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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

BOROUGH OF LONGPORT and
TOWNSHIP OF IRVINGTON,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

NETFLIX, INC. and HULU, LLC,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Borough of Longport and Township of Irvington, individually and on behalf of all others similarly situated (the “Class,” as more fully defined below), file this Class Action Complaint against Defendants Netflix, Inc. and Hulu, LLC (collectively “Defendants”), alleging violations of New Jersey’s Cable Television Act, N.J. Rev. Stat. § 48:5A-1, *et seq.*, as follows:

I. INTRODUCTION

1. Defendants provide online streaming services, using wireline facilities (*i.e.*, broadband wireline facilities) located at least in part in public rights-of-way. Defendants' services, which offer subscribers a catalog of television shows, movies and other programming, are comparable to that provided by traditional cable companies and television-broadcast stations and are available to customers throughout the state of New Jersey.

2. New Jersey's Cable Television Act, N.J. Rev. Stat. § 48:5A-1, *et seq.* (the "CTA") governs entities that provide "video programming" and "cable television service" to subscribers and the CTA imposes certain franchise and fee obligations on these entities.

3. Under the CTA, Defendants qualify as providers of "video programming" and "cable television service" and are thus required to pay New Jersey municipalities franchise fees equivalent to a percentage of their gross revenue, derived in each municipality.

4. Defendants, however, have failed to pay the required fee, necessitating this lawsuit, and entitling Plaintiffs and the putative class to the relief requested herein.

II. PARTIES

5. Plaintiff Borough of Longport is a lawfully existing New Jersey

municipality located in Atlantic County, New Jersey.

6. Plaintiff Township of Irvington is a lawfully existing New Jersey municipality located in Essex County, New Jersey.

7. Defendant Netflix, Inc. (“Netflix”) is a Delaware corporation, headquartered in Los Gatos, California. Netflix owns and operates the video streaming service of the same name. Netflix does business in Longport, New Jersey and Irvington, New Jersey and has done so at all times relevant to this action.

8. Defendant Hulu, LLC (“Hulu”) is a Delaware limited liability company, headquartered in Santa Monica, California. Hulu owns and operates the video streaming service of the same name. Hulu is currently owned jointly by The Walt Disney Company and Comcast Corporation. Hulu does business in Longport, New Jersey and Irvington, New Jersey and has done so at all times relevant to this action.

III. JURISDICTION AND VENUE

9. This Court has original jurisdiction over this action under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d). Defendants are citizens of a state different from that of Plaintiffs, the putative class size is greater than 100, and the aggregate amount in controversy for the proposed Class exceeds \$5,000,000.00, exclusive of interest and costs.

10. Venue is proper in this District, and this Court has personal jurisdiction

over Defendants, pursuant to 18 U.S.C. § 1965(a) and 28 U.S.C. § 1391(b), because a substantial part of the events giving rise to the claims occurred in this District, and because Defendants “transact affairs” in this District; each Defendant continuously and systematically engaged in and continues to engage in business in this District.

IV. FACTUAL ALLEGATIONS

A. Defendants’ Video Streaming Businesses

11. Netflix is the world’s leading subscription entertainment service, offering paid streaming memberships around the world to view “TV series, documentaries and feature films across a wide variety of genres and languages.” Netflix’s streaming service allows “[m]embers [to] watch as much as they want, anytime, anywhere, on any internet-connected screen. Members can play, pause and resume watching, all without commercials.”¹

12. Netflix describes itself as “a pioneer in the delivery of streaming entertainment, launching our streaming service in 2007. Since this launch, we have developed an ecosystem for internet-connected screens and have added increasing amounts of content that enable consumers to enjoy entertainment directly on their internet-connected screens. As a result of these efforts, we have experienced growing consumer acceptance of, and interest in, the delivery of streaming

¹ Netflix, Inc., *2019 Annual Report*, at 1 (2020).

entertainment.”²

13. Netflix’s streaming memberships exceed 200 million in number worldwide.³

14. “Hulu aggregates acquired and original television and film entertainment content for distribution to internet-connected devices. Hulu offers a subscription-based service with limited commercial announcements and a subscription-based service with no commercial announcements. In addition, Hulu operates a digital OTT MVPD service, which offers linear streams of broadcast and cable channels, including the major broadcast networks.”⁴ Hulu has subscribers in excess of 39 million.⁵

B. New Jersey’s Cable Television Act

15. New Jersey’s Cable Television Act, N.J. Rev. Stat. § 48:5A-1, *et seq.* (the “CTA”), governs the providers of “cable television service” or “CATV” which are defined as:

(1) the one-way transmission to subscribers of (a) video programming, or (b) other programming service; and (2) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, regardless of the technology utilized by a cable

² *Id.*

³ Netflix, Inc., *2020 Earnings Call Transcript*, at 7 (Tuesday, January 19, 2021).

⁴ The Walt Disney Company, *2019 Annual Report*, at 16 (2020).

⁵ The Walt Disney Company, *2021 First Quarter Earnings Report*, at 5 (February 11, 2021).

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