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9

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

12
13 NONA GAPRINDASHVILI, an
individual,

14 Plaintiff,

15 v.

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

17 Defendants.
18
19

CASE No.

**FIRST AMENDED COMPLAINT
FOR:**

**(1) FALSE LIGHT INVASION OF
PRIVACY; AND**

(2) DEFAMATION PER SE

20 Plaintiff Nona Gaprindashvili (“Gaprindashvili”) complains of defendants
21 Netflix, Inc. (“Netflix”), and Does 1 through 50, and alleges as follows:

22 **INTRODUCTION**

23 1. This is an action for false light invasion of privacy and defamation per
24 se arising from a knowingly false statement of fact made about Gaprindashvili in the
25 popular Netflix miniseries, *The Queen’s Gambit* (“Series”).

26 2. Gaprindashvili is a pioneer of women’s chess and a much-loved icon in
27 her native country of Georgia. Throughout her extraordinary career, she won many
28 championships, beat some of the best male chess players in the world, and was the

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1 first woman in history to achieve the status of international chess grandmaster
2 among men.

3 3. In 1983, author Walter Tevis wrote a novel entitled *The Queen’s*
4 *Gambit* (“Novel”) which tells the story of a fictional American woman named
5 Elizabeth Harmon, also known as Beth, mostly set in the 1960’s. Harmon is an
6 orphan who rises from humble beginnings to become a great chess player despite
7 prejudice against female players. The Novel’s final chapter is set at a prestigious
8 chess tournament in Moscow called the Moscow Invitational where she dramatically
9 defeats several top male players, including a Russian who was the world champion.
10 The main characters are fictional, but the Novel references a few real chess players,
11 including Gaprindashvili, who is described in the context of the Moscow
12 Invitational as having “met all these Russian Grandmasters many times before.”

13 4. Although Gaprindashvili is mentioned in the Novel only in passing,
14 Harmon’s character plainly draws on her achievements. Harmon is in many respects
15 an Americanized and fictionalized version of the real-life female Georgian prodigy
16 who was the first to break gender barriers in international chess in the 1960’s by
17 competing with and defeating top male players.

18 5. The Series was based on the Novel and for the most part follows it
19 closely. However, in the final episode, just after Harmon beats a fictional Russian
20 Grandmaster called Viktor Laev at the Moscow Invitational, a commentator
21 observes that the male players in the tournament believed that:

22 “Harmon’s level of play wasn’t at theirs. Someone like Laev probably didn’t
23 spend a lot of time preparing for their match. Elizabeth Harmon’s not at all an
24 important player by their standards. The only unusual thing about her, really, is
25 her sex. And even that’s not unique in Russia. **There’s Nona Gaprindashvili,**
26 **but she’s the female world champion and has never faced men.** My guess is
27 Laev was expecting an easy win, and not at all the 27-move thrashing Beth
28 Harmon just gave him.” (Emphasis added).¹

27 ¹ The scene can be viewed at <https://www.youtube.com/watch?v=gUB6P59CUko>

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1 6. As Gaprindashvili’s name is mentioned in this scene, the camera pans
2 onto an actor sitting in the audience, watching the game, who is obviously meant to
3 be Gaprindashvili.

4 7. The allegation that Gaprindashvili “has never faced men” is manifestly
5 false, as well as being grossly sexist and belittling. By 1968, the year in which this
6 episode is set, she had competed against at least 59 male chess players (28 of them
7 simultaneously in one game), including at least ten Grandmasters of that time,
8 including Dragoljub Velimirovich, Svetozar Gligoric, Paul Keres, Bojan Kurajica,
9 Boris Spassky and Mikhail Tal. The last three were also world champions during
10 their careers.

11 8. These facts were well known to Netflix, both from the Novel which
12 stated that she had “met all these Russian Grandmasters many times before,” and
13 because it had hired two of the world’s leading chess authorities as consultants for
14 the Series: the legendary Garry Kasparov, a Russian former world champion, and
15 American national master Bruce Pandolfini, considered to be America's most
16 experienced chess teacher and a consultant to Tevis when he wrote the Novel.

17 9. Netflix brazenly and deliberately lied about Gaprindashvili’s
18 achievements for the cheap and cynical purpose of “heightening the drama” by
19 making it appear that its fictional hero had managed to do what no other woman,
20 including Gaprindashvili, had done. Thus, in a story that was supposed to inspire
21 women by showing a young woman competing with men at the highest levels of
22 world chess, Netflix humiliated the one real woman trail blazer who had actually
23 faced and defeated men on the world stage in the same era.

24 10. Piling on additional insult to injury, Netflix described Gaprindashvili as
25 Russian, despite knowing that she was Georgian, and that Georgians had suffered
26 under Russian domination when part of the Soviet Union, and had been bullied and
27 invaded by Russia thereafter.

28

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1 11. Netflix had no need to use Gaprindashvili’s name and to disparage her
2 achievements for dramatic purposes. It could have used a fictional character instead;
3 or it could have referred to her by name, but not told the lie that she had never
4 competed against men. Instead, Netflix deliberately eschewed these non-defamatory
5 alternatives because it believed that the lie made for a more dramatic story.

6 12. After the Series was broadcast, Gaprindashvili confronted Netflix over
7 its lie and demanded a public statement acknowledging the falsity of the statement,
8 an apology, and a retraction. Netflix could have responded in any number of
9 inexpensive and morally honorable ways of making redress, but instead it responded
10 with extraordinary hubris, dismissing Gaprindashvili’s assertion of defamation by
11 claiming that the false statement was “innocuous.” This arrogant refusal to take
12 responsibility for its actions was shockingly tone-deaf, given the sexism and
13 offensiveness of its lie.

14 13. This lawsuit is simple in its factual and legal predicates. Netflix lied
15 about Gaprindashvili in a profound and obvious manner, impugning her professional
16 standing by falsely stating she had not competed against men, and thereby
17 insinuating that she lacked the skills to successfully compete against men. This was
18 a devastating falsehood, undermining and degrading her accomplishments before an
19 audience of many millions. Netflix broadcast this statement with knowledge of
20 falsity and reckless disregard for the truth. Gaprindashvili brings this suit to
21 vindicate herself and seek redress for the damage to her good name and human
22 dignity, and to serve as an example to wronged women by reminding them that they
23 have the right to fight back against such cynical misconduct.

24 **JURISDICTION AND VENUE**

25 14. Plaintiff Nona Gaprindashvili is a citizen and resident of the Republic
26 of Georgia. Defendant Netflix, Inc. is a corporation organized and existing under
27 the laws of the State of Delaware with its principal place of business in Santa Clara
28 County, California. This Court has diversity of citizenship subject matter

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1 jurisdiction under 28 U.S.C. § 1332. There is complete diversity among the parties,
2 and the amount in controversy exceeds \$75,000.

3 15. Venue is proper in this District pursuant to 28 U.S.C. § 1332 (b)(3) and
4 (c)(3), because Netflix is subject to the court’s personal jurisdiction with respect to
5 this action because its principal place of business is located in California. It also has
6 offices in this District at 5808 Sunset Boulevard, Los Angeles, California 90028.

7 **PARTIES**

8 16. Gaprindashvili was born in Georgia in 1941. She began playing
9 professionally at the age of 13, and when she was 14, she won the semi-final of the
10 Women’s Soviet Union Championship. In 1961, aged 20, she became female World
11 Champion. She did not relinquish her crown until 1978 when she was defeated by
12 another Georgian, 17-year-old Maia Chiburdanidze, who had grown up inspired by
13 Gaprindashvili as a role model.

14 17. Gaprindashvili participated in and received 25 medals in Chess
15 Olympiads, including 1963, 1966, 1969, 1972, 1974, 1978, 1980, 1982, 1984, 1986,
16 1990 and 1992. She won a total of eleven team gold medals and nine individual gold
17 medals. At the 1986 Olympiad in Dubai, she won all ten games she played.

18 18. Beginning in 1962-63, Gaprindashvili competed against and frequently
19 defeated male chess players. In 1965, she played 28 male players at once,



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1 19. Gaprindashvili encountered severe prejudice when she started to
2 compete against men. As she said in a recent interview, “At first they all wanted to
3 play with me to the end, they didn’t agree to draws, the games were postponed
4 according to the then regulations, they had to finish the game the next morning.
5 Even a draw against a woman infringed on the pride of rivals, so they fought with
6 me to the last. I myself have always played all the games to the end, even if the first
7 place in the tournament is already guaranteed. Over time, of course, they began to
8 treat me differently, they accepted me, one might say, into their company.” See
9 World Today News, November 20, 2020, [https://www.world-today-news.com/the-
10 series-queens-move-lied-about-the-soviet-champion-she-supposedly-didnt-play-
11 with-men/](https://www.world-today-news.com/the-series-queens-move-lied-about-the-soviet-champion-she-supposedly-didnt-play-with-men/).

12 20. In 1976, Gaprindashvili wrote a book in which she spoke about her
13 devotion to chess and her inability to imagine life without a chessboard. In a chapter
14 called “Fighting Discrimination,” she explained how difficult it was to overcome a
15 generally accepted perception that women chess players are weaker than men, and
16 passionately argues that women are equally talented in chess: “Women chess
17 players do not need any privileges or exemptions... The term ‘Women’s chess’ has
18 expired. I am proud that I have my share in promoting the creative emancipation of
19 women in chess. I had my share in helping women to overcome psychological
20 barriers separating them from ‘man’s chess.’”

21 21. Gaprindashvili’s notable successes against men began with her
22 successful entry into the Challengers Section of the Hastings International Chess
23 Congress in England in 1963, which she won, defeating several male players.

24 22. Gaprindashvili was the only female participant in a chess tournament in
25 Reykjavik in 1964. The male chess players at this tournament included the youngest
26 world champion in history at that time (Grandmaster Mikhail Tal), a twelve-time
27 champion of Yugoslavia (Grandmaster Svetozar Gligoric), and a six-time Iceland
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1 champion (Fridrik Ólafsson). Gaprindashvili competed against 13 male chess
2 players, including the Grandmasters mentioned above, and won three games.

3 23. Gaprindashvili returned to Hastings for the 1964-65 tournament, this
4 time in the top-tier Premier Section, and won notable chess victories over highly
5 ranked male players such Victor Mardle, Norman Littlewood, Peter Lee, Owen
6 Hindle. In a particularly famous chess match at this tournament, Gaprindashvili
7 battled Grandmaster Paul Keres to a draw.

8 24. In 1968, Gaprindashvili successfully competed in a tournament against
9 9 men, including Grandmaster Evfim Geller of the Soviet Union. The New York
10 Times reported: “Nona Gaprindashvili of the Soviet Union, the women's world
11 chess champion, was the only woman in the recent strong International Tournament
12 at Goteborg, Sweden. She finished third in the ten-player round robin.” And it
13 praised about her “never-say-die spirit.” New York Times, April 15, 1968

14 <https://timesmachine.nytimes.com/timesmachine/1968/04/15/91225493.html?pagenumber=40>

15
16 25. Gaprindashvili successfully competed in other tournaments against
17 men, including a tie for second place at Sandomierz in 1976, a tie for first place at
18 Lone Pine in 1977, and a tie for second place at Dortmund in 1978. She was the
19 only woman invited to the Lone Pine Tournament, and defeated John Peters, James
20 Tarjan, Leonid Shamkovich, Eugene Martinovsky, Oscar Panno, Peter Biyiasas,
21 Burkhard Malich, Thomas Casper, William James Lombardy, and Grandmaster
22 Anatoly Lein. The New York Times reported: “Nona Gaprindashvili of the Soviet
23 Union, the world women’s champion, achieved the greatest triumph ever by a
24 woman in tying for first place in the Louis D. Statham International Tournament in
25 Lone Pine, Calif., with Grandmaster Yuri Balashov, also of the Soviet Union.
26 Grandmaster Oscar Panno of Argentina and International Master Sahovic of
27 Yugoslavia.” New York Times, “Chess,” June 29, 1977

28

1 [https://www.nytimes.com/1977/06/29/archives/chess-miss-gaprindashvili-strikes-a-](https://www.nytimes.com/1977/06/29/archives/chess-miss-gaprindashvili-strikes-a)
 2 [blow-for-womens-equality.html](https://www.nytimes.com/1977/06/29/archives/chess-miss-gaprindashvili-strikes-a-blow-for-womens-equality.html).

3 26. Other famous male players against whom she competed constitute a
 4 “who’s who” of highly ranked players and Grandmasters, including Dragoljub
 5 Velimirovich, Svetozar Gligoric, Rudolf Servaty, Bojan Kurajica, Boris Spassky,
 6 Viswanathan Anand and Mikhail Tal. Tal, Anand and Spassky were world
 7 champions. Although she never beat these three, she did draw with Anand. Tal, in
 8 his autobiography, tells a story of their game in Reykjavik in 1964. Not wishing to
 9 win on time in his winning endgame, Tal would occasionally not press his clock
 10 after moving. Gaprindashvili caught onto him and confirmed her sporting nature by
 11 telling him she would resign immediately if he continued to go easy on her.

12 27. Gaprindashvili was known for her aggressive style. A famous match
 13 against Velimirovich at a tournament in Yugoslavia progressed until there were
 14 virtually no pieces left on the board, when the two players agreed to a draw. The
 15 match was later declared to be the best chess game of the year by the Soviet Chess
 16 Federation, which was the first time that this accolade had been bestowed on a draw.

17 28. Following her stunning success at Lone Pine, Gaprindashvili became
 18 the first woman in history to be awarded the honor and rank of International Chess
 19 Grandmaster among men.

20 29. Gaprindashvili is a national hero in Georgia. In addition to being a
 21 chess champion, she participated in politics, holding positions within the Georgian
 22 Parliament and participating in protests against corruption within Georgia and
 23 against Russian aggression and subjugation. In 2015, the President of Georgia,
 24 Giorgi Margvelashvili, awarded Gaprindashvili the Georgia Order of Excellence.
 25 The Tbilisi Chess Palace is dedicated to her.

26 30. Gaprindashvili was the subject of the film, *Glory to the Queen*, which
 27 honored the female chess-greats of Georgia. Unlike the Netflix Series, which
 28 gratuitously insulted Gaprindashvili, *Glory to the Queen* properly honored her as a

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1 woman who helped revolutionize female chess by taking on male competitors across
2 the globe—and who in the process became a Georgian icon of female emancipation.
3 Her example inspired later generations of Georgian women chess champions such as
4 Maya Chiburdanidze and Ketevan Arakhamia, who both also became Grandmasters.

5 31. Now aged 80, Gaprindashvili still competes in senior chess
6 tournaments and in 2014, 2015 and 2019, she was world champion among seniors
7 agreed over 65. Also in 2019, she was awarded the European Chess Union’s
8 prestigious prize of Golden Pawn for Lifetime achievement at the same time that
9 Garry Kasparov was awarded the title chess legend. She continues to be a role
10 model and exemplar of what a woman can achieve in a male-dominated arena.

11 32. Netflix is a dominant world media giant with its headquarters in Los
12 Gatos, California. Its programming is available world-wide, with over 209 million
13 subscribers. In 2020, it reported total revenue of over 24.9 billion dollars. It has a
14 major production office located at Sunset Bronson Studios, 5808 Sunset Boulevard,
15 Los Angeles, California 90028.

16 33. Plaintiff is unaware of the true names and capacities of defendants
17 named herein as Does 1 through 50, inclusive, but is informed and believes, and
18 thereon alleges, that each of the fictitiously named defendants engaged in, or is in
19 some manner responsible for, the wrongful conduct alleged herein. Plaintiff
20 therefore sues these defendants by such fictitious names and will amend this
21 complaint to state their true names and capacities when such names have been
22 discovered.

THE *QUEEN’S GAMBIT* MINISERIES

23
24 34. All seven episodes of the Series were released simultaneously on
25 October 23, 2020. The scene which forms the predicate for this lawsuit is in the final
26 episode, “End Game.” By October 28, 2020, the Series reached the number one
27 rating spot on Netflix. On November 23, 2020, Netflix announced that the Series
28 had been watched by 62 million households since its release. The Series topped

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1 United States television Nielsen’s streaming rankings for the weeks of October 26 to
2 November 1, November 2 to 8, and November 9 to 15, 2020, making it the first
3 series in history to top those Nielsen ratings for three straight weeks.

4 35. The Series gained substantial artistic recognition, including winning
5 two Golden Globe Awards, for Best Limited Series or Television Film, and for Best
6 Actress in a Miniseries or Television Film (for Anya Taylor-Joy who played
7 Harmon). It won 11 awards at the 73rd Annual Primetime Emmy Awards.

8 36. The Series is about a female chess prodigy, and in numerous respects
9 parallels the real-world life of Gaprindashvili, particularly when Harmon competes
10 against male chess players. It is set in the years 1958-1968. These years parallel
11 Gaprindashvili’s own meteoric rise in the world of chess, including her impressive
12 victories against men at Hastings in 1963 and 1964-65, and her spectacular display
13 in 1965 where she played simultaneously against 28 male players.

14 37. The Series opens with a description of how Harmon is orphaned when
15 her mother dies in a car accident. She is taken to live in an orphanage where the
16 janitor teaches her chess. After she is adopted, she begins playing chess
17 competitively aged 12. From the beginning, she is constantly confronted with the
18 reality that chess is a man’s world. As she tries to register for her first tournament,
19 she is asked, “are you sure you want to do this?” and told that “we don’t have a
20 women’s section.” Like Gaprindashvili, Harmon surprises her male competitors. In
21 her first major tournament in Cincinnati, Ohio, she finds herself competing against
22 and holding her own against a slate of male players. She wins the tournament, and
23 collects her first significant prize money.

24 38. Harmon emerges as a chess prodigy and a model for women, becoming
25 a national cultural celebrity during a time in American history when the rights of
26 women were beginning to be asserted across the country. For example, in Episode
27 Three, there is a scene in which Harmon is interviewed by a reporter from *Life*
28 Magazine. The reporter, also a woman, asks Harmon, “Tell the readers of *Life* how

1 it feels to be a girl among all those men?” and concludes the interview with the
 2 remark that Harmon should take up the game of “bridge.” The remark underscores
 3 how Harmon’s battle with systemic sexism is a major leitmotif of the Series, as the
 4 remark is manifestly intended by the reporter to convey the prevailing view of the
 5 era that there was no place for women at the highest echelons of chess.

6 39. The Series depicts Harmon’s struggles with drug and alcohol abuse,
 7 and her see-saw struggle between confidence and insecurity. Throughout the Series,
 8 she is confronted with sexism, to which she typically responds with pluck and
 9 resolve. For example, in Episode 6, she is in Paris when a male interviewer asks her,
 10 “What do you say to those in the Chess Federation who accuse you of being too
 11 glamorous to be a serious chess player?” She quickly retorts, “I would say that it’s
 12 much easier to play chess without the burden of an Adam’s Apple.”

13 40. The dramatic final episode begins with Harmon still struggling with
 14 depression, alcohol, and drug abuse. While she is the fictional 1967 American
 15 United States Champion, she is still reeling from a defeat in the prior episode by
 16 fictional Russian Grandmaster, Vasily Borgov, the reigning World Champion.

17 41. Harmon is able to overcome her depression and addiction. She gets
 18 herself together to prepare to enter the “Moscow Invitational” tournament in Russia.
 19 Her first-round match pits her against another fictional character, an older male
 20 chess player named Viktor Laev whom Harmon had long admired.

21 42. After the match between Harmon and Laev unfolds, the announcer for
 22 the tournament, in a voice-over “play-by-play” (or “move-by-move”) commentary,
 23 comments on Harmon’s gender, observing that the male players in the tournament
 24 did not take Harmon seriously as an opponent. Here is the exact language he used:

25 [The male players believe] Harmon’s level of play wasn’t at theirs. Someone
 26 like Laev probably didn’t spend a lot of time preparing for their match.
 27 Elizabeth Harmon’s not at all an important player by their standards. The only
 28 unusual thing about her, really, is her sex. And even that’s not unique in Russia.
**There’s Nona Gaprindashvili, but she’s the female world champion and
 has never faced men.** My guess is Laev was expecting an easy win, and not at
 all the 27-move thrashing Beth Harmon just gave him.

1 43. As Gaprindashvili’s name is mentioned, an actor is shown sitting in the
2 audience, watching the game, who is obviously meant to be Gaprindashvili.



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11 44. The Series ends with a “Hollywood ending.” After her first-round win
12 against Laev, Harmon goes on to defeat a series of fictional male Russian chess
13 masters, culminating in a final dramatic victory over her nemesis, Borgov, whom
14 she defeats in the final match, playing the “Queen’s Gambit” chess opening, and
15 winning the Moscow Invitational.

16 **FALSITY**

17 45. Netflix sought to create a drama in which not only did a woman
18 triumph over men in an arena traditionally dominated by men, but also in which an
19 American woman triumphed over Soviet men at the height of the cold war. To serve
20 its dramatic purposes, Netflix gratuitously proclaimed to the world the egregious
21 falsehood that Gaprindashvili never competed against men, and was not capable of
22 the level of play of the fictional Beth Harmon. Because the truth would have
23 undercut this narrative, Netflix cynically and deliberately chose to ignore it. This
24 deliberate falsehood was highly offensive and defamatory, on multiple levels.

25 46. Adding insult to defamatory injury, Netflix falsely portrayed the real
26 Gaprindashvili as Russian, despite knowing that she came from Georgia, which still
27 today struggles to resist aggression, subjugation, and war at the hands of Russia.
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1 47. The false defamatory meaning of the statement is apparent on the face
2 of the broadcast. Yet perhaps the best evidence of how average viewers would have
3 understood the lie is a demonstration of how it reverberated among actual viewers,
4 with commentary on social media and by major news organizations.

5 48. News organizations reported on and called out Netflix for its false
6 statement concerning Gaprindashvili, such as the article entitled “The series
7 ‘Queen’s Move’ lied about the Soviet champion. She supposedly didn’t play with
8 men,” World Today News, November 20, 2020, [https://www.world-today-
9 news.com/the-series-queens-move-lied-about-the-soviet-champion-she-supposedly-
10 didnt-play-with-men/](https://www.world-today-news.com/the-series-queens-move-lied-about-the-soviet-champion-she-supposedly-didnt-play-with-men/) which described the key scene in the Series as follows:

11 A brunette looks at the young champion from the podium with a sad look.
12 “This is Nona Gaprindashvili, the world champion among women, who has
13 never played against men,” the tournament commentator says. In fact, this is a
14 lie. Nona Gaprindashvili passed all the steps to the pedestal that were submitted
15 to the fictional Elizabeth Harmon in the series.

16 49. Similarly, an article in The Calvert Journal underscored the
17 offensiveness of the lie by noting the parallels between the fictional Harmon and the
18 real Gaprindashvili, observing that a “similar story happens to Elizabeth Harmon on
19 the show when she faces the US champion. So, the amount of overlap between the
20 Series and Nona Gaprindashvili’s career hints that her path has had a great influence
21 on the writers of the script and the original book.” Fatima Hudoon, “The real-life
22 Queen’s Gambit: how Georgia’s Nona Gaprindashvili conquered the chess world,”
23 The Calvert Journal, November 27, 2020
24 [https://www.calvertjournal.com/features/show/12351/real-life-queens-gambit-nona-
25 gaprindashvili-georgian-women-chess-beth-harmon-netflix](https://www.calvertjournal.com/features/show/12351/real-life-queens-gambit-nona-gaprindashvili-georgian-women-chess-beth-harmon-netflix)

26 50. The following paragraphs contain social media posts which strongly
27 complain and protest about the false statement about Gaprindashvili.

28 51. Anthony Shaw, Twitter, @anthonyjpshaw (Nov. 29, 2020),
<https://twitter.com/anthonyjpshaw/status/1333249169796939781?s=20>

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Anthony Shaw
@anthonyjpshaw

In the Queens Gambit, Nona Gaprindashvili (a real person) is introduced as “a female world champion, who has never faced men”, which is total rubbish. "it's dishonouring to have misinformation spread about someone's achievements."



Don't miss what's happening

People on Twitter are the first to know.

While the Netflix story is fictional, Gaprindashvili is a real chess player who became the Women's World Chess Champion five times

calvertjournal.com

52. Steve Coyle, Twitter, @SEHCoyle (Nov. 20, 2020),

<https://twitter.com/SEHCoyle/status/1329835286927380481?s=20>



Steve Coyle @SEHCoyle · Nov 20, 2020

Chess realism part that bothered me was the erasure of actual women's histories in chess while lots of anecdotes about men players to make Harmon more extraordinary. Nona Gaprindashvili is misrepresented as never competing against men. She tied for first in mixed Hasting's '63.

