

MILLER BARONDESS, LLP

ATTORNEYS AT LAW
1999 AVENUE OF THE STARS
SUITE 1000
LOS ANGELES, CALIFORNIA 90067
TEL: (310) 552-4400
FAX: (310) 552-8400
WWW.MILLERBARONDESS.COM

April 19th, 2022

LOUIS R. MILLER
DIRECT DIAL: (310) 552-5251
SMILLER@MILLERBARONDESS.COM

VIA E-MAIL AND U.S. MAIL RETURN RECEIPT REQUESTED

David Zaslav
CEO/President of Warner Bros. Discovery
230 Park Avenue South
New York, NY 10003

HBO
John Billock, President, HBO U.S.
Casey Bloys, President, Programming
Danielle Knight, General Counsel
1100 Avenue of the Americas
New York, NY 10036

Adam McKay and Kevin Messick, Producers
c/o HBO

Re: *Winning Time: The Rise of the Lakers Dynasty*

Dear Sirs:

Our law firm is counsel for Jerry West. We write to request the retraction of the false and defamatory portrayal of Mr. West in HBO's *Winning Time: The Rise of the Lakers Dynasty* by no later than two weeks from the date of this letter. You have perpetrated an egregious wrong on a good and decent man and have harmed him in the process. This should never have happened; and by issuing a retraction, you can ameliorate some of the harm you have caused.

A. The Lakers Of The 1980s

The Lakers of the 1980s are one of the greatest dynasties in the history of sports. Before 1980, NBA finals games were shown on tape delay and the league was struggling financially. The Showtime era Lakers and their rivalry with the Boston Celtics changed everything. The Lakers of that era helped launch the NBA into the multi-billion dollar enterprise and globally revered sports league it is today.

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For the Lakers organization, this was an era of joy and incredible accomplishment. Jerry West helped build a roster that would go on to win five championships and make eight finals appearances during a ten-year span. The Laker dynasty culminated with back-to-back championships over the Celtics in 1987 and the Pistons in 1988. The Lakers had three of the all-time great players in history in Magic Johnson, Kareem Abdul-Jabbar and James Worthy.

For the players, coaches and the entire Lakers organization this was a magical and amazing time; and they, along with Jerry West, enjoyed it and got along great with one another. This reality is directly contrary to the portrayals in your show.

Unfortunately, your false portrayal of the Lakers in your show has caused harm to the reputation of the Lakers organization and its people. Some of the individuals portrayed have passed away and are unable to defend themselves. For others, it has tarnished their reputations and shown them in a damaging false light. As you know, several former players and people with knowledge have spoken out against the show as being completely unrealistic and depicting events that never took place.

You took a happy and super successful Lakers era and turned it into a pulpy soap opera. You depicted the people in a false light, not at all who they are, to garner ratings and make money.

B. You Have Depicted Jerry West As Someone He Is Not

Winning Time falsely and cruelly portrays Mr. West as an out-of-control, intoxicated rage-aholic. The Jerry West in *Winning Time* bears no resemblance to the real man. The real Jerry West prided himself on treating people with dignity and respect. *Winning Time* is a baseless and malicious assault on Jerry West's character. You reduced the legacy of an 83-year-old legend and role model to that of a vulgar and unprofessional bully—the polar opposite of the real man.

Those who know and have worked with Jerry West have confirmed that the real Jerry West is the opposite of the person depicted in your show. Enclosed are statements from several people with first-hand knowledge of the real Jerry West—all reviewed and confirmed accurate by people who knew and worked with Jerry. (See **Exhibit A.**) These statements confirm the crass falsity of your portrayal of Jerry West.

Claire Rothman worked with team owner Jerry Buss and ran the operations of The Forum. She worked with Jerry West for 20 years. Per her enclosed statement:

Jerry treated me and everyone else in the Lakers organization with dignity and respect. I never saw Jerry break or throw anything in anger or rage, nor did I hear anyone ever say he did such things. Jerry did not throw trophies, golf clubs or

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anything else in anger. Jerry was soft-spoken and not prone to angry outbursts or tirades, nor did he scream or swear at me or anyone else. The person depicted in the show is not the real Jerry West.

Charlene Kenney worked with the Lakers organization from 1980-2002 as Executive Assistant to the owner of the Lakers (Dr. Jerry Buss). She worked in the office with Jerry West for 20 years, and this is her statement:

I have watched the HBO show *Winning Time* and the character they portray as Jerry West is nothing like the man I knew. I never heard Jerry yell or scream at me or anyone. In fact, I never heard Jerry even raise his voice at the office. He was always a gentleman and he treated me and others within the Lakers organization with respect and professionalism. I also never heard Jerry West use swear words or curse words in the office. And I never witnessed Jerry throw or break anything in anger. I also never heard Jerry on a tirade or rant about anything. Lastly, I never saw Jerry drink alcohol at the office, nor did I ever see Jerry intoxicated at the office.

Frank Mariani—Jerry Buss’ longtime business partner—has the same recollection of Jerry West. Per his attached statement, Jerry always “was professional, cordial and nice” and never screamed or yelled at anyone.

Bill Sharman was a former Laker coach and executive, who passed away several years ago. Mr. Sharman’s widow, Joyce Sharman, had this to say about how Jerry West is portrayed in your show:

NEVER was Jerry intoxicated, loud, or angry. I never personally experienced Jerry being rude to anyone. It was, in fact, the opposite. He was soft-spoken and yes, intense. That is why with his brilliance, he was able to accomplish so much throughout his career. But NEVER did I see him with crazy outbursts, and my husband would have shared that with me had it ever happened, as well as NEVER throwing anything!!! It has been extremely upsetting to see how Jerry has been portrayed in this vulgar and disgusting series.”

Mitch Kupchak played for the Los Angeles Lakers from 1981-1986. From 1986-2000, Mr. Kupchak worked as Assistant General Manager directly with Jerry West who was the General Manager of the Lakers. Mr. Kupchak, current President of Basketball Operations and General Manager of the Charlotte Hornets, said the following:

During my time with the Lakers as a player and in the front office, Jerry was always professional, even-keeled and soft spoken. He was always positive and

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encouraging with me. I also found Jerry to be honest and sincere. I never saw or heard Jerry lose his temper with anyone. I also never saw or heard Jerry go on an angry rant or tirade nor did I ever see or hear Jerry scream or yell at anyone. That was not his personality. Jerry is soft spoken and does not like confrontation. He always keeps his composure and remains calm even when he has a disagreement with someone. Last, I've never heard or seen Jerry ever break or throw anything in anger.

With respect to all players, Laker employees, coaches and assistant coaches, I never saw or heard Jerry denigrate anyone or speak poorly about someone. He and I had intense and heated conversations behind closed doors, but I never saw Jerry go off on anyone or yell or scream at anyone. In fact, I never even saw Jerry in a heated argument with anyone. He kept his composure and always behaved like a gentleman. Jerry is polite and charming. I've never seen him be rude or intentionally ignore anyone in all of my years knowing him.

Bob Steiner was head of Public Relations for California Sports Inc., the company that owned the Lakers, from 1979-1999. Mr. Steiner was responsible for public relations for the Lakers, the Kings and for Forum events. He had this to say about Jerry:

I first met Jerry West in 1979 and we worked closely together until 2000. We worked together during this over twenty-year period in a small office building at the Forum...

I have watched several episodes of the HBO show, *Winning Time*. The Jerry West portrayed in the show has no resemblance to the Jerry West I knew. The depiction could not be further from the truth. Jerry was talkative and friendly with people he knew at the office but somewhat shy with those he did not know. Jerry was not loud at the office nor did I ever see or hear him scream or yell at anyone. In fact, I never saw Jerry express any anger towards anyone at the office. I also never saw Jerry go on an angry tirade at the office nor did I ever hear him use profanity to describe anyone in the Laker organization. I also never saw Jerry throw or break anything in anger. I never saw Jerry lose his temper at the office.

Former Laker players who were there in 1979/1980 also believe the depiction of Jerry is entirely false. NBA legend and all-time leading scorer Kareem Abdul-Jabbar played with the Lakers from 1975-1989 and had this to say about Jerry West: "Instead of exploring his issues with compassion as a way to better understand the man, they turn him into a Wile E. Coyote cartoon to be laughed at. He never broke golf clubs, he didn't throw his trophy through the window. Sure, those actions make dramatic moments, but they reek of facile exploitation of the man rather than exploration of character."

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Per Jamaal Wilkes who played for the Lakers from 1977-1985, “Jerry treated me – and from my point of view – the other Laker players with dignity and respect.” Michael Cooper, who played for the Lakers from 1979-1990 and worked closely with Jerry in the Laker front office as Special Assistant to the GM states:

When I was in the front office, Jerry and I spent a lot of time together. We travelled together, went on recruiting trips together and attended Laker training camp together. Jerry has one of the highest basketball IQs of anyone I have ever known. His ability to evaluate and identify talent is unparalleled. He would often see upside and talent in players that others could not see. In my decades of experience as a player, coach and basketball executive, I haven’t seen a better talent evaluator or basketball mind.

Jerry was soft-spoken and kind. He was also genuine and considerate. During my entire time knowing Jerry, I never heard or saw him yell, scream or swear at anyone. I’ve also never heard or seen Jerry go on an angry tirade nor did I ever see Jerry lose his temper or break/throw anything in anger. And I never heard or saw Jerry be disrespectful or ignore anyone. Jerry was never mean or demeaning to anyone. To the contrary, Jerry was always polite to all members of the Laker organization. He was on a first name basis with everyone from the owner to the security guards and maintenance workers at the Forum. Jerry always acknowledged and greeted everyone in the Laker organization and at the Forum. I also never saw Jerry turn down an autograph request.

I never heard Jerry denigrate or say bad things about Magic Johnson. Jerry always spoke glowingly about Magic as a player and as a person. In fact, I’ve never heard Jerry denigrate or speak badly about any Laker player, employee or coach. I also never saw Jerry intoxicated or drinking alcohol while on the job.

