

1 David M. deRubertis, State Bar No. 208709
 2 Garen R. Nadir, State Bar No. 285394
 3 **The deRubertis Law Firm, APC**
 4 4219 Coldwater Canyon Avenue
 5 Studio City, California 91604
 6 Telephone: (818) 761-2322
 7 Facsimile: (818) 761-2323
 8 E-Mail: David@deRubertisLaw.com
 9 E-Mail: Garen@deRubertisLaw.com

10 Alan I. Schimmel, State Bar No. 101328
 11 Michael W. Parks, State Bar No. 154531
 12 Arya Rhodes, State Bar No. 299390
 13 **Schimmel & Parks, APLC**
 14 15303 Ventura Blvd., Suite 650
 15 Sherman Oaks, California 91403
 16 Telephone: (818) 464-5061
 17 Facsimile: (818) 464-5091
 18 E-Mail: MWParks@spattorneys.com

19 Attorneys for Plaintiff
 20 Monique Hicks

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

22 **IN AND FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

23 MONIQUE HICKS, an individual,

24 Plaintiff,

25 vs.

26 NETFLIX, INC., a Delaware corporation; and
 27 DOES 1 through 50, inclusive,

28 Defendants.

Case No.:

COMPLAINT FOR:

1. Race Discrimination (Disparate Treatment) in Violation of the Fair Employment and Housing Act (Gov. Code § 12940, *et seq.*);
2. Race Discrimination (Disparate Impact) in Violation of the Fair Employment and Housing Act (Gov. Code § 12940, *et seq.*);
3. Sex/Gender Discrimination (Disparate Treatment) in Violation of the Fair Employment and Housing Act (Gov. Code § 12940, *et seq.*);
4. Sex/Gender Discrimination (Disparate Impact) in Violation of the Fair Employment and Housing Act (Gov. Code § 12940, *et seq.*);
5. Retaliation in Violation of the Fair Employment and Housing Act (Gov. Code § 12940, *et seq.*);

6. Failure to Prevent Discrimination and Retaliation in Violation of the Fair Employment and Housing Act (Gov. Code § 12940, *et seq.*);
7. Discrimination Based on Race/Ethnicity/Color/Ancestry (42 U.S.C. § 1981);
8. Retaliation (42 U.S.C. § 1981);
9. Discrimination in Violation of the Unruh Civil Rights Act (Cal. Civ. Code §51);
10. Unfair Business Practices (Cal. Bus. & Prof. Code § 17200, *et seq.*)

JURY TRIAL DEMANDED

Plaintiff, MONIQUE HICKS, hereby alleges against Defendants NETFLIX, INC., a Delaware corporation; and DOES 1 through 50, inclusive, as follows:

INTRODUCTION

1. Black women earn only sixty-one cents (\$.61) for every one dollar (\$1.00) that a white male earns. Some may think that this pay inequity is limited to lower paid workers. But this case shows that it is not. The pay gap for Black women cuts across the economic spectrum affecting low paid workers and highly compensated ones alike.

2. Looking to corner the market, in recent years Defendant Netflix has aggressively expanded its reach into the online comedy streaming market. Plaintiff Monique Hicks (known professionally as Mo’Nique) is an Oscar-winning actress who headlined the famous *Queens of Comedy* Tour. In the words of one of the Netflix’s executives who recruited Mo’Nique, she is “a legend.” Given Netflix’s ambition in the online comedy market, and Mo’Nique’s stature in the field as a leading Black female comedian, it only made sense that Netflix would recruit Mo’Nique for one of its comedy specials. And that is precisely what happened.

3. Netflix courted Mo’Nique, saw what she had to offer and made her an offer. But the offer Netflix made Mo’Nique wreaked of discrimination; it perpetuated the pay gap suffered by Black women.

1 the Plaintiff's injuries and damages.

2 9. Plaintiff is informed and believes and thereon alleges that at all relevant times each
3 of the Defendants was the integrated enterprise, joint employer of Plaintiff and was engaged with
4 some or all of the other Defendants in a joint enterprise for profit, and bore such other
5 relationships to some or all of the other Defendants so as to be liable for the conduct of them.
6 Plaintiff performed services for each and every one of Defendants, and to the mutual benefit of all
7 Defendants, and all Defendants shared control of Plaintiff as employers, either directly or
8 indirectly, and of the manner in which Defendants' business was conducted.

