Walmart.com in Brisbane to be the Chief Marketing Officer of
27 Wal-Mart Stores in Bentonville, Defendants issued a joint press release that revealed the existence of
28 the Market Allocation Agreement. By entering into the Market Allocation Agreement, Defendants
unlawfully divided and allocated the markets for DVD sales and rentals, and did, in fact, create the

1 two-firm market that Hastings sought. Recognizing the tremendous benefits that this improper
2 agreement would bring to them, Hastings admitted that “This agreement bolsters both Netflix’s
3 leadership in DVD movie rentals and Wal-Mart’s strong movie sales business.”

4 **54. The Media’s Reaction.** The news of the agreement was featured in a number of
5 newspapers and other publications, in articles with aptly colorful titles, such as:

- 6 • “Wal-Mart and Netflix Scratch Each Other’s Backs,”
- 7 • “Truce in DVD-Rental Wars,”
- 8 • “Wal-Mart and Netflix: An Alliance,” and
- 9 • “Wal-Mart Loves Netflix: And Vice-Versa.”

10 **55. The Execution.** Beginning on May 19, 2005, Walmart.com, as agreed, did in fact exit the
11 Online DVD Rental Market. Walmart.com announced to all of the subscribers to Wal-Mart DVD
12 Rentals that it was exiting the Relevant Market and that those subscribers could be transferred to
13 Netflix. Walmart.com took additional steps to affirmatively implement the Market Allocation
14 Agreement by adding a prominently placed link to the Netflix website to encourage customers to
15 transfer their subscriptions to and otherwise rent from Netflix. Since the date of their joint
16 announcement on May 19, 2005 (apart from the 30 days that Walmart.com used to wind down its
17 existing online rental business), neither Walmart.com nor Wal-Mart Stores has participated in the
18 Online DVD Rental Market, and Netflix has not sold new DVDs.

19 **56.** As a result of the Market Allocation Agreement, downward pricing pressure from
20 Walmart.com was eliminated and the Online DVD Rental Market was reduced to two competitors.
21 Absent the Market Allocation Agreement, Netflix would have lowered its prices no later than May 19,
22 2005. As a result of the elimination of a competitor in this Relevant Market, Netflix was able to hold
23 its subscription rate steady at \$17.99 per month and its only competitor left, Blockbuster, was able to
24 raise its subscription price in July to match that of Netflix, from \$14.99 per month to \$17.99 per
25 month. This was in accord with Hastings’ expectation that “[i]f there are only two major players,
26 Blockbuster and Netflix, the profitability may be substantial like other two-firm entertainment
27 markets.” As one business publication proclaimed: “That’s one less competitor for the DVD rental

1 pioneer . . . Now it looks like the competitive storm is dying down.” In Netflix’s next earnings call,
2 on July 25, 2005, Hastings boasted:

3 Last quarter we said online rental was shaping up to be a two-player market, and that is
4 indeed what is happening.

5 57. The Market Allocation Agreement was not in the independent self-interest of Wal-Mart
6 Stores, Walmart.com, or Netflix. Neither Wal-Mart Stores nor Walmart.com would have wanted
7 Walmart.com to withdraw from the online rental market, encourage its subscribers to be transferred to
8 Netflix, and promote Netflix’s rental business absent substantial consideration from Netflix, such as an
9 agreement not to compete for new DVD retail sales. But for the Market Allocation Agreement,
10 Walmart.com would not have exited the Online DVD Rental Market when it did. Likewise, Netflix
11 would not have foreclosed its opportunity to sell DVDs to its millions of subscribers—a base of
12 customers who purchase on average 25 DVDs per year each—and would not have promoted new DVD
13 sales by Wal-Mart Stores and Walmart.com, rather than its own sales, absent an agreement from them
14 not to compete against Netflix’s online rental business.

