KING & SPALDING LLP
ARWEN R. JOHNSON (SBN 247583)
arwen.johnson@kslaw.com
KELLY PERIGOE (SBN 268872)
kperigoe@kslaw.com
633 West Fifth Street, Suite 1600
Los Angeles, CA 90071
Telephone: (213) 443-4355
Facsimile: (213) 443-4310

Attorneys for Defendant NETFLIX, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

NONA GAPRINDASHVILI, an individual,

Plaintiff,

v.

NETFLIX, INC., a Delaware corporation, and DOES 1-50,

Defendants.

Case No. 2:21-cv-07408-VAP-SK
The Honorable Virginia A. Phillips
Courtroom: 8A

DEFENDANT NETFLIX, INC.'S REPLY IN SUPPORT OF ITS (1) SPECIAL MOTION TO STRIKE PLAINTIFF'S FIRST AMENDED COMPLAINT UNDER CALIFORNIA'S ANTI-SLAPP STATUTE, OR, IN THE ALTERNATIVE, (2) MOTION TO DISMISS PURSUANT TO RULE 12(B)(6)

[Reply Declaration of Arwen R. Johnson with Exhibit; Evidentiary Objections filed concurrently herewith]

Date: January 24, 2022
Time: 2:00 p.m.
Judge: The Honorable Virginia A. Phillips

Action Filed: September 16, 2021
Trial Date: Not Set

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

I. INTRODUCTION

Netflix demonstrated in its motion that Plaintiff cannot satisfy her anti-SLAPP burden as to her defamation and false light claims. Courts have repeatedly recognized that reasonable viewers of fictional works do not assume they convey statements of objective fact. Taken in context, as it must be, the Line is not actionable for numerous reasons, each of which is an independent basis for striking Plaintiff's claims.

Plaintiff's opposition fails to overcome any of Netflix's five independent grounds as to why she cannot satisfy her burden. She does not meaningfully address Netflix's many controlling cases and misstates the relevant standards, relying almost exclusively on non-binding, inapposite caselaw that cannot save her claims. Rather than contend with Netflix's arguments or authorities, Plaintiff sets up several strawman arguments and devotes much of her opposition to mining Scott Frank's testimony for purported trivial inconsistencies—ignoring that the Court may decide four of the five independent grounds for Netflix's motion as a matter of law without reference to extrinsic evidence.[1] And Plaintiff's arguments about the fifth ground for Netflix's motion (*i.e.*, her inability to meet her burden on actual malice) *confirm* the adequacy of Netflix's investigation: As Frank testified, he did not believe the Line was inaccurate and two world-renowned chess experts reviewed the draft screenplay and did not flag any concerns with the Line.

Because Plaintiff cannot meet her anti-SLAPP burden, the Court should grant Netflix's motion and dismiss her claims with prejudice.

II. THE FAC SHOULD BE STRICKEN

Plaintiff agrees that Netflix has satisfied the first step of the anti-SLAPP inquiry, and thus the motion turns on her ability to demonstrate "a probability that [she] will prevail on each element" of her claims at step two. *See Harkonen v. Fleming*, 880 F. Supp.2d 1071, 1078 (N.D. Cal. 2012). Plaintiff fails to meet her burden.

[1] As set forth in the evidentiary objections, Plaintiff did not submit any of Frank's deposition testimony with her opposition, in violation of the Local Rules. *See* L.R. 7-6, 7-9. Her counsel's representations about Frank's testimony are not evidence.