9 10. At all times herein mentioned, Defendants (whether or not specifically identified or
10 designated herein as a DOE Defendant), and each of them, were the agents, employees, servants,
11 partners, independent contractors, joint venturers, and/or participants with all other Defendants,
12 and with each other, and in doing the things hereinafter mentioned, were agents, employees,
13 servants, partners, and joint venturers and/or acted with the consent and permission of the co-
14 Defendants, and each of them.

15 11. This action lies properly in this judicial district because the unlawful employment
16 practices complained of herein occurred within this district. As detailed herein, the negotiations
17 for employment occurred in California, the employment services were to be provided in California
18 and California was therefore where the unlawful practices alleged herein occurred.

19 12. Plaintiff timely filed charges against all named Defendants with the California
20 Department of Fair Employment and Housing (DFEH) and has received a Right-to-Sue letter from
21 the DFEH regarding all applicable claims asserted in this action. Accordingly, Plaintiff has fully
22 exhausted her administrative remedies as to such claims.

23
24 **FACTUAL ALLEGATIONS**

25 **A. The historical pay discrimination against Black women produces a**
26 **substantial pay gap between Black women and literally all other**
27 **workers.**

28 13. The gender pay gap is real and severe. According to the U.S. Census bureau, a

1 full-time working woman earns about eighty cents (\$.80) for every dollar a working man earns.
2 That is bad enough, but the reality is much worse for Black women. Black women earn only
3 sixty-one cents (\$.61) on the dollar compared to White males.¹ As a result, based on today's wage
4 gap, a Black woman working a forty (40) year career stands to earn one million dollars
5 (\$1,000,000.00) less than a White, non-Hispanic man.²

6 14. The pay gap for Black women has persisted for as long as data is available. In
7 1967, the earliest year for which data are available, a Black woman working full-time, year-round
8 typically made only forty-three cents (\$.43) for every dollar made by a White male.³ In 2017, fifty
9 (50) years later, that gap had narrowed by only eighteen cents (\$.18).⁴

10 15. While the gap has narrowed slightly within the past half-century, experts predict
11 that, if current wage trends continue, it may take another hundred years from now for Black
12 women to achieve pay parity (when measured against their White male coworkers).⁵

13 16. To put this disparity into even more concrete terms, August 22, 2019 was Black
14 Women's Equal Pay Day. Far from a celebration, this day – August 22nd – is significant for an
15 invidious reason: it represents the day on which Black women who began working on January 1,
16 2018 would earn as much as a White male earned in 2018 alone. In other words, Black women
17 will have to have worked all of 2018 and through August 22, 2019 to earn what White men earned
18 in 2018 alone.⁶

19 17. The pay gap produces real, tangible, and stark consequences. Black women have
20 less money to support themselves and their families, less money to save and invest for the future,
21 and less money to spend on goods and services.

23 ¹ See National Women's Law Center, "The Wage Gap for Black Women: Working Longer and
24 Making Less," August 2019, available at <https://nwlc-ciw49tixgw51bab.stackpathdns.com/wp-content/uploads/2019/08/Wage-Gap-for-Black-Women.pdf>.

25 ² See *Ibid.*

26 ³ See *Ibid.*

27 ⁴ See *Ibid.*

28 ⁵ See <https://iwpr.org/issue/employment-education-economic-change/pay-equity-discrimination>.

⁶ See <https://www.chicagotribune.com/opinion/commentary/ct-opinion-equal-pay-black-women-20190819-h2ctbj7xfvccnny6muc7nlqsnm-story.html>.

1 18. In recent years, pay equity concerns (both gender and gender/race) have blossomed
2 in many industries from entertainment, to sports, to Wall Street, with the birth of the #timesup
3 movement. Unfortunately, as detailed below, this lawsuit shows that pay equity problems still
4 persist deeply in Hollywood, including in one of Hollywood’s most innovative companies:
5 Netflix.