15 58. Walmart.com’s exit from the Online DVD Rental Market was not a unilateral decision. It
16 was a key element of the Market Allocation Agreement as set forth herein. First, Walmart.com’s exit
17 was expressly part of the Market Allocation Agreement with Netflix that directly stemmed from the
18 meeting between the two companies’ CEOs. Prior to that Agreement, Walmart.com had not
19 announced anything about exiting this market. Second, as detailed above, shortly prior to the January
20 dinner Walmart.com repeatedly described its success in the online DVD rental business and expressed
21 its intention to continue and expand in that business. Its conduct after the January meeting thus
22 represents a sudden and sharp reversal in its plans. Third, Walmart.com cut its price shortly before the
23 January dinner. It would not have done so had it planned to exit the Online DVD Rental Market. Such
24 a price cut only makes sense if Walmart.com planned to remain a long-term competitor in that market.
25 Fourth, the fact that the dinner was initiated by Reed Hastings right around the time of Walmart.com’s
26 price cut and numerous announcements of its intention to continue and expand its online DVD rental
27 business, contradicts any assertion that the dinner stemmed from a unilateral decision by Walmart.com

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1 activity of the Market Allocation Agreement itself. The co-promotion aspects of the Agreement were a
 2 means to reinforce the market allocation. To the extent that those aspects were portrayed as the sole
 3 reason for the Market Allocation Agreement, that portrayal was misleading and pretextual, allowing
 4 Defendants' market allocation conspiracy to escape scrutiny and "hide in plain sight."

5 CLASS ACTION ALLEGATIONS

6 64. Plaintiffs bring this action on their own behalf and as a class action under Rules
 7 23(a), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of all members of the
 8 following Class:

9 Any person or entity in the United States that paid a subscription fee to Netflix on or
 10 after May 19, 2005 up to and including the date of class certification.

11 Excluded from the Class are government entities, Defendants, their co-conspirators,
 12 Reed Hastings, John Fleming, Defendants' subsidiaries, corporate affiliates, and
 13 counsel in this action. Also excluded are persons who subscribed to Wal-Mart DVD
 14 Rentals as of May 19, 2005. Also excluded are the Judge presiding over this action, her
 15 law clerks, her spouse, or any person within the third degree of relationship to either of
 16 them, or the spouse of such a person, within the meaning of 28 U.S.C. § 455.

17 65. The Class numbers in the millions, the exact number and identities of the members being
 18 known by Defendants.

19 66. The Class is so numerous and geographically dispersed that joinder of all members is
 20 impracticable.

21 67. There are questions of law and fact common to the Class and the members
 22 thereof. These common questions relate to the existence of the conspiracy alleged, and to the type
 23 and common pattern of injuries sustained as a result thereof. The questions include, but are not
 24 limited to:

- 25 a. Whether Defendants engaged in a contract, combination, or conspiracy to
 allocate markets;
- 26 b. Whether Defendants unreasonably restrained trade in the Online DVD Rental
 Market;
- 27 c. Whether Defendants had the specific intent for Netflix to monopolize the
 Online DVD Rental Market;
- 28 d. The nature and character of the acts performed by Defendants in the
 furtherance of the alleged contract, combination, and conspiracy;

- 1 e. Whether the alleged contract, combination, and conspiracy violated Section 1
2 of the Sherman Act;
- 3 f. Whether the alleged contract, combination, and conspiracy and other conduct
4 violated Section 2 of the Sherman Act;
- 5 g. The anticompetitive effects of Defendants' violations of law;
- 6 h. Whether Defendants have acted or refused to act on grounds generally
7 applicable to the Class, thereby making appropriate final injunctive relief or
8 corresponding declaratory relief with respect to the Class as a whole; and
- 9 i. Whether the conduct of Defendants, as alleged in this Complaint, caused
Netflix subscription fees to be higher than they otherwise would have been and
thereby caused injury to the business and property of Plaintiffs and other
members of the Class.

10 68. The questions of law and fact common to the members of the Class predominate over any
11 questions affecting only individual members, including the legal and factual issues relating to
12 liability and damages.

13 69. Each Plaintiff is a member of the Class. Plaintiffs' claims are typical of the
14 claims of other members of the Class, and they will fairly and adequately protect the interests of the
15 members of the Class. Their interests are aligned with, and not antagonistic to, those of the other
16 members of the Class.

17 70. Plaintiffs are represented by counsel who are competent and experienced in class action
18 antitrust litigation.

19 71. A class action is superior to other available methods for the fair and efficient
20 adjudication of this controversy. Class treatment will permit the adjudication of relatively small
21 claims by members of the Class who otherwise could not afford to litigate antitrust claims such as
22 are asserted in this Complaint. This class action presents no difficulties of management that would
23 preclude its maintenance as a class action.

24 **ANTITRUST INJURY AND STANDING**

25 72. During the Class Period, Plaintiffs and the members of the Class have directly paid
26 monthly DVD subscription fees to Netflix in the United States, and many continue to do so.

