

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

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.

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

I. INTRODUCTION 1

II. STATEMENT OF FACTS 4

 A. The Series..... 4

 B. Plaintiff’s Allegations 6

 C. The Creative Process and Context of the Line 7

III. THE FAC SHOULD BE STRICKEN UNDER CALIFORNIA’S ANTI-SLAPP STATUTE..... 8

 A. The Complaint Assails Netflix’s Protected Activity 9

 B. Plaintiff Cannot Establish That She Will Probably Prevail on the Merits of Her Claims 11

 1. The Series Is a Fictional Work That A Reasonable Viewer Would Not Construe as Conveying Objective Fact..... 12

 2. A Reasonable Viewer Would Not Draw the Negative Implication that Plaintiff Alleges 15

 3. The Allegedly Defamatory Statement Does Not Constitute Defamation *Per Se*, and Plaintiff Cannot Satisfy the Special-Damages Element of a Defamation *Per Quod* Claim..... 18

 4. The Gist of the Line is Substantially True..... 21

 5. Plaintiff Cannot Prove Actual Malice by Clear and Convincing Evidence..... 23

IV. ALTERNATIVELY, THE FAC SHOULD BE DISMISSED WITH PREJUDICE FOR FAILURE TO STATE A CLAIM FOR RELIEF UNDER RULE 12(b)(6)..... 25

V. CONCLUSION..... 25

TABLE OF AUTHORITIES

Page(s)

Cases

Annette F. v. Sharon S.,
119 Cal.App.4th 1146 (2004) 25

Baker v. Los Angeles Herald Examiner,
42 Cal.3d 254 (1986) 17

Balla v. Hall,
59 Cal.App.5th 652 (2021) 11, 17, 18, 19

Barnes-Hind, Inc. v. Super. Ct.,
181 Cal.App.3d 377 (1986) 19

Bartholomew v. YouTube, LLC,
17 Cal.App.5th 1217 (2017) 21

Bradbury v. Superior Court,
49 Cal.App.4th 1108 (1996) 11

Braun v. Chronicle Publ’g Co.,
52 Cal.App.4th 1036 (1997) 22

Brodeur v. Atlas Entm’t, Inc.,
248 Cal.App.4th 665 (2016) 10, 11, 17

De Havilland v. FX Networks, LLC,
21 Cal.App.5th 845 (2018) *passim*

Dougherty v. City of Covina,
654 F.3d 892 (9th Cir. 2011) 4, 25

Fellows v. Nat’l Enquirer, Inc.,
42 Cal.3d 234 (1986) 18

Films of Distinction, Inc. v. Allegro Film Prods., Inc.,
12 F. Supp. 2d 1068 (C.D. Cal. 1998) 13

1 *Gallagher v. Philipps*,
 2 No. 20-CV-993 JLS (BLM), 2021 WL 4428996 (S.D. Cal. Sept. 27,
 3 2021) 19
 4 *Good Gov’t Grp. Of Seal Beach, Inc. v. Super. Ct. of L.A. Cnty.*,
 5 22 Cal.3d 672 (1978) 24
 6 *Greater L.A. Agency on Deafness, Inc. v. Cable News Network, Inc.*,
 7 742 F.3d 414 (9th Cir. 2014) 8
 8 *Guccione v. Hustler Magazine, Inc.*,
 9 800 F.2d 298 (2d Cir. 1986) 22
 10 *Guglielmi v. Spelling-Goldberg Prods.*,
 11 25 Cal.3d 860 (1979) 12, 14
 12 *Harkonen v. Fleming*,
 13 880 F.Supp.2d 1071 (N.D. Cal. 2012)..... 8
 14 *Heller v. NBC Universal, Inc.*,
 15 No. CV-15-09631-MWF-KS, 2016 WL 6583048 (C.D. Cal. June 29,
 16 2016) 17, 21
 17 *Hughes v. Hughes*,
 18 122 Cal.App.4th 931 (2004) 22
 19 *Issa v. Applegate*,
 20 31 Cal.App.5th 689 (2019) 12
 21 *Khodorkovskaya v. Gay*,
 22 5 F.4th 80 (D.C. Cir. 2021)..... 13
 23 *Klingebiel v. Lockheed Aircraft Corp.*,
 24 494 F.2d 345 (9th Cir. 1974) (per curiam) 9
 25 *Marder v. Lopez*,
 26 450 F.3d 445 (9th Cir. 2001) 8
 27 *Masson v. New Yorker Magazine, Inc.*,
 28 501 U.S. 496 (1991)..... 3, 13, 21
McGarry v. Univ. of San Diego,
 154 Cal.App.4th 97 (2007) *passim*

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.