6 **B. Netflix’s corporate culture: a lack of racial diversity and frequent**
7 **racial insensitivity at the highest levels of senior leadership.**

8 19. Netflix has maintained a corporate culture – reaching the highest levels of senior
9 leadership – that has been insensitive to Black workers. Relatedly, the company has been plagued
10 by a lack of racial diversity within senior leadership, as well as across the organization. Some
11 examples, offered by way of illustration and not by way of limitation, are set forth below.
12

13 **1. Netflix’s undeniable lack of internal diversity at the highest**
14 **levels of the corporation.**

15 20. Netflix has been, and still is, plagued by a lack of diversity at the highest levels of
16 the corporation’s senior leadership.

17 21. Netflix’s own website lists its key “Management Team” and “Officers”: Founder
18 and Chief Executive Officer (CEO) Reed Hastings; Chief Talent Officer Jessica Neal; Chief
19 Communications Officer Rachel Whetstone; General Counsel David Hyman; Chief Product
20 Officer Greg Peters; Chief Financial Officer Spencer Neumann; and Chief Content Officer Ted
21 Sarandos. The images of the six senior leaders that Netflix displays on its own website share one
22 glaring feature in common: their complete lack of racial diversity:
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Reed Hastings
Founder/CEO



Jessica Neal
Chief Talent Officer



Rachel Whetstone
Chief Communications Officer



David Hyman
General Counsel



Greg Peters
Chief Product Officer



Spencer Neumann
Chief Financial Officer



Ted Sarandos
Chief Content Officer

22. Not surprisingly, given the lack of diversity (including particularly racial diversity) in key leadership positions within Netflix, not one Netflix executive is listed on Black Enterprise’s “300 Most Powerful Executives in Corporate America” even though Netflix is considered an innovative industry leader currently listed as 197 on the Fortune 500.

23. Netflix’s Board of Directors has historically mirrored its senior leadership. The Board, too, has historically lacked racial diversity. Instead, it was White-only for years lacking even one Black member – let alone, a Black female. Then, in January 2018 – after Mo’Nique had already raised questions and concerns regarding Netflix’s discriminatory treatment of Black females (including herself) as described below – the company had another opportunity to begin to address the Board’s lack of diversity. Instead, it persisted in its ways – appointing yet another

1 White male (Rodolphe Belmer) as its newest Director. This prompted more public outcry at
2 Netflix's stubborn refusal to address the race problem within its upper ranks.⁷

3 24. Given the lack of racial diversity at the top, it is not surprising that Netflix's
4 workforce similarly lacks racial diversity across-the-board. In 2018 and 2019 respectively, Netflix
5 reported that only four percent (4%) and six percent (6%) of its workforce being comprised of
6 Black employees. In other words, while its senior management specifically lacks racial diversity,
7 Netflix's workforce generally also underrepresents Black workers compared to the general
8 population.⁸

9 25. Indeed, Netflix's lack of diversity is notable even when compared to the
10 historically non-diverse studios. For example, in 2017, the Directors Guild of America ranked
11 Netflix last among the ten largest studios and their subsidiaries on its TV Director Diversity
12 Report. Netflix had the worst record of all ten major studios for hiring the lowest percentage of
13 diverse directors – only twenty-nine percent (29%) of Netflix's shows had diverse directors
14 compared to an average of thirty-eight percent (38%) across the industry.⁹

15 **2. A senior executive's repeated use of the "n-word" is tacitly**
16 **accepted and, only upon additional offensive conduct, did CEO**
17 **Hastings intervene and eventually acknowledge that Netflix had**
18 **failed to properly handle the situation.**

19 26. Upon information and belief, Netflix's historical lack of commitment to executive
20 and employee diversity contributed to a corporate culture of insensitivity and/or discriminatory
21 treatment of Black workers within Netflix's operations. This corporate culture has exposed the
22 racial insensitivity and, in some instances, downright racial improprieties of senior leadership –
23 those who make the ultimate decisions regarding Netflix's operations.

24 ⁷ On or about March 28, 2018, only after (and presumably in response to) public outcry like that
25 detailed in the text above, Netflix finally announced that it was appointing a woman of color
26 (Ambassador Susan E. Rice) to its Board.