53. Larmes de Saint-Laurent, Twitter, @Fiel_Laurentien (Nov. 28, 2020),

https://twitter.com/Fiel_Laurentien/status/1332886143428341761?s=20



Larmes de Saint-Laurent @Fiel_Laurentien · Nov 28, 2020

I went to chess dot com fora after watching The Queen Gambit and it's ironic how the single chess-related inaccuracy in the serie is about Nona Gaprindashvili an actual woman grandmaster who played against men only depicted as a mere woman player. Way to go for a feminist story.

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54. Medi, Twitter, @Medi050505 (Nov. 26, 2020),

<https://twitter.com/medi050505/status/1331912451953221632?s=20>



Medi @medi050505 · Nov 26, 2020

It doesn't seem correct, does it? I mean I loved the film and it was very entertaining. But it also bothers me that this bit seems factually off and also quite a strong statement to make portraying that Georgian world champion in chess has never played men 🧑 when she did.

55. Olimpiu G. Urcan @olimpiucan October 23, 2020

Olimpiu G. Urcan @olimpiuucan · Oct 23, 2020
A script line in #TheQueensGambit says Nona Gaprindashvili "never faced men," while a lookalike watches the fictional Beth Harmon admiringly. In real life, Gaprindashvili actually inspired others by playing in the 1960s men's tournaments. Odd play of reality and fiction there.



Steve Coyle @SStCoyle
Replying to @AgnesCallari
Chess realism par of actual women's anecdotes about r extraordinary. Nor as never competir mixed Hasting's '6
12:13 PM · Nov 20, 2020

56. Pumbaa, Twitter, @WarthogPumbaa (Nov. 29, 2020), Pumba, Twitter, @WarthogPumbaa (Nov. 29, 2020),

<https://twitter.com/WarthogPumbaa/status/1332980139999813633?s=20>

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Pumbaa @WarthogPumbaa · Nov 29, 2020
Dear @netflix,
I've heard about your new TV series The Queen's Gambit and I want to address on some misleading information in your show. Firstly, I'd be grateful if you could tell me why are you lying about Mrs. Nona Gaprindashvili's career. To be more specific...

...in the last episode of the series you mentioned that she had never played against male opponents, which is absolute nonsense. In 1962, right after she became the champion she was invited to the traditional international tournament where she was the only female player...

← **Thread**



Pumbaa @WarthogPumbaa · Nov 29, 2020
Mrs. Nona is the first woman grandmaster among men. She has a lot of individual prizes, including women's world chess championship titles (5x). She won as many as 25 medals, among which 11 team gold medals and 9 individual gold medals.



Pumbaa @WarthogPumbaa · Nov 29, 2020
As you can imagine, it's pretty unprofessional behavior of you to lie about her in front of 7 billion people, considering the fact that Georgia is very small and unknown country. You make her career not as impactful as it actually was.



Pumbaa @WarthogPumbaa · Nov 29, 2020
We, as proud Georgians, demand a public apology letter to her and her tremendous legacy.

Yours faithfully, Timon and Pumbaa from Tbilisi, Georgia, 2020.

57. https://www.reddit.com/r/chess/comments/kzg0e0/why_did_the_queens_gambit_lie_about_nona/

I hope this is the right place to ask this question. In the final episode of The Queen's Gambit. no spoilers. the commentator says that Nona Gaprindashvili never played against men. This iust is not true and is an odd lie to make. Does anybody know why this lie was said? Nona herself has come out and said, 'It is downright offensive to hear I never played men.'

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1 58. The Calvert Journal, Facebook, December 19, 2020



10 **ACTUAL MALICE**

11 59. The false statements placing Gaprindashvili in a false light in the public
12 eye and defaming her were made by Netflix with actual malice, defined as
13 knowledge of falsity or reckless disregard for truth or falsity.

14 60. Because media defendants never openly confess to publishing or
15 broadcasting with actual malice, proof of actual malice may plausibly be inferred
16 from indirect and circumstantial evidence, considered in its totality. As the United
17 States Supreme Court explained in *Herbert v. Lando*, 441 U.S. 153, 164 n. 12
18 (1979): “The existence of actual malice may be shown in many ways. As a general
19 rule, any competent evidence, either direct or circumstantial, can be resorted to, and
20 all the relevant circumstances surrounding the transaction may be shown, provided
21 they are not too remote, including threats, prior or subsequent defamations,
22 subsequent statements of the defendant, circumstances indicating the existence of
23 rivalry, ill will, or hostility between the parties, facts tending to show a reckless
24 disregard of the plaintiff’s rights . . .”

25 61. Netflix’s actual malice may plausibly be inferred from the fact that it
26 deliberately altered the text of the Novel used as the source for the Series, and which
27 in all other respects regarding the scene in question faithfully follows the Novel.

28

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1 62. Here is the text in the Novel on page 217-218 (First Vintage
2 Contemporaries Edition, 2003), with the key sentence in bold:

3 As far as they knew, [Harmon’s] level of play was roughly that of Benny Watts,
4 and men like Laev would not devote much time to preparation for playing
5 Benny. She was not an important player by their standards; the only unusual
6 thing about her was her sex; and even that wasn’t unique in Russia. **There was
7 Nona Gaprindashvili, not up to the level of this tournament, but a player
8 who had met all these Russian Grandmasters many times before.** Laev
9 would be expecting an easy win.

10 63. Netflix deliberately altered the passage in Episode 7 of the Series (at
11 running time 0:29:51-0:30:20), with the key sentence shown in bold:

12 As far as they knew, Harmon’s level of play wasn’t at theirs. Someone like
13 Laev probably didn’t spend a lot of time preparing for their match. Elizabeth
14 Harmon’s not at all an important player by their standards. The only unusual
15 thing about her, really, is her sex. And even that’s not unique in Russia.
16 **There’s Nona Gaprindashvili, but she’s the female world champion and
17 has never faced men.** My guess is Laev was expecting an easy win, and not at
18 all the 27-move thrashing Beth Harmon just gave him.

19 64. This alteration is highly probative of actual malice because it is direct
20 evidence of a deliberate falsification of the truth. Netflix knew the truth just as
21 Walter Tevis knew the truth. Tevis, writing fiction, was free to create a fictional
22 tournament and decide in his fictional world that Gaprindashvili was not up to the
23 level of competition he had created in his fictional world. Even that was misleading,
24 in that at the time the Novel was set, Gaprindashvili had already shown she was up
25 to any elite level of chess competition. Yet Tevis was entitled to concoct a fictional
26 world with his opinions embedded in it. As Senator Daniel Patrick Moynihan most
27 famously noted, however, while everyone is entitled to his or her own opinion, they
28 are not entitled to their own facts. At least Tevis had the integrity to tell the truth
that Gaprindashvili “had met all these Russian Grandmasters many times before.”
Netflix, however, chose to tell a brazen and callous lie, changing the critical passage
to the false statement that Gaprindashvili “had never faced men.”

65. There is more. Netflix hired two famous chess experts, Garry Kasparov
and Bruce Pandolfini, as consultants for the Series, both of whom knew that the
Tevis account was correct, especially Pandolfini who had acted as a consultant to

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1 Tevis with respect to the Novel. Gaprindashvili and Kasparov had long known each
2 other, and Kasparov and Pandolfini are renowned experts and historians of chess, its
3 famous players (including Gaprindashvili), and the lore and legends surrounding the
4 game. Thus, either Netflix failed to consult their experts in this area to determine the
5 truth of the statement or, worse still, their experts advised them that the statement
6 was false but nevertheless Netflix kept it in the scene. Either way, Netflix acted with
7 knowledge of falsity or with reckless disregard for the truth.

8 66. A jury could also plausibly and reasonably infer actual malice from the
9 stubborn and arrogant refusal of Netflix to correct the record, offer an apology, offer
10 a retraction, or re-dub the voiceover in the pivotal scene, once confronted with its
11 egregious falsehood. While actual malice must be determined at the time of the
12 publication of the false light or defamation, courts have long held that a subsequent
13 failure to retract an obviously false and damaging statement may be probative of
14 actual malice at the time the statement was originally made.

15 67. A jury could also plausibly and reasonably infer actual malice from the
16 facts above that Netflix had an invidious self-interested motive in intentionally and
17 recklessly lying about Gaprindashvili. By advancing the “fairy tale” that only an
18 American woman was on the same level as male Russian chess masters, Netflix
19 enhanced the dramatic impact of its story.

20 68. Considered in its entirety, given the egregious nature of the falsehood
21 and the many indicia of actual malice, including the allegation that the falsehood
22 broadcast by Netflix was deliberately fabricated by Netflix to advance its own self-
23 serving and self-absorbed dramatic and pecuniary interests, Netflix acted not only
24 with actual malice, but with common-law motives of malice, fraud, and oppression
25 justifying an award of punitive damages to deter future acts of willful and malicious
26 exploitation and misconduct.

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FIRST CLAIM FOR RELIEF
(False Light Invasion Of Privacy)

69. Gaprindashvili incorporates under this first cause of action all of the prior paragraphs in this Complaint.

70. California recognizes a cause of action for placing a person in a “false light in the public eye.” The key elements necessary to state a false light claim are (1) the publication or broadcast of a false statement of fact that places the plaintiff in a false light in the public eye; (2) a demonstration by clear and convincing evidence that the statement was published or broadcast with “actual malice,” and (3) a demonstration that the publication or broadcast of the falsehood would be deemed “highly offensive to a reasonable person.”

71. The first two elements of the false light tort described above are identical to parallel elements for defamation. In that limited sense false light and defamation overlap, and the failure to prove an element of an overlapping element of one necessarily also defeats the other. Thus, both torts require falsity, and both torts require, at least for public figures, actual malice.

72. The third crucial element of the false light tort, however, is not identical to defamation, and both the Supreme Court of California and the Supreme Court of the United States have differentiated the two torts on this ground. Unlike defamation, which requires proof of injury to reputation, false light does not require proof of defamatory harm. The false light tort substitutes for the defamation element requirement of damage to reputation the requirement that the plaintiff in a false light establish that the falsehood would be highly offensive to a reasonable person. In this respect, the two torts significantly differ.

73. The false statement that she had never faced men would be highly offensive to a reasonable person. Gaprindashvili had spent a large part of her career facing men. She was an authentic and true breaker of glass ceilings. She had faced men and triumphed, enduring the slings and arrows of embedded patriarchy and

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1 sexism. Netflix and Does 1-50 (collectively, “Defendants”) arrogantly and
2 recklessly turned her life’s accomplishments on their head, reversing her feminist
3 courage and morphing it into submissive and inferior temerity. No woman who has
4 dared to challenge gender barriers and succeed in an arena and an era historically
5 dominated by men could fail to be objectively and reasonably offended by a false
6 statement that Gaprindashvili had never faced men. The offensiveness was
7 magnified by Defendants portraying her as a Russian when she had exemplified
8 Georgian pride and independence against Russian attempts at subjugation.

9 74. As a proximate result of the foregoing, Gaprindashvili has suffered
10 damages in an amount according to proof at trial but in any event in excess of the
11 jurisdictional threshold of this Court, and seeks actual and presumed damages of at
12 least \$5 million.

13 75. Defendants' conduct as described herein was done with a conscious
14 disregard of the rights of Gaprindashvili, with the intent to maliciously vex, annoy,
15 and/or harass her, and with motives of fraud and oppression to exploit her for their
16 personal gain. Such conduct was unauthorized and constitutes oppression, fraud,
17 and/or malice under California Civil Code §3294, entitling Gaprindashvili to an
18 award of punitive damages appropriate to punish or set an example of Defendants in
19 an amount to be determined at trial.

20 **SECOND CLAIM FOR RELIEF**

21 **(Defamation Per Se)**

22 76. Gaprindashvili repleads and incorporates by reference all the
23 paragraphs in this Complaint above. She does not seek a “double recovery” by
24 pleading her parallel false light and defamation per se claims, but asserts them as
25 alternative theories of liability. For her false light claim, she need not prove that the
26 statements made by Defendants were defamatory, but only that they were highly
27 offensive to a reasonable person. For this defamation per se cause of action,
28 Gaprindashvili must plausibly allege defamatory meaning.

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1 77. In California defamation per se includes a statement that has the natural
2 tendency to impugn a plaintiff in her office, profession, trade, or business. For
3 Gaprindashvili, her life-long office, profession, trade, or business is the world of
4 competitive chess, in which she remains an active leader, role-model, and
5 competitor. To degrade Gaprindashvili by impugning that she did not face men, or
6 was inferior to men, was manifestly defamatory, cutting to the heart of her standing
7 in the world that she has made as her profession. It is no answer that she is 80 years
8 old, any more than it would be an answer impugning the career of an 80-year-old
9 doctor, lawyer, movie director, or actress. Gaprindashvili’s current participation in
10 the chess world, and her ability to earn income from that participation, remains tied
11 to her historical success and accomplishments. The professional reputation and
12 brand of Gaprindashvili was inextricably bound up with her courageous efforts to
13 face and defeat estimable male opponents when chess was overwhelmingly a man’s
14 world. In lying about her by saying the opposite, Defendants caused her
15 professional reputation and brand egregious harm. Defendants’ false statement
16 about her career has caused her great distress.

17 78. The magnitude of the harm to Gaprindashvili caused by the
18 Defendants’ defamation has been extraordinary by any plausible measure. As pled
19 above, the Series was viewed by over 62 million households in just the first month
20 after its release. The false statements have caused Gaprindashvili personal
21 humiliation, distress, and anguish, as well as damages to her profits and earnings,
22 and her ongoing capacity to engage in her professional livelihood in the world of
23 chess. She has thus suffered “special damages” in the form of pecuniary losses and
24 lost business opportunities of no less than \$75,000, and general and damages of no
25 less than \$5,000,000, all to be established at trial.

26 79. In pleading and establishing actual malice, Gaprindashvili is entitled
27 under First Amendment standards to recover actual, presumed, and punitive
28 damages. As a proximate result of the foregoing, she has suffered damages in an

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1 amount according to proof at trial but in any event in excess of the jurisdictional
2 threshold of this Court, and seeks actual and presumed damages of at least \$5
3 million.

4 80. Defendants' conduct as described herein was done with a conscious
5 disregard of the rights of Gaprindashvili, with the intent to maliciously vex, annoy,
6 and/or harass her, and with motives of fraud and oppression exploiting her for their
7 personal gain. Such conduct was unauthorized and constitutes oppression, fraud,
8 and/or malice under California Civil Code §3294, entitling Gaprindashvili to an
9 award of punitive damages in an amount appropriate to punish or set an example of
10 Defendants in an amount to be determined at trial.

11 81. The meaning conveyed by the false statements will, if published again,
12 continue to cause Gaprindashvili great and irreparable damage, and injunctive relief
13 will be necessary to prevent and restrain continued dissemination of the statement.
14 She is entitled to an injunction requiring Defendants, their agents and all persons
15 acting in concert with it to desist from continuing to make the false statement that
16 she never played men, and to remove the statement in question from the Series.

17
18 **PRAYER FOR RELIEF**

19 WHEREFORE, Gaprindashvili prays for relief against Defendants, and each
20 of them, as follows:

- 21 1. For actual and presumed damages of at least \$5 million;
22 2. For punitive damages;
23 3. For temporary, preliminary, and permanent injunctive relief, restraining
24 and enjoining Defendants, their agents and all persons acting in concert with it to
25 remove the statement that Gaprindashvili never played men from the Series.
26
27 4. For costs of suit; and
28


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5. For such further relief as the Court deems just and proper.

DATED: September 20, 2021

RUFUS-ISAACS ACLAND &
GRANTHAM LLP

By: 
Alexander Rufus-Isaacs
Attorneys for plaintiff Nona Gaprindashvili

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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 (SKx)

**DECLARATION OF NONA
GAPRINDASHVILI (ORIGINAL
AND ENGLISH TRANSLATION
WITH CERTIFICATE OF
ACCURATE TRANSLATION)**

Date: January 24, 2022
Time: 2:00 pm
Crtrm.: 8A



TRANSLATION CERTIFICATION

Arriva Translations certifies that the attached document listed below has been translated by a skilled and qualified translator. Further, Arriva Translations has no involvement or interest in this matter other than providing an accurate translation.

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|----------------------|--|
| Document Title | All 7 pages of DECLARATION OF NONA GAPRINDASHVILI |
| Summary/Description | Certified Russian to English Translation of DECLARATION OF NONA GAPRINDASHVILI |
| Number of Pages | 7 |
| Originating Language | Russian |
| Translator | Michael Ishenko |
| Date | 11-22- 2021 |
| Project Manager | Jansen Trojacek |



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Declaration of Nona Gaprindashvili

I, Nona Gaprindashvili, declare as follows:

1. I am a party in the aforesaid action. I have personal knowledge of the facts set forth herein, except as to those stated on the basis of information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. I am a citizen and resident of the Republic of Georgia. I was born in Georgia in 1941. I began playing chess professionally at the age of 13, and when I was 15, I won the semi-final of the Women's Soviet Union Championship. In 1962, aged 21, I became female World Champion and retained my crown until 1978 having defended it 4 more times.

3. I participated in 12 Chess Olympiads in 1963, 1966, 1969, 1972, 1974, 1978, 1980, 1982, 1984, 1986, 1990 and 1992. I am an 11-time Olympic Chess Champion; in addition, I won a total of 8 individual Olympic gold medals and 3 silver medals.

4. I am a 5-time Champion of the USSR. Also, I won two tournaments for the European Champions Cup, including the first tournament in 1969.

5. I was the winner of the first "Chess Oscar" (women's award) in 1982 and became the first woman to become an international Grandmaster among men in 1978.

6. Following a victory in the 1962 World Championship among women, I was invited to participate in the Challengers Section of the International Chess Congress (Tournament) in Hastings, England in 1963, where I became victorious after defeating several male players. Having won in the Challengers Section, I was entitled to participate in the main Hastings tournament of 1964/65 in which I competed against two legendary Grandmasters, Svetozar Gligorić (a twelve-time champion of Yugoslavia) and Paul Keres (a three-time champion of the Soviet Union); I battled the latter to a draw.

7. A well-known photograph that went viral in social media, in which I am playing against several men, shows one of my "simul exhibitions" in Dorset, UK on January 11, 1965 where I battled 28 male players simultaneously and won a total of 20 games. I have played multiple simul exhibitions like that

with male players in different countries. In these simulms, the number of participants usually included at least 20 players.

8. I played multiple games with Soviet male chess players in 1968 and earlier, including, but not limited to the following:

a) In 1959, I played in a Soviet tournament, Men's Championship of the Georgian Soviet Socialist Republic ("SSR"), one of the first important tournaments in which I played against male chess players.

b) In 1963, I played in a Soviet tournament, Men's Championship of the Georgian Soviet Socialist Republic ("SSR"), held in Tbilisi. I scored 11 points and won the 6th place. I played against a distinguished Soviet chess player, Aleksandr Blagidze, champion of the Georgian SSR among men in 1950, 1953, and 1957 and holder of the title of the USSR Master of Sports in 1961.

c) In 1964, I played in a tournament held in Reykjavik, Iceland, believed to be one of the strongest world chess tournaments. I was the only female participant and played against many male players and grandmasters, including Mikhail Tal of Latvian SSR, world champion and one of the greatest chess players of all time; Svetozar Gligorić (a twelve-time champion of Yugoslavia and Grandmaster); and Fridrik Ólafsson (a six-time Iceland champion). I competed against 13 male chess players, including those mentioned above, and won three games.

d) In 1965, I participated in a Soviet tournament, Men's Championship of the Georgian SSR, held in Tbilisi, where I scored 8 points and won the 9th place. I played with several Soviet male chess players, including grandmasters such as Bukhuti Gurgidze (a 12-time champion of the Georgian SSR among men); Roman Djindjikhshvili / Dzindzichashvili¹ (a 1977 champion of Israel among men; a 1983 and 1989 US champion among men; and a member of the US Olympic team); Evgeni Vasiukov (a 6-time winner of Moscow City Championships); and Ratmir Kholmov (champion of the 1961 Moscow International Tournament).

¹ Both [spelling] versions of his last name are used by various statistical sources.

e) In 1966, I played in a Soviet tournament, Championship of the Soviet Socialist Republics of the Caucasus², held in Baku, Azerbaijan SSR. Again, I was the only female participant and played against 5 Soviet male chess players: Vladimir Bagirov (Azerbaijan SSR); Adolf Demirkhanian (Armenian SSR); Oleg Privorotsky (Azerbaijan SSR, 1966 male champion of Azerbaijan SSR); Levon Grigorian (Armenian SSR, a 5-time champion of Armenian SSR among men); Oleg Pavlenko (Azerbaijan SSR, champion of the Azerbaijan SSR among men in 1968 and 1970).

f) In 1968, I participated successfully in a tournament held in Göteborg, Sweden, against 9 men, including Grandmaster Efim Geller of the Soviet Union. The *New York Times* reported at that time: “Nona Gaprindashvili of the Soviet Union, the world chess champion among women, was the only woman at the strong international tournament held recently in Göteborg, Sweden. She won the third place in the 10-player round-robin tournament.”

g) In 1968, I participated in a Soviet tournament, Championship of Baltic Socialist Republics, held in Pärnu, Estonian SSR. I played against a well-known Soviet chess player, Anatoly Shmit, who became champion of the Latvian SSR among men in 1969 and 1975.

h) In 1968, I also participated in a Soviet tournament, Vakhtang Karseladze Memorial Tournament, held in Gori, Georgian SSR. I played against many Soviet male players, including Roman Djindjikhashvili / Dzindzichashvili (Georgian SSR, a 1977 champion of Israel among men; a 1983 and 1989 US champion among men); Eduard Gufeld (Ukrainian SSR, a Ukrainian Grandmaster at that time); Levon Grigorian (Armenian SSR, a 5-time champion of the Armenian SSR among men); Mikhail Tal (Latvian SSR, world champion); Aleksandr Bokuchava (Georgian SSR; 1971 male champion of the Georgian SSR); Zurab Mikadze (Georgian SSR; 1971 male champion of the Georgian SSR); Bukhuti Gurgenidze (Georgian SSR; a 12-time champion of the Georgian SSR among men, Grandmaster); Efim Geller (Ukrainian SSR, Grandmaster); and Guram Mukniashvili (Georgian SSR).

9. I encountered severe prejudice when I started to compete against men. At first they all wanted to play with me to the end and didn't agree to draws. When the games were postponed according to the then

² These included the Georgian SSR, the Armenian SSR, and the Azerbaijan SSR.

regulations, we had to finish the game late at night or the next morning, and that was very strenuous. Even a draw against a woman hurt their pride, so they fought with me to the last. Soon enough, however, they began to treat me differently and accepted me, one might say, into their ranks.

10. In 1976, I wrote a book in which I spoke about my devotion to chess and my inability to imagine life without a chessboard. In a chapter called “Fighting for Equality,” I explained how difficult it was to overcome a generally accepted perception that women chess players are weaker than men, and argued that women are equally talented in chess: “Women chess players do not need any privileges or exemptions... The term ‘women’s chess’ has expired. I am proud that I have my share in promoting the creative emancipation of women in chess. I had my share in helping women to overcome psychological barriers separating them from ‘man’s chess.’”

11. I successfully competed in other tournaments against men after 1968, including a tie for third and fourth places at Dortmund in 1974; a tie for second and third places at Sandomierz, Poland in 1976; a tie for first and fourth places at Lone Pine in 1977, and a tie for second and third places in Dortmund in 1978. In all of the aforesaid tournaments, I was the only woman invited, including to the Lone Pine Tournament where I defeated John Peters, James Tarjan, Leonid Shamkovich, Eugene Martinovsky, Oscar Panno, Peter Biyiasas, Burkhard Malich, Thomas Casper, William James Lombardy, and Grandmaster Anatoly Lein. The *New York Times* reported: “Nona Gaprindashvili of the Soviet Union, the world women’s champion, achieved the greatest triumph ever by a woman in tying for first place in the Louis D. Statham International Tournament in Lone Pine, California, with Grandmaster Yuri Balashov, also of the Soviet Union, with Grandmaster Oscar Panno of Argentina, and International Master Sahovic of Yugoslavia.” *New York Times*, Chess, June 29, 1977 <https://www.nytimes.com/1977/06/29/archives/chess-miss-gaprindashvili-strikes-a-blow-for-womens-equality.html>. I confirm that the statements in quotes are correct. Following my success in Lone Pine, in 1978 I became the first woman in history to be awarded the honor and title of an international chess grandmaster among men.