Arn Tellem—a former basketball agent and current vice chairman of the Detroit Pistons—has also verified that the portrayal of Mr. West in *Winning Time* is in his words, “dishonest and staggeringly insensitive.” (See attached **Exhibit A** for an article written by Mr. Tellem.) The real Mr. West was courteous, respectful, generous and self-deprecating. He did not lash out or throw trophies out of windows. Nor did the real Jerry West become intoxicated at work. He is known to be health conscious and shied away from alcohol.

Winning Time purports to be based on Jeff Pearlman’s novel, *Showtime: Magic, Kareem, Riley, and the Los Angeles Lakers Dynasty of the 1990s*. Mr. Pearlman’s book itself makes reference to Jerry West as someone who treated people with dignity and respect. Per Gene Tormohlen, a longtime Lakers scout, “Jerry treated all Laker employees wonderfully.” Per Mike Dunleavy (former head coach of the Lakers, among other NBA teams), “Jerry was the most respected guy in the league.”

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You are liable for your false and mean-spirited misrepresentation. You have committed the tort of false light invasion of privacy by creating a false impression about Mr. West that is highly offensive and injurious to his reputation. *See Solano v. Playgirl, Inc.*, 292 F.3d 1078, 1082 (9th Cir. 2002). You have also defamed Mr. West by attributing acts of rage to him that he never committed. *See Gaprindashvili v. Netflix, Inc.*, 2022 WL 363537, at *4 (C.D. Cal. Jan. 27, 2022) (elements of defamation are “(a) a publication that is (b) false, (c) defamatory, and (d) unprivileged and that (e) has a natural tendency to injure”).

C. You Falsely Portrayed Jerry West As Incompetent

Jerry West is one of the most well-regarded General Managers in NBA history. He was twice awarded NBA Executive of the Year. Throughout his career, he has shown incredible skill and expertise in identifying talent and creating NBA rosters competing for a championship.

Mr. West was instrumental in establishing the Lakers of the 1980s as one of the all-time greatest dynasties in NBA history. Later on, Jerry traded for the draft rights to Kobe Bryant and signed Shaquille O’Neal in the same year, which paved the way for another Lakers dynasty. The book—which your show is supposed to be based on—repeatedly emphasizes Jerry’s acumen and genius as a GM.

Per the book, “West was, by all accounts, one of the smartest men ever to step on the court. He was perceptive, instinctive and forward thinking.” In describing Jerry West’s approach to the NBA draft, the book states, “One of the league’s keen talent evaluators, West prepared for the event like few others.” In his 23-year career as an NBA executive, “Jerry West made some magnificent trades.” “[Jerry West] was emerging as one of the greatest gurus the sport had ever seen.” His track record was “phenomenal,” and Jerry “was widely regarded as a personnel magician.”

Rather than follow the book, the show goes out of its way to denigrate Jerry West despite his accomplishments as an executive. It shows Jerry launching into expletive-filled tirades about the decision to draft Magic, implying that Jerry had personal animus against Magic. Worse, the show implies that Jerry tried to sabotage the drafting of Magic Johnson. This never happened. All Jerry did was point out that Sidney Moncrief was a prolific scorer and that the Lakers should consider him. It was not Jerry’s decision who to draft. It was the owner (Jack Kent Cooke) who made the call.

So instead of seeing the true Jerry West—a brilliant GM who was the architect of one of the great NBA dynasties—anyone who watched the show would be left with the false impression that West is incompetent, that he didn’t want Magic Johnson. This is a fabrication. You depict Jerry as a clueless bumpkin—wearing a fishing hat to practice, which also never happened—rather than a dedicated and capable GM.

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D. You Have Fabricated Events That Never Happened

In episode 1, Jerry West is shown golfing with Jerry Buss, Bill Sharman and Frank Mariani while discussing Magic Johnson. Jerry is shown kicking his golf ball and storming off, yelling, "Fucking have them coach ok. I fucking quit. I can't even play a fucking game of golf without you bringing up shit." Mr. Sharman then says, "*He does this all the time.*" This never happened.

In the same scene, Mr. Buss suggests Magic Johnson would be good for advertising, and the actor playing Jerry West screams, "Your cocksucking motherfucking buttfucking billboards don't play the game of basketball." He then breaks a golf club over his knee. This never happened. Jerry never even played golf with the Messrs. Buss and Sharman.

All of this is fabricated. Your claim that Jerry West yelled and screamed at Jerry Buss and others is fiction. Jerry West loved Dr. Buss. They had a great relationship and worked together harmoniously.

There's another scene in which Jerry and Dr. Buss are shown talking in Mr. West's office. Jerry West is again portrayed as enraged, and Dr. Buss says to him: "I used to drink a lot of bourbon. I switched to Vodka. You can smell it less. Just a tip." This scene depicts Mr. West as intoxicated at work. This never happened.

After Magic Johnson was drafted, Jerry is shown throwing his MVP trophy through his office window in anger. This never happened. Jerry would never throw anything in anger. The repeated portrayal of uncontrollable rage is entirely false. You falsely show Jerry being thrown out of practice by Coach McKinney and Jerry ignoring assistant coach Paul Westhead and not acknowledging his presence. These events never happened.

There are several other instances of false scenes that never took place. For example, Jerry West is shown as a player pushing fans out of the way after they stormed the floor after losing to the Celtics. This never happened. After winning the 1972 championship, a clip of Bill Sharman with his arms around Jerry West shows Jerry looking unhappy.

In reality, there is a famous clip of Jerry West running off the floor with a huge smile on his face extremely happy. Particularly false and egregious is a depiction of Jerry's wife suggesting that they start a family. The camera zooms in on Jerry as he looks disgusted at the idea of having a family. This is also completely false. Jerry always wanted a family and has a great one.

Depicting Jerry West in this manner is *per se* defamation. See *Shepherd v. Kohl's Dep't Stores, Inc.*, 2016 WL 1626950, at *4 (E.D. Cal. Apr. 25, 2016) ("[A] document which states

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plaintiff was discharged from employment for being intoxicated while at work, if shown to be false and unprivileged, could plausibly constitute defamation per se, as no extrinsic facts need be alleged to understand the purportedly defamatory nature of the publication.”).

E. The Disclaimer Does Not Excuse Your Wrongful Conduct

The disclaimer in *Winning Time* that the series is a “dramatization” does not insulate you from liability. See *Gaprindashvili*, 2022 WL 363537, at *6 (holding plaintiff proved probability of prevailing on her defamation claim, notwithstanding disclaimer that show was a work of fiction). Despite this disclaimer, the show conveys to viewers that its depiction of Jerry West is factual.

For example, the fabricated scene on the golf course is accompanied by Dr. Buss “breaking the fourth wall” by looking directly into the camera and saying to viewers: “Jerry West, Head Coach of the Lakers, considered a true gentleman of the sport *to everyone who does not know him.*” The unmistakable meaning of this is that the episode is showing us the “real” Jerry West. *Winning Time* implies that its rageful, intoxicated depiction of Jerry West is factual.

Winning Time’s misrepresentations are not a matter of slight inaccuracies, as was the case in *De Havilland v. FX Networks, LLC*, 21 Cal. App. 5th 845, 869 (2018) (finding, among other things, that portrayal that substituted one word for a modern synonym in dialogue was substantially truthful). Rather, the actions and personality of the Jerry West in *Winning Time* were made up out of whole cloth.

In the recent federal court decision in Los Angeles, *Gaprindashvili v. Netflix, Inc.*, 2022 WL 363537 (Jan. 27, 2022 - copy enclosed), Judge Phillips distinguished the De Havilland case and denied motions to dismiss and strike based on facts far less egregious than what you have done to and said about Jerry West. I suggest you read that decision to gain an understanding of your very substantial legal exposure in this matter.

You replaced the real Jerry West—a consummate professional—with his polar opposite, then portrayed this lie to the public as genuine. You thereby violated the law.

F. You Acted With Malice

Your false portrayal of Jerry was also accompanied by legal malice—*i.e.*, knowledge that your portrayal of Jerry West was false or a reckless disregard of the truth. *Winning Time* purports to be based on Mr. Pearlman’s book. But the defamatory scenes of Jerry’s purported rage *appear nowhere in the book*. You knew they were false yet showed them to audiences anyway.

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You omit any reference to Jerry being one of the most accomplished and well-regarded NBA executives in history. Instead, you degrade him by exaggerating his urging the Lakers not to draft Magic Johnson. Contrary to the show, the book leaves readers with the true impression of Jerry as a brilliant and thoughtful GM. Your extreme departure from the book shows malice in your false portrayal.

It has been reported that a longtime Lakers employee walked away from a multi-thousand-dollar consulting fee because of the show's inaccurate portrayal of Jerry West. He is quoted as saying, "It was a total mischaracterization of Jerry West." You were on notice of the falsity, yet you still released *Winning Time* knowing it was false and misleading. This is the epitome of malice.

G. You Have Permanently Tarnished Jerry West

Jerry West is 83. He's led an honorable and distinguished life. He treats people of all walks with dignity and respect. You have portrayed him as a monster—rude, angry and demeaning—the opposite of who he really is. For many, especially those who do not know Jerry, your portrayal will be all they know. It will be their reality.

The false reality you have created has already subjected Mr. West to scorn. After the false portrayal of Jerry West in the first episode on March 6th, *Winning Time* became one of the top trending topics on Twitter. Here is a selection of comments on Twitter about Mr. West from viewers of *Winning Time*:

- "who knew JW was a drunk, a mean drunk at that"
- "had no idea JW was a psychopath"
- "a drunk ass hater who didn't want Magic"
- "a full-fledged psycho"
- "a jerk"
- "anger issues"
- "rage issues"
- "absolute buffoon"
- "really crazy"
- "a madman"
- "an asshole"
- "a bully"

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- “an alcoholic hot head”
- “seems like a nutcase”

You should be ashamed for doing this. Money and ratings aren’t everything. What about honesty and decency? You need to fix what you have done.