A. *A Reasonable Viewer Would Not Construe the Line as Conveying Objective Fact*

To begin, a reasonable viewer would not assume statements in fictional works—even those that portray real characters—are assertions of objective fact. *See* Mot. at 12-15. Courts recognize that viewers are "sufficiently familiar with [the docudrama] genre to avoid assuming that all statements within them represent assertions of verifiable facts." *Partington v. Bugliosi*, 56 F.3d 1147, 1155 (9th Cir. 1995); *see also De Havilland v. FX Networks, LLC*, 21 Cal.App.5th 845, 866 (2018) (questioning if reasonable viewer would view docudrama "as entirely factual"). Here, the Series is not a docudrama; it is pure fiction. It was adapted from fiction, the Line is dialogue by a fictional character, and disclosures in each episode reiterate that the Series is a work of fiction based on a fictional novel. *E.g.*, Ex. 1, Ep. 7 at 29:45-30:31,1:04:52, and 1:06:03.

Plaintiff does not dispute that the Series is fictional, but ignores that crucial context in contravention of the well-settled principle that "[f]or words to be defamatory, they must be understood in a defamatory sense" and "the context in which the statement was made must be considered." *Issa v. Applegate*, 31 Cal.App.5th 689, 703 (2019). Plaintiff thus does not grapple with the majority of cases Netflix identified holding that the fictional nature of a work undermined the publisher's liability for alleged defamatory statements. Mot. at 12-15 (citing cases). Plaintiff argues Netflix's reliance on *De Havilland*, *Sarver v. Hurt Locker LLC*, No. 2:10-CV-09034-JHN, 2011 WL 11574477, at *8 (C.D. Cal. Oct. 13, 2011), aff'd sub nom, *Sarver v. Chartier*, 813 F.3d 891 (9th Cir. 2016), and *Guglielmi v. Spelling-Goldberg Prod.*, 25 Cal. 3d 860 (1979), is misplaced because they were right of publicity cases. But *De Havilland* and *Sarver* both analyzed false light and/or defamation claims, concluding that they lacked merit for many of the same reasons that Plaintiff's claims fail. *See De Havilland*, 21 Cal.App.5th at 866 (striking false light claim where plaintiff failed to establish that a reasonable viewer, viewing the fictional work in its context, would have understood the statements at issue to convey statements of fact); *Sarver*, 2011 WL 11574477 at *9

(striking false light and defamation claims where court disagreed with plaintiff's subjective interpretation of fictional work). And *Guglielmi* compares right of publicity and defamation claims in fiction, noting that "the author who denotes his work as fiction proclaims his literary license and indifference to 'the facts'" and that "all fiction, by definition, eschews an obligation to be faithful to historical truth." 25 Cal.3d at 871 (cited with approval in *Sarver*).

By contrast, *Bindrim v. Mitchell*, 92 Cal.App.3d 61 (1979), the sole case on which Plaintiff relies, is inapposite because it concerned whether a fictional character could be found to be "of and concerning" a particular plaintiff, an element not at issue here. *Bindrim* simply reinforced the reasonable viewer standard and noted that "[e]ach case must stand on its own facts." *Id.* at 78. Here, no reasonable viewer observing the Line in its context—including the fictional nature of the Series and the unreliability of the fictitious announcer responsible for the Line—would interpret it as objective fact.

In an effort to circumvent this bedrock principle, Plaintiff also sets up various strawman arguments that do not advance her cause. Netflix has not argued that Plaintiff cannot prove defamation because the Line "resides in just one sentence." Opp. at 6. To the contrary, Netflix argued that the Line must be considered within the context of the fictional Series—a basic rule of defamation law. *See Issa*, 31 Cal.App.5th at 703. Nor has Netflix argued that the disclaimers in the Series are alone dispositive. They are, however, a powerful additional factor that bolsters the fictional nature of the Series, further undermining any claim that a reasonable viewer would construe the Line as conveying objective fact. *See Mossack Fonseca & Co. v. Netflix, Inc.*, No. CV 19-9330-CBM-AS(x), 2020 WL 8510342, at * 4 (C.D. Cal. Dec. 23, 2020) (disclaimers about how a film was fictionalized particularly supported the court's conclusion that no reasonable viewer would interpret the film to convey objective fact).[2] Here, the

