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ENDORSED
FILED
San Francisco County Superior Court

JAN - 5 2006

CORDON PARK-LI, Clerk
BY: JUANITA MURPHY
Deputy Clerk

13
14 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO

16 FRANK CHAVEZ, an individual, and
California resident, on behalf of himself,
17 those similarly situated, and the general
public,

18 Plaintiff,

19 v.

20 NETFLIX, INC., a foreign corporation;
and DOES 1 THROUGH 10,

21 Defendants.
22
23

CASE NO. CGC-04-434884

FEDERAL TRADE COMMISSION'S
MOTION FOR LEAVE TO FILE
MEMORANDUM OF LAW AS
AMICUS CURIAE

CLASS ACTION

Hon. Thomas J. Mellon
Dept. 514

24 The Federal Trade Commission ("FTC") respectfully moves for leave to file a
25 memorandum of law as *amicus curiae* opposing the proposed settlement in this case, which will
26 be the subject of a Settlement Hearing on January 18, 2006. The FTC is the nation's principal
27 consumer protection agency, with a broad mandate to prevent "unfair or deceptive acts or
28 practices in or affecting commerce." 5 U.S.C. § 45(a)(2). As explained in the attached *amicus*

1 memorandum, the FTC has considerable experience challenging allegedly unfair or deceptive
2 marketing practices, including those involved in the use of negative option plans; issuing
3 administrative orders and obtaining federal court injunctions prohibiting such practices;
4 implementing redress programs for consumers injured by such practices; and filing *amicus* briefs
5 in or otherwise commenting upon class action litigation and settlements. In light of this
6 experience, we believe that the FTC's views would likely be useful to the Court as it considers
7 whether to approve the proposed settlement.

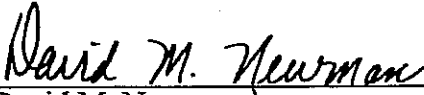
8 This trial court clearly has discretion to consider the arguments of *amici curiae*. Stockton
9 v. Department of Employment, 25 Cal. 2d 264, 272, 153 P.2d 741, 245 (1944) (trial court
10 requested filing of *amicus curiae* brief); Board of Administration v. Wilson, 52 Cal. App. 4th
11 1109, 1118 n.4, 61 Cal. Rptr. 2d 207, 214 n.4 (Cal. Ct. App. 1997) (California State Employees
12 Association appeared as *amicus curiae* in the trial court); In re Executive Life Ins. Co., 32 Cal.
13 App. 4th 344, 389, 38 Cal. Rptr. 2d 453, 480 (Cal. Ct. App. 1995) (formal status in trial court of
14 Action Network for Victims of Executive Life was that of *amicus curiae*); Auchmoody v. 911
15 Emergency Services, 214 Cal. App. 3d 1510, 1518, 263 Cal. Rptr. 278, 282 (Cal. Ct. App. 1989)
16 (California Ambulance Association was *amicus curiae* both in appellate and trial court); Beach
17 Colony II v. California Coastal Com., 151 Cal. App. 3d 1107, 1119 n.7, 199 Cal. Rptr. 195, 203
18 n.7 (Cal. Ct. App. 1984) (City of Del Mar appeared as *amicus curiae* both in appellate and trial
19 court); Great Western Sav. & Loan Asso. v. City of Los Angeles, 31 Cal. App. 3d 403, 407 n.5
20 and 414, 107 Cal. Rptr. 359, 362 n.5 and 367 (Cal. Ct. App. 1973) (owner of property subjacent
21 to land owned by developer seeking writ of mandate ordering recordation of tract map was
22 permitted to argue *amicus curiae* upon the conclusion of the trial).

23 We further submit that the Court's acceptance of the FTC's *amicus* memorandum need
24 not result in any delay in the Court's consideration of the proposed settlement at the Settlement
25 Hearing on January 18, 2006. For the foregoing reasons, the FTC respectfully moves for leave to
26 file the Memorandum of Law as *Amicus Curiae* being lodged with this motion.

1 Dated: January 5, 2006

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, David M. Newman, an attorney, hereby certify that, on this 4th day of January, 2006, I have caused to be served copies of the foregoing Motion by the Federal Trade Commission for Leave to File Memorandum of Law as *Amicus Curiae*; Proposed Order; and Memorandum of Law as *Amicus Curiae*, by overnight delivery, on each of the following:

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