* * * *

To mitigate the harm you have caused, we request the issuance of a retraction of *Winning Time*’s false depiction of Jerry West no later than two weeks from the date of this letter. You also owe Mr. West an apology for your hurtful misrepresentation of his work and legacy, plus damages for the harm you caused to his well-earned and stellar reputation.

We understand that the show has been picked up for one more season. We further demand that all future episodes avoid any false and defamatory content about Jerry West. All legal rights and remedies are reserved.

Sincerely,

A handwritten signature in blue ink that reads "Skip" followed by a stylized, cursive signature.

Louis R. Miller

LRM:CH

EXHIBIT A

STATEMENT OF MICHAEL COOPER

I played in the NBA for the Lakers from 1979-1990. As a player, my teams won five championships, I was named to the NBA All-Defensive Team eight times and I won NBA Defensive Player of the Year in 1987. After I retired as a player, I became a Special Assistant to the General Manager of the Lakers. While I was Special Assistant to the General Manager for about three years, I worked directly with Jerry West in the front office. From 1994-1996, I was an assistant coach for the Lakers. I have kept in touch with Jerry and his family and remain in touch with them.

During my time with the Laker organization as a player, executive in the front office and on the coaching staff, I got to know Jerry very well. Jerry took me under his wing when I was in the front office and I consider Jerry to be a mentor. He taught me about the game and spent a lot of time teaching me about being an executive as well. Jerry is a kind-hearted and compassionate person who is very generous with his time. In good times and bad, he was always there for me and always willing to take the time to lend a helping hand or share a kind word. If I ever needed him, Jerry was there.

When I was in the front office, Jerry and I spent a lot of time together. We travelled together, went on recruiting trips together and attended Laker training camp together. Jerry has one of the highest basketball IQs of anyone I have ever known. His ability to evaluate and identify talent is unparalleled. He would often see upside and talent in players that others could not see. In my decades of experience as a player, coach and basketball executive, I haven't seen a better talent evaluator or basketball mind.

Jerry was soft-spoken and kind. He was also genuine and considerate. During my entire time knowing Jerry, I never heard or saw him yell, scream or swear at anyone. I've also never heard or seen Jerry go on an angry tirade nor did I ever see Jerry lose his temper or break/throw anything in anger. And I never heard or saw Jerry be disrespectful or ignore anyone. Jerry was never mean or demeaning to anyone. To the contrary, Jerry was always polite to all members of the Laker organization. He was on a first name basis with everyone from the owner to the security guards and maintenance workers at the Forum. Jerry always acknowledged and greeted everyone in the Laker organization and at the Forum. I also never saw Jerry turn down an autograph request.

I never heard Jerry denigrate or say bad things about Magic Johnson. Jerry always spoke glowingly about Magic as a player and as a person. In fact, I've never heard Jerry denigrate or speak badly about any Laker player, employee or coach. I also never saw Jerry intoxicated or drinking alcohol while on the job.

Whenever I saw Jerry, he was always well-dressed and professional. He usually wore slacks with a nice collared shirt or a sweater, or he wore a suit. I never even saw Jerry wear jeans or sweatpants on the job nor did I ever see him in fishing gear on the job. Jerry was intense and took his job very seriously. He taught me a lot about how to be a professional.

STATEMENT OF CHARLINE KENNEY

I worked with the Laker organization from 1980-2002 as Executive Secretary to the owner of the Lakers (Dr. Jerry Buss). During that time, my office was in close proximity to Jerry West's office. I often worked closely with Jerry West and we got to know each other well as co-workers. Jerry West and I worked together for about 20 years.

I have watched the HBO show *Winning Time*, and the character they portray as Jerry West is nothing like the man I knew. I never heard Jerry yell or scream at me or anyone. In fact, I never heard Jerry even raise his voice at the office. He was always a gentleman, and he treated me and others within the Laker organization with respect and professionalism. I also never heard Jerry use swear words or curse words in the office. And I never witnessed Jerry throw or break anything in anger. I also never heard Jerry West on a tirade or rant about anything. Lastly, I never saw Jerry drink alcohol at the office, nor did I ever see Jerry intoxicated at the office.

Jerry was charismatic and kind. With respect to all employees and Laker players, Jerry always comported himself as a gentleman. When Magic Johnson was drafted by the Lakers, Jerry was happy; and I never heard Jerry denigrate Magic or say anything bad or offensive about Magic or Magic's playing ability. In fact, I never heard Jerry denigrate or speak poorly of any Lakers players.

Jerry was very dedicated to the Lakers. When Dr. Buss would cancel a speaking engagement (which happened fairly often), Jerry West was always willing to jump in and do the speaking engagement in Dr. Buss' place. Jerry West had a positive attitude at work and was always trying to make the Lakers better. Jerry Buss told me that he gave Jerry West the credit for building the Lakers team that became a dynasty in the 1980s. It was Jerry West's vision that led to the Lakers' success in my view and the view of Dr. Buss.

STATEMENT OF MITCH KUPCHAK

I played in the NBA from 1976-1986. From 1981-1986, I played for the Los Angeles Lakers. After retiring as an NBA player, I moved into the front office of the Lakers and worked as Assistant General Manager. From 1986-2000 I worked directly for and with Jerry West who was the General Manager of the Lakers. When Jerry left the Lakers, I became General Manager of the Lakers. I am currently President of Basketball Operations and General Manager of the Charlotte Hornets. During my time as an NBA Executive with the Lakers, the team won seven NBA championships (1987, 1988, 2000-2002, 2009, 2010).

I first got to know Jerry West when I played for the Lakers from 1981-1986. When I started working with Jerry in the front office, I worked very closely with him and got to know him on a personal and professional level. For several years, Jerry and I were the only executives for the Lakers in the office together. Jerry was a mentor to me and spent a tremendous amount of time training me and helping me in my career. He also was and is a very close friend. We spent a lot of time together and worked very closely in the office. Jerry and I also have spent a lot of time together socially at dinners, events, traveling together and our families have spent holidays together.

During my time with the Lakers as a player and in the front office, Jerry was always professional, even-keeled and soft spoken. He was always positive and encouraging with me. I also found Jerry to be honest and sincere. I never saw or heard Jerry lose his temper with anyone. I also never saw or heard Jerry go on an angry rant or tirade nor did I ever see or hear Jerry scream or yell at anyone. That was not his personality. Jerry is soft spoken and does not like confrontation. He always keeps his composure and remains calm even when he has a disagreement with someone. Last, I've never heard or seen Jerry ever break or throw anything in anger.

With respect to all players, Laker employees, coaches and assistant coaches, I never saw or heard Jerry denigrate anyone or speak poorly about someone. He and I had intense and heated conversations behind closed doors, but I never saw Jerry go off on anyone or yell or scream at anyone. In fact, I never even saw Jerry in a heated argument with anyone. He kept his composure and always behaved like a gentleman. Jerry is polite and charming. I've never seen him be rude or intentionally ignore anyone in all of my years knowing him.

Jerry is not a heavy drinker. He would occasionally have a glass of wine when we went out to dinner. I never saw Jerry drink alcohol on the job during my entire time as a Laker player and executive. I also never saw Jerry intoxicated on the job. He was a consummate professional and I have the utmost respect for Jerry as a professional and as a person.

STATEMENT OF FRANK MARIANI

I was working in real estate and was business partners with Dr. Jerry Buss at the time he bought the Lakers in 1979. I remained business partners with Dr. Buss until he passed away in 2013. In 1979, I first met Jerry West. In the next few years (starting in 1979), I had occasion to interact with Jerry West at the office and outside of the office a few times at lunch or dinner. During all of my interactions with Jerry West, he was professional, cordial and nice. He always treated me with respect, and I had a good relationship with Jerry West.

I never saw or heard Jerry West yell or scream at anyone. I also never saw or heard Jerry curse or swear, nor did I ever see Jerry go on an angry tirade or rant. And I never saw Jerry West throw or break anything in anger. No one ever told me that Jerry yelled or screamed at anyone, nor did I ever hear of Jerry throwing or breaking anything in anger. I also never saw or heard Jerry in any sort of verbal fight with anyone. In all of my interactions with Jerry and when I saw Jerry interact with others, he was always pleasant and professional.

I never saw Jerry West drink alcohol at the office, nor did I ever see Jerry intoxicated at the office. I also never saw or heard Jerry denigrate or speak poorly of any Lakers players or employees.

STATEMENT OF BUCK MARTIN

Everyone I talk to says the same thing about the way Jerry West is being portrayed in the show *Winning Time*. That's not Jerry West. I first met Jerry back in 1976 working a concert ticket sale as a security guard one morning in the parking lot of the Fabulous Forum. Jerry was coming to work and said hello to me and asked how I was doing. I was 18 years old. After walking into the double doors leading into the Forum offices, I said to my co-worker, that was Jerry West! Just a nice man. I worked security for a lot of Lakers games during the Show Time era. Every time Jerry saw me, he made it a point to say hello. He was that way with everyone: ushers, concession workers, maintenance workers, everyone. I eventually got hired by Claire Rothman in 1991 as an event coordinator. Jerry's office was right around the corner from mine. In all the years working with him and the Lakers organization, we were a family. Everyone took care of each other. Jerry was always there to help out to solve challenges we sometimes faced in scheduling the building. He would help us move a Lakers game if necessary, which you can imagine was no easy task. I never heard a curse word from him. You could see when he could get excited about something, but never did I hear him raise his voice or treat someone with disrespect. He was a mentor to me, as was Mitch Kupchak. We used to draw names for exchanging Christmas presents. I got Jerry's name one year. What do you give Jerry West? I got an idea and borrowed James Worthy's jersey and had Len, the Forum photographer take a picture of me slamming a basketball, standing on a ladder of course. You couldn't see the ladder in the picture. I autographed the photo with a personal message saying I was there if he needed me. I framed it, wrapped it and gave it to him. Jerry got a real kick out of it and had it on his desk until he left the Forum. Shaq one time commented to me, you're the guy in the photo on Jerry West's desk. Jerry is a gentleman and will always be my hero. He is a winner through and through. Please give him a hug for me and the rest of your family. All the best to you and yours from Wendy and I and our clan.