[2] Even in *Stanton v. Metro Corp.*, 438 F.3d 119 (1st Cir. 2006), one of many nonbinding cases on which Plaintiff relies, the First Circuit specifically left open the possibility that

disclaimers, included in every episode, specifically reinforced that the Series was based on a novel, the "characters and events depicted in this program are fictitious," and "[n]o depiction of actual persons or events is intended." *E.g.*, Ep. 7 at 1:06:03. Given this explicit language, no reasonable viewer could construe the Line or the Series as making any factual representations. Considered in context as it must be—*i.e.*, spoken by a fictional character in a fictional series, based on a fictional novel, that includes multiple disclaimers—the Line does not "convey the requisite factual implication" as a matter of law. *Issa*, 31 Cal.App.5th at 703.

B. Plaintiff Cannot Show That a Reasonable Viewer Would Draw the Implication She Alleged or that the Implication is "Highly Offensive"

As Netflix also demonstrated, whether the Line can be interpreted in a defamatory light is an objective standard that likewise requires analyzing the Line within the context of the Series as a whole. *De Havilland*, 21 Cal.App.5th at 865–66. Because the context of the Line makes clear that Plaintiff's failure to face men as of 1968 would have been attributable to the pervasive sexism and gender segregation of the Cold War era, rather than any inferiority on Plaintiff's part, she also cannot meet her burden on the defamatory element of her claims. *See* Mot. at 15-17. Indeed, even if Plaintiff were correct that the Line implied that she was inferior to male grandmasters, which it does not, that implication is not defamatory as a matter of law.

Plaintiff's only response is to assert that "*of course*" the Line "carries the stigma that women bear a badge of inferiority" because "what else is conveyed by 'she has never faced men' other than 'she is not as good as men?'" Opp. at 11. Plaintiff's subjective interpretation, however, is entirely divorced from the context of the Series and fails to take into account the extremely sympathetic portrayal of the challenges that Harmon and other female characters face, including Harmon's struggles against sexism and gender-segregation in the male-dominated world of 1960s chess. Taken in context,

---

disclaimers could render a statement incapable of conveying a defamatory meaning, correctly observing that "context matters." 438 F.3d at 128.

the Line conveys that Plaintiff "never faced men" not because of her abilities—which the Line explicitly lauds by describing her as the "female world champion"—but because of the widespread gender-segregation in the Soviet competitive chess world of the era. No reasonable viewer of the Series would conclude in its broad context that the Line meant that Plaintiff was inferior to men. *Underwager v. Channel 9 Austl.*, 69 F.3d 361, 366 (9th Cir. 1995). And to the extent Plaintiff argues that the Line is offensive because it purportedly elevates Harmon's character's accomplishments over her own, Opp. at 10–11, Plaintiff fails to cite *any* precedent recognizing a defamation claim based on an allegedly unfavorable comparison to a *fictional* character.

Despite Plaintiff's acknowledgment that the standard here is an *objective* one, she argues that the Court should nonetheless consider the *subjective* opinions of a handful of specific viewers out of the 62 million households that viewed the series. *See* FAC, ¶ 62. Outlier tweets by purported chess enthusiasts, however, are not probative of how reasonable viewers would interpret the Line.[3] Indeed, as Plaintiff's own precedents recognize, "the test is not whether some actual readers were misled" but whether a reasonable viewer would be. *Tah v. Global Witness Publ., Inc.*, 413 F.Supp.3d 1, 11 (D.D.C. 2019). Neither *Tah* nor *Vasquez v. Whole Foods Market, Inc.*, 302 F.Supp.3d 36 (D.D.C. 2018), the other out-of-Circuit case on which Plaintiff relies, compels a different conclusion. In *Vasquez*, the court simply observed that the plaintiff could rely upon extrinsic evidence to show that listeners understood the statements to pertain to the plaintiff—an element not at issue here. 302 F.Supp.3d at 64. And in *Tah*, the court looked to the language of the report itself to analyze its defamatory implication, noting that the actual view of a certain reader was "not dispositive." 413 F.Supp.3d at 11. Neither *Tah* nor *Vasquez* supplants the objective test with the subjective perspective of a handful of viewers. *De Havilland*, 21 Cal.App.5th at 865-

[3] The Court should disregard these cherry-picked Twitter posts, as Plaintiff's counsel cannot lay a proper foundation for these unidentified third-party tweets.