27 ⁸ Netflix's public data does not identify the percentage of African-American females it employs
28 and, thus, Netflix does not permit an analysis of the degree to which its workforce underrepresents
African-American women particularly.

⁹ See <https://www.dga.org/News/PressReleases/2017/171114-Episodic-Television-Director-Diversity-Report.aspx>.

1 27. As one notable example: Upon information and belief, in approximately early-
2 2018, Netflix’s then Chief Communications Officer Jonathan Friedland used the “n-word” in a
3 meeting of approximately sixty (60) members of Netflix’s publicity staff. Reportedly, multiple
4 offended employees lodged complaints regarding the incident, prompting Friedland to apologize,
5 meet with CEO Hastings, and spend an hour discussing the issue with Friedland’s own team.
6 Thereafter, Friedland met with two Black human resource employees about his use of the “n-
7 word.” At this meeting, in recounting his earlier use of the “n-word,” Friedland again used the
8 full, offensive epithet. A few months later, Friedland was invited to, and did speak with, a group
9 of Black employees. In this meeting, Friedland still did not apologize for nor even acknowledge
10 his earlier offensive conduct. According to CEO Hastings, Friedland’s conduct left “many in the
11 meeting” to interpret Friedland’s response “to mean he didn’t care and didn’t accept accountability
12 for his words.”

13 28. Only after all of the above did CEO Hastings terminate Friedland and acknowledge
14 in a memo to Netflix employees that Friedland – the corporation’s Chief Communications Officer
15 and a key senior leader – “showed unacceptably low racial awareness and sensitivity” and a “deep
16 lack of understanding.” In this same memo, CEO Hastings acknowledged that he – that is, really
17 Netflix as a whole – “should have done more” upon learning of Friedland’s conduct but instead
18 allowed the issue to remain unsatisfactorily addressed for too long. CEO Hastings chalked this up
19 to his own “privilege [that] has made [him] intellectualize or otherwise minimize race issues like
20 this” and he agreed that he, as the Founder and current CEO of Netflix, “need[s] to set a better
21 example by learning and listening more so [he] can be the leader we need.”

22 29. In the end, according to published reports, Friedland purported to apologize for his
23 conduct but simultaneously seemed to justify his racial insensitivity by the fact that he was
24 “moving at a million miles an hour” at the time (presumably, in doing work for Netflix).

25 **3. Netflix reportedly allowed *House of Cards* star Kevin Spacey to**
26 **repeatedly make racist remarks (including the use of the “n-**
27 **word”) on the set without consequence.**

28 30. Upon information and belief, another example of Netflix’s corporate culture that

1 has tolerated racial inequities or indignities occurred on its renowned original series *House of*
2 *Cards*. *House of Cards* was Netflix's first ever original series and it was one of Netflix's leading
3 original series. Actor Kevin Spacey played the lead role. Eventually, in or about November 2017,
4 Netflix fired Spacey after it was publicly revealed that Spacey had for years committed acts of
5 sexual assault and harassment.

6 31. Upon information and belief, before the worldwide allegations of sexually
7 assaultive behavior by Spacey came to public light, Netflix turned a blind eye to other unlawful
8 conduct by Spacey – namely, racial abuse directed at Black employees or contactors working on
9 the show's set. Specifically, during the show's first season in 2012, VIP Protective Services, a
10 professional security company, contracted to provide security services for the show. VIP
11 Protective Services employed a number of guards who were Black.

12 32. According to reports from the security company's head (Earl Blue), while on the
13 set Kevin Spacey engaged in a number of racist and offensive acts toward the Black guards
14 including, without limitation and merely by way of illustration:

- 15 • Spacey complained to his own personal security personnel: "I don't want [n-words] on
16 my set anymore!";
- 17 • Spacey complained he did not "want [n-words] watching my trailer" when he saw Black
18 guards watching a trailer for the show;
- 19 • Spacey refused to acknowledge or shake hands of the Black guards; and
- 20 • Spacey generally ignored and refused to talk to the Black guards.