12. Other famous male players against whom I competed constitute a “who’s who” of highly ranked players and Grandmasters, including Dragoljub Velimirović, Svetozar Gligorić, Rudolf Servaty, Bojan Kurajica, Boris Spassky, and Mikhail Tal. Tal and Spassky were world champions.

13. I played a famous match against Velimirović at a tournament in Yugoslavia that progressed until there were virtually no pieces left on the board and we agreed to a draw. The match was later declared to be the best chess game of the year by the Soviet Chess Federation, which was the first time that this accolade had been bestowed on a draw.

14. In addition to being a 5-time world chess champion, I was elected the first president of the Georgian National Olympic Committee (GNOC) in 1989. To this day, I remain President Emeritus of the GNOC and of the Georgian Chess Federation (GCF). For my significant contribution to sports, I have received awards from the International Olympic Committee (IOC) and the Association of National Olympic Committees (ANOC).

15. In 1997, by resolution of the 68th FIDE Congress, a special award was established in my honor, the Nona Gaprindashvili Cup, which is awarded to the country demonstrating the best overall result for both women's and men's teams at World Chess Olympiads. The award is handed by me personally to the winning team.

16. The Tbilisi National Chess Palace is named after me. In 2001, I was honored when my name was given to a street in Georgia's capital city of Tbilisi. In 2015, the President of Georgia, Giorgi Margvelashvili, awarded me the Presidential Order of Excellence.

17. The games and victories enumerated above do not constitute an exhaustive list of my career achievements. I have studied chess professionally and I have read and perused closely many chess books over my entire career. All information set forth herein with respect to the chess games I have played, as well as my opponents and their accomplishments, is available to the general public and can be easily located at many websites, including www.chessgames.com and www.365chess.com and in standard chess reference books.

18. Now aged 80, I still compete in senior chess tournaments. I am a 7-time world champion among seniors: 1995, 2009, 2014, 2015, 2016, 2018, and 2019. Also in 2019, I was awarded the European Chess Union's prestigious prize of Golden Pawn for Lifetime Achievement.

19. Mr. Kasparov and I have known each other since approximately 1980 and we have always been on friendly terms. He was interviewed by the Georgian TV channel *Imedi* and the interview was

broadcast in May of 2021 as part of a special TV show dedicated to my 80th anniversary. The show can be viewed using the following Facebook link: https://fb.watch/8dq4p1_cLz/. In his interview, he wishes me a happy birthday and speaks kindly about me in Russian:

a) “My generation’s chess idols were Tal, Petrosian, Spassky, and Fisher, when all of a sudden a new name emerged in the records of chess history — Nona Gaprindashvili. This was not something out of the ordinary in Georgia where chessboards, along with a volume of *The Knight in the Panther’s Skin*, have been a part of a marrying woman’s dowry since Middle Ages.”

b) “Nona Gaprindashvili’s ascent to the Chess Olympus was very impressive. At the age of 15, she had already won all titles in the Soviet Union. At 21, she triumphed over the existing world champion among women, Elizaveta Bykova. I’m not going to detail the awards and honors bestowed on Nona Gaprindashvili — all I’m going to say is that she had an aggressive professional chess style. **She was not just the first grandmaster among women, but also the first grandmaster among men.**” (Emphasis added.)

c) “If the advancement of the Soviet school of chess is associated with Mr. Botvinnik, the advancement of the Georgian school of chess is unequivocally associated with Nona Gaprindashvili. Her world-class achievements and recognition caused a chess boom in Georgia and, soon enough, brought about an entire new generation of chess stars. The Georgian chess phenomenon became apparent. International women’s chess teams worked hard to catch up with Georgia and, as a result, chess was clearly on the rise worldwide.”

d) “At present, women can successfully compete in international tournaments alongside men and make substantial award money. It was just unimaginable half a century ago. Ms. Nona and I first met in the fall of 1980, when I participated in the World Chess Olympiad for the first time. I was particularly fascinated by her sharp mind, devotion to chess, candor, integrity, and sense of humor.”

e) “Dear Ms. Nona, happy birthday to you! From the bottom of my heart, I wish you good health and energy and new exciting adventures and impressions.”

20. I have devoted almost 70 years of my life to chess. I had to show extraordinary determination and commitment to become successful in this particular sport that was considered a part of “man’s world” at

the time. Over my professional career, I have tried my best and been able to win all possible — and, ostensibly, impossible — titles, but the most valuable of my achievements was that I deserved love and admiration of all Georgians and chess fans world over, as well as recognition and respect on the part of male chess players.

21. As for chess, it is my love and my vocation — the essence of my life. My life and career have always been in the spotlight. When I realized that I inspired not just young chess players, but also the young generation as a whole, I did my best not only to achieve my chess goals, but also to live a life that would best serve as an example of success and humility, and to demonstrate to the world at large what a woman with a strong character, a firm belief, and a clear objective can accomplish.

22. Lastly, I would like to point out that the disputed scene in the Netflix series misrepresented one of my most significant career achievements and placed me in a false light before millions of viewers worldwide. It tarnished my personal and professional reputation and caused me great pain as a result.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 18, 2021, at Tbilisi, Georgia.

[signature]

Nona Gaprindashvili



ata Active Member, American Translators Association
ATA-certified for translation from English into Russian

CERTIFICATION OF TRANSLATION

*I, the undersigned Michael Ishenko, a certified professional translator and an active member of the American Translators Association (ATA-certified for translation from English into Russian), residing in San Mateo, California, hereby declare under penalty of perjury that I have a thorough knowledge of the English and Russian languages and that, to the best of my knowledge and belief, the annexed translation from Russian into English of **Declaration of Nona Gaprindashvili**, on a total of seven (7) pages, constitutes a true and accurate translation of the original Russian document which is also annexed hereto.*



Verify at www.atanet.org/verify

MICHAEL ISHENKO
San Mateo, California
November 22, 2021

1 **Декларация Гаприндашвили Ноны**

2 Я, Гаприндашвили Нона, заявляю о следующем:

3 1. Я являюсь стороной вышеуказанного процесса . Я лично знаю факты, изложенные в
4 данном документе, за исключением тех, которые указаны на основании информации и
5 убеждений и, что касается этих фактов, я проинформирована и считаю их правдой. Если меня
6 вызовут в качестве свидетеля, я в силе и буду компетентно давать показания по изложенным
7 здесь вопросам.

8 2. Я гражданка и резидент Грузии. Родилась в Грузии в 1941 году. Начала
9 профессионально заниматься шахматами в 13 лет, а когда мне было 15 лет, я выиграла
10 полуфинал женского чемпионата Советского Союза. В 1962 году, в возрасте 21 года, я стала
11 чемпионкой мира среди женщин и сохраняла свою корону до 1978 года, защищая ее еще 4
12 раза.

13 3. Я участвовала в 12 шахматных олимпиадах в 1963, 1966, 1969, 1972, 1974, 1978, 1980,
14 1982, 1984, 1986, 1990 и 1992 годах. Я 11-кратная олимпийская чемпионка по шахматам и,
15 кроме того, выиграла 8 олимпийских индивидуальных золотых и 3 серебряных медалей.

16 4. Я 5-кратная чемпионка СССР. Я также дважды выиграла турнир под названием
17 «Кубок чемпионов европейских стран», включая первый турнир в 1969 году.

18 5. Я лауреат первого «Шахматного Оскара» (приз среди женщин) 1982 года и стала
19 первой женщиной, которая стала международным гроссмейстером среди мужчин в 1978
20 году.

21 6. После победы на чемпионате мира среди женщин в 1962 году меня пригласили
22 принять участие в челенджер-секции на Международном шахматном конгрессе(турнире) в
23 Гастингсе, в Англии в 1963 году, где я победила, выиграв у нескольких игроков-мужчин.
24 Победив в челенджер-секции, я получила право участвовать в главном турнире Гастингса
25 1964/65 годов, где я сыграла с двумя легендарными гроссмейстерами - Светозаром
26 Глигоричем (двенадцатикратный чемпион Югославии) и Паулем Кересом (трехкратный
27 чемпион Советского Союза), с последним из которых я заключила ничью.

28 7. Известная фотография, широко распространенная в социальных сетях, на которой я
играю против нескольких мужчин, изображает одну из моих «сессий одновременной игры»,
состоявшуюся в Дорсете, в Великобритании, 11 января 1965 года, где я противостояла 28
игроков-мужчин одновременно и выиграла в общей сложности 20 партий. Я сыграла много
таких сеансов одновременной игры с игроками-мужчинами в разных странах. Во время этих

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1 сессий количество участников обычно составляло не менее 20 игроков.

2 8. Я сыграла многочисленные партии с советскими шахматистами-мужчинами в 1968 году
3 и ранее , включая, но не ограничиваясь, следующими :

4 а) В 1959 году я сыграла в советском турнире под названием Мужское первенство
5 Грузинской Советской Социалистической Республики («ССР»), который был одним из
6 первых значительных турниров, где я встречалась с советскими шахматистами-мужчинами.

7 б) В 1963 году я сыграла в советском турнире под названием мужское первенство
8 Грузинской Советской Социалистической Республики («ССР»), проходившем в Тбилиси. Я
9 набрала 11 очков и заняла 6-е место. Я сыграла с известным советским шахматистом
10 Александром Благодзе, чемпионом Грузинской ССР среди мужчин 1950, 1953, 1957 годов и
11 обладателем звания мастера спорта СССР 1961 года.

12 с) В 1964 году я сыграла в турнире, проходившем в Рейкьявике, Исландии, который считался
13 одним из самых сильных турниров в мировых шахматах. Я была единственной женщиной-
14 участницей и встречалась с многочисленными успешными игроками мужского пола и
15 гроссмейстерами, в том числе с чемпионом мира и одним из величайших шахматистов всех
16 времен - Михаилом Талем из Латвийской ССР, Светозаром Глигоричем (двенадцатикратный
17 чемпион Югославии и гроссмейстер) и Фридриком Олафссоном (шестикратным чемпионом
18 Исландии). Соревновалась с 13 шахматистами мужского пола, включая упомянутых выше, и
19 выиграла три партии.

20 d) В 1965 году я участвовала в советском турнире под названием «Мужское первенство
21 Грузинской ССР», проходившем в Тбилиси, где набрала 8 очков и заняла 9-ое место. Я
22 сыграла с несколькими советскими шахматистами мужского пола, в том числе с
23 гроссмейстерами, такими как Бухути Гургенидзе (12-кратный чемпион Грузинской ССР
24 среди мужчин), Роман Джинджихашвили / Дзиндзичашвили¹ (чемпион Израиля среди
25 мужчин 1977 года, чемпион США среди мужчин 1983 и 1989 годов, Член олимпийской
26 сборной США), Евгений Васюков (6-кратный победитель первенства города Москвы) и
27 Ратмир Холмов (чемпион «Московского международного турнира» 1961 года).

28 e) В 1966 году я сыграла в советском турнире под названием «Чемпионат Советских

26

27

28 ¹ Обе версии его фамилии используются различными статистическими источниками.

1 Социалистических Республик Кавказа»², который проходил в Баку, Азербайджанской ССР.
 2 Опять же, я была единственной женщиной-участницей и сыграла с 5 советскими
 3 шахматистами мужского пола: Владимир Багиров (Азербайджанская ССР); Адольф
 4 Демирханян (Армянская ССР); Олег Привороцкий (Азербайджанская ССР - мужской
 5 чемпион Азербайджанской ССР в 1966 году); Левон Григорян (Армянская ССР - 5-кратный
 6 чемпион Армянской ССР среди мужчин); Олег Павленко (Азербайджанская ССР - Чемпион
 7 Азербайджанской ССР среди мужчин в 1968 и 1970 годах).

8 f) В 1968 году я успешно участвовала в турнире, проходившем в Гетеборге, Швеция, против
 9 9 мужчин, включая гроссмейстера Ефима Геллера из Советского Союза. Газета New York
 10 Times тогда сообщала: «Нона Гаприндашвили из Советского Союза, чемпионка мира по
 11 шахматам среди женщин, была единственной женщиной на недавнем сильном
 12 международном турнире в Гетеборге, Швеция. Она заняла третье место в круговой системе
 13 с десятью игроками ».

14 g) В 1968 году я сыграла в советском турнире под названием «Чемпионат Балтийских
 15 Социалистических Республик», который проходил в Пярну, Эстонской ССР. Я сыграла с
 16 известным советским шахматистом Анатолием Шмитом, который в 1969 и 1975 годах стал
 17 чемпионом Латвийской ССР среди мужчин.

18 h) В 1968 году я также участвовала в советском турнире под названием «Турнир памяти
 19 Вахтанга Карселадзе», который проходил в Гори, Грузинской ССР. Сыграла с
 20 многочисленными советскими игроками мужского пола, а именно - Роман Джинджихашвили
 21 / Дзиндзичашвили (Грузинская ССР - мужской чемпион Израиля 1977 года, мужской
 22 чемпион США 1983, 1989); Эдуард Гуфельд (Украинская ССР - украинский гроссмейстер в
 23 то время); Левон Григорян (Армянская ССР - 5-кратный чемпион Армянской ССР среди
 24 мужчин); Михаил Таль (Латвийская ССР - чемпион мира); Александр Бокучава (Грузинская
 25 ССР - мужской чемпион Грузинской ССР 1971 года); Зураб Микадзе (Грузинская ССР -
 26 мужской чемпион Грузинской ССР 1971 года); Бухути Гургенидзе (Грузинская ССР - 12-
 27 кратный чемпион Грузинской ССР среди мужчин, гроссмейстер); Ефим Геллер (Украинская
 28 ССР - гроссмейстер); и Гурам Мукниашвили (Грузинская ССР).

9. Я столкнулась с жестокими предрассудками, когда начала соревноваться с мужчинами.
 Сначала все хотели сыграть со мной до конца, и на ничью не соглашались. Когда партии

² Это были Грузинская ССР, Армянская ССР и Азербайджанская ССР.

1 откладывались по тогдашнему регламенту, чтобы закончить игру, нам приходилось
2 доигрывать поздно вечером или на следующее утро, что было очень утомительно. Даже
3 ничья с женщиной ущемляла их гордость, поэтому они боролись со мной до последнего. Но
4 очень скоро, они стали относиться ко мне иначе и приняли меня, можно сказать, в свои ряды.

5 10. В 1976 году я написала книгу, в которой рассказала о своей преданности к шахматам и
6 невозможности представить жизнь без шахматной доски. В главе «Борьба за равенство» я
7 объяснила, насколько трудно было преодолеть общепринятое мнение о том, что
8 шахматистки-женщины слабее мужчин, и заявила, что женщины поровну талантливы в
9 шахматах: «Шахматистам-женщинам не нужны никакие привилегии или льготы... термин
10 «женские шахматы» устарел. Я горжусь тем, что внесла свой вклад в содействии творческой
11 эмансипации женщин в шахматах и преодолении их психологических барьеров,
12 отделяющих женщин от «мужских шахмат».

13 11. Я успешно участвовала в других турнирах среди мужчин после 1968 года, в том числе
14 разделила третье-четвертое место в Дортмунде в 1974 году, второе-третье место в
15 Сандомире, Польша, в 1976 году, первое-четвертое место в Лоун-Пайн, в 1977 году и второе-
16 третье место в Дортмунде, в 1978 году. Во всех вышеупомянутых турнирах я была
17 единственной женщиной, которую приглашали, в том числе и на турнир Лоун-Пайн, где я и
18 победила Джона Питерсаала, Джеймса Тарьяна, Леонида Шамковича, Евгения
19 Мартиновского, Оскара Панно, Питера Бийясаа, Буркхарда Малича, Томаса Каспера,
20 Уильяма Джеймса Ломбарди и гроссмейстера Анатолия Лейна. «Нью-Йорк Таймс»
21 сообщила: «Нона Гаприндашвили из Советского Союза, чемпионка мира среди женщин,
22 добилась величайшего женского триумфа из когда-либо достигнутых, заняв первое место на
23 международном турнире Луи Д. Стэтхэма в Лоун-Пайн, Калифорния, с гроссмейстером
24 Юрием Балашовым, тоже из Советского Союза, с Гроссмейстером Оскаром Панно из
25 Аргентины и с международным мастером Саховичем из Югославии». «Нью-Йорк Таймс»
26 Chess, 29 июня 1977 г. <https://www.nytimes.com/1977/06/29/archives/chess-miss-gaprindashvili-strikes-a-blow-for-womens-equality.html>. Подтверждаю, что факты в этой цитате верны. После
27 моего успеха в Лоун-Пайн, в 1978 году я стала первой женщиной в истории, удостоенной
28 чести и звания международного гроссмейстера по шахматам среди мужчин.

12. Другими известными игроками мужского пола, против которых я соревновалась,
являются «кто есть кто» из сильнейших игроков и гроссмейстеров, в том числе Драголюб
Велимирович, Светозар Глигорич, Рудольф Сервати, Боян Кураджица, Борис Спасский, и

1 Михаил Таль, последние два из которых были чемпионами мира.

2 13. Я сыграла знаменитую партию против Велимировича на турнире в Югославии,
3 который продолжался до тех пор, пока на доске практически не осталось фигур, и мы
4 согласились на ничью. Позднее Советская шахматная федерация признала эту партию
5 лучшей шахматной партией года, и это была первая награда, присужденная за ничью.

6 14. Помимо того, что я была 5-кратной чемпионкой мира по шахматам, я была избрана
7 первым президентом Национального Олимпийского Комитета Грузии (GNOC) в 1989 году.
8 По сей день я являюсь почетным президентом GNOC-а, а также Шахматной Федерация
9 Грузии (GCF). За значительный вклад в спорт я получила награды от Международного
10 Олимпийского Комитета (МОК) и Ассоциации национальных Олимпийских Комитетов
11 (АНОК).

12 15. В 1997 году решением 68-го Конгресса ФИДЕ, в честь меня был учреждён специальный
13 кубок, известный как Кубок Ноны Гаприндашвили, который вручается стране, показавшей
14 лучший общий результат женских и мужских команд вместе взятых, на всемирных
15 шахматных олимпиадах и который я лично вручаю победившей делегации.

16 16. Тбилисский государственный дворец шахмат носит мое имя. В 2001 году мне выпала
17 честь и моим именем была названа улица в столице Грузии - Тбилиси. В 2015 году президент
18 Грузии Георгий Маргвелашвили наградил меня Президентским орденом «Сияние».

19 17. Все вышеперечисленные партии и победы не являются исчерпывающим списком моих
20 карьерных достижений. Я профессионально изучала шахматы и читала множество книг о
21 шахматах на протяжении всей своей карьеры и часто тщательно просматривала их. Вся
22 информация в этом заявлении о шахматных партиях, которые я сыграла, а также о моих
23 оппонентах и их достижениях, является общедоступной и может быть легко найдена на
24 множество веб-сайтов, в том числе www.chessgames.com и www.365chess.com , и в
25 стандартных справочниках по шахматам.

26 18. Мне сейчас 80 лет, и я все еще участвую в шахматных турнирах среди ветеранов. Я 7-
27 кратная чемпионка мира среди ветеранов в 1995, 2009, 2014, 2015, 2016, 2018 и 2019 годах.
28 Также в 2019 году я была удостоена престижной награды Европейского Шахматного Союза
- «Золотая пешка за жизненные достижения».

19. Мы с господином Каспаровым знакомы примерно с 1980 года, и мы всегда были
дружны. Он дал интервью грузинскому телеканалу «Имеди», которое транслировалось в мае
2021 года в специальной телепрограмме, посвященной моему 80-летию, которую можно

1 просмотреть по этой ссылке на страницу в Facebook: https://fb.watch/8dq4p1_cLz/ В этом
 2 интервью он поздравляет меня с днем рождения и высказывает следующие добрые слова в
 3 мой адрес на русском языке:

4 а) «Шахматными кумирами моего поколения были Таль, Петросян, Спасский, Фишер и
 5 вдруг впервые в истории шахмат в списке появилось новое имя - Нона Гаприндашвили. Это
 6 не было неожиданностью для Грузии, поскольку со времен средневековья шахматные доски
 7 с романом «Витязь в тигровой шкуре» использовались в качестве приданого женщинам,
 8 выходявшим замуж».

9 б) «Восхождение Ноны Гаприндашвили на Шахматный Олимп было очень впечатляющим.
 10 В возрасте 15 лет она уже выиграла все титулы Советского Союза. В возрасте 21 года она
 11 разгромила действующую чемпионку мира среди женщин - Елизавету Быкову. Не буду
 12 перечислять награды и заслуги Ноны Гаприндашвили, но скажу, что у нее жёсткий
 13 профессиональный шахматный стиль. **Она стала не только первым гроссмейстером среди**
 14 **женщин, но и первым гроссмейстером среди мужчин**». (подчеркнуто).

15 в) «Если восхождение советских шахмат связано с г-ном Ботвинником, то восхождение
 16 грузинских шахмат однозначно связано с Ноной Гаприндашвили. Достижения мирового
 17 уровня и признание Ноны Гаприндашвили являлись причиной шахматного бума в Грузии, и
 18 вскоре начало расти целое поколение шахматных звезд. Возник феномен грузинских шахмат.
 19 Международные женские сборные по шахматам неустанно пытались догнать уровень
 20 Грузии, и, как следствие, международный шахматный уровень заметно поднялся».

21 д) «В настоящее время женщины могут успешно соревноваться вместе с мужчинами в
 22 международных турнирах и зарабатывать значительные призовые деньги. Полвека назад это
 23 было невозможно вообразить. Мы с г-жой Ноной знакомы с осени 1980 года. В то время я
 24 впервые играл на Всемирной шахматной Олимпиаде. Я был особенно очарован ее ясным
 25 умом, преданностью к шахматам, искренностью, честностью и чувством юмора ».

26 е) «Уважаемая госпожа Нона, с днем рождения вас, от всей души желаю вам крепкого
 27 здоровья, сил, новых интересных приключений и впечатлений».

28 20. Я посвятила шахматам почти 70 лет своей жизни. Мне нужно было быть чрезвычайно
 волевым и целеустремленным, чтобы добиться успеха в этом виде спорта, который в то время
 считался «мужским миром». Я старалась изо всех сил и сумела выиграть все возможные (и

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1 на первый взгляд невозможные) титулы за свою профессиональную карьеру, но самым
2 ценным из моих достижений было то, что я заслужила любовь и уважение всех грузин и
3 любителей шахмат во всем мире, также признание и уважение шахматистов-мужчин.

4 21. Что касается шахмат, это моя любовь и профессия, это суть моей жизни. Моя карьера
5 и жизнь всегда привлекали пристальное внимание. Когда я поняла, что являюсь источником
6 вдохновения не только для молодых шахматистов, но и для молодого поколения в целом, я
7 изо всех сил старалась не только достичь своих шахматных целей, но и вести свою жизнь
8 так, чтобы наилучшим образом служить примером успеха и смирения и показать миру, чего
9 может достичь женщина с сильным характером, твердой верой и четкой целью.

10 22. Под конец, я бы хотела подчеркнуть, что оспариваемая сцена в сериале Netflix
11 искажает одно из моих самых значительных карьерных достижений и представляет меня в
12 ложном свете перед миллионной аудиторией по всему миру. Это ущемила мою
13 персональную и профессиональную репутацию и в результате, причинила мне огромную
14 боль.

15 Осознавая возможность наказания за лживое свидетельство, согласно законам штата
16 Калифорния, я заявляю, что вышеизложенные факты являются правдивыми и правильными.

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Выполнено 18 ноября 2021 года в Тбилиси, Грузия.



Нона Гаприндашвили

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 9420 Wilshire Blvd., 2nd Floor, Beverly Hills, California 90212.

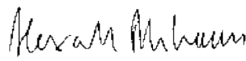
On December 3, 2021, I served true copies of the following document(s) described as **DECLARATION OF NONA GAPRINDASHVILI (ORIGINAL AND ENGLISH TRANSLATION WITH CERTIFICATE OF ACCURATE TRANSLATION** on the interested parties in this action as follows:

Arwen Johnson
Email: arwen.johnson@kslaw.com
Kelly Perigoe
Email: kperigoe@kslaw.com
KING & SPALDING LLP
633 West Fifth Street, Suite 1600
Los Angeles, CA 90071

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am a member of the bar of this Court.

Executed on December 3, 2021, at Beverly Hills, California.



Alexander Rufus-Isaacs

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6 Attorneys for Defendant NETFLIX, INC.

7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

10 NONA GAPRINDASHVILI, an
11 individual,

12 Plaintiff,

13 v.