STATEMENT OF CLAIRE L. ROTHMAN

I worked with the Lakers organization from January 1975 to May 1995. From 1975-1979, I was General Manager of the Forum. In 1979, I became Vice President of California Sports for the Forum when Dr. Jerry Buss took over ownership of the team. I was in charge of booking all events at the Forum. In the late 1980s, I became President of California Sports for the Forum. During my time working at the Forum, my job responsibilities slowly increased over time. I eventually became in charge of a significant amount of the overall operation of the Forum, including security, parking, food, concessions, Box Office, Season Seats, concerts, boxing, tennis, circus, ice shows, gymnastics, the Forum Club, and ushering.

I worked with Jerry West for 20-plus years. I do not recognize the character portrayed in the current HBO Show *Winning Time*. It is nothing like the man I knew and still know. The Lakers organization felt like a close-knit family. Jerry and I had occasion to work closely together during my time with the Laker organization. In my experience, Jerry treated me and everyone else in the Lakers organization with dignity and respect. I never saw Jerry break or throw anything in anger or rage, nor did I hear anyone ever say he did such things. Jerry did not throw trophies, golf clubs or anything else in anger. Jerry was soft-spoken and not prone to angry outbursts or tirades, nor did he scream or swear at me or anyone else. The person depicted in the show is not the real Jerry West.

Jerry had a close relationship with Magic Johnson throughout his time with the Lakers. Jerry never showed personal dislike towards Magic Johnson at the time Magic was drafted, nor did he ever show a personal dislike of Magic. Jerry was intelligent, thoughtful and professional throughout his time working in the Lakers organization.

I have also had the pleasure of introducing Jerry at multiple charity fundraisers. Jerry was very giving with his time and genuine. I witnessed first-hand the adoration of the attendees, the thrill exhibited at seeing him, and how he was truly beloved. Jerry has lent his personal appearance to many good causes that bring in many dollars for charity events.

STATEMENT OF JOYCE SHARMAN

Jerry West and my late husband, Bill Sharman, knew each other for many years through their long careers in the NBA. Even though Bill played for the Celtics, which was a dreaded rival for the Lakers, Jerry and Bill became like brothers until Bill died in 2013. As a matter of fact, Jerry and his wife Karen attended our wedding in 1981, and attended Bill's memorial service where Jerry spoke very admiringly of Bill, even claiming to wear green underwear that day in honor of Bill. During those years, I NEVER saw Bill and Jerry exchange any harsh words, and he always treated both of us with the utmost kindness and respect. We were at their home for dinner and attended other events with them, as well as having dinner at restaurants through the years. NEVER was Jerry intoxicated, loud, or angry. I never personally experienced Jerry being rude to anyone. It was, in fact, the opposite. He was soft-spoken and yes, intense. That is why with his brilliance, he was able to accomplish so much throughout his career. But NEVER did I see him with crazy outbursts, and my husband would have shared that with me had it ever happened, as well as NEVER throwing anything!!! It has been extremely upsetting to see how Jerry has been portrayed in this vulgar and disgusting series. And not only Jerry West, but others as well. Bill loved and respected Jerry ALWAYS and was proud to have him as his friend. Jerry was generous with his time with us and several times helped us to raise hundreds of thousands of dollars for charity by allowing us to honor him even though he always felt that he didn't deserve to be honored. He was humble, and that is how much people loved him—they paid top dollar to attend these events, and Jerry allowed us to auction dinners and lunches with him that people paid thousands of dollars for. This is a man of great integrity and a man that was never disrespectful to anyone, including, to my knowledge, Paul Westhead or Magic Johnson. I have seen Jerry many times over the years and recently saw him at the 75th anniversary of the NBA at the 2022 All Stars game where he and Bill were both selected to be among the top 75 players of all time. And I can honestly say that they are both among the two most respected players of all time. Jerry was busy there, but he took time out to talk to me and our son, and took photos with us as well. He has been nothing but professional; and I know that if Bill could do so, he would tell you that it is a disgrace how Jerry is depicted in this disgusting series; and I have told and will continue to tell anyone who will listen to me that it is not true. Jerry deserves better than this, and my heart hurts for him and his family for the lies and false impressions being conveyed by this show!!

STATEMENT OF BOB STEINER

I have worked for Dr. Jerry Buss and his family from 1978 on. When Dr. Buss bought the Lakers in 1979, I became head of Public Relations for California Sports Inc. I was head of Public Relations until 1999 when I became a consultant to the Buss family. As head of public relations, I was responsible for public relations for the Lakers, the Kings and for Forum events.

I first met Jerry West in 1979 and we worked closely together until 2000. We worked together during this over twenty-year period in a small office building at the Forum. Jerry and I would talk a lot at work, Jerry would bounce ideas off me and others at work, and we worked very closely together. I spoke to Jerry at the office on a daily basis. Jerry was friendly with everyone in the Laker organization and treated me and others in the organization with dignity and respect. He was a generous person who often brought gifts to the office for any employee who had a birthday. Jerry and I had a very good working relationship.

I have watched several episodes of the HBO show, *Winning Time*. The Jerry West portrayed in the show has no resemblance to the Jerry West I knew. The depiction could not be further from the truth. Jerry was talkative and friendly with people he knew at the office but somewhat shy with those he did not know. Jerry was not loud at the office nor did I ever see or hear him scream or yell at anyone. In fact, I never saw Jerry express any anger towards anyone at the office. I also never saw Jerry go on an angry tirade at the office nor did I ever hear him use profanity to describe anyone in the Laker organization. I also never saw Jerry throw or break anything in anger. I never saw Jerry lose his temper at the office.

Jerry was not much of a drinker if at all. I never saw him drink alcohol at the office nor did I ever see him intoxicated at the office. Jerry carried himself as a professional and as a gentleman. Jerry and I spent a lot of time together at training camp in Palm Springs and Hawaii. During this two-week period, Jerry and I along with all traveling staff were allowed to attend practice when Jack McKinney was coaching the team. Dr. Buss always attended practice during training camp. The practices were not closed to us as depicted in the show. I also never saw Jerry be rude or intentionally ignore anyone (including Paul Westhead). Jerry was polite and courteous to everyone in the Laker organization regardless of whether they were the head coach, a player or a maintenance worker.

When Magic Johnson was drafted in 1979, I never heard Jerry say anything bad about Magic or express that he did not want to draft Magic. I also never heard Jerry denigrate or speak poorly of Magic or any other Laker players at any time.

STATEMENT OF JAMAAL WILKES

I played for the Lakers from 1977-1985. During that time, I knew Jerry West as a coach and as an executive with the Lakers. Jerry treated me—and from my point of view—the other Laker players with dignity and respect. I never saw Jerry break anything or throw anything in anger. While Jerry was very intense and wanted to do what it takes to win, that was the nature of our business. I always felt that Jerry treated me fairly.

I had a good relationship with Jerry West. As a coach and as an executive, Jerry was professional, polite and courteous. Jerry taught me a lot about being a professional. I noticed that as an executive, Jerry was willing to ask tough questions. But he did so in a respectful and fair way. In all of the time I knew Jerry as a coach and as a Laker executive, I never saw him drink alcohol on the job nor did I ever see him intoxicated or impaired. After I stopped playing with the Lakers in 1985, I would see Jerry occasionally at a game or somewhere else in L.A. My interactions with him were always professional and he treated me well.

EXHIBIT B

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Nona Gaprindashvili,
Plaintiff,
v.
Netflix, Inc.; Does 1–50
Defendants.

Case No. 2:21-cv-07408-VAP-SKx

**Order DENYING Motion to
Dismiss and DENYING Motion to
Strike
(Dkt. 21)**

United States District Court
Central District of California

Before the Court is Defendant Netflix, Inc.'s Motion to Dismiss or Strike ("Motion") Plaintiff Nona Gaprindashvili's First Amended Complaint ("FAC") pleading claims of false light or in the alternative, defamation. (Dkt. 11).

After considering all the papers filed in support of, and in opposition to, the Motion, the Court deems this matter appropriate for resolution without a hearing pursuant to Local Rule 7-15. The Court **DENIES** the Motion.

I. BACKGROUND

This action arises from a statement made about Plaintiff Nona Gaprindashvili in the popular Netflix miniseries, *The Queen's Gambit* ("Series"). (FAC ¶ 1). The Court bases the following summary on the allegations in Plaintiff's complaint.

1 Plaintiff is a trailblazing woman chess player, who throughout her career
2 won many championships, defeated some of the best male chess players in
3 the world, and became the first woman in history to achieve the status of
4 international chess grandmaster among men. (*Id.* ¶ 2).

5
6 In 1983, author Walter Tevis wrote a novel entitled *The Queen's Gambit*
7 ("Novel"), on which the Series is based. (*Id.* ¶¶ 3, 5). The Novel's main
8 characters are fictional, but it references a few real chess players, including
9 a passing reference to Plaintiff in the context of the fictional Moscow
10 Invitational chess tournament. (*Id.* ¶ 3). The Series, like the Novel, tells the
11 story of a fictional American woman named Elizabeth Harmon ("Beth
12 Harmon" or "Harmon"), an orphan who rises from humble beginnings to
13 become a great chess player. (*Id.* ¶¶ 3, 5). The story, set in the 1960s,
14 portrays the systemic sexism of the time and the "prevailing view of the era
15 that there was no place for women at the highest echelons of chess." (*Id.*
16 ¶¶ 4, 38). The Series culminates in a fictional chess tournament, the
17 Moscow Invitational, which Harmon receives an invitation to participate in
18 after her triumph in the U.S. Championship. (*Id.* ¶ 41; Motion at 3).
19 Significantly, the fictional Moscow Invitational takes place in 1968. (FAC
20 ¶ 7).