21 33. According to Blue, he raised concerns about Spacey's racially offensive conduct
22 but the set managers disregarded the concerns retorting, "That's just the way he is; we've got to
23 keep him happy" and referring to Spacey as "the Powers that be." Thereafter, VIP Protective
24 Service's contract was not renewed even though, according to Blue, he had been told by the
25 show's producers that they were pleased with the company's work.

1 **4. Reports of differential treatment of female executives compared**
2 **to males.**

3 34. Netflix’s corporate culture has also contributed to a lack of gender equality in the
4 workplace.

5 35. As one example: Upon information and belief, CEO Hastings asked Netflix’s
6 former Chief Talent Officer Tawni Nazario-Cranz to “sunshine” – that is, to publicly explain prior
7 (presumably misguided) decisions – why she had taken some of her team before a launch event in
8 Milan to get their hair and make-up done and expensed the costs. Netflix’s expense-
9 reimbursement policy is simply “Act in Netflix’s best interests”; the policy liberally permits
10 employees to decide for themselves appropriate use of their expense accounts. Thus, Ms. Nazario-
11 Cranz’s response was to point out the obvious double-standard: If a manager took two male team
12 members out for a round of golf and expensed the outing, nobody at Netflix would second-guess
13 this decision for a second.

14 36. Upon information and belief, Ms. Nazario-Cranz pointing out the obvious gender
15 double-standard triggered a discussion of gender inequity in the workplace, but it did not cause
16 Netflix’s White male CEO to reconsider his position. Instead, according to public reports, soon
17 after this encounter with CEO Hastings, Ms. Nazario-Cranz departed from the company raising
18 the question of whether such departure was retaliatory.

19 **5. Pay equity disputes on other Netflix shows.**
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21 37. Not surprisingly, the effects of the foregoing corporate culture and its
22 discriminatory mindset impacted and influenced pay decisions by Netflix and lead to pay
23 disparities within Netflix.

24 38. As one example: In or about March of 2018, it was revealed that Netflix had a pay
25 equity problem on its show, *The Crown*. Specifically, it was reported at that time that Actress
26 Claire Foy, who played the lead role of Queen Elizabeth II, was paid nearly fourteen thousand
27 dollars (\$14,000.00) less per episode than male actor Matt Smith, who had a supporting role of
28 Prince Philip. This blatant pay inequity was unjustifiable. Indeed, Netflix itself had to concede

1 the point and ultimately, upon information and belief, paid two hundred and seventy-five thousand
2 dollars (\$275,000.00) in back pay to make up for this gender-based pay inequity after it was
3 exposed in the public spotlight.

4 39. Faced with this public outrage about gender-based pay inequity within its shows,
5 upon information and belief, Netflix’s Chief Content Officer Ted Sarandos publicly declared that
6 the debacle surrounding pay inequity on *The Crown* prompted Netflix to review cast salaries
7 across all of the company’s productions (including those done in-house and by third-parties),
8 which revealed that there were other (unspecified) pay inequities beyond just those reported on
9 *The Crown*. Media outlets quoted Sarandos as stating the following (acknowledging the problem
10 of a pay gap within Netflix productions): “[I]n general there was a disparity. What it did for us
11 was it had us go back and look at all of our productions – and all of our productions that were
12 being run by third parties – and make sure that none of those disparities existed.” Sarandos also
13 publicly stated that, through this process, Netflix found, and adjusted, a salary of an unnamed
14 female executive who was being paid less than her male counterparts had historically received for
15 the same position.

16 40. In short, Netflix has been on notice of its problems with pay equity and the need for
17 it to fix them before it tried to impose similar pay inequity on Mo’Nique as detailed below.
18 Indeed, Sarandos himself was quoted as noting that the pay inequity on *The Crown* “pointed to a
19 bigger problem throughout the industry.” This lawsuit is yet another example of this “bigger
20 problem throughout the industry.”

21 **C. Netflix dominates the stand-up comedy market and has used that**
22 **market-dominance to suppress wages, and contribute to the wage gap,**
23 **of Black women.**

24 **1. Netflix dominates the stand-up comedy market.**

25 41. Netflix proclaims itself as “the world’s leading internet entertainment service with
26 over 158 million paid memberships in over 190 countries.” Netflix offers its members online
27 streaming of a library of films and television programs, including those produced in-house.