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

16 Defendants.

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

**DECLARATION OF SCOTT FRANK
IN SUPPORT OF NETFLIX, INC.'S
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)**

**[Notice of Motion; Memorandum of
Points and Authorities; Declaration of
Arwen R. Johnson with Exhibits; and
[Proposed] Order 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

1 **DECLARATION OF SCOTT FRANK**

2 I, Scott Frank, hereby declare as follows:

3 1. I am a screenwriter, director, and producer. I wrote the screenplay for the
4 Netflix limited series *The Queen's Gambit*, for which I was the co-creator, writer,
5 director, and executive producer. The matters set forth below are based on my own
6 knowledge, except as may be otherwise indicated, and, if called and sworn as a
7 witness, I could and would competently testify thereto under oath.

8 2. I have previously written or co-written the screenplays for the following
9 works, among others: *Little Man Tate*, *Dead Again*, *Get Shorty*, *Out of Sight*, *Minority*
10 *Report*, and the Netflix series *Godless*.

11 3. In October 2020, Netflix released *The Queen's Gambit*, a seven-episode
12 limited series.

13 4. I adapted the screenplay for *The Queen's Gambit* from the 1983 fictional
14 novel of the same title by Walter Tevis. The novel and the screenplay tell the story of
15 Elizabeth Harmon (“Harmon”), an orphan chess prodigy who becomes a star chess
16 player in the male-dominated chess world of the 1960s, while grappling with
17 addiction and finding her support system. In following Harmon’s journey, the
18 screenplay explores themes of drug addiction, chosen family, the cost of genius, the
19 rejection of gender norms, and the value of collectivism over individualism in the
20 context of the Cold War.

21 5. Both the novel and its screenplay adaptation are works of fiction.
22 Harmon is a fictional character, her chess opponents are fictional characters, and the
23 tournaments in which she competes are fictional tournaments. The end credits of each
24 episode of *The Queen's Gambit* indicate that the series is “based upon the novel of
25 Walter Tevis.”

26 6. Although the series and the novel on which it is based are both works of
27 fiction, to provide a factual underpinning and enhance the realism of the fictional
28 series, the screenplay—like the novel—includes various references to real events,

1 books about chess, and chess players, including, for example, Jose Raul Capablanca,
2 Francois-Andre Philidor, George Koltanowski, Paul Morphy, William Steinitz, David
3 Ionovich Bronstein, and Alexander Alekhine.

4 7. The screenplay largely adheres to the novel, but it was necessary to make
5 some changes to the novel to make elements of the story better suited for a dramatic
6 television series. One of the challenges in adapting a novel about chess to a
7 screenplay was to make the chess play sufficiently dramatic and engaging for the
8 viewer. To that end, it was important to me to provide enough context for each chess
9 match to set the emotional stakes of the match beyond whether Harmon wins or loses.

10 8. One important element of that context is where each of Harmon's chess
11 matches falls in the narrative arc of her rise to prominence in the chess world. Her
12 first tournament is a local tournament in her hometown of Lexington, Kentucky. She
13 then progresses through increasingly prominent tournaments including in Cincinnati,
14 Pittsburgh, Houston, Las Vegas, and Mexico City, followed by the U.S. Championship
15 in Ohio, and a Paris invitational. The story arc culminates at the Moscow Invitational,
16 referred to as the Tournament of Champions, in 1968, where many of the fictional
17 chess greats that have dominated the chess world during Harmon's chess career
18 compete, including the Soviet player Vasily Borgov whom Harmon beats in a highly
19 anticipated rematch.

20 9. It was important to include details about each of the chess tournaments to
21 help set the stage of the increasing prestige of the tournaments in which Harmon
22 competes. For example, Harmon's first tournament is open to anyone who pays the
23 \$5 entry fee, and the chess matches are played on chess boards made of paper. The
24 U.S. Championship takes place in a classroom at Ohio University to minimal fanfare.
25 By contrast, the Moscow Invitational is covered heavily by the press, the participants
26 stay in suites at a luxury hotel, and avid fans watch the matches both inside the hall
27 and amassed outside, where each move is reported to the gathered crowds.

28

1 10. Harmon reaches the ultimate or peak prestige at the Moscow Invitational,
2 as Moscow was the seat of Soviet chess, the pinnacle of competitive chess at the time.
3 The screenplay sets up the Moscow Invitational as the crowning tournament in several
4 ways, including through a discussion in Cincinnati between Harmon and two local
5 chess players, Matt and Mike, whom Harmon had met at her first tournament.
6 Harmon discusses with Matt and Mike the possibility of playing in the U.S. Open
7 Championship and using a win there to leverage invitations to international
8 tournaments. She specifically asks about the possibility of competing in tournaments
9 against Soviet players, and Matt and Mike respond that no American has been able to
10 match the Soviets in chess in more than 20 years. Later, as the winner of the U.S.
11 Championship, Harmon receives an invitation to the Moscow Invitational.

12 11. I developed the narrative construct of the low expectations for Harmon at
13 the Moscow Invitational by having her leave the tournament hall in Moscow after her
14 first match to a relatively empty sidewalk with just one fan waiting for an autograph.
15 The series of scenes in which Harmon exits the tournament hall after defeating each
16 opponent she plays at the tournament allowed me to show the progression of
17 increasing press coverage and fan attention that Harmon receives as she begins to
18 overcome the low expectations for her, build a reputation, and attain stardom.

19 12. I understand that Nona Gaprindashvili, the Plaintiff in this action, alleges
20 that a line of spoken dialogue that references her in the series finale is defamatory.
21 Specifically, during the first match of the Moscow Invitational, a fictional chess
22 announcer providing commentary about the first of Harmon's matches refers to Ms.
23 Gaprindashvili when speculating about Harmon's opponents:

24 As far as they knew, Harmon's level of play wasn't at theirs.
25 Someone like Laev [Harmon's first opponent] probably didn't spend a
26 lot of time preparing for their match. Elizabeth Harmon's not at all an
27 important player by their standards. The only unusual thing about her,
28 really, is her sex. And even that's not unique in Russia. There's Nona
 Gaprindashvili, but she's the female world champion and has never

1 faced men. My guess is Laev was expecting an easy win, and not at
2 all the 27-move thrashing Beth Harmon just gave him.

3 13. The purpose of this commentary is to further the narrative construct that
4 Harmon’s all-male opponents at the Moscow Invitational were likely initially
5 dismissive of Harmon due to gender segregation in the Soviet chess world at that time.
6 The fictional announcer surmises that, to Harmon’s opponents at that tournament, she
7 would not have been an important player. Although there were other female chess
8 players, including Ms. Gaprindishvili, the female world champion, I understand that
9 Soviet tournaments generally were divided by gender and thus female players
10 generally did not compete in substantial Soviet tournaments (like the fictional
11 Moscow Invitational) with men. The commentator speculates that Harmon’s Soviet
12 opponents’ lack of competition experience against female chess players would cause
13 them to underestimate her.

14 14. The fictional commentator’s statement that Ms. Gaprindashvili was “the
15 female world champion and has never faced men” in the context of this scene was not
16 intended to disparage Ms. Gaprindashvili in any way. It was intended to indicate to
17 the viewer that the Soviet chess world of 1968 was gender-segregated, such that major
18 tournaments were separated by sex.

19 15. My purpose in having the fictional commentator refer to Ms.
20 Gaprindashvili by name during this scene was to recognize her status as one of the
21 then Soviet Union’s great chess players, while also making clear that even though
22 there were excellent female players, the Soviet chess world in the late 1960s was
23 male-dominated and gender-segregated. The line was intended to honor Ms.
24 Gaprindashvili, not disparage her, and I believed it to be accurate.

25 16. The line refers to “Russia,” as opposed to the Soviet Union. Throughout
26 the series, American characters occasionally refer to Soviet players as “Russian” and
27 to the Soviet Union as “Russia,” which is consistent with the way in which I
28 understand many Americans referred to the U.S.S.R. in the 1960s.

1 17. The line in the series differs from that in the novel, in which the narrator,
2 as opposed to a character, makes the following statement about Harmon’s defeat of
3 Laev in the first match of the Moscow Invitational:

4 As far as they knew, [Harmon’s] level of play was roughly that of Benny
5 Watts, and men like Laev would not devote much time to preparation for
6 playing Benny. She was not an important player by their standards; the
7 only unusual thing about her was her sex; and even that wasn’t unique in
8 Russia. There was Nona Gaprindashvili, not up to the level of this
9 tournament, but a player who had met all these Russian Grandmasters
10 many times before. Laev would be expecting an easy win.

11 18. I deviated from this text, first, by having a fictional character (an
12 announcer at the tournament), rather than the narrator, make the statement in the
13 series. Then, I modified the language itself to make the statement less expository and
14 more direct, *i.e.*, in a manner that an announcer would deliver such a line. I also
15 removed the negative commentary from the novel that Ms. Gaprindashvili was “not
16 up to the level of” the fictional tournament even though she had “met” the Russian
17 Grandmasters before, and instead added express recognition that Ms. Gaprindashvili
18 was the female world champion.

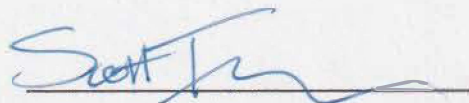
19 19. My team and I spent many hours researching chess and consulting with
20 chess advisors in developing the screenplay. In particular, I worked extensively with
21 two chess advisors. One was Bruce Pandolfini, who is one of the premier chess
22 teachers in the world and was Walter Tevis’s chess consultant when Tevis wrote the
23 novel. The other was Garry Kasparov, a former world champion and expert in Soviet
24 chess during the relevant era, who, in addition to consulting about the details of chess
25 games, gave insight into how chess players feel, think, move, and interact with one
26 another.

27 20. All of the scripts for the series were provided to Mr. Pandolfini and Mr.
28 Kasparov to review for accuracy of references to people and events in the chess world
and for authenticity of the chess-related scenes. Based on their review, both advisors

1 identified various notes about the scripts, which were considered and addressed as
2 appropriate. Neither advisor identified any issue with the commentator's line that is
3 the subject of this action, and I understood it to be accurate.

4 21. It is my understanding based on research by my team that during the
5 relevant time period chess was largely gender-segregated. While the World
6 Championship was open to women, there was a separate Women's World
7 Championship. Based on the research that my team completed, Ms. Gaprindashvili
8 was the female world champion in the 1960s, and her participation in notable
9 tournaments against male grandmasters largely occurred in the 1970s and later.

10
11 I declare under penalty of perjury under the laws of the United States of
12 America that the foregoing is true and correct. Executed on October 28, 2021 at
13 New York City New York.

14
15 

16 Scott Frank

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5 Facsimile: (213) 443-4310

6 Attorneys for Defendant NETFLIX, INC.

7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

10
11 NONA GAPRINDASHVILI, an
12 individual,

13 Plaintiff,

14 v.

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

17 Defendants.
18

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

**DEFENDANT NETFLIX, INC.'S
NOTICE OF MOTION AND
(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); MEMORANDUM OF POINTS
AND AUTHORITIES**

**[Declarations of Scott Frank and Arwen
R. Johnson with Exhibits; and Proposed
Order 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
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1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on January 24, 2022 at 2:00 p.m., or as soon
3 thereafter as the matter may be heard before the Honorable Virginia A. Phillips of the
4 above-entitled Court, located at United States Courthouse, 350 W. 1st Street, Los
5 Angeles, CA 90012, Courtroom 8A, Defendant Netflix, Inc. (“Netflix”) will and hereby
6 does move the Court (the “Motion”) (1) to strike the claims asserted against Netflix in
7 the First Amended Complaint (the “FAC” (ECF No. 11)) of Plaintiff Nona
8 Gaprindashvili (“Plaintiff”) pursuant to California’s anti-SLAPP statute, California
9 Code of Civil Procedure section 425.16 *et seq.*; or (2) to dismiss Plaintiff’s FAC, with
10 prejudice, pursuant to Federal Rule of Civil Procedure 12(b)(6).

11 The grounds for the Motion are that (1) Plaintiff’s FAC targets activity protected
12 under the anti-SLAPP statute and Plaintiff cannot meet her burden of establishing a
13 probability of success on any of her claims; and (2) Plaintiff in any event has failed to
14 plausibly allege any claim for relief.

15 This Motion is based on this Notice of Motion, the accompanying Memorandum
16 of Points and Authorities, the accompanying Declarations of Scott Frank and Arwen R.
17 Johnson and attached exhibits, the pleadings and records on file in this case, all matters
18 of which the Court may take judicial notice, and such other or further material as may
19 be presented at or before the hearing on the Motion. This Motion is made following the
20 conference of counsel pursuant to Local Rule 7-3, which took place on October 25,
21 2021. (Declaration of Arwen R. Johnson (“Johnson Decl.”), ¶ 7.)

22
23 DATED: November 1, 2021

KING & SPALDING LLP
ARWEN R. JOHNSON
KELLY PERIGOE

24
25
26 By: /s/ Arwen R. Johnson

27 ARWEN R. JOHNSON
28 Attorneys for NETFLIX, INC.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 In October 2020, Netflix released *The Queen’s Gambit* (the “Series”), a critically-
4 acclaimed, popular fictional limited series based on a 1983 novel of the same name.
5 Plaintiff Nona Gaprindashvili, an elite chess competitor, asserts claims against Netflix
6 arising from a line of dialogue in the Series finale. Because Plaintiff’s meritless claims
7 are designed to threaten free speech, as forbidden by the California legislature, they
8 should be stricken or, alternatively, dismissed.

9 The Series follows the rise of fictional protagonist Elizabeth Harmon, a chess
10 prodigy, through the male-dominated world of elite chess during the Cold War era.
11 Plaintiff’s allegations arise from a short scene in the Series finale, set 53 years ago in
12 1968 at the fictional “Moscow Invitational,” in which a chess announcer speculates that
13 Harmon’s male competitors at that tournament likely would not have adequately
14 prepared to face her. The fictional announcer remarks during his commentary that
15 Harmon’s opponents might be familiar with Plaintiff, but “she’s the female world
16 champion and has never faced men” (the “Line”). Plaintiff alleges the Line is inaccurate
17 by a few years and therefore false, defamatory, and highly offensive to a reasonable
18 person. In her First Amended Complaint (“FAC”), she asserts claims against Netflix
19 under California law for (1) false light invasion of privacy and (2) defamation *per se*.

20 Plaintiff’s claims are unavailing and should be stricken under California’s anti-
21 SLAPP statute, Cal. Code Civ. Proc. § 425.16, or in the alternative, dismissed with
22 prejudice under Rule 12(b)(6) for failure to state a claim. As a threshold matter,
23 Plaintiff’s claims arise directly from Netflix’s exercise of its constitutional right of free
24 speech in connection with a public issue. The Line is a part of a fictional television
25 series that addresses a number of significant matters of public interest, including the
26 challenges women faced competing in the male-dominated world of elite chess during
27 the 1960s. Netflix easily meets its burden on the first step of the analysis. *See De*
28 *Havilland v. FX Networks, LLC*, 21 Cal.App.5th 845, 849-50 (2018).

1 Plaintiff thus must show that her claims are legally sufficient and factually
2 substantiated to meet her burden at step two. Plaintiff cannot meet this burden because
3 she cannot prove a probability of prevailing on her claims for each of the following,
4 independent reasons:

5 **First**, Plaintiff cannot show that a reasonable viewer of the Series would construe
6 the Line as conveying a statement of objective fact, as required for both of her claims.
7 Television shows often portray real people, but such people “do [] not own history” or
8 “have the legal right to control, dictate, approve, disapprove, or veto the creator’s
9 portrayal of actual people.” *De Havilland*, 21 Cal.App.5th at 849–50. The Line consists
10 of speculation by a fictional chess announcer, about how fictional players might have
11 prepared for a fictional tournament, in a fictional series, based on a novel. Even in more
12 difficult cases involving works of historical fiction or docudramas—which the Series is
13 not—courts recognize that viewers are “sufficiently familiar with this genre to avoid
14 assuming that all statements within them represent assertions of verifiable facts.”
15 *Partington v. Bugliosi*, 56 F.3d 1147, 1155 (9th Cir. 1995); *see also De Havilland*, 21
16 Cal.App.5th at 866 (granting anti-SLAPP motion to strike defamation and false light
17 claims by actress about statements in a docudrama).

18 **Second**, the Line is not defamatory, or even disparaging. It could only be
19 construed as reflecting negatively on Plaintiff’s abilities if a reasonable viewer would
20 interpret it as insinuating that Plaintiff had not faced men as of 1968 *because she was*
21 *“inferior” and not capable of doing so*. But that is an inference no reasonable viewer
22 would draw from the Line or the tenor of the Series, which is about the challenges a
23 female prodigy faces in the gender-segregated chess world. *Underwager v. Channel 9*
24 *Austl.*, 69 F.3d 361, 366–67 (9th Cir. 1995). As the Series powerfully illustrates, there
25 are many non-defamatory reasons (bias, gender segregation, etc.) why someone as
26 skilled as Plaintiff might not have faced men as of 1968.

27 **Third**, although she styles her defamation claim as one for defamation *per se*, the
28 defamatory implication that Plaintiff alleges depends on viewers being familiar with the

1 opportunities for female chess players in the Soviet Union in 1968. Such facts are not
2 common knowledge. *See McGarry v. Univ. of San Diego*, 154 Cal.App.4th 97, 112
3 (2007). Accordingly, her claim is properly construed as a claim of defamation *per quod*,
4 *see* Cal. Code Civ. Proc. § 48a(d)(2), which requires Plaintiff to plead and prove special
5 damages (*i.e.*, economic losses) caused by the Line. As detailed below, she cannot do
6 so. At most, the Line is about a moment in time that has no bearing on the decades of
7 her career successes that followed and would not cause Plaintiff to experience lost
8 economic opportunities.

9 **Fourth**, Plaintiff’s claims also fail for the simple reason that the “gist or sting”
10 of the Line is substantially true. *See Masson v. New Yorker Magazine, Inc.*, 501 U.S.
11 496, 517 (1991) (“Minor inaccuracies do not amount to falsity so long as the substance,
12 the gist, the sting of the libelous charge be justified.”). Plaintiff does not and cannot
13 allege that she faced men in prestigious Soviet tournaments before 1968—*i.e.*, the gist
14 of the Line as delivered in the context of the scene. Plaintiff alleges that she began
15 facing men in a couple of tournaments a few years earlier, but none of those
16 competitions were Soviet tournaments like the fictional “Moscow Invitational” in which
17 Harmon competes in the Series finale. Moreover, the difference between 1963 and
18 1968 amounts to, at most, a minor inaccuracy in timing that is not actionable.

19 **Fifth**, Plaintiff, a public figure, cannot meet her burden to prove that Netflix acted
20 with the requisite actual malice. Plaintiff’s malice theory ignores that in adapting the
21 novel for television, the Series’ creator *removed* the disparaging statement that she was
22 “not up to the level of” the fictional Moscow Invitational, and added the express
23 recognition that she was the female world champion. The creator, moreover, relied on
24 two chess experts to confirm the historical chess details of the screenplay adaptation.
25 The Series’ reference to Plaintiff was intended to recognize her, not disparage her. She
26 cannot establish through clear and convincing evidence that Netflix acted “in the hope
27 of insinuating a defamatory import.” *De Havilland*, 21 Cal.App.5th at 869-70.

28 The First Amendment protects the creator’s artistic license to include the Line in

1 the fictional Series. Because Plaintiff cannot meet her anti-SLAPP burden, the FAC
2 must be dismissed with prejudice.

3 Alternatively, for the reasons set forth in Sections III.B.1–4 below—all of which
4 can be decided based on the FAC and Series alone—Plaintiff fails to state a claim for
5 relief under Rule 12(b)(6). Because no amount of repleading could transform the Line
6 into actionable defamation, the claims should be dismissed without leave to amend. *See*
7 *Dougherty v. City of Covina*, 654 F.3d 892, 901 (9th Cir. 2011).

8 **II. STATEMENT OF FACTS**

9 **A. *The Series***

10 Netflix released the Series to its members in October 2020 through its online
11 streaming service. (FAC ¶ 34.) The Series was a critical success and was widely
12 viewed. (*Id.*) It is a seven-episode limited series adapted by director and producer Scott
13 Frank from a 1983 novel of the same name by Walter Tevis. (Johnson Decl., Ex. 1
14 (“Ex. 1”), *e.g.*, Ep. 1 at 56:43; *see also* Declaration of Scott Frank (“Frank Decl.”), ¶¶ 1,
15 3–4.) The Series tells the story of the fictional Elizabeth Harmon. It follows Harmon’s
16 life and career as an orphan who becomes a chess prodigy and later a star chess player
17 in the male-dominated and largely gender-segregated chess world of the 1960s, while
18 she grapples with addiction and finds her support system. (Ex. 1; Frank Decl., ¶¶ 4, 14–
19 15.) The Series explores themes of drug addiction, chosen family, the cost of genius,
20 the rejection of gender norms, and the value of collectivism over individualism in the
21 context of the Cold War. (Ex. 1; Frank Decl., ¶ 4.)

22 The Series, like the novel, is a work of fiction. (Ex. 1, Ep. 1 at 57:59; Frank
23 Decl., ¶ 5.) Harmon is a fictional character. (*Id.*) Her chess opponents and the
24 tournaments in which she competes are fictional. (*Id.*) The Series, however, includes
25 references to real events and people to enhance the realism. (Frank Decl., ¶ 6.) To that
26 end, Bruce Pandolfini, one of the premier chess teachers in the world (and Tevis’s chess
27 consultant during the writing of the novel), and Garry Kasparov, a former world
28 champion and expert in Soviet chess during the relevant era, consulted on the adaption

1 of the Series and reviewed the scripts. (*Id.* ¶ 19.)

2 While the Series largely adheres to the novel, additional context for each chess
3 tournament was necessary to set the emotional stakes for the Series and Harmon’s rise
4 to predominance in the chess world to ensure that the Series was sufficiently engaging
5 for a viewer of a dramatic, fictional, television series. (Frank Decl., ¶¶ 7–8.) For
6 example, the prestige and prominence of the tournaments in which Harmon competes
7 steadily increase throughout the Series. (*Id.* ¶ 8; *see generally* Ex. 1.) Harmon first
8 competes in a local tournament, held in her Kentucky hometown. (Ex. 1, Ep. 2 at 27:05–
9 28:01, 32:40–34:45; Frank Decl. ¶ 9.) She goes on to play tournaments in Cincinnati,
10 Pittsburgh, Houston, Las Vegas, and Mexico City. (Ex. 1, Ep. 3 at 1:34–10:00
11 (Cincinnati), 10:35–13:38 (Pittsburgh and Houston), 22:54–41:00 (Las Vegas); *id.*, Ep.
12 4 at 9:50–11:40 (Mexico City); Frank Decl., ¶ 8.) Near the end of the Series, Harmon
13 competes in even more prestigious and exclusive tournaments: the U.S. Championship
14 in Ohio, which she wins; and a Paris invitational. (Ex. 1, Ep. 5 at 27:38–41:40 (Ohio);
15 *id.*, Ep. 6 at 19:45–33:40 (Paris); Frank Decl., ¶ 8) Because of her status as reigning
16 U.S. Champion, Harmon is invited to compete in the fictional 1968 Moscow
17 Invitational. (Ex. 1, Ep. 5 at 42:23–48; Ep. 7 at 26:35–29:52.)

18 The fictional Moscow Invitational is portrayed as a highly prestigious
19 tournament, as the Soviets were the pinnacle of competitive chess at that time. (Ex. 1,
20 Ep. 5 at 41:40–45:27; *id.*, Ep. 6 at 7:10–9:40; Frank Decl., ¶ 10.) The Series also depicts
21 sexism and gender-segregation in the male-dominated world of 1960s chess. (Frank
22 Decl., ¶ 4.) In Harmon’s first tournament, the male organizers discourage her from
23 competing due to the lack of a women’s section. (Ex. 1, Ep. 2 at 33:06–34:02.) Later,
24 reporters ask her how it feels “to be a girl among all those men” (Ex. 1, Ep. 3 at 13:50–
25 14:23), and when a stranger asks if she is the “U.S. Women’s Champion,” she replies,
26 “U.S. Open Co-Champion,” a genderless title. (Ex. 1, Ep. 4 at 1:27–43.)

27 At the culminating Moscow Invitational, referred to as the “Tournament of
28 Champions,” (Ex. 1, Ep. 7 at 30:36), Harmon is the only American and the only female

1 chess player. (*Id.* at 28:25–30:02.) Nevertheless, Harmon triumphs over her internal
2 demons, and the low expectations for her based on her nationality and gender, to win
3 the tournament by drawing on her chosen family of American chess players for support.
4 (*Id.* at 51:37–59:54.)