21
22 In the first round of the tournament, Harmon plays against fictional
23 chess player Victor Laev, an older male player who Harmon had long
24 admired. (*Id.* ¶ 41). After the match between Harmon and Laev ends, the
25 announcer for the tournament, in a voice-over commentary, comments on
26 Harmon's gender to make the point that the male players in the tournament

1 did not take Harmon seriously as an opponent. (*Id.* ¶ 42). The announcer
2 states the following:

3
4 [The male players believe] Harmon’s level of play wasn’t at
5 theirs. Someone like Laev probably didn’t spend a lot of time
6 preparing for their match. Elizabeth Harmon’s not at all an
7 important player by their standards. The only unusual thing
8 about her, really, is her sex. And even that’s not unique in
9 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.

10
11 (*Id.* ¶ 42 (emphasis in original)). As Plaintiff’s name is mentioned, an
12 actor is shown sitting in the audience who is obviously meant to be Plaintiff.
13 (*Id.* ¶ 43). This language, particularly the line referencing Plaintiff (“but
14 [Nona Gaprindashvili] . . . has never faced men”) (“Line”) is the subject of
15 the lawsuit.

16
17 The Line appears to be based on similar text from the Novel, which
18 reads:

19
20 As far as they knew, [Harmon’s] level of play was roughly that
21 of Benny Watts, and men like Laev would not devote much time
22 to preparation for playing Benny. She was not an important
23 player by their standards; the only unusual thing about her was
24 her sex; and even that wasn’t unique in Russia. ***There was
Nona Gaprindashvili, not up to the level of this tournament,
but a player who had met all these Russian Grandmasters
many times before.*** Laev would be expecting an easy win.

25
26 (*Id.* ¶ 62).

1
2 The statement that Plaintiff herself had “never faced men,” even by
3 1968, is inaccurate.¹ (*Id.* ¶ 18; Motion at 3). Beginning in 1962 and 1963,
4 Plaintiff competed against and frequently defeated male chess players. In
5 1965, “she played 28 male players at once.”² (FAC ¶ 18). Plaintiff began
6 playing chess at the age of thirteen and proceeded to have an extraordinary
7 and successful career. She won the semi-final of the Women’s Soviet Union
8 Championship at the age of fourteen. In 1961, she became female World
9 Champion at the age of 20. (*Id.* ¶ 16). She participated in and won medals
10 in Chess Olympiads internationally and faced and defeated men in
11 significant chess tournaments, many of which garnered international
12 attention. (*Id.* ¶¶ 17, 21–26; Decl. of Gaprindashvili (“Gaprindashvili Decl.”),
13 Dkt. 28-1 at 4–7 (enumerating accomplishments)). In fact, by 1968, the
14 year in which the episode is set, she had competed against at least 59 male
15 chess players, at least ten of which were Grandmasters of that time,
16 including Dragoljub Velimirovich, Svetozar Gligoric, Paul Keres, Bojan
17 Kurajica, Boris Spassky and Mikhail Tal. The last three were also world
18 champions during their careers. (FAC ¶ 7). Plaintiff later became the first
19 woman in history to be awarded the honor and rank of International Chess
20 Grandmaster among men. (*Id.* ¶ 28).

21
22
23 ¹ Netflix concedes as much but argues that the Line is fiction and thus not
24 understood to be conveying a fact. (Motion at 2). Netflix additionally argues
25 for a substantial truth defense because the difference between having faced
26 men by 1963 versus 1968 amounts to only a minor inaccuracy. (*Id.* at 3).
Both these issues are discussed *infra*.

² The FAC shows an image of Plaintiff on one side of a row of men, playing
individual chess games down the row of men.

1 During Plaintiff's career, she encountered severe prejudice because she
2 was a woman—and often the only woman—competing amongst men. (*Id.*
3 ¶ 19). In 1976, Plaintiff wrote a book in which she described her devotion to
4 chess, the difficulty she faced in overcoming barriers as a woman in that
5 world, and her pride for the part she played in advancing gender equality in
6 the chess world. (*Id.* ¶ 20 (“The term ‘Women’s chess’ has expired. I am
7 proud that I have my share in promoting the creative emancipation of
8 women in chess. I had my share in helping women to overcome
9 psychological barriers separating them from ‘man’s chess.’”)). Plaintiff is
10 well-known in the chess world and was the subject of many news stories
11 about her accomplishments in tournaments. (*Id.* ¶¶ 24, 25). Plaintiff also
12 alleges she is the subject of a film that portrayed her as a “woman who
13 helped revolutionize female chess by taking on male competitors across the
14 globe” and in which she “became a Georgian icon of female emancipation.”
15 (*Id.* ¶ 30).

16
17 Netflix released all seven episodes of the Series on October 23, 2020.
18 The final episode, “End Game,” contains the scene that features the Line.
19 (*Id.* ¶ 34). On November 23, 2020, Netflix announced that the Series had
20 been watched by 62 million households since its release. The Series
21 topped the United States television Nielsen’s streaming rankings for three
22 straight weeks, the first series in history to do so. (*Id.*).

23
24 When the Series aired, multiple news outlets and various individual
25 internet users commented on the inaccuracy of the Line. (*Id.* ¶¶ 48–58).
26 Plaintiff states that the Line “misrepresented one of [her] most significant

1 career achievements . . . before millions of viewers worldwide” and
2 “tarnished [her] personal and professional reputation.” (Gaprindashvili Decl.
3 at 9).³ To this day, Plaintiff continues to compete in chess tournaments and
4 receive accolades for her accomplishments. (FAC ¶¶ 31). Plaintiff’s life-long
5 career is in the world of competitive chess, in which she remains an active
6 leader, role-model, and competitor. (*Id.* ¶¶ 77). Plaintiff contends that the
7 Line cuts to the heart of her hard-won standing in her profession and as a
8 result, injures her current participation in the chess world and ability to earn
9 income from that participation. This “remains tied to her historical success
10 and accomplishments. The professional reputation and brand of
11 Gaprindashvili was inextricably bound up with her courageous efforts to face
12 and defeat estimable male opponents when chess was overwhelmingly a
13 man’s world.” (*Id.* ¶¶ 77).

14
15 Plaintiff filed suit against Netflix and Does 1–50 on September 16, 2021
16 and filed the First Amended Complaint (“FAC”) on September 20, 2021.
17 (Compl., Dkt. 1; FAC, Dkt. 11). Plaintiff brings claims for false light invasion
18 of privacy (FAC ¶¶ 69–75), or in the alternative, defamation per se (FAC
19 ¶¶ 76–81). Netflix moved to dismiss under Federal Rule of Civil Procedure
20 Rule 12(b)(6), or to strike under California’s anti-SLAPP statute, California
21 Code of Civil Procedure section 425.16. (Def. Mot. to Dismiss or Strike
22 (“Motion”), Dkt. 21). Plaintiff opposed the Motion, and Netflix filed a Reply.
23 (Pl. Opp. (“Opp.”), Dkt. 28; Def. Reply (“Reply”), Dkt. 29).

24
25 _____
26 ³ For ease of reference, the Court uses the page numbering given by the
electronic filing system for the Gaprindashvili Declaration. All other page
references utilize internal page numbering.

1
2 **II. MOTION TO DISMISS**

3
4 **A. Legal Standard**

5 Federal Rule of Civil Procedure 12(b)(6) allows a party to bring a mo-
6 tion to dismiss for failure to state a claim upon which relief can be granted.
7 Rule 12(b)(6) is read along with Rule 8(a), which requires a short, plain
8 statement upon which a pleading shows entitlement to relief. Fed. R. Civ.
9 P. 8(a)(2); *Conley v. Gibson*, 355 U.S. 41, 47 (1957) (holding that the Fed-
10 eral Rules require a plaintiff to provide “a short and plain statement of the
11 claim’ that will give the defendant fair notice of what the plaintiff’s claim is
12 and the grounds upon which it rests” (quoting Fed. R. Civ. P. 8(a)(2)).); *Bell*
13 *Atl. Corp. v Twombly*, 550 U.S. 544, 555 (2007). When evaluating a Rule
14 12(b)(6) motion, a court must accept all material allegations in the com-
15 plaint—as well as any reasonable inferences to be drawn from them—as
16 true and construe them in the light most favorable to the non-moving party.
17 *See Doe v. United States*, 419 F.3d 1058, 1062 (9th Cir. 2005); *ARC Ecol-*
18 *ogy v. U.S. Dep’t of Air Force*, 411 F.3d 1092, 1096 (9th Cir. 2005); *Moyo v.*
19 *Gomez*, 32 F.3d 1382, 1384 (9th Cir. 1994). “The court need not accept as
20 true, however, allegations that contradict facts that may be judicially noticed
21 by the court.” *Schwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000).

22
23 “While a complaint attacked by a Rule 12(b)(6) motion to dismiss
24 does not need detailed factual allegations, a plaintiff’s obligation to provide
25 the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and con-
26 clusions, and a formulaic recitation of the elements of a cause of action will

1 not do.” *Twombly*, 550 U.S. at 555 (citations omitted). Rather, the allega-
2 tions in the complaint “must be enough to raise a right to relief above the
3 speculative level.” *Id.* To survive a motion to dismiss, a plaintiff must allege
4 “enough facts to state a claim to relief that is plausible on its face.”
5 *Twombly*, 550 U.S. at 570; *Ashcroft v. Iqbal*, 556 U.S. 662, 697 (2009).
6 “The plausibility standard is not akin to a ‘probability requirement,’ but it
7 asks for more than a sheer possibility that a defendant has acted unlawfully.
8 Where a complaint pleads facts that are ‘merely consistent with’ a defend-
9 ant’s liability, it stops short of the line between possibility and plausibility of
10 ‘entitlement to relief.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at
11 556).