28 42. Since 2012, Netflix began taking a more active role producing and distributing its

1 own original content, including movies, series, and specials. Its success in doing so has upended
2 the traditional “movie studio” model itself becoming a literal factory for manufactured
3 entertainment products including its original content.

4 43. Indeed, each consecutive year, Netflix boosts its annual budget for original content
5 and increases its output of original content. In 2017 and 2018, Netflix released over 1,000 and
6 1,500 hours of original content each year, respectively. By 2019, Netflix sought to have half of its
7 library consist of original content, according to a company announcement. In 2018 and 2019,
8 Netflix’s investment on content reached approximately \$12 billion and \$15 billion each year,
9 respectively (approximately 85% of which is earmarked for original content). Netflix’s
10 anticipated content spending will hit \$17.8 billion in 2020, according to BMO Capital Markets
11 analyst Daniel Salmon.

12 44. As Netflix’s influence has being felt across film and television, the company
13 aggressively broadened its reach into comedy. In 2019, Netflix launched a comedy radio channel
14 on Sirius XM and also released *Comedians of the World*, a series featuring 47 comedians¹⁰ from
15 13 regions. Where HBO and Comedy Central were once viewed as the destination for comics,
16 Netflix has now emerged as a dominating force that is disrupting the industry. According to the
17 *Los Angeles Times*, “Netflix is transforming stand-up comedy and making it integral to its future.”
18 “Unlike drama, which costs them [Netflix] billions, what they’re able to do with standup for \$100
19 million is dominate,” says Brian Volk-Weiss, founder of Comedy Dynamics. “They basically
20 said, let’s take everything off the table so that if the public wants to tune in to high-end comedy, it
21 goes to Netflix.” “Unless somebody mounts a tremendous counterattack, which is getting
22 increasingly harder,” Volk-Weiss says, “Netflix will have utter domination of one of five or six
23 genres that exist.” He goes on to say that “[a] huge piece of the puzzle is that [Netflix Chief
24 Content Officer] Ted Sarandos loves stand-up comedy, and he’s got a really nice checkbook.” As
25 this case shows, however, that “really nice checkbook” is not color blind.

26 45. In fact, while the sky seems to be the limit when it comes to Netflix’s content
27

28 ¹⁰ Among those forty-seven (47) comedians, only six (6) are Black.

1 budget (estimated at \$19 billion in 2019), there apparently is a ceiling when it comes to Netflix's
2 willingness to pay talent of certain demographics, namely, Black women. That pay inequity is
3 what this case is about, and this is the injustice that Mo'Nique seeks to correct by this lawsuit.

4 **2. Mo'Nique and her background as the "Queen of Comedy."**

5
6 46. The youngest of four children, Mo'Nique started from humble beginnings. She
7 first took to the stage in 1988 during an open-mic night at a comedy club in her hometown of
8 Baltimore, Maryland. Encouraged by the positive reception, she soon began performing at other
9 comedy clubs in Baltimore, Atlanta, and along the East Coast.

10 47. Eventually, she left her day job and decided to pursue a full-time career in stand-up.
11 Before long, she was opening for musicians and appearing in such television specials as Russell
12 Simmons' Def Comedy Jam and Comic View.

13 48. After Mo'Nique made popular guest appearances on the television show *Moesha* in
14 1999 and 2000, a spin-off series was created for her character. She starred for five seasons as
15 Nikki Parker on the sitcom *The Parkers* (1999–2004), a series about a single mom who attends
16 college with her daughter. The celebrated family sitcom earned Mo'Nique several accolades,
17 including four NAACP Image Awards for Outstanding Actress in a comedy series in 2001, 2002,
18 2004, and 2005.

19 49. Film roles soon followed, including *Baby Boy* (2001), *Two Can Play That Game*
20 (2001), *Soul Plane* (2004), *Shadowboxer* (2005), *Domino* (2005), and a starring role in *Phat Girlz*
21 (2006), a romantic comedy.

22 50. Then, in 2009, Mo'Nique played Mary Lee Johnston, the abusive and violent
23 mother, in *Precious: Based on the Novel 'Push' by Sapphire* (2009), starring Gabourey Sidibe and
24 directed by Lee Daniels. Mo'Nique's performance in *Precious* brought her both an Academy
25 Award (Oscar) and a Golden Globe for Best Supporting Actress.