66. Because no reasonable viewer could draw the alleged inference of inferiority from the Line when considering it in its broad context and the Series as a whole, the Court should grant the motion. *See Underwager*, 69 F.3d at 366 (courts must analyze the statement "in its broad context, which includes the general tenor of the entire work, the subject of the statements, the setting, and the format of the work").

Finally, even if the Line implied that Plaintiff—despite being the female world champion—was not good enough to play against male grandmasters (it does not), such an implication is not defamatory as a matter of law. The implication that Plaintiff, while still an elite chess player, was not *as* elite as she in fact was is not highly offensive. *See Sarver*, 813 F.3d at 906. In Sarver, for example, the court held that even if some aspects of the portrayal of the plaintiff were "unflattering, it does not support the conclusion that the film's overall depiction of [the character] could reasonably be seen to defame" him given that he was depicted as "a heroic figure." *Id*. Here, Plaintiff was portrayed as one of the world's best chess players, struggling with presumably the same sexism many female chess players of the era experienced. Because she cannot establish a reasonable viewer of the Series would draw an actionable negative implication from the Line, the Court should grant the motion. *See Heller v. NBC Universal*, No. CV-15-09631-MWF-KS, 2016 WL 6583048, at *6 (C.D. Cal. June 29, 2016).

C. The Line Does Not Constitute Defamation Per Se, and Plaintiff Cannot Satisfy the Special-Damages Element of a Defamation Per Quod Claim

Plaintiff also cannot proceed on a defamation *per se* theory for several reasons. *First*, Plaintiff contends that the Line undercuts her "professional standing," arguing "[i]t is no answer that she is 80 years old," Opp. at 14, but the Line refers to Plaintiff's record as of 1968 (when the episode is set) and does nothing to undermine the accomplishments she achieved afterwards—including her 1977 Lone Pine victory, which led to her recognition as a grandmaster in 1978. Netflix has not argued that a person in her 80s cannot be defamed, but rather that a statement as to a moment in time a half century ago has no bearing on the present perception of a decades-long career.

She cannot plausibly argue an opponent today would view her abilities any differently based on whether she first faced men in elite tournaments in 1963 or 1968, and thus the Line does not injure her in her profession. *Cf. MacLeod v. Trib. Publ'g Co.*, 52 Cal.2d 536, 546 (1959) (allegation that plaintiff was a communist sympathizer during an era when "anti-communist sentiment" was "crystalized" was considered "libelous on its face"); *Burrill v. Nair*, 217 Cal.App.4th 357, 383 (2013), disapproved of on other grounds by *Baral v. Schnitt*, 1 Cal.5th 376 (2016) (false statements "tending directly to injure a plaintiff in respect to his or her profession by imputing dishonesty or questionable professional conduct are defamatory *per se*").

Second, even if the Line implied Plaintiff was inferior to male players (it does not), reasonable viewers would not "understand [its] defamatory meaning without the necessity of knowing extrinsic explanatory matter," as required for defamation *per se* liability. *Balla*, 59 Cal.App.5th at 676; *see also McGarry v. Univ. of San Diego*, 154 Cal.App.4th 97, 112 (2007). No reasonable viewer could infer a negative implication from the statement that a female chess player in 1968 did not play men, absent extrinsic knowledge of whether female chess players even had opportunities to play tournaments against men in the Soviet Union at that time. Mot. 18-21. Relying on *MacLeod*, Plaintiff argues that a statement can be defamatory *per se* while still leaving room for an innocent interpretation, Opp. at 15-16, but that does not change that a statement must still carry a defamatory implication *on its face*, which the Line does not.