12
13 The Ninth Circuit has clarified that: (1) a complaint must “contain suffi-
14 cient allegations of underlying facts to give fair notice and to enable the op-
15 posing party to defend itself effectively” and (2) “the factual allegations that
16 are taken as true must plausibly suggest an entitlement to relief, such that it
17 is not unfair to require the opposing party to be subjected to the expense of
18 discovery and continued litigation.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th
19 Cir. 2011). Although the scope of review is limited to the contents of the
20 complaint, the Court may also consider exhibits submitted with the com-
21 plaint, *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542,
22 1555 n.19 (9th Cir. 1990), and “take judicial notice of matters of public rec-
23 ord outside the pleadings,” *Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646,
24 649 (9th Cir. 1988).

25
26 **B. False Light**

1 To state a claim for false light invasion of privacy, Plaintiff must
2 demonstrate: (1) disclosure to one or more persons (2) information about or
3 concerning Plaintiff presented as factual but that was actually false or
4 created a false impression about him; (3) that was highly offensive and
5 would injure Plaintiff's reputation; (4) constitutional malice; and (5) Plaintiff
6 suffered damages as a result. *Solano v. Playgirl, Inc.*, 292 F.3d 1078, 1082
7 (9th Cir. 2002) (applying California law). California courts have taken the
8 view that since false light is a division of invasion of privacy tort, the claim
9 must relate to the plaintiff's interest in privacy, and hence cannot involve
10 matters, however offensively misrepresented to the public, which are in
11 essence "public" themselves. *Patton v. Royal Indus., Inc.*, 263 Cal.App.2d
12 760, 768 (1968). Here, where the challenged statements were exclusively
13 related to Plaintiff's public professional life, she fails to plead that the
14 publication of these statements "intrudes into [her] private li[fe]." *Id.*
15 Because Plaintiff fails to state a claim for false light invasion of privacy, that
16 claim is **DISMISSED** with prejudice.⁴

18 C. Defamation Per Se

19 To establish a claim for defamation, Plaintiff must plead (a) a publication
20 that is (b) false, (c) defamatory, and (d) unprivileged and that (e) has a

22 ⁴ Plaintiff pleads false light as an alternative theory of liability to the second
23 cause of action for defamation per se. (FAC ¶ 21). Plaintiff's defamation
24 claim, based on the same facts, provides a complete remedy for any dam-
25 ages Plaintiff suffered by the alleged conduct. See *Selleck v. Globe Int'l,*
26 *Inc.*, 166 Cal. App. 3d 1123, 1129, 1136 (1985) (affirming denial of false light
claim which was in substance equivalent to libel claim). Further, given the
claims are entirely based on Plaintiff's public, rather than private, life,
amendment would be futile. See *Foman v. Davis*, 371 U.S. 178, 182.

1 natural tendency to injure or that causes special damage. *Taus v. Loftus*, 40
2 Cal. 4th 683, 720 (2007). As a public figure, Plaintiff must also plead the
3 requisite constitutional malice. *Reader's Dig. Assn. v. Superior Ct.*, 37 Cal.
4 3d 244, 256 (1984) (citing *New York Times Co. v. Sullivan*, 376 U.S. 254,
5 280 (1964)). "Defamation is effected by either of the following: (a) Libel. (b)
6 Slander." Cal Civ. Code § 44. In California, defamation in a television
7 broadcast is treated as slander. *Arno v. Stewart*, 245 Cal. App. 2d 955, 961
8 (1966). Slander per se is actionable without proof of special damages. Cal.
9 Civ. Code § 46. Slander per se includes such publications which tend to
10 injure a plaintiff with respect to their "office, profession, trade or business,
11 either by imputing to [plaintiff] general disqualification in those respects
12 which the office or other occupation peculiarly requires, or by imputing
13 something with reference to his office, profession, trade, or business that
14 has a natural tendency to lessen its profits." Cal. Civ. Code § 46(3). If a
15 plaintiff establishes the Line injured her with respect to her profession or
16 trade, this is sufficient to establish slander per se under section 46(3) and
17 does not require proof of actual damage. *Id.*

18
19 Netflix contends that Plaintiff fails to plead the elements of this claim,
20 specifically arguing that: (1) Plaintiff fails to plead falsity because a
21 reasonable viewer would not believe the Line conveyed an objective fact;
22 (2) the Line is not defamatory because it contains no defamatory
23 implication, or because a reasonable viewer would not see the defamatory
24 implication because it relies on information that is not common knowledge;
25 (3) the Line falls under the "substantial truth" defense; and (4) Plaintiff
26 cannot plead the requisite "actual malice." (Motion at 3).

1
2 1. Falsity – Whether the Line Conveyed Objective Fact

3 To state a defamation claim, a plaintiff must present a statement of fact
4 that is provably false. *Seelig v. Infinity Broad. Corp.*, 97 Cal. App. 4th 798,
5 809 (2002) (citing *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990)).
6 “Whether published material is reasonably susceptible of an interpretation
7 which implies a provably false assertion of fact . . . is a question of law for
8 the court.” *Couch v. San Juan Unified Sch. Dist.*, 33 Cal. App. 4th 1491,
9 1500 (1995). “This question must be resolved by considering whether the
10 reasonable or ‘average’ reader would so interpret the material.” *Id.*
11 “Statements do not imply a provably false factual assertion and thus cannot
12 form the basis of a defamation action if they cannot reasonably [be]
13 interpreted as stating actual facts about an individual.” *Nygaard, Inc. v. Uusi-*
14 *Kerttula*, 159 Cal. App. 4th 1027, 1048 (2008) (internal quotations omitted).

15
16 Netflix argues that no reasonable viewer would have understood the
17 Line to convey a statement of fact because the Series is an entirely fictional
18 work. (Motion at 12). Netflix points to various cases for the proposition that
19 “[f]ictional works have no obligation to the truth.” (Motion at 12 (quoting
20 *Sarver v. Hurt Locker LLC*, No. 2:10-CV-09034-JHN (JCx), 2011 WL
21 11574477, at *8 (C.D. Cal. Oct. 13, 2011), *aff’d sub nom. Sarver v. Chartier*,
22 813 F.3d 891 (9th Cir. 2016))).

23
24 As an initial matter, Netflix does not cite, and the Court is not aware, of
25 any cases precluding defamation claims for the portrayal of real persons in
26 otherwise fictional works. On the contrary, the fact that the Series was a

1 fictional work does not insulate Netflix from liability for defamation if all the
2 elements of defamation are otherwise present. See *Bindrim v. Mitchell*, 92
3 Cal. App. 3d 61, 73 n.2, 76 (1979), *cert. denied*, 444 U.S. 984 (1979),
4 *disapproved of on other grounds by McCoy v. Hearst Corp.*, 42 Cal. 3d 835
5 (1986) (fictional character in the novel was identifiable as the real person);
6 *see also Partington v. Bugliosi*, 56 F.3d 1147, 1155 (9th Cir. 1995) (creators
7 of docudramas that mix fact and fiction “must attempt to avoid creating the
8 impression that they are asserting objective facts”). The test is whether a
9 reasonable viewer would understand the character to be the person
10 identified and to have the characteristics as described. See *Sarver*, 2011
11 WL 11574477, at *8. Courts “must look to the specific context in which the
12 statements were made and to the content of the statements themselves” to
13 determine whether the speaker “creat[ed] the impression that they [were]
14 asserting objective facts.” *Partington*, 56 F.3d at 1155.

15
16 In the last episode, the Series identifies Plaintiff in dialogue by a fictional
17 commentator analyzing fictional character Beth Harmon’s likelihood of
18 defeating a fictional chess champion. (FAC ¶¶ 41–42). Despite the
19 presence of fiction surrounding the Line, however, the Court cannot ignore
20 that the Series does reference real people and events and most importantly,
21 the Line identifies a real person, Plaintiff, by name, references her real
22 career, and then shows an actor sitting in the audience who resembles
23 Plaintiff. (*Id.* ¶ 43). In other words, a “physical description,” “biographical
24 references” and unique identifying characteristics which “would allow a
25 reasonable person to conclude that the fictional [Nona Gaprindashvili] was
26 in fact the real [Nona Gaprindashvili]” accompany the Line. *Tamkin v. CBS*

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1 *Broad., Inc.*, 193 Cal. App. 4th 133, 147 (2011). Not only does this close the
2 gap between associating the supposedly fictional character with the real
3 person, but regardless of whether viewers recognized Plaintiff's name (as
4 indeed, some did), viewers may reasonably have believed the comment to
5 be one of these historical details incorporated into the Series.
6

7 The Court also considers the presence of the disclaimer that the Series
8 is a work of fiction as a factor in this analysis, albeit not a dispositive one.
9 *Mossack Fonseca & Co. v. Netflix, Inc.*, No. 19-CV-9330-CBM (ASx), 2020
10 WL 8510342, at *4 (C.D. Cal. Dec. 23, 2020). The cases that Defendant
11 cites on this point are distinguishable.
12

13 In *Mossack*, the court considered a film portraying a law firm that
14 represented clients involved with money laundering, tax evasion, and other
15 criminal conduct. 2020 WL 8510342, at *4. The court found that no
16 reasonable viewer would believe the film was making "assertions of
17 objective fact," rather than a dramatization, "particularly given the statement
18 at the beginning of the Film 'BASED ON ACTUAL SECRETS' which sets the
19 stage and the disclaimer at the end of the Film that states the Film is
20 fictionalized. . . ." *Id.* Here, the Series includes a similar disclaimer, but the
21 Line resembles one of those factual details incorporated into the Series for
22 believability more than it resembles the main plot devices, such as Beth
23 Harmon, or the law firm, which are clearly fictional or at least dramatized. In
24 *De Havilland v. FX Networks, LLC*, the court found that fictionalized
25 interviews portrayed in the work would not reasonably be interpreted as
26

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1 literal statements of the actual person, which has little bearing on the issues
2 here. 21 Cal. App. 5th 845, 867–68.