26 51. In addition to her Oscar-winning performance *Precious*, Mo'Nique also won
27 awards from the Screen Actors Guild, Sundance Film Festival, BET, NAACP, British Academy of
28 Film and Television Arts, African American Film Critics Association, Los Angeles Film Critics

1 Association, and New York Film Critics Circle, among many others.

2 52. Following her Oscar-winning performance in *Precious*, Mo’nique had other
3 significant roles such as the lead role in *Blackbird*, a coming-of-age film about a young Black
4 singer struggling with his sexuality.

5 53. Then, in 2015, Mo’Nique was nominated for an Emmy for her supporting role as
6 “Ma Rainey” in the TV movie *Bessie*, a biopic about the American blues singer Bessie Smith.

7 54. While climbing the Hollywood ranks and performing roles in a variety of genres,
8 Mo’Nique never strayed too far from her comedic roots. One of her most notable performances to
9 date is when she starred in the hit stand-up comedy film, *The Queens of Comedy*, which follows
10 four Black female stand-up comedians at Memphis, Tennessee’s Orpheum Theatre. *The Queens*
11 *of Comedy* was released in 2002 and aired on Showtime.

12 55. The Queens of Comedy (consisting of Mo’Nique, Laura Hayes, Adele Givens, and
13 Sommore) toured the country, released an album of the same title, and went on to earn a Grammy
14 nomination in 2002 for Best Spoken Comedy Album.

15 56. That same year, in 2002, Mo’Nique became the first female to host NBC’s
16 nationally televised program, *Showtime at the Apollo*. She carried the legendary torch for three
17 consecutive seasons.

18 57. Mo’Nique has starred in comedy specials (which happen to be available to stream
19 on Netflix): *Monique: I Coulda Been Your Cellmate* (2007) and *Shaquille O’Neal Presents: All*
20 *Star Comedy Jam: Live From Dallas* (2010).

21 58. The concept for *The Mo’Nique Show* which started as a nationally syndicated radio
22 show in 2008 eventually evolved into a late-night talk show in 2009, which aired weeknights on
23 Black Entertainment Television (BET).

24 59. More recently, in 2019, Mo’Nique kicked off a Las Vegas residency at SLS Hotel
25 and Casino. In doing so, she became the first Black female comedian in history to secure a Las
26 Vegas residency.

27 60. Despite Mo’Nique’s extensive résumé and documented history of comedic success,
28 when Netflix presented her with an offer of employment for an exclusive stand-up comedy

1 special, Netflix made a lowball offer that was only a fraction of what Netflix paid other (non-
2 Black female) comedians.

3 **3. Netflix’s biased, discriminatory offer to Mo’Nique.**

4 **a. The offer of employment.**

5
6 61. In or about November 2017, Netflix executives – including Benjamin Lynn of
7 Netflix’s Original Stand-up Comedy Programming – attended Mo’Nique’s live stand-up show at
8 the Improv in Ontario, California. After the show, Lynn gave Mo’Nique effusive praise for her
9 work and asked for additional tickets reserved for the show the next day so that Caitlin Hotchkiss
10 (Netflix’s Coordinator of Original Stand-up Programming) and others could attend Mo’Nique’s
11 show. Lynn made clear that Netflix was considering making an offer to Mo’Nique to work on a
12 Netflix original stand-up show. The next day, Hotchkiss and others attended Mo’Nique’s show.
13 Again, they offered effusive praise about her show.

14 62. Netflix then began to recruit Mo’Nique. At this time, Netflix was aggressively
15 ramping-up its stand-up content and trying to dominate the market for original stand-up material.
16 Given her background and history of success, Mo’Nique was precisely the type of talent Netflix
17 should have wanted. Mo’Nique had a proven track record of success in original stand-up content,
18 had years of filling stand-up venues, was widely regarded as one of the leading Black female
19 comedians of all time, etc.

