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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 PRESERVATION
12 TECHNOLOGIES, LLC,

13 Plaintiff(s),

14 v.

15 NETFLIX, INC., ET AL,

16 Defendant(s).
17 _____

) CASE NO. SACV 11-1862-JVS(RNBx)

) INITIAL ORDER FOLLOWING
) FILING OF COMPLAINT ASSIGNED
) TO JUDGE SELNA

18 **Important Notice: The Court posts tentative law and motions rulings**
19 **to the internet. Please see Section P, below.**
20

21 COUNSEL FOR PLAINTIFF SHALL SERVE THIS ORDER ON ALL
22 DEFENDANTS AND/OR THEIR COUNSEL ALONG WITH THE SUMMONS
23 AND COMPLAINT, OR IF THAT IS NOT PRACTICABLE AS SOON AS
24 POSSIBLE THEREAFTER. IF THIS CASE WAS ASSIGNED TO THIS
25 COURT AFTER BEING REMOVED FROM STATE COURT, THE
26 DEFENDANT WHO REMOVED THE CASE SHALL SERVE THIS ORDER
27 ON ALL OTHER PARTIES.
28

1
2 This case has been assigned to the calendar of Judge James V. Selna.
3 The intent of this Order is to ensure that this case will proceed so as “to secure [a]
4 just, speedy and inexpensive determination.” (Fed.R.Civ. P., Rule 1.)
5

6 **A. THE COURT’S ORDERS**
7

8 Copies of Judge Selna’s orders that may have specific application to
9 this case are available on the Central District of California website. See ¶ N.
10 Those orders include the following:
11

- 12 (1) Order Setting Rule 26(f) Scheduling Conference
13 (2) Order re Civil Jury Trials
14 (3) Order re Civil Court Trials
15 (4) Order re RICO Case Statement
16

17 **B. SERVICE OF PLEADINGS**
18

19 Although Fed.R.Civ.P., Rule 4(m) does not require the summons and
20 complaint to be served for as much as 120 days, the Court expects that the initial
21 pleadings will be served much sooner than that, and will require plaintiff to show
22 cause before then if it appears that there is undue delay.
23

24 **C. ASSIGNMENT TO A MAGISTRATE JUDGE**
25

26 Under 28 U.S.C. § 636, the parties may consent to have a Magistrate
27 Judge preside over all proceedings, including trial. The Magistrate Judges who
28 accept those designations are identified on the Central District’s website, which

1 also contains the consent form. See ¶ N.

2
3 **D. EX PARTE PRACTICE**

4
5 *Ex parte* applications are solely for extraordinary relief and should be
6 used with discretion. See Mission Power Engineering Company v. Continental
7 Casualty Co., 883 F. Supp. 488 (C. D. Cal. 1995). The Court will generally
8 decide *ex parte* matters on the papers. Opposition to an *ex parte* application, if
9 any, should be submitted within 24 hours.

10
11 **E. APPLICATIONS AND STIPULATIONS FOR EXTENSIONS**
12 **OF TIME**

13
14 No stipulations extending scheduling requirements or modifying
15 applicable rules are effective until and unless the Court approves them. Both
16 applications and stipulations must set forth:

- 17
- 18 1. The existing due date or hearing date;
 - 19
 - 20 2. Specific, concrete reasons supporting good cause for granting the
21 extension. In this regard, a statement that an extension “will promote settlement”
22 is insufficient. The requesting party or parties must indicate the status of ongoing
23 negotiations: Have written proposals been exchanged? Is counsel in the process of
24 reviewing a draft settlement agreement? Has a mediator been selected?
 - 25
 - 26 3. Whether there have been prior requests for extensions, and
27 whether these were granted or denied by the Court.
 - 28

1 **F. TRO'S AND INJUNCTIONS**

2
3 Parties seeking emergency or provisional relief shall comply with
4 F.R.Civ.P., Rule 65 and Local Rule 65. The Court will not rule on any application
5 for such relief for at least 24 hours after the party subject to the requested order
6 has been served; such party may file opposing or responding papers in the interim.

7
8
9 **G. CASES REMOVED FROM STATE COURT**

10
11 All documents filed in state court, including documents appended to
12 the complaint, answers and motions, must be refiled in this Court as a supplement
13 to the Notice of Renewal, if not already included. See 28 U.S.C. § 1447(a),(b). If
14 the defendant has not yet answered or moved, the answer or responsive pleading
15 filed in this Court must comply with the Federal Rules of Civil Procedure and the
16 Local Rules of the Central District. If before the case was removed a motion was
17 pending in state court, it must be re-noticed in accordance with Local Rule 7.

18
19 **H. STATUS OF FICTITIOUSLY NAMED DEFENDANTS**

20
21 This Court intends to adhere to the following procedures where a matter
22 is removed to this Court on diversity grounds with fictitiously named defendants.
23 (See 28 U.S.C. §§ 1441(a) and 1447.)

24
25 1. Plaintiff is normally expected to ascertain the identity of and serve
26 any fictitiously named defendants within 120 days of the removal of the action to this
27 Court.
28

1 2. If plaintiff believes (by reason of the necessity for discovery or
2 otherwise) that fictitiously named defendants cannot be fully identified within the
3 120-day period, an *ex parte* application requesting permission to extend that period
4 to effectuate service may be filed with this Court. Such application shall state the
5 reasons therefor, and may be granted upon a showing of good cause. The *ex parte*
6 application shall be served upon all appearing parties, and shall state that appearing
7 parties may comment within seven (7) days of the filing of the *ex parte* application.
8

9 3. If plaintiff desires to substitute a named defendant for one of the
10 fictitiously named parties, plaintiff first shall seek to obtain consent from counsel
11 for the previously-identified defendants (and counsel for the fictitiously named
12 party, if that party has separate counsel). If consent is withheld or denied, plaintiff
13 may apply *ex parte* requesting such amendment, with notice to all appearing parties.
14 Each party shall have seven calendar days to respond. The *ex parte* application and
15 any response should comment not only on the substitution of the named party for a
16 fictitiously named defendant, but on the question of whether the matter should
17 thereafter be remanded to the Superior Court if diversity of citizenship is destroyed
18 by the addition of the new substituted party. See U.S.C. § 1447(c), (d).
19

20 **I. BANKRUPTCY APPEALS**
21

22 Counsel shall comply with the ORDER RE PROCEDURE TO BE
23 FOLLOWED IN APPEAL FROM BANKRUPTCY COURT issued at the time the
24 appeal is filed in the District Court.
25

26 **J. MOTIONS UNDER FED.R.CIV.P., Rule 12**
27
28

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