5 The end credits of every episode expressly state that the Series is “based upon the
6 novel of Walter Tevis” immediately after identifying the director, screenwriter, and
7 creators. (Ex. 1, Ep. 1 at 56:43; Ep. 2 at 1:02:29; Ep. 3 at 43:35; Ep. 4 at 46:04; Ep. 5
8 at 45:36; Ep. 6 at 57:21; Ep. 7 at 1:04:52; Frank Decl., ¶ 5.) The credits also note:

9 [T]he characters and events depicted in this program are fictitious. No
10 depiction of actual persons or events is intended.

11 (Ex. 1, Ep. 1 at 57:59; Ep. 2 at 1:03:51; Ep. 3 at 45:01; Ep. 4 at 47:20; Ep. 5 at 46:59;
12 Ep. 6 at 58:46; Ep. 7 at 1:06:03.)

13 ***B. Plaintiff’s Allegations***

14 Plaintiff’s FAC for defamation *per se* and false light is based on a single reference
15 to her in a line of dialogue in one episode of the Series. While Harmon is playing in the
16 Moscow Invitational, a tournament announcer says of her opponents:

17 As far as they knew, Harmon’s level of play wasn’t up to theirs. Someone
18 like Laev probably didn’t spend a lot of time preparing for their match.
19 Elizabeth Harmon’s not at all an important player by their standards. The
20 only unusual thing about her, really, is her sex. And even that’s not unique
21 in Russia. **There’s Nona Gaprindashvili, but she’s the female world
22 champion and has never faced men.** My guess is Laev was expecting an
23 easy win, and not at all the 27-move thrashing Beth Harmon just gave him.

24 (Ex. 1, Ep. 7 at 29:45–30:31; FAC ¶ 5) (emphasis added).

25 Plaintiff alleges that by “impugning that she did not face men, or was inferior to
26 men,” the Line is “manifestly defamatory.” (*Id.* ¶ 77.) She alleges that the Line is false
27 because she had played matches against male chess players by 1968. (*Id.* ¶ 7.) The
28 FAC does not allege, however, that Plaintiff had competed against men in a prestigious
Soviet competition before 1968. Her most notable chess competitions against men and
co-ed titles, as identified in the FAC, took place after 1968, including Plaintiff’s tie for

1 second place at Sandomierz in 1976, tie for first place at Lone Pine in 1977, and tie for
2 second place at Dortmund in 1978. (*Id.* ¶ 25.) Plaintiff alleges that she became the first
3 woman to be awarded the title of “Grandmaster” in 1978, as a result of her 1977 Lone
4 Pine performance. (*Id.* ¶ 28.)

5 **C. *The Creative Process and Context of the Line***

6 The screenwriter who adapted the novel for the Series included the Line to
7 emphasize the male-dominated, gender-segregated world of 1960s chess, especially in
8 the Soviet Union, in furtherance of the Series’ narrative arc. (Frank Decl., ¶¶ 13-15.)

9 The Line was changed from the following statement by the novel’s narrator:

10 As far as they knew, [Harmon’s] level of play was roughly that of Benny
11 Watts, and men like Laev would not devote much time to preparation for
12 playing Benny. She was not an important player by their standards; the
13 only unusual thing about her was her sex; and even that wasn’t unique in
14 Russia. There was Nona Gaprindashvili, not up to the level of this
15 tournament, but a player who had met all these Russian Grandmasters
16 many times before. Laev would be expecting an easy win.

17 (FAC ¶ 3.) The Line thus deviates from the novel by shifting the reason the fictional,
18 male Soviet chess players would not have faced Plaintiff from her “not [being] up to
19 the level of this tournament”—a disparaging comment (that Plaintiff does not think is
20 defamatory (*id.* ¶ 64))—to her being the “female world champion.” In making this
21 change, the screenwriter did not intend to disparage Plaintiff, but rather to recognize her
22 status, in 1968, as the reigning Women’s World Champion. (Frank Decl., ¶ 18.)

23 In adapting the screenplay, the screenwriter and his team spent many hours
24 researching chess and consulting with chess experts Pandolfini and Kasparov. (Frank
25 Decl., ¶ 19.) All of the scripts for the Series were provided to Pandolfini and Kasparov
26 to review for accuracy, and neither expert identified any issue with the Line. (*Id.* at
27 ¶ 20.) Indeed, the most widely available information about Plaintiff described her as a
28 long-reigning female world champion whose most notable success among men occurred
in the 1970s. (See Johnson Decl., ¶ 4, Ex. 3 (*Legendary Chess Careers: Nona
Gaprindashvili*); *id.* ¶ 3, Ex. 2 (*Glory to the Queen*).)

1 **III. THE FAC SHOULD BE STRICKEN UNDER CALIFORNIA’S ANTI-**
2 **SLAPP STATUTE**

3 California’s anti-SLAPP statute enables a defendant to strike meritless claims
4 that would otherwise chill the exercise of its constitutional right to free speech.¹ *See*
5 *De Havilland*, 21 Cal.App.5th at 854-55; *Metabolife Int’l, Inc. v. Wornick*, 264 F.3d
6 832, 839 (9th Cir. 2001). Consistent with the statute’s explicit direction, *see* Cal. Code
7 Civ. Proc. § 425.16(a), federal courts construe the statute broadly. *Greater L.A. Agency*
8 *on Deafness, Inc. v. Cable News Network, Inc.*, 742 F.3d 414, 421 (9th Cir. 2014).

9 Resolution of an anti-SLAPP motion proceeds in two steps. **First**, the defendant
10 must make “a threshold showing that the challenged cause of action is one arising from
11 protected activity.” *Navellier v. Sletten*, 29 Cal.4th 82, 88 (2002). **Second**, the court
12 must strike the challenged claim unless the plaintiff meets the burden to show “a
13 probability that [she] will prevail on each element” of the claim. *Harkonen v. Fleming*,
14 880 F.Supp.2d 1071, 1078 (N.D. Cal. 2012). Where, as here with respect to the grounds
15 in Sections III.B.1-4, an anti-SLAPP motion is based on a complaint’s facial legal
16 deficiencies, the motion is “treated in the same manner as a motion under Rule
17 12(b)(6).” *See Planned Parenthood Fed’n of Am., Inc. v. Ctr. for Med. Progress*, 890
18 F.3d 828, 833–34 (9th Cir. 2018). As to the factual sufficiency of the actual malice
19 element, Section III.B.5, the Rule 56 standard applies. *Id.*

20 The Court may properly consider the Series in determining the legal sufficiency
21 of the claims (*see* Sections III.B.1-4, below) because it was referenced in the FAC, the
22 Series is “central to [Plaintiff’s] claims,” and the authenticity of the copy of the Series,
23 attached to the Johnson Declaration as Exhibit 1, cannot be contested. *See Marder v.*
24 *Lopez*, 450 F.3d 445, 448 (9th Cir. 2001).

25 As set forth below, Netflix easily carries its burden on the first step of the

26 _____
27 ¹ California’s anti-SLAPP statute applies where, as here, a plaintiff sues in federal
28 court based on diversity jurisdiction. *Thomas v. Fry’s Electronics, Inc.*, 400 F.3d
1206 (9th Cir. 2005) (*per curiam*).

1 analysis, whereas Plaintiff cannot make her required showing on the second step.

2 **A. The Complaint Assails Netflix’s Protected Activity.**

3 To satisfy the first step, Netflix need only make a *prima facie* showing that
4 Plaintiff’s claims arise from a “written or oral statement” made “in a place open to the
5 public or a public forum in connection with an issue of public interest,” or in furtherance
6 of the exercise of “the constitutional right of free speech in connection with a public
7 issue or an issue of public interest.” Cal. Code Civ. Proc. § 425.16(e)(3)–(4). Netflix
8 easily does so. Plaintiff’s claims fall directly under Section 425.16(e)(3) because they
9 concern a statement “made in a place open to the public or a public forum.” Plaintiff’s
10 defamation and false light claims arise from a line of dialogue in the Series, which was
11 released through Netflix’s online streaming service in October 2020 and reportedly
12 viewed by over 60 million households as of November 23, 2020. (FAC ¶¶ 5–7, 34.)
13 Such a widely watched television series qualifies as a “public forum” under the anti-
14 SLAPP statute. *Cf. De Havilland*, 21 Cal.App.5th at 856-57 (plaintiff conceded that
15 television miniseries was part of a public forum);² *Mossack Fonseca v. Netflix Inc.*, No.
16 CV 19-9330-CBM-AS(x), 2020 WL 8510342, at *2 (C.D. Cal. Dec. 23, 2020) (same
17 with respect to film).

18 Plaintiff’s claims also fall squarely within Section 425.16(e)(4) because the
19 “creation of a television show is an exercise of free speech.” *Tamkin v. CBS Broad.,*
20 *Inc.*, 193 Cal.App.4th 133, 143 (2011). “The First Amendment to the United States
21 Constitution protects the creative elements of an artistic work,” which extends to the
22 creation of television shows. *Winter v. DC Comics*, 30 Cal.4th 881, 891-92 (2003); *see*
23 *also De Havilland*, 21 Cal.App.5th at 850 (docudrama about the rivalry between
24 Hollywood actresses protected by anti-SLAPP statute). Here, the Line was delivered

25 _____
26 ² Federal courts applying California law must follow decisions of the California Court
27 of Appeals “where the Supreme Court of California has not spoken on the question,”
28 unless there is “convincing evidence that the highest court of the state would decide
differently.” *Klingebiel v. Lockheed Aircraft Corp.*, 494 F.2d 345, 346 n.2 (9th Cir.
1974) (per curiam).

1 by a fictional character in the Series—making it the product of Netflix’s creation and
2 production of a television show. Acts that “advance or assist in the creation, casting,
3 and broadcasting of an episode of a popular television show” fall within the scope of
4 protected First Amendment activity. *Tamkin*, 193 Cal.App.4th at 143. Just as in *Tamkin*,
5 the acts underlying this litigation were in furtherance of the creation, casting, and
6 broadcasting of the Series and are accordingly entitled to First Amendment protection.

7 Finally, both Sections 425.16(e)(3) and (e)(4) apply to speech made in connection
8 with an issue of “public interest,” which broadly encompasses “any issue in which the
9 public is interested,” regardless of the issue’s significance. *Nygaard, Inc. v. Uusi-*
10 *Kerttula*, 159 Cal.App.4th 1027, 1042 (2008) (statements about Finnish businessman
11 and celebrity constituted issue of public interest). The statement here satisfies that low
12 bar. As Plaintiff recognizes, the Line is part of the announcer’s broader speculation that
13 “the male players in the tournament did not take Harmon seriously as an opponent.”
14 (FAC ¶ 42.) Sexism and gender-segregation in the chess world (and society more
15 generally) are recurring themes in the Series and paradigmatic examples of issues of
16 public interest protected by the anti-SLAPP statute. *See, e.g., Brodeur v. Atlas Entm’t,*
17 *Inc.*, 248 Cal.App.4th 665, 675 (2016) (public interest in *American Hustle* scene
18 regarding the possible negative consequences of exposure to microwave radiation);
19 *Tamkin*, 193 Cal.App.4th at 143 (television show’s use of the names of private,
20 unknown relators as guest characters involved an issue of public interest regarding “the
21 creation and broadcasting of that episode”); *Seelig v. Infinity Broad. Corp.*, 97
22 Cal.App.4th 798, 807–08 (2002) (public interest in game show meant that radio host’s
23 mockery of one of the contestants satisfied the first step of the analysis). In addition,
24 the Line was made in connection with Plaintiff, an undisputed public figure, who would
25 herself be an issue of public interest. *See Brodeur*, 248 Cal.App.4th at 675 (statement
26 made in connection with a public figure who was a “well-known author in the
27 environmental field” qualified as a matter of public interest).

1 California’s anti-SLAPP statute must be read “broadly” so as to maximize the
2 protection afforded to acts in furtherance of the constitutionally protected right to free
3 speech. Cal. Code Civ. Proc. § 425.16(a); *see also Bradbury v. Superior Court*, 49
4 Cal.App.4th 1108, 1114 & n.3 (1996). Plaintiff’s defamation and false light claims arise
5 from an exercise of free speech in connection with an issue of public interest.

6 ***B. Plaintiff Cannot Establish That She Will Probably Prevail on the Merits***
7 ***of Her Claims.***

8 Because Netflix satisfies its threshold showing that the anti-SLAPP statute
9 applies, the burden shifts to Plaintiff to demonstrate both that she has a legally sufficient
10 claim *and* prove with admissible evidence there is a probability of her prevailing on that
11 claim. *De Havilland*, 21 Cal.App.5th at 855.

12 As Plaintiff’s claim for false light invasion of privacy is “in substance equivalent”
13 to defamation, the survival of that claim depends on her ability to show a probability of
14 success on the merits of her defamation claim. *Brodeur*, 248 Cal.App.4th at 678; *see*
15 *also Tamkin*, 193 Cal.App.4th at 149. To prevail on her defamation claim, Plaintiff
16 must demonstrate that Netflix intentionally published a comment that a reasonable
17 viewer would regard as a statement of fact that is “false, unprivileged, and has a natural
18 tendency to injure or which causes special damage.” *Balla v. Hall*, 59 Cal.App.5th 652,
19 675 (2021). Because Plaintiff is a public figure, she must also show by clear and
20 convincing evidence that Netflix published the comment at issue with “actual malice,”
21 meaning with subjective knowledge or reckless disregard as to its truth or falsity.³
22 *McGarry*, 154 Cal.App.5th at 114.

23 _____
24 ³ Among other things, Plaintiff is the first woman to be honored with the rank of
25 International Chess Grandmaster among men, a “national hero in Georgia,” a former
26 Georgian politician, a recipient of the Georgia Order of Excellence, and the subject of
27 a recent documentary film—all of which are internationally recognized
28 accomplishments that explain why Plaintiff concedes that she is a public figure. (FAC
¶¶ 28–30, 71.) *See also Balla*, 59 Cal.App.5th at 716 (an all-purpose public figure refers
to someone who “has achieved such pervasive fame or notoriety that [she] becomes a
public figure for all purposes and in all contexts” (cleaned up)).

1 Plaintiff cannot meet her burden as to several elements of her defamation claim,
2 each of which provides an independent basis to grant Netflix’s motion: (1) a reasonable
3 viewer would not interpret the fictional Series as making assertions of fact, (2) the Line
4 is not defamatory, (3) special damages should not be presumed, and Plaintiff cannot
5 prove them, (4) the gist of the Line is substantially true, and (5) Plaintiff cannot prove
6 that Netflix acted with actual malice. Plaintiff’s defamation claim is both legally
7 insufficient and unsupported by admissible evidence, and her FAC must be stricken.

8 **1. The Series Is a Fictional Work That A Reasonable Viewer**
9 **Would Not Construe as Conveying Objective Fact.**

10 As a threshold matter, “a reasonable viewer, watching the scene [] in [its] original
11 context,” would not “have understood [it] to convey statements of fact.” *De Havilland*,
12 21 Cal.App.5th at 866. Whether statements such as the Line “convey the requisite
13 factual implication is ordinarily a question of law for the court.” *Issa v. Applegate*, 31
14 Cal.App.5th 689, 703 (2019). Here, the Series is a fictional work, based upon another
15 fictional work (the novel). Elizabeth Harmon is not a real person, and the Series does
16 not purport to be a journalistic or documentarian account of real events, or even a
17 “docudrama.” The character speaking the line is a fictitious announcer, who himself
18 would be affected by the bias inherent in competitive chess at the time. No reasonable
19 viewer would understand the Series to be asserting objective facts.

20 As a matter of law, it is not reasonable for a viewer to accept statements in
21 fictional works—even those that portray real characters—as assertions of fact.
22 “Fictional works have no obligation to the truth.” *Sarver v. Hurt Locker LLC*, No. 2:10-
23 CV-09034-JHN, 2011 WL 11574477, at *8 (C.D. Cal. Oct. 13, 2011), *aff’d sub nom*,
24 *Sarver v. Chartier*, 813 F.3d 891 (9th Cir. 2016); *see also Guglielmi v. Spelling-*
25 *Goldberg Prods.*, 25 Cal.3d 860, 871 (1979) (Bird, J., concurring) (“All fiction, by
26 definition, eschews an obligation to be faithful to historical truth.”) (cited in *Sarver*,
27 2011 WL 11574477, at *8). Rather, fictional works are known to involve worlds in
28 which “drama and dramatic license are generally the coin of the realm,” and the creators

1 are understood to be artists, rather than “journalists or documentarians.”
2 *Khodorkovskaya v. Gay*, 5 F.4th 80, 85 (D.C. Cir. 2021) (theater production’s depiction
3 of “its character Inna [the wife of a Russian oligarch] could not reasonably be
4 understood to communicate actual facts about the real-life Inna”).

5 Even as to docudramas, which blend fact and fiction, courts recognize that
6 viewers are “sufficiently familiar with this genre to avoid assuming that all statements
7 within them represent assertions of verifiable facts.” *Partington*, 56 F.3d at 1155
8 (“[T]he general tenor of the docudrama [] tends to negate the impression that the
9 statements involved represented a false assertion of objective fact.”); *see also Masson*,
10 501 U.S. at 512-13 (“[S]tatements made in ‘a so-called docudrama or historical fiction’
11 should not be accepted unquestioningly.”); *De Havilland*, 21 Cal.App.5th at 866
12 (“Viewers are generally familiar with dramatized, fact-based movies and miniseries in
13 which scenes, conversations, and even characters are fictionalized and imagined.”);
14 *Films of Distinction, Inc. v. Allegro Film Prods., Inc.*, 12 F. Supp. 2d 1068, 1081 (C.D.
15 Cal. 1998) (dismissing defamation claim where “the Film as a whole is clearly a work
16 of fiction” that a reasonable viewer would understand not to involve objective fact).

17 The disclosures in each episode that the Series is a work of fiction based on a
18 novel (*see, e.g.*, Ex. 1, Ep. 7 at 1:04:52; *id.*, Ep. 7 at 1:06:03), reinforces that the Series
19 is of a genre that a reasonable viewer would not interpret as containing statements of
20 fact. *Mossack Fonseca*, 2020 WL 8510342, at *4 (disclaimers about how a film was
21 fictionalized demonstrate that no reasonable viewer would interpret the film to convey
22 objective fact); *cf. Masson*, 501 U.S. at 512-13 (where a work acknowledges that it is
23 docudrama or historical fiction, that “might indicate that the quotations should not be
24 interpreted as the actual statements of the speaker to whom they are attributed”).

25 Indeed, in discussing the novel, Plaintiff acknowledges that a fiction-writer is
26 “free to create a fictional tournament and decide in his fictional world that Plaintiff was
27 not up to the level of competition he had created in his fictional world.” (FAC ¶ 64.)
28 By that same logic, Netflix, in adapting Tevis’s fictional novel into a fictional television

1 series, is free to create a fictionalized world where the fictional Moscow Invitational is
2 the type of tournament in which Plaintiff would not have participated given the male-
3 dominated and gender-segregated world of chess in the 1960s.

4 Not only is the Series fiction, but the Line’s context further demonstrates that a
5 reasonable viewer would not interpret it as fact. The Line is not stated by an objective
6 narrator, but rather as dialogue by a fictional character who is, himself, a part of the
7 gender-segregated chess world that the Series depicts. (Ex. 1, Ep. 7 at 29:52–31:32.)
8 Moreover, the Line is not the only one the announcer makes that invokes real-life chess
9 players. (*Id.* at 35:30–36:20.) At a subsequent match, that same announcer remarks
10 that a fictional male Soviet chess player (Luchenkov) was renowned for beating several
11 accomplished opponents who are real historical figures (*Id.*) The decision to ground
12 the fictional characters’ performance in the context of real grandmasters is a clear
13 exercise of artistic license—increasing the likelihood of the viewer’s understanding that
14 the announcer’s statements are not intended to convey objective facts. *Guglielmi*, 25
15 Cal.3d at 871 (Bird, J., concurring) (“[T]he author who denotes his work as fiction
16 proclaims his literary license and indifference to ‘the facts.’”).

17 While Plaintiff criticizes Netflix’s references to historical figures as unnecessary,
18 (FAC ¶ 11), that argument is unavailing. Whether the reference is “necessary,” in
19 Plaintiff’s mind or otherwise, is not the standard. Because the “creative process must
20 be unfettered,” courts preclude juries from “dissect[ing] the creative process in order to
21 determine what was necessary to achieve the final product and what was not, and to
22 impose liability for that portion deemed unnecessary.” *Tamkin*, 193 Cal.App.4th at 144-
23 45 (cleaned up) (granting anti-SLAPP motion). Indeed, “[c]ontemporary events,
24 symbols and people are regularly used in fictional works,” and “[n]o author should be
25 forced into creating mythological worlds or characters wholly divorced from reality.”
26 *Guglielmi*, 25 Cal.3d at 869 (1979) (Bird, J., concurring).

27 Because reasonable viewers would not interpret the Line as conveying objective
28 fact, the Court should dismiss the FAC on this basis alone and need not reach any other

1 elements of Plaintiff’s claims. *See Mossack*, 2020 WL 8510342, at *4 (granting anti-
2 SLAPP motion where “no reasonable viewer of the Film would interpret the Film as
3 conveying ‘assertions of objective fact’”); *Partington*, 56 F.3d at 1153 (affirming
4 summary judgment for defendant where “the general and specific contexts in which the
5 defendants’ contested statements were made do not imply the assertion of an objective
6 fact,” even assuming that the docudrama statements carried a negative implication).

7 **2. A Reasonable Viewer Would Not Draw the Negative Implication**
8 **that Plaintiff Alleges.**

9 Not only would a reasonable viewer not interpret the Line as conveying a
10 statement of objective fact, but no reasonable viewer would interpret the Line as
11 defamatory. Plaintiff alleges that, by stating that she had “never faced men,” the Series
12 “degrade[s] Gaprindashvili by impugning that she did not face men, *or was inferior to*
13 *men.*” (FAC ¶ 77 (emphasis added).) Courts “decide as a matter of law whether a
14 reasonable viewer” would interpret statements like the Line as “defamatory or highly
15 offensive to a reasonable person.” *De Havilland*, 21 Cal.App.5th at 865–66. Plaintiff’s
16 allegation about the Line’s supposedly defamatory implication is unavailing.

17 *First*, a reasonable viewer would never conclude that Plaintiff was in any way
18 “inferior” to her male counterparts given the context of the Line and the general tenor
19 of the Series as a whole. *See Underwager*, 69 F.3d at 366 (to analyze a defamation
20 claim, courts must “examine the totality of the circumstances,” such as “the statement
21 in its broad context, which includes the general tenor of the entire work, the subject of
22 the statements, the setting, and the format of the work.”). The Series focuses on
23 depicting the many barriers that women faced while attempting to advance through the
24 male-dominated world of elite competitive chess during the 1960s—even when
25 fortunate enough to possess a prodigy-level talent for chess. The alleged implication
26 that Plaintiff had not faced men because she was inferior not only appears nowhere in
27 the Series, but also is entirely inconsistent with the Series’ portrayal of the structural
28 barriers that impeded women’s advancement in elite chess during the 1960s.

1 For example, when Harmon enters her first chess tournament in Kentucky, the
2 male students discourage her from competing due to the lack of a women’s section and
3 their assumption that she will get “eaten alive” by her male counterparts; Harmon
4 proceeds to win. (Ex. 1, Ep. 2 at 33:06–59.) After a series of victories leads to Harmon
5 being interviewed by *Life* magazine, the female reporter focuses on how it feels to be
6 the sole woman “among all those men,” implies that Harmon’s dedication to chess
7 reflects an undiagnosed form of psychosis, and recommends that Harmon switch to
8 bridge. (*Id.*, Ep. 3 at 14:02-16:53.) Even when Harmon establishes herself as an
9 accomplished chess competitor, she continues to receive sexist questions from reporters
10 and endures male competitors’ resistance to the idea of facing a woman. (*Id.*, Ep. 4 at
11 33:34–34:45 (male Soviet players downplay Harmon’s skill and criticize her for a
12 tendency to “get angry” when under attack “like all women”); *id.*, Ep. 6 at 20:37–21:11
13 (reporter asks Harmon at the Paris tournament how she would respond to those who
14 criticize her for being too glamorous); *id.*, Ep. 7 at 33:02–26 (one of Harmon’s male
15 Soviet competitors becomes so angry at his defeat that he storms out without shaking
16 her hand).) After witnessing the immense challenges that Harmon needed to overcome
17 to compete at the Moscow Invitational, it is implausible to think that a reasonable viewer
18 would infer that Plaintiff, the female world champion, had not faced men in elite
19 tournaments as of 1968 due to some inferiority on Plaintiff’s part, as opposed to the
20 same discrimination and structural barriers in the chess world that undermined Harmon.