27 73. Plaintiffs and the members of the Class have suffered, and many continue to suffer, injury

1 of the type that the antitrust laws are designed to punish and prevent. Plaintiffs and the members of
2 the Class have paid, and many continue to pay, more to subscribe to Netflix than they would
3 have, absent the Market Allocation Agreement. As a direct and proximate result of the unreasonable
4 restraint of trade and market and monopoly power created by the Market Allocation Agreement, which
5 is continuing to this day, Plaintiffs and the members of the Class were, and many continue to be,
6 injured and financially damaged in their businesses and property, in amounts that are not presently
7 determined. As the direct victims of Defendants' antitrust violations, Plaintiffs are efficient
8 enforcers of the antitrust claims made herein.

9 **COUNT ONE**

10 **SHERMAN ACT SECTION ONE (15 U.S.C. § 1)**
11 **Market Allocation of Online DVD Rental Market**
12 **(Against All Defendants)**

13 74. Plaintiffs reallege each allegation set forth above, as if fully set forth herein.

14 75. Defendants have entered into a *per se* illegal market division agreement, in violation of
15 Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1.

16 76. In the alternative, if evaluated under the Rule of Reason, the Market Allocation Agreement
17 is an unreasonable restraint of trade in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. §
18 1.

19 77. Prior to and at the time of the agreement, Netflix and Walmart.com were actual competitors
20 in the Online DVD Rental Market. In addition, Netflix was a potential competitor of Wal-Mart Stores
21 and Walmart.com in new DVD sales. Wal-Mart Stores and Walmart.com were actual participants and
22 Netflix was a potential participant, with the means and economic incentive to sell new DVDs—in the
23 absence of the Market Allocation Agreement.

24 78. Defendants shared a conscious commitment to a common scheme designed to achieve the
25 unlawful objective of allocating the markets for online DVD rentals and new DVD sales. The Market
26 Allocation Agreement allocated the Online DVD Rental Market to Netflix, with Wal-Mart Stores and
27 Walmart.com agreeing not to compete in that market. The agreement also allocated new DVD sales to
28 Wal-Mart Stores and Walmart.com, with Netflix agreeing to refrain from selling new DVDs in
competition with them.

1 79. In addition to explicitly or *de facto* agreeing not to sell new DVDs, Netflix also obtained
2 the Market Allocation Agreement by providing potentially valuable promotion to Wal-Mart Stores and
3 Walmart.com. In so doing, Netflix provided significant consideration to Wal-Mart Stores and
4 Walmart.com for their agreement that Walmart.com would withdraw from, and both Walmart.com and
5 Wal-Mart Stores would not compete in, the Online DVD Rental Market.

6 80. The Market Allocation Agreement has created significant anticompetitive effects and no
7 pro-competitive benefits. It eliminated competition in the Relevant Market, raising prices paid by
8 consumers. To the extent that there were any procompetitive benefits resulting from the agreement,
9 they would not outweigh the agreement's anticompetitive effects and could have been achieved by less
10 restrictive means.

11 81. As a result of this violation of law, Netflix's subscription prices charged to, and paid by,
12 Plaintiffs and the Class are, and have been, higher than they otherwise would have been.

13 **COUNT TWO**

14 **SHERMAN ACT SECTION TWO (15 U.S.C. § 2)**
15 **Monopolization of Online DVD Rental Market**
16 **(Against Netflix)**

17 82. Plaintiffs reallege each allegation set forth above, as if fully set forth herein.

18 83. Netflix has monopoly power in the Online DVD Rental Market.

19 84. Netflix willfully acquired and maintained its monopoly in the Online DVD Rental Market
20 by its acts and practices described herein, including by executing, implementing, and otherwise
21 complying with the Market Allocation Agreement, in violation of Section 2 of the Sherman Antitrust
22 Act, 15 U.S.C. § 2. That monopolization was achieved or strengthened through restrictive or
23 exclusionary conduct, rather than by means of superior business acumen. It was Netflix's conscious
24 object to further its dominance in the relevant market by and through the Market Allocation
25 Agreement.

26 85. As a result of this violation of law, Netflix's subscription prices charged to, and paid by,
27 Plaintiffs and the Class are, and have been, higher than they otherwise would have been.

COUNT THREE

**SHERMAN ACT SECTION TWO (15 U.S.C. § 2)
Attempt to Monopolize Online DVD Rental Market
(Against Netflix)**

86. Plaintiffs reallege each allegation set forth above, as if fully set forth herein.

87. If Netflix does not already have monopoly power, then Netflix has a dangerous probability of success in achieving monopoly power in the Online DVD Rental Market.

