

## CLASS ACTION CONTINGENT FEE AGREEMENT

The City of Fort Scott, Kansas ("Clients" or "you") hires Kapke & Willerth, LLC and designated associate counsel to investigate, evaluate, and if appropriate, to represent your interests as representatives in an action for damages against Netflix, Hulu and others for failing to pay a video franchise fee pursuant to K.S.A 12-2022, et. seq.

1. **Client's Duty as a Representative.** As a representative, the Court may require that the Client will adequately and fairly represent the Plan. This is your duty. Here is how you are expected to accomplish that duty:

a. *You must be generally familiar with the litigation.*

(1) This does not mean you must know every aspect of this litigation. We will keep you informed of major events and this will satisfy your duty. You should read the Petition and understand it generally. You should know who the parties are. You should know why you are suing.

(2) You may and should confer with us at any time you feel it is appropriate to do so.

b. *You must vigorously prosecute the litigation.*

This basically means that you will authorize your Attorneys to do what is necessary to successfully prosecute this case on behalf of the class. You have done so and we are vigorously pursuing this case.

2. **Responsibility for Expenses and Costs.** Attorneys shall be legally responsible for advancing all expenses and costs associated with the case, including, but not limited to, filing fees, service fees, witness fees, research fees, charges for investigation, records, medical reports, photographs, exhibits, photocopies, facsimiles, extraordinary postage, travel, meals, and accommodations, local counsel if paid hourly (excluding any contingency participant), expert fees and expenses (consulting and testifying), extraordinary document management, and videotaping and other deposition recording and reproduction expenses. All expenses and costs will be deducted from the recovery before calculating the Attorneys' fees unless fees have been awarded by the Court.

3. **Notice to the Class.** You may be responsible for providing notice to the class, depending on whether the state or federal rules or the judge requires such notice. We will undertake this task on your behalf and be responsible for advancing all such costs. Notice is usually accomplished by mailing a copy to identifiable class members and publishing a copy of the class notice in newspapers.

4. **No Special Treatment.** You have not been promised any special treatment above the treatment which may be awarded to other class members. If successful, however, we will ask the judge to award you additional compensation for the extra time and effort you expend as a class representative and for having the courage to challenge defendants' conduct. We cannot guarantee the judge will do so, but incentive awards are often awarded in successful class actions to the class representatives.

5. **You Do Not Have a Duty to Investigate or to Be an Expert.** As an intimidation tactic, defendants may ask you in a deposition what investigation you have undertaken to fulfill your duty as a representative. You have no such duty personally - this is why you have hired experienced lawyers. We have conducted a thorough investigation and expect that you will rely on our advice. We will and have discussed with you our investigation. Nevertheless, it is a good practice for you to familiarize yourself with the allegations in the lawsuit, to keep a file on this matter, to read our reports to you, and to stay generally abreast of developments.

6. **Attorneys' Fees.** Our fees (payment for our time) must be approved by the Court and are dependent upon a successful recovery. This is a Contingent Fee Agreement. Unless the Court orders otherwise, Clients (and the Class or Plan) will pay Attorneys the contingency, if any, set forth below. The contingency upon which the attorneys' fees shall be due to Attorneys is the recovery of damages or other benefits to Clients (and the Class or Plan) recovered by settlement or trial. "Recovery of damages or other benefits" includes all monies paid in settlement or award of damages, attorneys' fees, expenses, costs, back pay, penalties, punitive damages, value of injunctive relief, pre-or post-judgment interest, or anything else of monetary value. Attorneys' fees will be calculated, after deduction of expenses and costs (and interest, if allowed), as a percentage of the recovery of damage or other benefits to Clients (and Class or Plan) as follows:

33% of all amounts recovered by settlement or payment of judgment after trial or after appeal;

**If there is no recovery, no contingency attorneys' fee, expenses or costs will be paid by you.**

If only injunctive or declaratory relief is obtained, Attorneys' fees and expenses shall be awarded based on the value of their work (with any enhancements or multipliers) allowed by the Court.

If the Court should award attorneys' fees on an hourly basis, with or without a multiplier, the Clients (and Class or Plan) recognize that the usual hourly rates of the Attorneys of \$500/hour would not completely compensate them for taking the risk inherent in a class action.

7. **Settlement.** We will consult you before recommending a settlement. You agree not to settle the claims in any manner without the written consent of Attorneys. If this case settles and does not go to trial, the settlement must be approved by the Court. You are entitled to object to the settlement if you do not agree with our recommendations to settle.

8. **Judicial Approval.** In prosecuting a class action, all of our actions, including the payment of fees, expenses, and costs, are subject to judicial approval and courts take that approval seriously.

9. **Associate Counsel.** Attorneys reserve the right to, may, and probably will, associate with other attorneys and law firms in representing Clients, without additional expense or fee obligation to Clients. Clients consent to such association and to any division of attorneys' fees and costs that might be agreed upon among associated counsel.

10. **Probate.** In the event a death requires commencement of a probate action to prosecute Clients' case, Clients authorize Attorneys to retain probate counsel. Fees and expenses incurred in any probate proceeding will be considered a cost item borne by Attorneys under paragraph 3.

11. **Withdrawal and Discharge.** Attorneys may at any time, during the course of settlement negotiations or litigation, be required because of a conflict or other reason to withdraw from the case. If Attorneys withdraw, for any reason, Clients will consider Attorneys' recommendation for replacement counsel and will encourage replacement counsel subsequently chosen to work with Attorneys to gain the benefit of the investigation and work product which was generated from the efforts of Attorneys to that point. Attorneys will be at liberty to negotiate with replacement counsel the value of services and information and make whatever agreements Attorneys deem prudent with the replacement counsel. Should a decision by Attorneys to withdraw result in costs being duplicated, Clients will not be obligated to reimburse Attorneys for those items. If Clients discharge Attorneys, or if Attorneys withdraw for cause other than for a conflict of interest, Clients agree to pay Attorneys a reasonable attorney fee and any unreimbursed costs out of the recovery, if any.

12. **Merger Clause and No Oral Modifications.** This Agreement comprises the total understanding as to the contingent fee agreement between Attorneys and Clients in this matter. It is agreed that the terms of this Contingent Fee Agreement may be altered or amended, as circumstances warrant, only by an amendment in writing signed by both a member of Attorneys and Clients. This Agreement shall be governed by the laws of the State of Kansas, without regard to choice of law rules.

13. **Binding on Successors.** The terms of this Agreement shall be binding on the heirs, estates, successors, and assigns of the parties. If for any reason it is not a binding contract, Attorneys will be entitled to the value of their services in equity/quantum meruit.

14. **Signature by Facsimile.** Signature by fax is as binding as an original, and the signature page to this Agreement may be signed in multiple copies, faxes, digital images or originals.


Having read and fully understanding the above Agreement, the parties sign this Agreement.

KAPKE & WILLERTH, LLC

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By: Michael J. Fleming

CLIENT:

 - City of Fort Scott - City Manager.