3
4 Moreover, the Series purports to be set in a historical setting and does
5 reference real people and events. (Decl. of Scott Frank (“Frank Decl.”), Dkt.
6 21-7 ¶ 6). In context, therefore, Netflix “creat[ed] the impression that [it] was
7 asserting objective facts.” *Partington*, 56 F.3d at 1155. Plaintiff sufficiently
8 pleads falsity because the Line is “reasonably susceptible of an
9 interpretation which implies a provably false assertion of fact.” *Couch*, 33
10 Cal. App. 4th at 1500.

11
12 2. Defamatory Meaning – Whether the Line Carries a Defamatory
13 Implication and Whether a Reasonable Viewer Would Have
14 Understood a Defamatory Implication

15 Netflix next argues that even if believed, the Line is not defamatory
16 because a reasonable viewer would not conclude that the Line “never faced
17 men” carries the implication of Plaintiff’s inferiority, the defamatory meaning
18 attributed by Plaintiff. (Motion at 15).⁵ Netflix contends that this implication
19 is inconsistent with the “Series’ portrayal of the structural barriers that
20 impeded women’s advancement in elite chess during the 1960s.” (Motion at
21 15). In other words, Netflix advances an interpretation that Nona
22 Gaprindashvili “never faced men” not because she was inferior, but rather

23
24 ⁵ In the alternative, Netflix argues that even if the Line implies inferiority, that
25 implication is statement of opinion rather than a “provably false factual as-
26 ssertion.” Motion 16–17. In doing so, Netflix confuses the question of de-
famatory meaning with the element of falsity. The line between a statement
of fact versus opinion is relevant for the latter. If Netflix concedes the Line
carries the implication of inferiority, Plaintiff has adequately pleaded the el-
ement of defamatory meaning.

1 because she had simply been impeded by the structural barriers depicted in
2 the Series.

3
4 Defamation is an invasion of the interest in reputation. *Gilbert v. Sykes*,
5 147 Cal. App. 4th 13, 27 (2007). A falsehood is defamatory if it “attribute[es]
6 to a person specific misdeeds or certain unfavorable characteristics or
7 qualities, or uttering certain other derogatory statements regarding a person,
8 constitutes slander.” *Nguyen-Lam v. Cao*, 171 Cal. App. 4th 858, 867
9 (2009). In addition to false statements that cause actual damage, the
10 California Legislature has specified slander per se categories, which include
11 false and unprivileged publications that “tend[] directly to injure [a plaintiff]
12 with respect to [her] profession, trade, or business.” Cal. Civ. Code § 46.
13

14 “If it is determined that the publication is susceptible of a defamatory
15 meaning and also of an innocent and nondefamatory meaning it is for the
16 jury to determine which meaning would be given to it by the average
17 reader.” *Patton v. Royal Indus., Inc.*, 263 Cal. App. 2d 760, 765 (1968).
18 “The fact that an applied defamatory charge or insinuation leaves room for
19 an innocent interpretation as well does not establish that the defamatory
20 meaning does not appear from the language itself.” *O’Connor v. McGraw-*
21 *Hill, Inc.*, 159 Cal. App. 3d 478, 485 (1984); *see also Solano*, 292 F.3d at
22 1084 (“[O]ur inquiry is not to determine whether the publication may have an
23 innocent meaning but rather to determine if it reasonably conveys a
24 defamatory meaning.”).

1 Here, the Line in context discusses why a male Russian chess master
2 underestimated Beth Harmon. The commentator delivering the Line
3 explains that Harmon’s gender is her most noteworthy characteristic but
4 adds: “even [her gender is] not unique in Russia. There’s Nona
5 Gaprindashvili, **but she’s the female world champion and has never**
6 **faced men**. My guess is Laev was expecting an easy win” (FAC
7 ¶ 63). The Line clearly conveys an import to the very feat of playing chess
8 against men—not only because men were believed to be better at chess,
9 but also because it was a monumental achievement to break into that world.
10 Breaking these gender barriers is a primary theme of the Series, which
11 celebrates Harmon for doing just that. The Line also uses Plaintiff as a
12 comparison point to Harmon, one with lesser achievements. An average
13 viewer easily could interpret the Line, as Plaintiff contends, as “disparaging
14 the accomplishments of Plaintiff” and “carr[ying] the stigma that women bear
15 a badge of inferiority” that fictional American woman Harmon, but not
16 Plaintiff, could overcome. (Opp. at 11). At the very least, the line is
17 dismissive of the accomplishments central to Plaintiff’s reputation. Given
18 Plaintiff’s allegations about the role Plaintiff’s reputation plays as a matter
19 not merely of personal pride, but in her ongoing professional pursuits, such
20 a falsehood “constitutes an injury to reputation,” that “tends directly to injure
21 [Plaintiff] with respect to [her] profession, trade, or business.” *Nguyen-Lam*,
22 171 Cal. App. 4th at 867; Cal. Civ. Code § 46.

23
24 Plaintiff further alleges that viewers did in fact attribute a defamatory
25 meaning to the Line. (FAC ¶¶ 51–57). Such evidence, while not dispositive,
26 supports how a “reasonable” viewer might have understood the Line. See

1 *Tah v. Global Witness Publishing, Inc.*, 413 F. Supp. 3d 1, 11–12 (D.D.C.
2 2019), *aff'd*, 991 F.3d 231 (D.C. Cir. 2021), *cert. denied*, 2021 WL 5043599
3 (Nov. 1, 2021). Because this falsehood tends to “directly to injure [her] in
4 respect to [her] office, profession, trade, or business,” it qualifies as
5 defamation per se. *Balla v. Hall*, 59 Cal. App. 5th 652, 675 (2021), *review*
6 *denied* (Apr. 14, 2021) (quoting Civ. Code § 46(3)).
7

8 Netflix next argues that Plaintiff cannot establish defamation per se
9 because understanding the alleged defamatory implication requires
10 knowledge of competitive Soviet chess in the 1960s. (Motion at 19). Netflix
11 argues that the audience “would be able to recognize a defamatory meaning
12 only by virtue of his or her knowledge of specific facts and circumstances,
13 extrinsic to the publication, which are not matters of common knowledge
14 rationally attributable to all reasonable persons,” making the claim
15 defamation *per quod*, which unlike defamation per se, requires proof of
16 special damages. *McGarry v. Univ. of San Diego*, 154 Cal. App. 4th 97, 112
17 (2007).
18

19 Netflix cites *Balla v. Hall* to no avail. (Motion at 18 (citing *Balla*, 59 Cal.
20 App. 5th 652)). In that case, the court held that a campaign advertisement
21 for a politician implying that one of the council members supported the
22 defendant candidate was not per se defamatory because for readers to
23 perceive the advertisement as harmful, they would need to know who the
24 defendant candidate was and his views within that specific community.
25 *Balla*, 59 Cal. App. 5th at 690. The Court disagrees that understanding the
26 negative implication of the Line requires any specific knowledge of chess

1 history. The statement that a politician supports another political candidate
2 is neutral unless one understands details about both politicians' positions
3 and their constituencies. In contrast, the defamatory implication of a
4 statement denying a person's notable accomplishments in the world of their
5 profession requires no specific knowledge. Moreover, injury to one's
6 professional reputation is an enumerated per se category in the California
7 Civil Code. Cal. Civ. Code § 46(3).

8
9 3. Substantial Truth Defense

10 The substantial truth defense protects allegedly defamatory speech
11 where "the imputation is substantially true so as to justify the 'gist or sting' of
12 the remark," even if there is "slight inaccuracy in the details." *Heller v.*
13 *NBCUniversal, Inc.*, No. 15-CV-09631-MWF (KSx), 2016 WL 6583048, at *4
14 (C.D. Cal. June 29, 2016) (citing *Summit Bank v. Rogers*, 206 Cal. App. 4th
15 669, 697 (2012)). An allegedly defamatory statement "is not considered
16 false unless it would have a different effect on the mind of the reader from
17 that which the pleaded truth would have produced." *Masson v. New Yorker*
18 *Magazine, Inc.*, 501 U.S. 496, 516–17 (1991).

19
20 Netflix argues the substantial truth defense bars Plaintiff's claims
21 because "[a] reasonable viewer would have interpreted the Line in context
22 to refer to Plaintiff's never facing male players at significant tournaments in
23 the Soviet Union before 1968." (Motion at 21). Even if the Line would be
24 interpreted in this fashion, Plaintiff alleges her "notable successes against
25 men began with her successful entry into the Challengers Section of the
26 Hastings International Chess Congress in England in 1963, which she won,

1 defeating several male players.” (FAC ¶ 21). Plaintiff further alleges
2 multiple other notable successes against men in significant tournaments
3 before 1968. (*Id.* ¶¶ 22–24). The pleaded truth would have an entirely
4 different “effect on the mind of the reader,” *Masson*, 501 U.S. at 516–17, as
5 the truth would have portrayed Plaintiff as a trailblazer that Beth Harmon
6 followed, or another woman chess player on a parallel path. Instead, the
7 reference to Plaintiff serves to elevate Harmon as being peerless in her
8 achievement of “facing men.”

9
10 4. Actual Malice Requirement

11 As a public figure, Plaintiff must plead “actual malice,” that is, that Netflix
12 published the defamatory statement “with knowledge that it was false or with
13 reckless disregard of whether it was false or not.” *Reader’s Dig. Ass’n. v.*
14 *Superior Ct.*, 37 Cal. 3d 244, 256 (1984) (citing *New York Times Co. v.*
15 *Sullivan*, 376 U.S. 254, 280 (1964)).