21 *Second*, even if the Line implied that Plaintiff was inferior to male players (which
22 it does not), such an implication would constitute a non-actionable statement of opinion.
23 Courts distinguish between “statements of fact” and “statements of opinion,” where the
24 latter may only form the basis of a successful defamation claim if it “implies a false
25 assertion of fact.” *See Nygard*, 159 Cal.App.4th at 1048; *see also Vogel v. Felice*, 127
26 Cal.App.4th 1006, 1019-20 (2005) (statement may only give rise to defamation claim
27 if it is “found to convey a provably false factual assertion”) (internal quotation marks
28 omitted). The question is a matter of law “to be decided by the court” based on whether

1 the average viewer would interpret the statement as one of fact or opinion under the
2 “totality of the circumstances.” *Baker v. Los Angeles Herald Examiner*, 42 Cal.3d 254,
3 260 (1986); *see also Brodeur*, 248 Cal.App.4th at 680-81.

4 Subjective assessments of a person’s professional competence, like the one
5 Plaintiff alleges, do not satisfy that requirement. *See Partington*, 56 F.3d at 1156
6 (criticizing a lawyer for “represent[ing] his client poorly” constituted nonactionable
7 opinion); *Vogel*, 127 Cal.App.4th at 1019-20 (accusing candidates for public office of
8 being “Dumb Asses” “communicates no factual proposition susceptible of proof or
9 refutation”); *Heller v. NBC Universal, Inc.*, No. CV-15-09631-MWF-KS, 2016 WL
10 6583048, at *6 (C.D. Cal. June 29, 2016) (statements regarding the plaintiff’s
11 professional performance not actionable because “they are not ordinarily susceptible of
12 being proved true or false”). The same reasoning applies here—the alleged implication
13 that Plaintiff was “inferior” constitutes a subjective assessment of Plaintiff’s
14 professional skill that is not provably false.

15 Finally, even if the subjective implication of “inferiority” were provably false
16 (which it is not), the purported inferiority would be limited to a moment in time—*as of*
17 *1968*, when the fictional Moscow Invitational takes place. The Line has no bearing on
18 Plaintiff’s many accomplishments in the intervening decades—including her victories
19 against men during the 1970s that led to her being recognized as the first female
20 Grandmaster in 1978—and thus no present tendency to “directly to injure [her] in
21 respect to [her] office, profession, trade, or business.” *Balla*, 59 Cal.App.5th at 675
22 (quoting Civ. Code § 46, subd. 3).⁴

23
24 ⁴ Plaintiff’s references to cherry-picked audience reactions to the Line do not undermine
25 this analysis. (*See* FAC ¶¶ 48–58). Relying on such anecdotal evidence is inconsistent
26 with the settled practice of assessing a statement’s defamatory import based on how a
27 “reasonable fact finder” would interpret it. *See Balla*, 59 Cal.App.5th at 678 (“The
28 pertinent question is whether a reasonable fact finder could conclude that the
statements” were defamatory.). Replacing the reasonable-viewer standard with a
subjective one would be unworkable and has no basis in case law.

1 Thus, even if this Court were to adopt Plaintiff’s implausible interpretation of the
2 Line, the alleged implication would not give rise to an actionable defamation claim.

3 **3. The Allegedly Defamatory Statement Does Not Constitute**
4 **Defamation *Per Se*, and Plaintiff Cannot Satisfy the Special-**
5 **Damages Element of a Defamation *Per Quod* Claim.**

6 Plaintiff’s claim that the Series allegedly defamed her by implying she was
7 inferior to male chess players is properly analyzed as a claim for defamation *per quod*,
8 not defamation *per se*. And she cannot show a probability of proving the required
9 special damages element of a *per quod* claim or an attendant false light claim.

10 A statement is defamatory *per se* if “it contains a charge by implication from the
11 language employed by the speaker and a listener could understand the defamatory
12 meaning without the necessity of knowing extrinsic explanatory matter.” *McGarry*,
13 154 Cal.App.4th at 112. If, however, the audience “would be able to recognize a
14 defamatory meaning only by virtue of his or her knowledge of specific facts and
15 circumstances, extrinsic to the publication, which are not matters of common
16 knowledge rationally attributable to all reasonable persons,” then the statement must be
17 considered defamation *per quod*, requiring proof of special damages. *Id.* The same is
18 true for Plaintiff’s false light claim. *Fellows v. Nat’l Enquirer, Inc.*, 42 Cal.3d 234, 251
19 (1986) (“[W]henever a claim for false light invasion of privacy is based on language
20 that is defamatory [*per quod*], pleading and proof of special damages are required.”).

21 In *Balla v. Hall*, for example, two city council members and a local developer
22 sued an unsuccessful city council candidate and the candidate’s campaign manager for
23 defamation and false light. 59 Cal.App.5th at 658. The court held that the defendants’
24 statements that alleged quid pro quo bribery were “susceptible of a defamatory *per se*
25 meaning” because the conduct would be an improper conflict of interest. *Id.* By
26 contrast, the court held that a campaign advertisement that implied that one of the
27 council members supported the defendant candidate was not defamatory *per se* because
28 “[f]or readers to perceive the advertisement as harmful to [plaintiff’s] reputation, they

1 would need to know, at a minimum, who [the defendant candidate] was and something
2 about his views and position and position within the Solona Beach community.” *Id.* at
3 690. The court thus granted the anti-SLAPP motion as to that claim for failure to show
4 special damages. *Id.*; *see also Barnes-Hind, Inc. v. Super. Ct.*, 181 Cal.App.3d 377
5 (1986) (plaintiff manufacturer did not state cause of action for libel *per se* where
6 defendant competitor’s alleged representations were defamatory, if at all, only by virtue
7 of special knowledge of doctors to whom representations were made).

8 Applying this distinction, the Line is not defamatory *per se*. Just as the plaintiff’s
9 support of a politician is meaningless to a reader who does not know the politician’s
10 views, the nature of Plaintiff’s participation in chess tournaments is meaningless to a
11 person who is not familiar with competitive Soviet chess in the 1960s. A reasonable
12 viewer could not know whether Plaintiff not having “faced” men as of 1968 was the
13 result of her own inferiority (as opposed to, for example, systemic bias against women)
14 *unless* the viewer was familiar with the opportunities for female chess players in the
15 Soviet Union at that time. Such facts are not common knowledge.

16 Plaintiff therefore must plead and prove special damages resulting from the
17 alleged defamation, which include “all damages that plaintiff alleges and proves that he
18 or she has suffered in respect to his or her property, business, trade, profession, or
19 occupation, including the amounts of money the plaintiff alleges and proves he or she
20 expended as a result of the alleged libel.” Cal. Code Civ. Proc. § 48a(d)(2); *see also*
21 *Gallagher v. Philipps*, No. 20-CV-993 JLS (BLM), 2021 WL 4428996, at *15-16 (S.D.
22 Cal. Sept. 27, 2021) (special damages include (a) economic loss, which must be specific
23 (such as the value of lost time at work or lost clients) and not rely on speculation about
24 the loss of prospective employment; or (b) “medical or psychological treatment” that
25 was sought out as a result of the defamation) (internal citation omitted).

26 Plaintiff does not allege, nor can she allege, that she incurred these specific types
27 of damages as a proximate result of the alleged defamation. She alleges that her
28 “current participation in the chess world, and her ability to earn income from that

1 participation, remains tied to her historical success and accomplishments” (FAC ¶ 77),
2 but cannot allege resulting economic damages—she has explained that her participation
3 in Senior Chess tournaments is for her own enjoyment, not money:

4 Why do I take part in senior chess championships? . . . It’s just that chess
5 makes me live longer. Although I didn’t play well today, I still feel okay.
6 I have positive emotions because this is my world.

7 (*See* Johnson Decl., Ex. 2 at 5:00–5:16). To the extent that Plaintiff argues that the Line
8 has negatively impacted her “brand,” Plaintiff will not be able to show this. To the
9 contrary, Plaintiff’s career—primarily familiar to chess enthusiasts—likely has
10 received an *increase* in publicity among a general audience since the Series aired. (*See*,
11 *e.g.*, *Id.*, Ex. 5 (Inna Lazareva, *Georgian women ruled chess in the Soviet era. A new*
12 *generation chases the same ‘Queen’s Gambit’ glory*, Washington Post, Dec. 13, 2020).)

13 Even if Plaintiff could allege economic damages (which she has not and cannot),
14 she has no basis for claiming that the publication of the Line was the proximate cause
15 of any such alleged losses. The Line only referred to Plaintiff’s co-ed competition
16 results *as of 1968* and did nothing to call into question the many accomplishments
17 Plaintiff achieved after that year—which is when she acknowledges her career reached
18 its height:

19 Q: “What was your best tournament in your life?”

20 Plaintiff: “The 1977 Lone Pine, where I shared the 1st-4th place in a very
21 strong open. . . . My best years were 1977 and 1978 including the above
22 mentioned tournament.”

23 (*See Id.*, Ex. 3 at 30; *id.*, Ex. 2 at 46:11–47:00 (Plaintiff describing Lone Pine as “the
24 unofficial US Open Championship,” which “was just by invitation and I was the only
25 woman player.”)). The Line’s assertion, made as of a moment in history, has no bearing
26 on the public’s view of Plaintiff’s accomplishments as of today.

27 Finally, construed as a claim for defamation *per quod*, Plaintiff’s claim should
28 also be stricken or dismissed for failure to allege the extrinsic facts that a reasonable

1 viewer would need to infer the Line’s alleged implication that Plaintiff did not face men
2 because she was inferior. *See Bartholomew v. YouTube, LLC*, 17 Cal.App.5th 1217,
3 1232 (2017) (“In pleading a case of libel *per quod* the plaintiff cannot assume that the
4 court has access to the reader’s special knowledge of extrinsic facts but must specially
5 plead and prove those facts.”) (internal quotation omitted).

6 **4. The Gist of the Line is Substantially True.**

7 Even if it were reasonable for a viewer to interpret the Line as conveying an
8 objective statement of fact (which it is not), the Line is substantially true and therefore
9 protected under the First Amendment. The substantial truth defense protects allegedly
10 defamatory speech where “the imputation is substantially true so as to justify the ‘gist
11 or sting’ of the remark”—even if there is “slight inaccuracy in the details.” *Heller*, 2016
12 WL 6583048, at *4 (citing *Summit Bank v. Rogers*, 206 Cal.App.4th 669, 697 (2012)).
13 An allegedly defamatory statement “is not considered false unless it would have a
14 different effect on the mind of the reader from that which the pleaded truth would have
15 produced.” *Masson*, 501 U.S. at 516-17.

16 The substantial truth defense bars Plaintiff’s claims as a matter of law based on
17 the Series and the allegations in the FAC. Plaintiff alleges that Netflix defamed her by
18 having the fictional chess announcer state that she “never faced men” as of 1968,
19 whereas Plaintiff allegedly “competed against and frequently defeated male chess
20 players” starting in 1962-63. (FAC ¶¶ 18, 21.) Plaintiff’s allegations, however, do not
21 undermine the substantial truth of the Line. The Line occurs in the Series finale at the
22 fictional Moscow Invitational of 1968, depicted as one of the Soviet Union’s most elite
23 chess tournaments. It explains why male Soviet players like Harmon’s opponent likely
24 failed to “spend a lot of time preparing for their match” against Harmon: They were
25 accustomed to competing in male-dominated tournaments in the Soviet Union and
26 lacked competition experience against elite female players. (*Id.* ¶ 5.) A reasonable
27 viewer would have interpreted the Line in context to refer to Plaintiff’s never facing
28 male players at significant tournaments in the Soviet Union before 1968.

1 The announcer’s assertion is substantially true. Plaintiff does not allege that she
2 competed in high-level tournaments or exhibitions against men within the Soviet Union
3 before 1968. (*See generally* FAC.) And even if the Line were interpreted more broadly
4 to mean that Plaintiff never competed against men before 1968 in *any* substantial chess
5 tournament, the substantial truth defense would still apply. Plaintiff’s most notable
6 international chess competitions against men took place after 1968, including her
7 achieving a tie for second place at Sandomierz in 1976; a tie for first place at Lone Pine
8 in 1977; and a tie for second place at Dortmund in 1978. (FAC ¶ 25.) Indeed, Plaintiff
9 became the first woman to be awarded the title of “Grandmaster” in 1978 as a result of
10 her 1977 Lone Pine performance. (*Id.* ¶ 28.)

11 Although Plaintiff identifies pre-1968 chess competitions in which she faced men
12 (*see* FAC ¶¶ 21–23), those allegations do not undermine Netflix’s substantial truth
13 defense. “[T]he law does not require [defendants like Netflix] to justify the literal truth
14 of every word of the allegedly defamatory content.” *Summit Bank*, 206 Cal.App.4th at
15 697. Rather, “[i]t is sufficient if the defendant proves true the substance of the charge,
16 irrespective of slight inaccuracy in the details.” *Id.* (internal quotation marks omitted).
17 Netflix has done so here. On the most generous reading of Plaintiff’s FAC, the worst
18 that can be said is that Netflix erred by a matter of five years because Plaintiff alleges
19 that she first played tournaments against men in 1963. (FAC ¶ 18.) Such an inadvertent
20 factual discrepancy does not undermine the substantial truth of the Line. *Cf. Vogel*, 127
21 Cal.App.4th at 1021-22 (claim that a candidate for public office owed his wife and
22 children “thousands” was substantially true, where the candidate only denied owing the
23 specific amount and therefore left open the possibility of owing a “substantially
24 equivalent” amount); *Braun v. Chronicle Publ’g Co.*, 52 Cal.App.4th 1036, 1050 n.6
25 (1997) (report that the district attorney opened a criminal probe was substantially true
26 even though the state auditor that initiated the investigation, given that the “sting” was
27 the existence of the investigation itself); *Guccione v. Hustler Magazine, Inc.*, 800 F.2d
28 298, 302 (2d Cir. 1986) (cited approvingly by *Hughes v. Hughes*, 122 Cal.App.4th 931

1 (2004)) (the substantial truth defense protected a magazine article published in 1983
2 describing a public figure as being “married [with] a live-in girlfriend” because the man
3 had in fact been married with a live-in girlfriend from 1966 to 1979). The Line cannot
4 be the basis for a successful defamation claim for that reason.⁵

5 **5. Plaintiff Cannot Prove Actual Malice by Clear and Convincing**
6 **Evidence.**

7 Finally, Plaintiff cannot prove actual malice. As a public figure (FAC ¶¶ 71, 79),
8 Plaintiff must prove actual malice by clear and convincing evidence, which requires
9 “that the evidence of actual knowledge of the falsity or reckless disregard for its falsity
10 must be of such character as to command the unhesitating assent of every reasonable
11 mind.” *McGarry*, 154 Cal.App.4th at 114 (internal quotation marks omitted). The test
12 is a subjective one “under which the defendant’s actual belief concerning the
13 truthfulness of the publication is the crucial issue.” *Id.* Negligence is not enough:
14 “[T]he evidence must permit the conclusion that the defendant actually had a high
15 degree of awareness of probable falsity.” *Id.* (cleaned up).

16 Plaintiff cannot satisfy this standard. The Series’ creator consulted with two
17 leading chess experts to ensure the accuracy of the Series’ depiction of chess
18 tournaments and historical references. (Frank Decl., ¶ 19.) The consultants reviewed
19 the scripts for the Series and returned notes flagging recommended changes or other

20
21 ⁵ Plaintiff also argues that Netflix allegedly “[p]il[ed] on additional insult to injury” by
22 “describ[ing] Gaprindashvili as Russian, despite knowing that she was Georgian.”
23 (FAC ¶ 10.) That is wrong. The commentator does not claim that Plaintiff is Russian
24 but rather states that female chess players like Plaintiff are “not unique in Russia.” (*Id.*
25 ¶ 5.) In context, a reasonable viewer would have understood the reference to “Russia”
26 to mean the former Soviet Union—a usage that was consistent with the way that the
27 Series’ creator understood Americans to refer to the Soviet Union during the 1960s.
28 (Frank Decl., ¶ 16.) Claiming that Plaintiff would have been well-known in Russia (*i.e.*,
the Soviet Union) is historically accurate, given that Plaintiff competed on behalf of the
Soviet Union for decades. (*See* Johnson Decl., Ex. 4 (Sammy Reshevsky, *The Art of*
Positional Play, Chess Life & Review 217 (April 1977)) (“The leading Soviet woman
player, Nona Gaprindashvili, has proved to be a strong competitor even among men.”)).

1 issues. (*Id.* ¶ 20.) Neither expressed any reservation to the Series’ author about the
2 accuracy of the Line. (*Id.*) Indeed, it was consistent with the understanding that 1960s
3 chess in the Soviet Union was largely gender-segregated, leading great female chess
4 players, like Plaintiff, to focus on competing in female world championships rather than
5 in other elite tournaments dominated by men. (*Id.* ¶ 21.) For example, *Glory to the*
6 *Queen*, a March 2020 documentary featuring Plaintiff and three other elite Georgian
7 female chess players, refers to the subjects’ co-ed tournaments in the 1970s and later,
8 but as to the 1960s, only references female-only tournaments. (Johnson Decl., ¶ 3; *see*
9 *also id.*, Ex. 2 at Preface (author characterizing Plaintiff as “the female player who
10 dominated women’s chess during almost all of the sixties and seventies”); *id.*, Ex. 2 at
11 51:35–51:58 (documentary stating that the 1986 match between grandmaster Petar
12 Popovic and “world’s best woman player” Maia Chiburdanidze, was “only the second
13 time in chess history that such a high-level battle between the sexes had taken place.”).

14 Plaintiff’s actual malice argument is especially futile because the alleged
15 defamation claim arises out of a work of fiction (the Series)—based on another work of
16 fiction (the novel)—that is “by definition untrue”: “It is imagined, made-up,” or “[p]ut
17 more starkly, it is false.” *De Havilland*, 21 Cal.App.5th at 869. Succeeding in showing
18 actual malice would require proving that Netflix acted “in the hope of insinuating a
19 defamatory import,” meaning that it “knew or acted in reckless disregard of whether its
20 words would be interpreted by the average reader as defamatory statements of fact.” *Id.*
21 at 870 (citing *Good Gov’t Grp. Of Seal Beach, Inc. v. Super. Ct. of L.A. Cnty.*, 22 Cal.3d
22 672, 684 (1978)). But as described above, Plaintiff cannot satisfy that standard. Not
23 only did the Series’ creator include the Line to highlight that the Soviet Union faced
24 sexism and structural barriers to the advancement of women in chess comparable to
25 those that the American protagonist Harmon faced; he also removed negative
26 commentary included in the novel about how Plaintiff was “not up to the level of” the
27 fictional tournament even though she had “met” the Russian Grandmasters before, and
28 expressly added that Plaintiff was the female world champion. (Frank Decl., ¶ 18.)

1 Those changes reflected an intent of recognizing Plaintiff’s elite status as one of the
2 Soviet Union’s preeminent chess players and its most accomplished female player—a
3 far cry from acting with reckless disregard as to the falsity of the Line.⁶ (*Id.*)

4 Because the creator consulted with multiple chess experts and relied in good faith
5 on their advice before Netflix released the Series, Plaintiff cannot show by clear and
6 convincing evidence that Netflix acted with actual malice. *See McGarry*, 154
7 Cal.App.4th at 114 (a defendant’s failure to investigate a claim entirely is not sufficient
8 to establish actual malice unless the plaintiff can show that the defendant “purposefully
9 avoided the truth or deliberately decided not to acquire knowledge of facts that might
10 confirm the probable falsity of charges”); *Annette F. v. Sharon S.*, 119 Cal.App.4th
11 1146, 1169 (2004) (“[M]ere failure to investigate the truthfulness of a statement, even
12 when a reasonably prudent person would have done so, is insufficient.”).

13 **IV. ALTERNATIVELY, THE FAC SHOULD BE DISMISSED WITH**
14 **PREJUDICE FOR FAILURE TO STATE A CLAIM FOR RELIEF**
15 **UNDER RULE 12(b)(6)**

16 For the reasons set forth in Sections III.B.1, III.B.2, III.B.3, and III.B.4 above—
17 none of which relies on evidence extrinsic to the FAC and Series—Plaintiff also fails
18 to plausibly allege a claim for relief under Rule 12(b)(6). Because no amendment would
19 cure the legal deficiencies in Plaintiff’s claims, which she has already amended once,
20 the FAC should be dismissed without leave to amend. *See Dougherty*, 654 F.3d at 901.

21 **V. CONCLUSION**

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

24
25 _____
26 ⁶ Plaintiff’s actual malice argument is predicated on her belief that Netflix should have
27 immediately understood the novel’s reference to Plaintiff having “met” Russian
28 Grandmasters as a factual statement that she competed against them by 1968. Plaintiff
ignores that the novel *itself* was a work of fiction, and that Netflix hired experts to verify
that the references to real life chess players in the Series were accurate.

1 DATED: November 1, 2021

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10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

13
14 NONA GAPRINDASHVILI, an
individual,

15
16 Plaintiff,

17 v.

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

19 Defendants.

CASE No. 2:21-cv-07408 VAP (SKx)

**PLAINTIFF'S OPPOSITION TO
SPECIAL MOTION TO STRIKE
FIRST AMENDED COMPLAINT**

Date: January 24, 2022
Time: 2:00 pm
Dept.: 8A

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1 **I. SUMMARY OF PLAINTIFF’S ACHIEVEMENTS**

2 Plaintiff Nona Gaprindashvili was born in the Georgian Soviet Socialist
3 Republic (“Georgia”) in 1941 and began playing chess professionally aged 13. In
4 1962, aged 21, she became female World Champion and kept her crown until 1978.
5 [Nona Gaprindashvili Declaration¹ (“NG Decl.”), ¶2.]

7 One of her first tournaments against men was the Men’s Championship of
8 Georgia in 1959. [Id., ¶8(a).] In 1963, she finished in 6th place in the same
9 tournament. Her opponents included Alexander Blaghidze, the Georgian Men’s
10 Champion, who held the title of “Soviet Master of Sports.” [Id., ¶8(b).]

12 Plaintiff began to compete against male chess players internationally in 1963
13 when she won the Challengers Section of the Hastings International Chess Congress
14 in England in 1963, defeating several male players. In 1964-65, she played in the
15 Premier Section of that tournament against male opponents including legendary
16 Grandmasters Svetozar Gligoric (12-time champion of Yugoslavia) and Paul Keres
17 (3-time Soviet champion). She drew with Keres. [Id., ¶6.] At another tournament in
18 England in 1965, she simultaneously played 28 men, beating 20 of them. [Id., ¶7.]

22 In 1964, she played in a tournament in Iceland against 13 male chess players,
23 including Gligoric, Fridrik Ólafsson (6-time Iceland champion), and World
24 _____

25 ¹ Plaintiff does not speak English. Her original declaration in Russian bearing her
26 signature is filed concurrently herewith, along with a translation into English by a
27 professional translator and a certificate of accurate translation, per FRE 604, 901.
28 [See Declaration of Alexander Rufus-Isaacs (“ARI Decl.”), ¶2.]

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1 Champion Mikhail Tal (Latvian Soviet Socialist Republic), winning 3 games. [Id.,
2 ¶8(c).] The same year, she finished in 9th place in the Men’s Championship of
3 Georgia. In 1966, she was the only female participant in the Championship of the
4 Soviet Socialist Republics of the Caucasus, and played 5 leading male Soviet chess
5 players. In 1968, she played in a tournament held in Sweden against 9 men. The
6 same year, she played against numerous Soviet male players in the Championship of
7 the Baltic Socialist Republics and the Vakhtang Karseladze Memorial Tournament,
8 including several Grandmasters. [See ¶8(d)-(h) for details of her male opponents.]
9

10
11 During her career, Plaintiff played other Grandmasters including Dragoljub
12 Velimirovich, Rudolf Servaty, Bojan Kurajica, Anatoly Lein, and Boris Spassky
13 who was World Champion. [Id., ¶12.] In 1978, she was the first woman to be made
14 an International Chess Grandmaster among men. [Id., ¶5.] She is now aged 80, and
15 still competes in senior chess tournaments. [Id., ¶18.]
16

17
18 All of this information is publicly available and can easily be found on chess
19 websites and reference books about chess. [Id., ¶17; Carlin Decl., ¶¶9-12.]
20

21 **II. SCOTT FRANK’S TESTIMONY SHOWS KNOWLEDGE OF**
22 **FALSITY AND/OR A RECKLESS DISREGARD FOR THE TRUTH**

23 The Novel states that Plaintiff “had met all these Russian Grandmasters many
24 times before.” Despite following the Novel closely in other respects, Scott Frank,
25 who wrote the screenplay of the Series (“Screenplay”), reversed this fact, writing
26 that she “had never faced men” (the “Line”). His declaration is dated October 28,
27
28

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1 2021 (“Frank Decl.”) (Docket 21-7). He was deposed on November 12, 2021.² His
2 declaration and deposition testimony establish that he knew that the Line was false,
3
4 or, alternatively, that he showed a reckless disregard for the truth.