Third, the alleged implication that Plaintiff was inferior to male players is a paradigmatic example of a non-actionable statement of opinion because it is a subjective assessment of professional competence not susceptible to objective proof. *See* Mot. at 16-17; *Partington*, 56 F.3d at 1156–58 (publication of a lawyer's failure to admit certain evidence was not defamatory because "[e]ven if [the court] were to attribute to [the allegedly defamatory] statement the implication that [plaintiff] contends arises from it. . .[defendant] can only be said to have expressed his own opinion").

Plaintiff's claim thus must be construed as a defamation *per quod* claim. But a

per quod claim requires pleading and proving special damages, which Plaintiff does not and cannot do. *See* Mot. at 18-21. Where, as here, a claim under California law requires pleading and proof of special damages (*i.e.*, economic losses), allegations of special damages "shall be specifically stated." Fed. R. Civ. P. 9(g); *Isuzu Motors Ltd. v. Consumers Union of U.S., Inc.*, 12 F.Supp.2d 1035, 1047 (C.D. Cal. 1998). Summarily alleging economic loss, as Plaintiff does, *see* FAC, ¶ 78, fails to satisfy that heightened pleading standard. *See id.* ("A bare allegation of the amount of pecuniary loss alleged is insufficient"); *Todd v. Lovecruft*, No. 19-cv-01751-DMR, 2020 WL 60199, at *20 (N.D. Cal. Jan. 6, 2020) ("A general allegation of the loss of a prospective employment, sale, or profit will not suffice" (quoting *Pridonoff v. Balokovich*, 36 Cal.2d 788, 792 (1951)); *Martin v. Wells Fargo Bank*, No. 17-cv-03425-RGK, 2018 WL 6333688, at *2 (C.D. Cal. Jan. 18, 2018) (allegation that plaintiff suffered, *inter alia*, a lowered credit score, raised interest rates, and loss of business opportunity did was insufficient because "the opportunities allegedly lost are impermissibly vague").

Nor could Plaintiff amend to plead special damages. Not only does she fail to explain how she would do so, *see* Opp. at 15-17, Gaprindashvili Decl., ¶¶ 18-22, but any such amendment would be implausible. There is no indication her successes in senior tournaments would have been undermined if some opponents believed some of her achievements occurred after instead of before 1968—much less that any of her opponents in elite senior chess tournaments based their knowledge of her on the Series.

D. The Gist of the Line is Substantially True

As Netflix also established, the substantial truth defense independently bars Plaintiff's claims. The gist of the Line in context, *i.e.*, that Plaintiff had never faced male players at major Soviet tournaments before 1968, is true. *See* Mot. at 21-23. Even in her opposition, Plaintiff focuses on *any* competition she played against men before 1968, again ignoring the critical context of the Line, which occurs in the finale at the fictional Moscow Invitational, a setting integral to one of the Series' central themes—the value of collectivism over individualism in the clash between Soviet and American

values in the context of the Cold War. Opp. at 18-19.[4] But even if the gist were that she had never faced men in *any* tournaments, not just major Soviet tournaments (it is not), the Line would be off by only a relatively short period of time; the substantial truth defense would still defeat her claims. *Cf. Vogel v. Felice*, 127 Cal.App.4th 1006, 1021-22 (2005); *Guccione v. Hustler Magazine Inc.*, 800 F.2d 298, 302 (2d Cir. 1986) (cited approvingly by *Hughes v. Hughes*, 122 Cal.App.4th 931 (2004)).