88. With the specific intent to achieve a monopoly, Netflix, by its acts and practices described herein, including by executing, implementing, and otherwise complying with the Market Allocation Agreement, has attempted to monopolize the Online DVD Rental Market, in violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2. It was Netflix’s conscious object to control prices and/or exclude competition in the relevant market.

89. As a result of this violation of law, Netflix’s subscription prices charged to, and paid by, Plaintiffs and the Class are, and have been, higher than they otherwise would have been.

COUNT FOUR

**SHERMAN ACT SECTION TWO (15 U.S.C. § 2)
Conspiracy to Monopolize Online DVD Rental Market
(Against All Defendants)**

90. Plaintiffs reallege each allegation set forth above, as if fully set forth herein.

91. Defendants shared a conscious commitment to a common scheme designed to achieve the unlawful objective of the monopolization of the Online DVD Rental Market. Prior to and at the time of the Agreement, Netflix and Walmart.com were actual competitors in that market. Defendants conspired with the specific intent, knowledge and purpose that their anticompetitive agreement would result in Netflix willfully acquiring and maintaining a monopoly in the Relevant Market. Wal-Mart Stores and Walmart.com knew that the natural and probable consequence of the Market Allocation Agreement would be the monopolization of the Relevant Market by Netflix. Defendants have committed overt acts in furtherance of their conspiracy, including entering into, complying with, and implementing the Market Allocation Agreement, in violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2.

1 92. As a result of this violation of law, Netflix's subscription prices charged to, and paid by,
2 Plaintiffs and the Class are, and have been, higher than they otherwise would have been.

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PRAAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that:

- A. The Court determine that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure and that Plaintiffs be appointed class representatives.
- B. Defendants be adjudged to violate Sections 1 and 2 of the Sherman Antitrust Act, 15 U.S.C. §§ 1-2.
- C. The Court declare the Market Allocation Agreement between Defendants announced May 19, 2005, to be unlawful and null and void.
- D. Judgment be entered for Plaintiffs and the members of the Class against Defendants, jointly and severally, for three times the amount of damages sustained by Plaintiffs and the Class, under Section 4 of the Clayton Antitrust Act, 15 U.S.C. § 15, together with the costs of the action, including reasonable attorneys' fees, and such other relief as is appropriate.
- E. Defendants, their affiliates, successors, transferees, assignees, and the officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf, be permanently enjoined and restrained from, in any manner, continuing, maintaining or renewing the contract, combination or conspiracy alleged herein, or from engaging in any other contract, combination or conspiracy having similar purpose or effect, and from adopting or following any practice, plan, program or device having a similar purpose or effect, pursuant to Section 16 of the Clayton Antitrust Act, 15 U.S.C. § 26.
- F. Plaintiffs and the members of the Class have such other, further, and different relief as the case may require and the Court may deem just and proper under the circumstances.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that:

- A. The Court determine that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure and that Plaintiffs be appointed class representatives.
- B. Defendants be adjudged to violate Sections 1 and 2 of the Sherman Antitrust Act, 15 U.S.C. §§ 1-2.
- C. The Court declare the Market Allocation Agreement between Defendants announced May 19, 2005, to be unlawful and null and void.
- D. Judgment be entered for Plaintiffs and the members of the Class against Defendants, jointly and severally, for three times the amount of damages sustained by Plaintiffs and the Class, under Section 4 of the Clayton Antitrust Act, 15 U.S.C. § 15, together with the costs of the action, including reasonable attorneys' fees, and such other relief as is appropriate.
- E. Defendants, their affiliates, successors, transferees, assignees, and the officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf, be permanently enjoined and restrained from, in any manner, continuing, maintaining or renewing the contract, combination or conspiracy alleged herein, or from engaging in any other contract, combination or conspiracy having similar purpose or effect, and from adopting or following any practice, plan, program or device having a similar purpose or effect, pursuant to Section 16 of the Clayton Antitrust Act, 15 U.S.C. § 26.
- F. Plaintiffs and the members of the Class have such other, further, and different relief as the case may require and the Court may deem just and proper under the circumstances.

JURY DEMAND

Pursuant to Rule 38(a) of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial of all issues triable by jury.

DATED: May 27, 2009

Respectfully Submitted,

/s/ Emily L. Maxwell

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