5 **A. Frank’s Use Of “Largely” Can Only Mean That He Knew That**
6 **Plaintiff Played Against Male Grandmasters Before The 1970’s**

7 Frank’s Declaration at ¶21 states that “[b]ased on the research that my team
8 completed, ... (Plaintiff’s) participation in notable tournaments against male
9 grandmasters largely occurred in the 1970s and later.” (Emphasis added.) The only
10 reason for Frank to add the qualifier “largely” was to indicate that this research had
11 revealed that Plaintiff had participated in some “notable tournaments against male
12 grandmasters” before the 1970’s. In deposition, Frank could not explain why he had
13 used “largely,” even though his declaration was dated only 2 weeks before the
14 deposition. [Transcript of Scott Frank’s deposition (“Transcript”), 33:25-34:24.]
15
16
17

18 **B. Frank Knew About Plaintiff’s Career Before He Wrote The Line**

19 In his declaration, Frank states that “[m]y team and I spent many hours
20 researching chess and consulting with chess advisors in developing the screenplay.”
21 Those advisors were Bruce Pandolfini and Garry Kasparov, “a former world
22 champion and expert in Soviet chess during the relevant era.” [Frank Decl., ¶19.]
23
24

25 Frank also states in his declaration, “[b]ased on the research that my team

26 _____
27 ² The transcript will be lodged with the court in accordance with L.R. 16.2-7 and
28 32.1.

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1 completed, Ms. Gaprindashvili was the female world champion in the 1960s...” [Id.,
2 ¶21.] This explains how he learned that she was “female world champion,” a fact
3 which he added to the Screenplay (it was not in the Novel) immediately before the
4 Line.³ [Id, ¶¶12, 17; Transcript, 36:15-37:1.] Further evidence that Frank knew
5 about Plaintiff’s career before he wrote the Screenplay is the statement in his
6 declaration that he referred to her by name therein “to recognize her status as one of
7 the then Soviet Union’s great chess players.” [Frank Decl., ¶15.] And he admitted in
8 deposition that when he wrote the Screenplay, he knew that she was female world
9 champion and one of the Soviet Union’s great chess players. [Transcript, 51:7-20.]

10
11
12
13 These facts conclusively establish that Frank was familiar with Plaintiff’s
14 career when he wrote the Screenplay. Nevertheless, he changed the correct
15 statement in the Novel that Plaintiff “had met all these Russian Grandmasters many
16 times before,” to the false statement that she “never faced men.” He admits that he
17 had no basis for making this change. [Id., 38:18-22.]

18
19
20 C. Frank Claims That He Changed The Line To Show Gender
21 Segregation But He Did Not Convey That Meaning To The Viewer

22 Frank claims that the Line “was intended to indicate to the viewer that the
23 Soviet chess world of 1968 was gender-segregated, such that major tournaments
24 were separated by sex.” [Id., ¶14.] But he conceded in deposition that he did not
25

26
27 ³ The whole sentence in the Screenplay reads, “There’s Nona Gaprindashvili, but
28 she’s the female world champion and has never faced men.” [Id, ¶12.]

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1 include any statements in the Screenplay that would lead a viewer to understand that
2 gender segregation was the reason why Plaintiff never faced men. [Transcript, 44:4-
3 9.] Without such words, no one could discern this meaning. This omission strongly
4 suggests that his professed intent was fabricated after the fact.
5

6 **D. Frank Contradicted Himself During His Deposition About When**
7 **He Learned That Plaintiff Was A Real Person**

8 In deposition, Frank contradicted himself about an important fact. Initially, he
9 said that he did not know that Plaintiff was a real person until he was told during
10 production in late 2019. [Id., 25:7-17; 29:10-30:11; 35:17-36:1; 36:6-12.] But when
11 confronted with the facts summarized in Section II(B) above, he agreed that he
12 knew in June 2019 when he wrote the Screenplay that Plaintiff was a real person
13 and a female world champion. [Id., 51:7-20.]. Clearly his testimony that he did not
14 find out that Plaintiff was a real person until later in 2019 is false.
15
16

17 **III. PLAINTIFF HAS A MINIMAL BURDEN UNDER SECOND PRONG**

18 Plaintiff does not contest prong one of the California anti-SLAPP law
19 analysis. Thus, the entire case turns on prong two. All that she is required to do
20 under this prong is to demonstrate that factually and legally her allegations present
21 “minimal merit.” *Navellier v. Sletten*, 29 Cal.4th 82, 93 (2002). To satisfy this
22 standard, “[t]he plaintiff need only state and substantiate a legally sufficient claim.”
23 *City of Montebello v. Vasquez*, 1 Cal.5th 409, 420 (2016). The Court is not
24 permitted to weigh one submission against the other, comparing the relative strength
25
26
27
28

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1 or credibility of Plaintiff’s submissions against the submissions of Netflix. *Soukup v.*
2 *Law Offices of Herbert Hafif*, 39 Cal.4th 260, 291 (2006). Dismissal is permitted
3 only when “no reasonable jury” could find in a plaintiff’s favor. *Metabolife*
4 *International, Inc. v. Wornick*, 264 F.3d 832, 840 (9th Cir.2001). The obligation of
5 the Court is to “accept as true” any evidence favorable to Plaintiff. *Oasis W. Realty,*
6 *LLC v. Goldman*, 51 Cal.4th 811, 820 (2011).

9 **IV. ACTIONABLE FALSE LIGHT AND DEFAMATION CLAIMS MAY**
10 **ARISE FROM FICTIONAL WORKS**

11 **A. False Light and Defamation May Arise in Fiction**

12 Netflix broadly asserts that it is immune from liability because the Series is a
13 work of fiction, based on the Novel that is also fiction. [Netflix Mem. at pp. 12-15.]
14 This is incorrect - fictional works are not defamation free-fire zones, and a false
15 statement of fact targeting a real person may give rise to an actionable false light or
16 defamation claim even though the statement is embedded in a fictional work.
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20 In this case, the actionable statement resides in just once sentence. Yet as the
21 Supreme Court recognized in *Masson v. New Yorker Magazine., Inc.*, 501 U.S. 496
22 (1991), “[i]t matters not under California law that petitioner alleges only part of the
23 work at issue to be false.” Id. at 510. “[T]he test of libel is not quantitative; a single
24 sentence may be the basis for an action in libel even though buried in a much longer
25 text.” Id., quoting *Washburn v. Wright*, 261 Cal.App.2d 789, 795 (1968).

26
27
28 The most significant California decision on the issue is *Bindrim v. Mitchell*,

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1 92 Cal. App. 3d 61, *cert. denied*, 444 U.S. 984 (1979), where Dr. Paul Bindrim, a
2 therapist who held nude encounter therapy sessions, sued Gwen David Mitchell, a
3 novelist, for depicting him as a character in her novel entitled *Touching* called “Dr.
4 Simon Herford” who misbehaves during such a session. *Id. at 70*. The court held
5 that “[t]he fact that ‘*Touching*’ was a novel does not necessarily insulate Mitchell
6 from liability for libel, if all the elements of libel are otherwise present.” *Id. at 71, n.*
7
8 2. No one test applies, the court reasoned. “Each case must stand on its own facts.”
9
10 *Id. at 78*. It rejected Mitchell’s main line of defense, which was that Herford was not
11 “of and concerning” Bindrim, concluding that they were one. *Id. at 76*.

12
13 Typically, false light or defamation cases arising from fictional works turn on
14 whether a fictional character would be understood as referring to the real-person
15 plaintiff, thus implicating the requirement that the statement be “of and concerning”
16 the plaintiff. But the identification issue is not in play here. Netflix cannot dispute
17 that Plaintiff was identified by name and that the identification was intentional.
18
19

20 **B. Fleeting And Self-Serving Disclaimers Are Not Immunizing**

21 Netflix attempts to buttress its sweeping “fiction defense” by pointing to a
22 fleeting disclaimer run by Netflix for a few seconds in credits for each episode,
23 reciting: “[T]he characters and events depicted in this program are fictitious. No
24 depiction of actual persons or events is intended.” [Netflix Mem. at p. 6.]
25

26 Such disclaimers do not immunize a fictional work from liability if a court
27 finds that a jury could reasonably conclude that contrary to the self-serving
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1 disclaimer, the work did contain a false statement of fact intended to reference a real
2 person. In *Stanton v. Metro Corp.*, 438 F.3d 119, 124 (1st Cir. 2006), the First
3 Circuit reversed a finding that a similar disclaimer was dispositive. It noted the
4 placement of the disclaimer, observing that it was “easy enough to overlook.” *Id. at*
5 *126*. The court held that “we cannot say as a matter of law that too few readers
6 would overlook the disclaimer to constitute a considerable and respectable segment
7 of the community” and that notwithstanding the disclaimer the publication was
8 “reasonably susceptible to a defamatory meaning.” *Id. at 128*.

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12 The existence of a disclaimer is thus but one factor in the analysis. Here, the
13 power of the disclaimer pales when measured against the use of Plaintiff’s actual
14 name and false description of her as a chess master who had never played men. See,
15 e.g., *New Times, Inc. v. Isaacks*, 146 S.W.3d 144, 160–61 (Tex. 2004) (“while a
16 disclaimer would have aided the reasonable reader . . . such a disclaimer is not
17 necessarily dispositive.”)

18
19
20 **C. Decisions Cited by Netflix Do Not Undermine Plaintiff’s Claims**

21 Netflix places extensive reliance on *De Havilland v. FX Networks, LLC*, 21
22 Cal.App.5th 845 (2018), misleadingly invoking it for the broad proposition that
23 “[t]elevision shows often portray real people, but such people ‘do [] not own
24 history’ or ‘have the legal right to control, dictate, approve, disapprove, or veto the
25 creator’s portrayal of actual people.’” [Netflix Mem. at p. 2, quoting *De Havilland*,
26 21 Cal.App.5th at 849–50.] Nothing in *De Havilland*, however, undermines
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1 Plaintiff’s claim. Many of the quotations Netflix lifts from *De Havilland* are not
2 germane to false light or defamation, but rather to the principal claim advanced by
3 Olivia de Havilland that the FX Network was not permitted to broadcast a
4 docudrama featuring her without her permission because such appropriation of her
5 life and persona constituted a violation of her right of publicity. The court rejected
6 this view, holding that the portrayal of a real person in a film was not the sort of
7 appropriation cognizable under the California right of publicity or the free speech
8 protections of the First Amendment. In this respect *De Havilland* was of a piece
9 with *Guglielmi v. Spelling-Goldberg Productions*, 25 Cal.3d 860 (1979), and *Sarver*
10 *v. Chartier*, 813 F.3d 891 (9th Cir. 2016), both cited by Netflix, which rejected right
11 of publicity claims grounded in portrayals of real persons in fictional works.

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16 Nothing in cases such as *De Havilland*, *Guglielmi*, or *Sarver*, however,
17 forecloses false light or defamation claims arising from the portrayal of real persons
18 in fictional works. To the contrary, decisions such as *De Havilland* and *Sarver* (the
19 issue was not posed in *Guglielmi*) accepted that viable false light or defamation
20 claims could arise from portrayals of real persons in fictional films. *De Havilland*
21 and *Sarver* then proceeded to analyze the portrayals in the two movies under
22 principles of false light or defamation, concluding on the specific facts presented the
23 portrayals were not actionable. The key to *De Havilland* was that the alleged falsity
24 was too trivial to be actionable. The movie portrayed de Havilland as using the word
25 “bitch” on two occasions in reference to Joan Fontaine, when in fact the word she
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1 used was “Dragon Lady.” In *Sarver* the court held that the depiction of plaintiff’s
2 military career was laudatory, not defamatory, and not by any measure offensive.

3
4 In summary, the law does not provide any blanket immunity for Netflix for
5 otherwise actionable false light or defamation claims by Plaintiff arising from the
6 Series merely because the work is generally fictional. What matters is not that the
7 Series is fictional, but that the statement concerning Plaintiff is actionable.

8
9 **V. THE LINE IS HIGHLY OFFENSIVE AND DEFAMATORY**

10 **A. Reasonable Viewer Could View Line As Offensive and Defamatory**

11 Netflix trivializes and belittles Plaintiff’s suit by stating: “Plaintiff alleges the
12 Line is inaccurate by a few years and therefore false, defamatory, and highly
13 offensive to a reasonable person,” and dismisses it as “a minor inaccuracy in
14 timing.” [Netflix Mem. at p. 1, 3.] It makes the argument that no reasonable viewer
15 would understand the false statements impugning Plaintiff for having never played
16 against men as a sexist imputation that she was inferior to men. No reasonable
17 viewer would draw this conclusion, Netflix argues, because a major theme of the
18 Series is the triumph of its fictional character over male chess players. [Id.. at p. 15.]

19
20 Netflix has it entirely upside down. Netflix was not merely telling a story of a
21 woman beating men in chess, it was telling a story of an *American* woman beating
22 Russian men at chess. Yes, Netflix *did* elevate its fictional character Beth Harmon
23 as a woman-beats-men story. Yet to heighten the drama, as Netflix *admits*, it found
24 it convenient to deliberately tell a falsehood about a real-world Georgian woman
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1 who had in *fact* faced men and beaten them. Netflix is here hoisting itself on its own
2 petard. Netflix is *admitting* that it was elevating Harmon as an American hero who
3 overcame sexism to compete successfully against men. But highlighting Harmon as
4 a hero who triumphed over men does not *diminish* the sting of the falsehood Netflix
5 uttered in exploiting and disparaging the accomplishments of Plaintiff, but *heightens*
6 it. The message (that Harmon could do it, but Plaintiff had not) in no way dilutes the
7 sting of the lie, it exacerbates it.

10 The notion that this falsehood could not, as a matter of law, ever be highly
11 offensive to a reasonable person—the standard for false light—or diminish the
12 esteem with which Plaintiff is regarded—the standard for defamation, is ludicrous.
13 It distills to an assertion that when a woman is compared to a man in her skills,
14 abilities, or accomplishments through the statement that she “has never faced men”
15 *no reasonable person* would construe this as conveying the meaning that *she is not*
16 *good enough because, after all, she never faced men.*

20 The position taken by Netflix defies common sense, the common law, and our
21 constitutional values. *Of course*, such a statement partakes of sexual stereotypes. *Of*
22 *course*, such a statement carries the stigma that women bear a badge of inferiority.
23 What else is conveyed by “she has never faced men” other than “she is not as good
24 as men?”

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B. Actual Viewers Understood the Line as Offensive and Defamatory

Netflix tries to dismiss the citations in the Complaint to the many social and mass media reactions to the Line as defaming Plaintiff. [ARI Decl., Exhs, 4-11.] [Netflix Mem. p. 17, n. 4.] But the ultimate test for this Court is whether a *reasonable viewer could* interpret the Line as conveying a false fact that was highly offensive to a reasonable person or defamatory. Evidence that actual viewers *did* interpret the statements as offensive or defamatory is at least *probative* of whether reasonable viewers *could* so interpret the broadcast. *See, e.g., Tah v. Global Witness Publishing, Inc.*, 413 F. Supp. 3d 1, 11–12 (D.D.C. 2019), *aff'd*, 991 F.3d 231 (D.C. Cir. 2021), *cert. denied*, 2021 WL 5043599 (Nov. 1, 2021) (treating evidence of how a statement was understood by recipients as germane to the question of whether the statement was capable of sustaining a defamatory meaning); *Vasquez v. Whole Foods Market, Inc.*, 302 F.Supp.3d 36, 64 (D.D.C. 2018) (a plaintiff can rely on evidence of how listeners understood statements to prove that they pertain to him.).

The standard, to be sure, remains objective. But in judging whether an ascribed meaning is *objectively* reasonable, the Court is entitled to consider how those in the real world actually construed the allegedly offending statement. That evidence is not offered as dispositive, but probative; it is not offered as controlling, but persuasive. The existence of those media and viewer interpretations, widespread and pointed as they were, *at the very least establishes that the issue of defamatory meaning is a jury question* that may not be decided on the pleadings.

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1 **VI. THE LINE IS PROVABLY FALSE AND THEREFORE NOT OPINION**

2 As Senator Daniel Patrick Moynihan famously noted, while everyone is
3 entitled to his or her own opinion, they are not entitled to their own facts. The Novel
4 states that Plaintiff “had met all these Russian Grandmasters many times before.”
5 [FAC ¶ 64.] That was a *true statement of fact*. Netflix deliberately reversed this,
6 stating that Plaintiff “had never faced men.” That was a *false statement of fact*.
7

8 The Supreme Court in *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990)
9 made it clear that under the First Amendment, labels do not matter. What matters is
10 substance. In *Milkovich*, the Court stated that the First Amendment does not “create
11 a wholesale defamation exemption for anything *that might be labeled* ‘opinion.’” *Id.*
12 at 18 (emphasis added).
13

14 At the end of the day, the most important touchstone in separating fact from
15 opinion is whether judges and juries may subject a statement to objective proof or
16 disproof. *Partington v. Bugliosi*, 56 F.3d 1147, 1158 (9th Cir. 1995). (“Thus, there is
17 no reason that pre-*Milkovich* opinions which analyze whether a particular type of
18 statement is susceptible to objective proof should be any less binding than before.”)
19

20 Netflix seeks to obscure the plain import of its offending statement with
21 smoke and mirrors. Yet whether Plaintiff had faced men or not faced men is an
22 objective factual question. She either did or she did not, and even Frank conceded
23 that if her Wikipedia page is accurate, the Line is false. [*Id.*, 41:9-22.]
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VII. THE LINE IS DEFAMATION PER SE

A. The Line is Slander Per Se Pursuant To Cal. Civ. Code § 46

Netflix’s argument that the defamatory meaning conveyed by the Line is *per quod* and not *per se* is incorrect. Defamation in a television broadcast is treated in California as slander. *Arno v. Stewart*, 245 Cal.App.2d 955, 961 (1966). And the Line fits easily within two of the slander per se categories recognized by statute in California, in that it tends to injure Plaintiff her profession, Cal. Civ. Code § 46(3), and it falls within the catch-all provision of the statute, constituting defamation “[w]hich, by natural consequence, causes actual damage.” Cal. Civ. Code § 46(5).

As she explains in her Declaration, Plaintiff’s life-long profession is the world of competitive chess, in which she remains an active leader, role-model, and competitor. To degrade her by falsely stating that she did not face men was manifestly defamatory, cutting to the heart of her professional standing. It is no answer that she is 80 years old, any more than it would be an answer impugning the career of an 80-year-old doctor, lawyer, movie director, or actress.

Plaintiff’s current participation in the chess world remains tied to her historical success and accomplishments. Her professional reputation and brand are inextricably bound up with her efforts to face and defeat top male opponents when chess was overwhelmingly a man’s world.

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1 **B. Accusation That Plaintiff Was Not Up To Competing With Men Is**
2 **Defamatory On Its Face**

3 Netflix erroneously conflates the question of how many viewers *knew* who
4 Plaintiff was in real-life, or how many viewers *knew* that the Line was false, with
5 whether the Line would be understood by the average viewer as imputing that
6 Plaintiff has never faced men, and in turn that she was not up to facing men.

7 Netflix’s rendition of the law is entirely in error. It is not the law that, for the
8 Line that Plaintiff had never faced men to be defamatory, a viewer must know about
9 the world of chess in 1968. All that is required is that the viewer *could* understand
10 that someone who is labeled as not having faced men was not up to competing
11 against men. *That* meaning is defamatory on its face. No extrinsic facts are required
12 to understand the defamatory import of *that* imputation. In the words of Justice
13 Oliver Wendell Holmes, defamation liability attaches if the statement “obviously
14 would hurt the plaintiff in the estimation of an important and respectable part of the
15 community,” because “liability is not a question of a majority vote.” *Peck v. Tribune*
16 *Co.*, 213 U.S. 185, 189-90 (1909).

17 This critical distinction is best illustrated by Justice Traynor’s elaborate
18 discussion in *MacLeod v. Tribune Publishing Co.*, 52 Cal.2d 536, 549 (1959), one of
19 the landmark decisions defining the contours of California defamation law. The
20 alleged defamation in *MacLeod* was that the plaintiff, a political candidate, was a
21 communist sympathizer. *Id.* at 543. Justice Traynor’s opinion for the Court held that
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1 it did not matter that some would deem the publication innocent, while other might
2 deem it negative, for this inquiry was not the same as whether the *meaning* of the
3 words from which the allegedly negative meaning arose was clear on the face of the
4 publication, because the “defendant’s article is libelous on its face even if it is
5 susceptible of the innocent interpretation.” Id. at 548. Even though not all readers
6 would deem the statement defamatory, it was enough that some readers would deem
7 it so. The question is whether, “when it is addressed to the public at large, it is
8 reasonable to assume that *at least some of the readers* will take it in its defamatory
9 sense.” Id. (emphasis added).

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13 The decision in *Barnes-Hind, Inc. v. Superior Court*, 181 Cal.App.3d 377,
14 382 (1986), cited by Netflix, follows the learning of *MacLeod* and stands for the
15 same proposition, and thus does nothing to help Netflix. So too, the reliance by
16 Netflix on *Balla v. Hall*, 59 Cal.App.5th 652, 689 (2021), is similarly misplaced.
17 *Balla* held that most of the statements at issue were defamation per se but that one
18 was not—because no readers would understand the defamatory meaning without
19 greater extrinsic context. In contrast, in this case, all readers would understand the
20 defamatory meaning conveyed by the falsehood that she had never played men.
21 Critically, many persons, including the world-wide chess community and citizens of
22 Georgia, knew how extremely offensive and defamatory those statements were.
23

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26 Most crucially, *MacLeod* reveals what Netflix has wrong: confusing the
27 question of a statement’s *impact* with its *meaning*. The fact that the damage done by
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1 a statement may vary among different segments in society is *different* from the
2 question of whether the defamatory meaning is plain on the face of the statement.
3
4 Moreover, even the existence of an innocent interpretation “does not establish that
5 the defamatory meaning does not appear from the language itself.” *Id.*

6 The *MacLeod* Court explained that the only function of the special damages
7 requirement in defamation law is to protect a defendant from being caught by
8 surprise, in cases in which the defendant could not have predicted that some readers
9 would have a diminished view of the plaintiff’s reputation from the face of the
10 publication. “The purpose of the rule requiring proof of special damages when the
11 defamatory meaning does not appear on the face of the language used is to protect
12 publishers who make statements innocent in themselves that are defamatory only
13 because of extrinsic facts known to the reader.” *Id.* For example, to say that John
14 had sex with Mary is not defamatory on its face. If that was all defendant published,
15 the plaintiff would have to establish defamatory meaning through pleading extrinsic
16 facts, such as pleading that John was married to someone else, or that John was a
17 professor and Mary was his student. In short, under Cal. Civ. Code § 46, as well as
18 under *MacLeod*, the Line is defamation *per se*.
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24 **C. Plaintiff Did Plead Special Damages**

25 Finally, though Plaintiff is not required to plead special damages in support of
26 her defamation *per se* claim, she did plead special damages, which is another ground
27 for rejecting Netflix’s argument. Complaint ¶78. *MacLeod*, 52 Cal.2d at 548.
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1 **VIII. THE LINE IS NOT SUBSTANTIALLY TRUE**

2 Netflix’s argument that the Line that Plaintiff “never faced men” is
3 substantially true is wrong. It is also inconsistent with its argument that the Line is
4 opinion, i.e., a statement that is incapable of being determined true or false.
5

6 Netflix argues that Plaintiff cannot establish that she had faced competition in
7 sufficiently *high-level* tournaments before. [Netflix Mem. at p. 22.] But Netflix
8 offers no cogent response to the plain fact that Plaintiff had played against and
9 triumphed over men in high-level tournaments starting domestically in 1959 and
10 internationally since 1963. [NG Decl., ¶¶6-8; Carlin Decl., ¶¶6-12, Exhs 2-3.]
11

12 Netflix’s song and dance, claiming that it was just off by a few years, is
13 plainly absurd. In fact, she had been playing men in top tournaments for 9 years
14 prior to 1968, and her status as a woman playing chess against men was even more
15 unique in the 1950’s and 1960’s than it was in later decades. Those few years meant
16 everything to Plaintiff, and would mean everything to the average viewer. Netflix is
17 of course free to try this defense in front of a jury. As the Supreme Court held in
18 *Masson v. New Yorker Magazine., Inc.*, 501 U.S., at 496, the test is whether the
19 statement would ““have a different effect on the mind of the reader from that which
20 the pleaded truth would have produced.”” *Masson* 501 U.S. at 517, quoting Robert
21 Sack, *Libel, Slander, and Related Problems* 138 (1980); and citing *Wehling v.*
22 *Columbia Broadcasting System* 721 F.2d 506, 509 (1983) and Rodney Smolla, *Law*
23 *of Defamation* § 5.08 (1991).
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Under this test the answer is plain. The difference between what Netflix stated—that Plaintiff had never faced men in/before 1968—and what the Complaint alleges, that she had faced many high-ranking men in top tournaments in that period—surely would have a different effect on the mind of the viewer. This Court cannot rule as a matter of law that no reasonable jury could determine that the statement that Plaintiff had never competed against men was false.