The opposition now argues that the Line is off by nine years, not five—but tellingly, the pre-1963 matches against men that Plaintiff identifies for the first time in her opposition were not even referenced in her own FAC. Nor does she address the controlling authorities establishing that comparable discrepancies do not undermine the substantial truth defense. Mot. at 22-23. Plaintiff misleadingly claims Frank testified that "if [Plaintiff's] Wikipedia page is accurate, the Line is false," Opp. at 13 (citing Frank Depo. at 41:09–22),[5] but the *actual* testimony is: "Based on this Wikipedia page you've just showed me and highlighted, she has played men." Frank Depo. at 41:20-22. In any event, the substantial truth defense does not "require [a defendant] to justify the literal truth of every word of the allegedly defamatory content." *Summit Bank v. Rogers*, 206 Cal.App.4th 669, 697 (2012). Rather, "[i]t is sufficient if the defendant proves true the substance of the charge, irrespective of slight inaccuracy in the details." *Heller*, 2016 WL 6583048, at *4 (citation omitted). Netflix has proven the truth of the substance of the Line here. The literal truth would have no "different effect on the mind" of the viewer under the Supreme Court's test in *Masson v. New Yorker Magazine,*

---

[4] Plaintiff's declaration identifies certain Soviet tournaments she says she played against men before 1968, but tellingly, these tournaments apparently were not significant enough to be included in the FAC, and even her retained expert could not uncover them all through his research. Carlin Decl., ¶¶ 10-11.

[5] Frank's testimony is irrelevant because the applicability of the substantial truth defense is "a question of law to be decided by the court." *Baker v. Los Angeles Herald Examiner*, 42 Cal.3d 254, 260 (1986). For this reason, it also was outside the scope of his deposition, which was limited to the actual malice issue. *See* ECF No. 27 ¶ 1.

Inc., 501 U.S. 496, 516-17 (1991), because the Line did not undermine Plaintiff's most notable accomplishments against men, which occurred during the 1970s and culminated in her being the first woman to earn the title of Grandmaster in 1978.

E. Plaintiff Cannot Prove Actual Malice by Clear and Convincing Evidence

Finally, although the Court need not even reach this element, Plaintiff cannot possibly succeed in showing a probability of prevailing on her actual malice argument, which requires her to prove by clear and convincing evidence that Netflix published the Line with knowledge or reckless disregard as to its truth or falsity. As set forth in the motion, Netflix relied on two world-renowned chess experts—Bruce Pandolfini and Garry Kasparov—to review the accuracy of the scripts and flag any concerns, and they identified no concerns about the accuracy of the Line. Mot. at 7, 23-24; Frank Decl., ¶¶ 19-20. Plaintiff does not dispute their qualifications or whether consulting chess experts constituted a sufficient investigation. Rather, she makes the remarkable argument that the experts "must have known that the Line was false" and, with no citation to authority, that Netflix is "charged with" that knowledge. Opp. at 25. At its essence, Plaintiff's position is that if a defendant conducts research before publishing a work, then the defendant must have acted with actual malice. But even a *failure* to investigate is generally insufficient to establish actual malice. *McGarry*, 154 Cal.App.4th at 114. *Conducting* an investigation can only support a finding of actual malice where it raises doubts about the statement's accuracy. *See Masson*, 960 F.2d at 900 (plaintiff "pointed out to [fact-checker] the inaccuracy of various quotations" and asked to review quotes, but was ignored). Netflix's research raised no such doubts.

In speculating about what the investigation "must have" yielded, Plaintiff ignores the only conclusion supported by the evidence: that the experts read the Line and did not raise any concerns because they understood it in the context of the Series to be substantially true. Frank Decl., ¶¶ 19-20. Plaintiff identifies *no* evidence, much less clear and convincing evidence, to show otherwise. Unlike in cases of actual malice, there is no indication the experts were biased against or otherwise hostile towards her.

To the contrary, Plaintiff concedes that Kasparov "made many kind remarks about her" in an interview given in early 2021. Opp. at 25. And she highlights public statements by Kasparov that *confirm* his view that the Line was true—*i.e.*, Plaintiff's most notable achievements, including becoming the first female grandmaster in 1978, occurred a full decade *after* the year in which the Line was set. *Id*. (citing Gaprindashvili Decl., ¶ 19.)