16
17 “When the expressive work at issue is fiction, or a combination of fact
18 and fiction, the ‘actual malice’ analysis takes on a further wrinkle.” *De*
19 *Havilland*, 21 Cal. App. 5th at 870. After all, “[p]ublishing a fictitious work
20 about a real person cannot mean the author, by virtue of writing fiction, has
21 acted with actual malice.” *Id.* Recognizing this, California courts require
22 plaintiffs to demonstrate “that [the defamatory statement] either deliberately
23 cast [plaintiff] . . . in an equivocal fashion in the hope of insinuating a
24 defamatory import to the reader, or that [defendant] knew or acted in
25 reckless disregard of whether [its] words would be interpreted by the
26 average reader as defamatory statements of fact.” *Id.* (quoting *Good*

1 *Government Group of Seal Beach, Inc. v. Superior Court*, 22 Cal.3d 672,
2 684 (1978)).

3
4 Plaintiff alleges the text on which the Line was based adapted from the
5 Tevis Novel states: “There was Nona Gaprindashvili, not up to the level of
6 this tournament, but a player who had met all these Russian Grandmasters
7 many times before.” (FAC ¶ 62). In the declaration of show creator Frank
8 Scott, attached to the Motion, Frank concedes to altering the Line from this
9 text on which he based the plot of the Series. (Frank Decl. ¶¶ 17–18). The
10 fact that the creators based the Line on text which states that Plaintiff had
11 not only faced the male Russian Grandmasters, but had in fact faced them
12 “many times before,” strongly indicates actual knowledge of the falsity of the
13 statement. Particularly in light of the text from the Novel, Netflix’s argument
14 that it conducted diligent research and “believed [the Line] to be accurate,”
15 (Frank Decl. ¶ 15), is unavailing because either the show creator knew the
16 truth and ignored it, or he “deliberately decided not to acquire knowledge off
17 acts that might confirm the probable falsity of [the Line].” *McGarry*, 154 Cal.
18 App. 4th at 114. For this reason, Netflix’s argument that it relied on two
19 chess experts to confirm the historical chess details of the screenplay
20 adaptation is also unavailing. (Motion at 3). Plaintiff’s allegations and
21 submitted declarations demonstrate that “[a]nyone who is at all familiar with
22 the game [of chess] and its history knows of Nona Gaprindashvili” and that
23 “[a]ny simple Google search” would have revealed the truthful information.
24 (Decl. of Nicholas Carlin (“Carlin Decl.”), Dkt. 28-2 ¶¶ 6, 7).

1 Even considering the fictional nature of the novel and the Series, the
2 decision to use the Line at best demonstrates “that [Netflix] knew or acted in
3 reckless disregard of whether [its] words would be interpreted by the
4 average reader as defamatory statements of fact.” *De Havilland*, 21 Cal.
5 App. 5th at 870 (quoting *Good Government Group*, 22 Cal.3d at 684).
6 Although Frank declares he “believed [the Line] to be accurate” and
7 “intended to honor [Plaintiff], not disparage her,” (Frank Decl. ¶ 15), the
8 inclusion of the Line evinces a reckless disregard that viewers would
9 interpret the Line as defamatory. *See supra* section II.C.2.

10 11 **III. MOTION TO STRIKE**

12 Netflix moves to strike the FAC on the grounds that it attacks Netflix’s
13 constitutionally protected free speech rights in violation of California’s anti-
14 SLAPP statute. Cal. Civ. P. § 425.16.

15 16 **A. Legal Standard**

17 California’s anti-SLAPP statute “provides for the early dismissal of
18 certain unmeritorious claims that are brought to thwart constitutionally
19 protected speech or petitioning activity.” *Robinzine v. Vicory*, 143 Cal. App.
20 4th 1416, 1420–21 (2006). An anti-SLAPP motion is available to
21 defendants in federal court. *Graham-Sult v. Clainos*, 756 F.3d 724, 735 (9th
22 Cir. 2014).

23
24 A SLAPP suit is “a meritless lawsuit filed primarily to chill the defendant’s
25 exercise of First Amendment rights.” *Paul v. Friedman*, 95 Cal. App. 4th
26 853, 861 (2002). California’s anti-SLAPP statute allows a defendant to

1 move to dismiss “certain unmeritorious claims that are brought to thwart
2 constitutionally protected speech or petitioning activity.” *Robinzine*, 143 Cal.
3 App. 4th at 1420–21. To prevail on such a motion, Netflix must make a
4 threshold showing that the challenged cause of action in fact “arise[s] from
5 an act in furtherance of the defendant’s rights of petition or free speech.”
6 *Graham-Sult*, 756 F.3d at 735 (internal quotations and citation omitted). If
7 Netflix makes that showing, the burden shifts to plaintiff to show that it has
8 “a reasonable probability of prevailing in its claims for those claims to
9 survive dismissal.” *Id.*; Cal. Code Civ. P. § 425.16(b)(1). “In making its
10 determination [on an anti-SLAPP motion], the court shall consider the
11 pleadings, and supporting and opposing affidavits stating the facts upon
12 which the liability or defense is based.” Cal. Civ. Proc. Code § 425.16(b)(2).
13 The plaintiff must meet its burden of proving a prima facie case “with
14 admissible evidence.” *Metabolife Int’l, Inc. v. Wornick*, 264 F.3d 832, 840
15 (9th Cir. 2001); see also *Sweetwater Union High Sch. Dist. v. Gilbane Bldg.*
16 *Co.*, 6 Cal. 5th 931, 940 (2019).

17
18 **B. Evidentiary Objections**

19 Netflix submitted two evidentiary objections to the additional exhibit
20 submitted by Plaintiff (Dkt. 30) in support of her opposition to Netflix’s
21 Motion to Strike. (Dkt. 33). The Court has not found it necessary to rely on
22 those statements for purposes of this Order, and therefore declines to rule
23 on the objections.

24
25 **C. Arises from Protected Activity**
26

1 A cause of action arises from protected activity within the meaning of
2 section 425.16 if: “(1) defendants’ acts underlying the cause of action, and
3 on which the cause of action is based, (2) were acts in furtherance of
4 defendants’ right of petition or free speech (3) in connection with a public
5 issue.” *Tamkin v. CBS Broad., Inc.*, 193 Cal. App. 4th 133, 142–43 (2011).
6 Plaintiff does not contest the first prong, and Netflix has made the required
7 showing that its speech arises from protected activity. First, the act that
8 forms the basis of the claim is the Line in the Series. Second, this act was
9 in furtherance of Netflix’s right of free speech. See *id.* at 143 (“The creation
10 of a television show is an exercise of free speech.”). Third, the speech was
11 in connection with a public issue, as it features a portrayal of historical
12 gender inequality in the chess world. Accordingly, the cause of action arises
13 from protected activity and falls under California’s anti-SLAPP protections,
14 which requires the Court to consider the second prong, Plaintiff’s reasonable
15 probability of success on the merits.
16

17 **D. Plaintiff’s Reasonable Probability of Success on Merits**

18 A court’s inquiry at the second prong “is limited to whether the plaintiff
19 has stated a legally sufficient claim and made a prima facie factual showing
20 sufficient to sustain a favorable judgment.” *Med. Marijuana, Inc. v.*
21 *ProjectCBD.com*, 46 Cal. App. 5th 869, 882 (2020). For the reasons
22 discussed above in section II.C., Plaintiff states a legally sufficient claim of
23 defamation per se. The Court next considers whether Plaintiff has made a
24 sufficient prima facie factual showing of admissible evidence.
25
26

1 Plaintiff submits admissible evidence sufficient to demonstrate falsity of
2 the Line and to defeat Netflix's defense of substantial truth. (See
3 Gaprindashvili. Decl.). As to evidence of the Line's defamatory meaning,
4 along with allegations of the Line in context, Plaintiff submits evidence that
5 viewers did in fact interpret the Line as defamatory. (Declaration of
6 Alexander Rufus-Isaacs ("Rufus-Isaac's Decl.") Dkt. 28-6 ¶¶ 3–10; Rufus-
7 Isaac's Decl. Ex. 6–11, Dkts. 28-7–28-14). This evidence, though not
8 dispositive, supports the allegation that a "reasonable" viewer would believe
9 the line to be defamatory. See *Tah*, 413 F. Supp. 3d at 11–12.

10
11 Plaintiff further submits evidence supporting the element of actual
12 malice, including a declaration by chess master Nicholas Carlin that
13 "[a]nyone who is at all familiar with the game [of chess] and its history
14 knows of Nona Gaprindashvili. She was very famous for the fact that she
15 was one of the few women . . . who played in tournaments with men at the
16 top level." (Carlin Decl. ¶ 6). As discussed above, Netflix's own evidence
17 demonstrates knowledge of the truth in its choice to deviate from the text of
18 the Novel, which states that Plaintiff had faced the male Russian
19 Grandmasters "many times before." (See Frank Decl. ¶ 15). Plaintiff further
20 refutes evidence that Netflix relied on chess experts and conducted good
21 faith research, because (1) Plaintiff was well-known in the chess world such
22 that the information would be common knowledge; (2) "[a]ny simple Google
23 search" would reveal the truthful information; and (3) the information was
24 readily available on multiple common websites, as well as common chess-
25 related sites. (Carlin Decl. ¶ 7; Carlin Decl. Ex. 2, Dkt. 28-4 (Nona
26 Gaprindashvili's Wikipedia page). Plaintiff has made a prima facie factual

1 showing sufficient to sustain a favorable judgment; evidence that Netflix fails
2 to overcome at this stage.

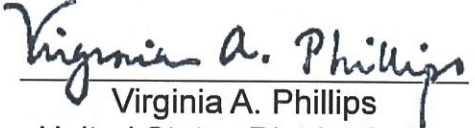
3
4 Accordingly, the Court **DENIES** Netflix's motion to strike.

5
6 **IV. CONCLUSION**

7 The Court therefore **DENIES** Netflix's Motion to Dismiss and **DENIES**
8 Netflix's Motion to Strike.

9
10
11 **IT IS SO ORDERED.**

12
13 Dated: 1/27/22

14 
15 Virginia A. Phillips
16 United States District Judge
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