IX. PLAINTIFF HAS SATISFIED THE ACTUAL MALICE STANDARD

A. Plaintiff Has Shown A Prima Facie Case That Netflix Knew That The Line Was False Because She Had Played Men in/Before 1968

Netflix’s argument that Plaintiff has not met her burden of showing a prima facie case of actual malice is constructed on a house of cards. Fundamentally, Netflix has no response to the fact that it deliberately replaced the true statement in the Novel that Plaintiff had faced men, including Soviet grandmasters, to the false Line that she had not faced men.

Frank admitted that the Line is inaccurate, and that he had no basis for making the change. He claims that he changed the Line to show gender segregation, but he did not convey that meaning to the viewer. His unreliability as a witness is further shown by the way in which he contradicted himself during his deposition about when he learned that Plaintiff was a real person. A jury could easily conclude that by altering this text, he engaged in a deliberate fabrication.

Further, as set forth in Section II(A) above, Frank’s use of the word “largely”

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1 can only mean that when he wrote the Line, he knew that Plaintiff had played at
2 least **some** against male grandmasters **before** the 1970’s. This is prima facie
3 evidence that he knew that Plaintiff had played against male grandmasters before the
4 1970’s, and that therefore he knew that the Line was false when he wrote it.

6 **B. Actual Malice Can Be Shown For Statements In Fictional Works**

7 Just as there is no “fiction defense” as to other elements of false light or
8 defamation claims arising from a fictional work, there is no “fiction defense” that
9 automatically precludes a finding of “actual malice” arising from works of fiction.
10 See *Bindrim*, 92 Cal.App.3d at 72-73 (“Mitchell’s reckless disregard for the truth
11 was apparent from her knowledge of the truth of what transpired. . . [C]ertainly
12 defendant Mitchell was in a position to know the truth or falsity of her own material,
13 and the jury was entitled to find that her publication was in reckless disregard of that
14 truth or with actual knowledge of falsity.”).

18 **C. Actual Malice May Be Shown By Any Competent Evidence**

19 The self-serving protestations of innocence by Netflix are not enough to
20 defeat this suit. “Professions of good faith will be unlikely to prove persuasive, for
21 example, where a story is fabricated by the defendant.” *St. Amant v. Thompson*, 390
22 U.S. 727, 732 (1968). In the words of the Ninth Circuit: “As we have yet to see a
23 defendant who admits to entertaining serious subjective doubt about the authenticity
24 of an article it published, we must be guided by circumstantial evidence. By
25 examining the editors' actions, we try to understand their motives.” *Eastwood v.*
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1 *National Enquirer, Inc.*, 123 F.3d 1249, 1253 (9th Cir. 1997). See also *Guam*
2 *Federation of Teachers, Local 1581, of Am. Federation of Teachers v. Ysrael*, 492
3 F.2d 438, 439 (9th Cir. 1974); *Burnett v. National Enquirer, Inc.*, 144 Cal.App.3d
4 991, 1011 (1983). The Court must therefore consider the totality of the
5
6 circumstances surrounding the decision of Netflix to falsify Plaintiff’s record.
7

8 As the Supreme Court has admonished, “[t]he proof of ‘actual malice’ calls a
9 defendant's state of mind into question, . . . and does not readily lend itself to
10 summary disposition.” *Hutchinson v. Proxmire*, 443 U.S. 111, 120, n. 9 (1979). This
11 is especially true given that “[t]he existence of actual malice may be shown in many
12 ways.” *Herbert v. Lando*, 441 U.S. 153, 164, n. 12 (1979). “[A]ny competent
13 evidence, either direct or circumstantial, can be resorted to, and all the relevant
14 circumstances surrounding the transaction may be shown, provided they are not too
15 remote, including threats, prior or subsequent defamations, subsequent statements of
16 the defendant, circumstances indicating the existence of rivalry, ill will, or hostility
17 between the parties, facts tending to show a reckless disregard of the plaintiff’s
18 rights, and . . . custom and usage with respect to the treatment of news items of the
19 nature of the one under consideration.” *Id*

20 The Complaint, Frank’s declaration and deposition testimony, and the
21 declarations of Plaintiff and Nicholas Carlin raise numerous plausible inferences
22 supportive of the existence of reckless disregard for the truth—certainly enough to
23 prevail at the pleading stage.

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D. Defendant Who Researches An Issue Is Charged With Knowledge

Those who tout must resolve plain doubt. Netflix may not have had an abstract “duty to investigate” the truth regarding Plaintiff’s career, but once it undertook to research it, to alter the text of the Novel, and to hire expert consultants, one of whom knew her personally, the failure to present her career truthfully can only be attributed to a deliberate fabrication or a purposeful avoidance of the truth.

This is a classic example of a situation in which the failure to investigate, if that is what it was, “must fairly be characterized as demonstrating the speaker purposefully avoided the truth or deliberately decided not to acquire knowledge of facts that might confirm the probable falsity of charges.” *McGarry v. Univ. of San Diego*, 154 Cal. App. 4th 97, 114, (2007), citing *Antonovich v. Superior Court*, 234 Cal.App.3d 1041, 1049, (1991). While the facts lead most plausibly to the inference that Netflix deliberately and knowingly lied, at best the broadcast was a culpable “product of a deliberate decision not to acquire knowledge.” *Id.* As in *Balla v. Hall*, 59 Cal. App. 5th at 685, “the evidence here goes well beyond mere lack of investigation, and includes . . . disregard of contradictory input.”

In *Masson v. New Yorker Magazine, Inc.*, 960 F.2d 896 (9th Cir. 1992), the Ninth Circuit explained that the *New Yorker Magazine*’s own famous reputation for careful fact-checking could be supportive of an inference of actual malice when it failed to resolve discrepancies in the record before it. *Id.* at 901. *Masson* explained that plaintiffs have two paths in establishing reckless disregard for the truth.

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1 One is to show that a publisher “actually had a high degree of awareness of
2 probable falsity.” *Id.* at 900. Plaintiff has satisfied the first path, given the deliberate
3 alteration of the text from the Novel, the use of “largely,” and its knowledge of
4 Plaintiff’s career.

6 *Masson* also articulated a second path. “Where such direct proof is missing,
7 the jury may nevertheless infer that the publisher was aware of the falsity if it finds
8 that there were ‘obvious reasons to doubt’ the accuracy of the story, and that the
9 defendant did not act reasonably in dispelling those doubts.” *Id.* “Although failure
10 to investigate will not alone support a finding of actual malice, . . . the purposeful
11 avoidance of the truth is in a different category.” *Harte-Hanks Communications,*
12 *Inc. v. Connaughton*, 491 U.S. 657, 692, (1989).

16 Plaintiff easily makes her case under the second path as well. A jury could
17 easily find that Netflix *had* to doubt the words it used in the Series given its
18 deliberate alteration of the Novel’s text, Frank’s use of “largely,” the research it
19 undertook, its hiring of consultants who knew Plaintiff, and its admitted knowledge
20 of her career which directly contradicted what Netflix asserted. That is all it takes to
21 deny Netflix’ motion on actual malice: “Once doubt exists, however, the publisher
22 must act reasonably in dispelling it.” *Masson*, 960 F.2d at 901. “Thus, where the
23 publisher undertakes to investigate the accuracy of a story and learns facts casting
24 doubt on the information contained therein, it may not ignore those doubts, even
25 though it had no duty to conduct the investigation in the first place.” *Id.*

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E. Netflix Researched Plaintiff’s Career And Must Have Discovered That Plaintiff Had Played Men Before 1968

As set forth in Section II above, Frank’s declaration reveals that he and his team researched Plaintiff’s career before he wrote the Line, and that he had learned from this research that she was the women’s world champion and one of the Soviet Union’s great chess players. Having undertaken such research and gained this knowledge, Netflix cannot now pretend that they did not discover that she had played male opponents many times in or before 1968.

As US National Chess Master Nicholas Carlin states, “[a]nyone who is at all familiar with the game and its history knows of Nona Gaprindashvili. She was very famous for the fact that she was one of the few women .. who played in tournaments with men at the top level.” [Carlin Decl., ¶6.] Further, “anyone who is interested in finding out about Ms. Gaprindashvili’s career, and in particular whether she had played male chess players in or before 1968, could easily do so by searching the internet, including Wikipedia, www.chessgames.com and other similar websites.” [Id., ¶12.] If Frank or his team had gone to her Wikipedia page, they would have read that “[d]uring her career Gaprindashvili successfully competed in men's tournaments, winning (amongst others) the Hastings Challengers tournament in 1963/4...” [Carlin Declaration., ¶7, Exh. 2.] If he or his team had looked on www.chessgames.com, they would have found most of the games that mentioned in her Declaration. [Id., ¶¶9-11, Exh. 3.]

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F. Kasparov Must Have Known That Plaintiff Had Played Men

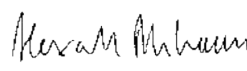
Another fact which strongly supports the conclusion that Netflix knew that Plaintiff had played men in or before 1968 is that one of its chess consultants, Garry Kasparov, has known Plaintiff personally since around 1980. He recently gave an interview in connection with her 80th birthday, in which he made many kind remarks about her, including that “[s]he became not only the first grandmaster among women but also the first female grandmaster among men.” (Emphasis added.) [NG Decl., ¶19, which has more quotes by Kasparov.] Mr. Kasparov must have known that the Line was false, and since he worked for Netflix on the Series, Netflix is charged with his knowledge.

X. CONCLUSION

For the reasons argued above, the Motion should be denied. If, arguendo, the Court has any doubts as to whether Plaintiff has shown a prima facie case on actual malice, she requests that the hearing be continued and seeks an order allowing her to take Mr. Kasparov’s deposition.

DATED: December 3, 2021

RUFUS-ISAACS ACLAND &
GRANTHAM LLP

By: 
Alexander Rufus-Isaacs
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 9420 Wilshire Blvd., 2nd Floor, Beverly Hills, California 90212.

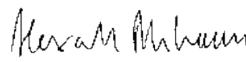
On December 3, 2021, I served true copies of the following document(s) described as **PLAINTIFF'S OPPOSITION TO SPECIAL MOTION TO STRIKE FIRST AMENDED COMPLAINT** on the interested parties in this action as follows:

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BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am a member of the bar of this Court.

Executed on December 3, 2021, at Beverly Hills, California.



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7
8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

11
12 NONA GAPRINDASHVILI, an
individual,

13
14 Plaintiff,

15 v.

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

18 Defendants.
19
20

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

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1 **I. INTRODUCTION**

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

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

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

21 **II. THE FAC SHOULD BE STRICKEN**

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

26 _____
27 ¹ As set forth in the evidentiary objections, Plaintiff did not submit any of Frank’s
28 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.

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

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

13 Plaintiff does not dispute that the Series is fictional, but ignores that crucial
14 context in contravention of the well-settled principle that “[f]or words to be defamatory,
15 they must be understood in a defamatory sense” and “the context in which the statement
16 was made must be considered.” *Issa v. Applegate*, 31 Cal.App.5th 689, 703 (2019).
17 Plaintiff thus does not grapple with the majority of cases Netflix identified holding that
18 the fictional nature of a work undermined the publisher’s liability for alleged
19 defamatory statements. Mot. at 12-15 (citing cases). Plaintiff argues Netflix’s reliance
20 on *De Havilland*, *Sarver v. Hurt Locker LLC*, No. 2:10-CV-09034-JHN, 2011 WL
21 11574477, at *8 (C.D. Cal. Oct. 13, 2011), *aff’d sub nom, Sarver v. Chartier*, 813 F.3d
22 891 (9th Cir. 2016), and *Guglielmi v. Spelling-Goldberg Prod.*, 25 Cal. 3d 860 (1979),
23 is misplaced because they were right of publicity cases. But *De Havilland* and *Sarver*
24 both analyzed false light and/or defamation claims, concluding that they lacked merit
25 for many of the same reasons that Plaintiff’s claims fail. *See De Havilland*, 21
26 Cal.App.5th at 866 (striking false light claim where plaintiff failed to establish that a
27 reasonable viewer, viewing the fictional work in its context, would have understood the
28 statements at issue to convey statements of fact); *Sarver*, 2011 WL 11574477 at *9

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

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

14 In an effort to circumvent this bedrock principle, Plaintiff also sets up various
15 strawman arguments that do not advance her cause. Netflix has not argued that Plaintiff
16 cannot prove defamation because the Line “resides in just one sentence.” Opp. at 6. To
17 the contrary, Netflix argued that the Line must be considered within the context of the
18 fictional Series—a basic rule of defamation law. *See Issa*, 31 Cal.App.5th at 703. Nor
19 has Netflix argued that the disclaimers in the Series are alone dispositive. They are,
20 however, a powerful additional factor that bolsters the fictional nature of the Series,
21 further undermining any claim that a reasonable viewer would construe the Line as
22 conveying objective fact. *See Mossack Fonseca & Co. v. Netflix, Inc.*, No. CV 19-9330-
23 CBM-AS(x), 2020 WL 8510342, at * 4 (C.D. Cal. Dec. 23, 2020) (disclaimers about
24 how a film was fictionalized particularly supported the court’s conclusion that no
25 reasonable viewer would interpret the film to convey objective fact).² Here, the
26

27
28 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

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

9 ***B. Plaintiff Cannot Show That a Reasonable Viewer Would Draw the***
10 ***Implication She Alleged or that the Implication is “Highly Offensive”***

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

20 Plaintiff’s only response is to assert that “*of course*” the Line “carries the stigma
21 that women bear a badge of inferiority” because “what else is conveyed by ‘she has
22 never faced men’ other than ‘she is not as good as men?’” *Opp.* at 11. Plaintiff’s
23 subjective interpretation, however, is entirely divorced from the context of the Series
24 and fails to take into account the extremely sympathetic portrayal of the challenges that
25 Harmon and other female characters face, including Harmon’s struggles against sexism
26 and gender-segregation in the male-dominated world of 1960s chess. Taken in context,
27 _____
28 disclaimers could render a statement incapable of conveying a defamatory meaning,
correctly observing that “context matters.” 438 F.3d at 128.

1 the Line conveys that Plaintiff “never faced men” not because of her abilities—which
2 the Line explicitly lauds by describing her as the “female world champion”—but
3 because of the widespread gender-segregation in the Soviet competitive chess world of
4 the era. No reasonable viewer of the Series would conclude in its broad context that the
5 Line meant that Plaintiff was inferior to men. *Underwager v. Channel 9 Austl.*, 69 F.3d
6 361, 366 (9th Cir. 1995). And to the extent Plaintiff argues that the Line is offensive
7 because it purportedly elevates Harmon’s character’s accomplishments over her own,
8 Opp. at 10–11, Plaintiff fails to cite *any* precedent recognizing a defamation claim based
9 on an allegedly unfavorable comparison to a *fictional* character.

10 Despite Plaintiff’s acknowledgment that the standard here is an *objective* one,
11 she argues that the Court should nonetheless consider the *subjective* opinions of a
12 handful of specific viewers out of the 62 million households that viewed the series. *See*
13 FAC, ¶ 62. Outlier tweets by purported chess enthusiasts, however, are not probative
14 of how reasonable viewers would interpret the Line.³ Indeed, as Plaintiff’s own
15 precedents recognize, “the test is not whether some actual readers were misled” but
16 whether a reasonable viewer would be. *Tah v. Global Witness Publ., Inc.*, 413
17 F.Supp.3d 1, 11 (D.D.C. 2019). Neither *Tah* nor *Vasquez v. Whole Foods Market, Inc.*,
18 302 F.Supp.3d 36 (D.D.C. 2018), the other out-of-Circuit case on which Plaintiff relies,
19 compels a different conclusion. In *Vasquez*, the court simply observed that the plaintiff
20 could rely upon extrinsic evidence to show that listeners understood the statements to
21 pertain to the plaintiff—an element not at issue here. 302 F.Supp.3d at 64. And in *Tah*,
22 the court looked to the language of the report itself to analyze its defamatory
23 implication, noting that the actual view of a certain reader was “not dispositive.” 413
24 F.Supp.3d at 11. Neither *Tah* nor *Vasquez* supplants the objective test with the
25 subjective perspective of a handful of viewers. *De Havilland*, 21 Cal.App.5th at 865-

26
27 ³ The Court should disregard these cherry-picked Twitter posts, as Plaintiff’s counsel
28 cannot lay a proper foundation for these unidentified third-party tweets.

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

6 Finally, even if the Line implied that Plaintiff—despite being the female world
7 champion—was not good enough to play against male grandmasters (it does not), such
8 an implication is not defamatory as a matter of law. The implication that Plaintiff, while
9 still an elite chess player, was not *as* elite as she in fact was is not highly offensive. *See*
10 *Sarver*, 813 F.3d at 906. In *Sarver*, for example, the court held that even if some aspects
11 of the portrayal of the plaintiff were “unflattering, it does not support the conclusion
12 that the film’s overall depiction of [the character] could reasonably be seen to defame”
13 him given that he was depicted as “a heroic figure.” *Id.* Here, Plaintiff was portrayed
14 as one of the world’s best chess players, struggling with presumably the same sexism
15 many female chess players of the era experienced. Because she cannot establish a
16 reasonable viewer of the Series would draw an actionable negative implication from the
17 Line, the Court should grant the motion. *See Heller v. NBC Universal*, No. CV-15-
18 09631-MWF-KS, 2016 WL 6583048, at *6 (C.D. Cal. June 29, 2016).

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

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

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

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

21 *Third*, the alleged implication that Plaintiff was inferior to male players is a
22 paradigmatic example of a non-actionable statement of opinion because it is a subjective
23 assessment of professional competence not susceptible to objective proof. *See* Mot. at
24 16-17; *Partington*, 56 F.3d at 1156–58 (publication of a lawyer’s failure to admit certain
25 evidence was not defamatory because “[e]ven if [the court] were to attribute to [the
26 allegedly defamatory] statement the implication that [plaintiff] contends arises from it.
27 . [defendant] can only be said to have expressed his own opinion”).

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

1 *per quod* claim requires pleading and proving special damages, which Plaintiff does not
2 and cannot do. *See* Mot. at 18-21. Where, as here, a claim under California law requires
3 pleading and proof of special damages (*i.e.*, economic losses), allegations of special
4 damages “shall be specifically stated.” Fed. R. Civ. P. 9(g); *Isuzu Motors Ltd. v.*
5 *Consumers Union of U.S., Inc.*, 12 F.Supp.2d 1035, 1047 (C.D. Cal. 1998). Summarily
6 alleging economic loss, as Plaintiff does, *see* FAC, ¶ 78, fails to satisfy that heightened
7 pleading standard. *See id.* (“A bare allegation of the amount of pecuniary loss alleged
8 is insufficient”); *Todd v. Lovecraft*, No. 19-cv-01751-DMR, 2020 WL 60199, at *20
9 (N.D. Cal. Jan. 6, 2020) (“A general allegation of the loss of a prospective employment,
10 sale, or profit will not suffice” (quoting *Pridonoff v. Balokovich*, 36 Cal.2d 788, 792
11 (1951)); *Martin v. Wells Fargo Bank*, No. 17-cv-03425-RGK, 2018 WL 6333688, at *2
12 (C.D. Cal. Jan. 18, 2018) (allegation that plaintiff suffered, *inter alia*, a lowered credit
13 score, raised interest rates, and loss of business opportunity did was insufficient because
14 “the opportunities allegedly lost are impermissibly vague”).

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

21 ***D. The Gist of the Line is Substantially True***

22 As Netflix also established, the substantial truth defense independently bars
23 Plaintiff’s claims. The gist of the Line in context, *i.e.*, that Plaintiff had never faced
24 male players at major Soviet tournaments before 1968, is true. *See* Mot. at 21-23. Even
25 in her opposition, Plaintiff focuses on *any* competition she played against men before
26 1968, again ignoring the critical context of the Line, which occurs in the finale at the
27 fictional Moscow Invitational, a setting integral to one of the Series’ central themes—
28 the value of collectivism over individualism in the clash between Soviet and American

1 values in the context of the Cold War. Opp. at 18-19.⁴ But even if the gist were that
2 she had never faced men in *any* tournaments, not just major Soviet tournaments (it is
3 not), the Line would be off by only a relatively short period of time; the substantial truth
4 defense would still defeat her claims. Cf. *Vogel v. Felice*, 127 Cal.App.4th 1006, 1021-
5 22 (2005); *Guccione v. Hustler Magazine Inc.*, 800 F.2d 298, 302 (2d Cir. 1986) (cited
6 approvingly by *Hughes v. Hughes*, 122 Cal.App.4th 931 (2004)).

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

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

26 ⁵ Frank’s testimony is irrelevant because the applicability of the substantial truth
27 defense is “a question of law to be decided by the court.” *Baker v. Los Angeles Herald*
28 *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.

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

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

5 Finally, although the Court need not even reach this element, Plaintiff cannot
6 possibly succeed in showing a probability of prevailing on her actual malice argument,
7 which requires her to prove by clear and convincing evidence that Netflix published the
8 Line with knowledge or reckless disregard as to its truth or falsity. As set forth in the
9 motion, Netflix relied on two world-renowned chess experts—Bruce Pandolfini and
10 Garry Kasparov—to review the accuracy of the scripts and flag any concerns, and they
11 identified no concerns about the accuracy of the Line. Mot. at 7, 23-24; Frank Decl.,
12 ¶¶ 19-20. Plaintiff does not dispute their qualifications or whether consulting chess
13 experts constituted a sufficient investigation. Rather, she makes the remarkable
14 argument that the experts “must have known that the Line was false” and, with no
15 citation to authority, that Netflix is “charged with” that knowledge. Opp. at 25. At its
16 essence, Plaintiff’s position is that if a defendant conducts research before publishing a
17 work, then the defendant must have acted with actual malice. But even a *failure* to
18 investigate is generally insufficient to establish actual malice. *McGarry*, 154
19 Cal.App.4th at 114. *Conducting* an investigation can only support a finding of actual
20 malice where it raises doubts about the statement’s accuracy. *See Masson*, 960 F.2d at
21 900 (plaintiff “pointed out to [fact-checker] the inaccuracy of various quotations” and
22 asked to review quotes, but was ignored). Netflix’s research raised no such doubts.

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

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

6 Plaintiff’s reliance on the declaration of U.S. National Chess Master Nicholas
7 Carlin is also misplaced. Carlin states that publicly available information on Wikipedia
8 and www.chessgames.com reveals that Plaintiff played against men in high-level
9 tournaments before 1968. Carlin Decl., ¶¶ 7, 12. But whether a defendant *could have*
10 accessed certain information is not the test for actual malice. *McGarry*, 154
11 Cal.App.4th at 114 (actual malice is a subjective test “under which the defendant’s
12 actual belief concerning the truthfulness of the publication is the crucial issue”).
13 Moreover, these sources only reinforce the view that Plaintiff’s major play against men
14 occurred in the 1970s. Even the Google search results Carlin attaches to his declaration
15 highlight that she was “the first woman to be awarded the FIDE title Grandmaster,
16 which occurred in 1978” and “was the fifth women’s world chess champion,” but make
17 *no reference* to her playing men—apart from references to this lawsuit, which plainly
18 post-date the release of the Series. Carlin Decl., Ex. 1.⁶ Carlin himself points to
19 Plaintiff’s performance at Lone Pine in 1977 as “especially noteworthy to [him].” *Id.*
20 ¶ 8. That Carlin—himself an elite chess player and acting at Plaintiff’s counsel’s
21 direction—could not even locate a record of some of the pre-1968 Soviet games she
22 identifies in her declaration underscores that Netflix did not act with reckless disregard.

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

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28 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.

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

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

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

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

24 **III. CONCLUSION**

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

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