Plaintiff's reliance on the declaration of U.S. National Chess Master Nicholas Carlin is also misplaced. Carlin states that publicly available information on Wikipedia and www.chessgames.com reveals that Plaintiff played against men in high-level tournaments before 1968. Carlin Decl., ¶¶ 7, 12. But whether a defendant *could have* accessed certain information is not the test for actual malice. *McGarry*, 154 Cal.App.4th at 114 (actual malice is a subjective test "under which the defendant's actual belief concerning the truthfulness of the publication is the crucial issue"). Moreover, these sources only reinforce the view that Plaintiff's major play against men occurred in the 1970s. Even the Google search results Carlin attaches to his declaration highlight that she was "the first woman to be awarded the FIDE title Grandmaster, which occurred in 1978" and "was the fifth women's world chess champion," but make *no reference* to her playing men—apart from references to this lawsuit, which plainly post-date the release of the Series. Carlin Decl., Ex. 1.[6] Carlin himself points to Plaintiff's performance at Lone Pine in 1977 as "especially noteworthy to [him]." *Id*. ¶ 8. That Carlin—himself an elite chess player and acting at Plaintiff's counsel's direction—could not even locate a record of some of the pre-1968 Soviet games she identifies in her declaration underscores that Netflix did not act with reckless disregard.

Faced with evidence of Netflix's more than adequate investigation, Plaintiff makes strained attempts to discredit Scott Frank's testimony, all of which are unavailing, and, as set forth in the evidentiary objections, not even before the Court.

[6] Plaintiff does not address *Glory to the Queen*, which similarly focuses on her status as an elite Georgian female player and only refers to her coed play post-1970.

Plaintiff argues, for example that Frank "contradicted himself" about when he learned that Plaintiff was a real person. Opp. at 5. But *when* Frank learned she was real has no bearing on the analysis, and he explained he could not clearly recall when he learned it because the reference was "one line by a minor character" in a 15-second clip of a series with a total running time of more than six hours. Frank Depo. at 37:9-21, 38:15-17.

Plaintiff's argument that Frank must have known the Line was false because the novel stated that Plaintiff "ha[d] met all these Russian Grandmasters many times before," Opp. at 2-3, is based on the flawed premise that the novel—also a work of fiction—contained objective fact. The novel's reference to "these Russian Grandmasters" is not a reference to real people, but rather to the fictional grandmasters who were competing in the fictional Moscow Invitational. *See* Frank Decl., ¶ 5. Frank cannot be faulted for altering one fictional line to create a different fictional line.

Finally, Plaintiff attempts to conjure an admission out of Frank's use of the word "largely" in his statement that he understood Plaintiff's "participation in notable tournaments against male grandmasters largely occurred in the 1970s and later." Opp. at 3, 19-20 (citing Frank Decl., ¶ 21). But Frank's declaration is accurate; he testified, "it was my understanding that she had not competed in any major tournaments with men until later" than 1968. Frank Depo. at 28:17-23. It is also consistent with the gist of the Line—that Plaintiff may have competed in *some* major tournaments before 1968 does not mean she had competed against men in major *Soviet* tournaments by that time. Plaintiff again ignores this critical context in contravention of basic defamation law.

Plaintiff falls far short of showing a probability of proving actual malice by clear and convincing evidence, another reason she fails to meet her anti-SLAPP burden.

III. CONCLUSION

For all the foregoing reasons, Plaintiff's FAC should be stricken under the anti-SLAPP statute or, alternatively, dismissed with prejudice under Rule 12(b)(6).

DATED: December 20, 2021

By: */s/ Arwen R. Johnson*

ARWEN R. JOHNSON (SBN 247583)
arwen.johnson@kslaw.com
KELLY PERIGOE (SBN 268872)
kperigoe@kslaw.com
KING & SPALDING LLP
633 West Fifth Street, Suite 1600
Los Angeles, CA 90071
Telephone: (213) 443-4355
Facsimile: (213) 443-4310

Attorneys for Defendant NETFLIX, INC.