20 63. Over the ensuing months, Mo’Nique and her representatives had conversations and
21 communications with various senior leaders within Netflix’s Original Stand-up Comedy
22 Programming, including Robbie Praw (Netflix’s Director – Original Stand-up Comedy
23 Programming). During these communications, Netflix representatives made it clear that they
24 understood, knew, and appreciated Mo’Nique’s background and proven track record of success.
25 Mo’Nique thus expected to receive an offer commensurate with her background rather than one
26 penalizing her for the color of her skin and her gender.

27 64. On or about January 11, 2018, Netflix communicated an offer of employment to
28 Mo’Nique. The offer contemplated employment services to be performed by Mo’Nique in

1 California. The offer's terms were as follows: Netflix would pay Mo'Nique five hundred
2 thousand dollars (\$500,000.00) as her "talent fee" for a one-hour stand-up original special
3 Mo'Nique would perform but which Netflix would have complete and total control of the manner,
4 means and method, including: Netflix would own the copyright of the program and control all
5 exhibition rights; Netflix would retain all audio-only rights in and to the special; Netflix would
6 retain all creative and business controls including choice of production company and final cut; for
7 a year after the show's premiere, Mo'Nique would have been prohibited from taping or
8 negotiating with any third party with respect to her next comedy special and, after this one year's
9 outright prohibition, Mo'Nique would still have to give Netflix the first negotiation/first right of
10 refusal after two years in the event Mo'Nique wished to use the content elsewhere; for two years
11 after the premiere, Mo'Nique would be prohibited from performing or using any of the show's
12 material in any recorded program and then after the two years Netflix would still have the first
13 negotiation/first right of refusal in the event Mo'Nique wished to use the content elsewhere.

14 65. The offer also was expressly to be kept confidential – that is, if she accepted the
15 offer, Mo'Nique would not be permitted to discuss her compensation with others (contrary to
16 Netflix's typical rule that employee compensation is not confidential among the workforce).
17 Instead, she would have to accept a contractual silencing that prevented her from discussing the
18 terms of her offer, including the discriminatory pay proposal within it.

19
20 **b. Netflix's offer was clearly discriminatory.**

21 66. The terms of Netflix's offer to Mo'Nique were discriminatory based on her gender
22 and race/color. The offer tried to perpetuate the drastic pay gap experience by Black women when
23 compared to both men and caucasians.

24 67. As just a few examples: Upon information and belief, Netflix made offers to other
25 comedic talent yet to perform in similar stand-up shows, but, when the talent was not a Black
26 woman, Netflix offered to pay, and did pay, astronomically more than it pays to Black women like
27 it offered to Mo'Nique. For example, by way of illustration and not by way of limitation:

- 28
- In or about 2017, Netflix reportedly signed a one hundred million-dollar

1 (\$100,000,000.00) deal with Jerry Seinfeld (a White male), which included in part
2 payment for a stand-up special.

3 • In or about 2019, Netflix reportedly is currently in negotiations, or signed a deal, with
4 Eddie Murphy (a Black male) estimated at sixty to seventy million-dollar (\$60,000,000.00
5 - \$70,000,000.00).

6 • In or about 2016, Netflix reportedly signed a sixty million-dollar (\$60,000,000.00) deal
7 with Dave Chapelle (a Black male) for a three-special deal, representing compensation of
8 twenty million dollars (\$20,000,000.00) per show.

9 • In or about 2016, Netflix reportedly signed a forty million-dollar (\$40,000,000.00) deal
10 with Chris Rock (a Black male) for a two-special program, representing compensation
11 (like Chapelle's) of twenty million dollars (\$20,000,000.00) per show.

12 • In or about 2017, Netflix reportedly signed a twenty million-dollar deal with Ellen
13 DeGeneres (a White woman) for a one-time comedy special.

14 • In or about 2017, Netflix reportedly signed a sixteen million five hundred thousand-
15 dollar (\$16,500,000.00) deal with Jeff Dunham (a White male) for a one-hour comedy
16 special.

17 • In or about 2016, Netflix reportedly signed a two-show deal with Ricky Gervais (a White
18 male) for forty million dollars (\$40,000,000.00), again representing compensation (like
19 Chappelle's and Rock's) of twenty million dollars (\$20,000,000.00) per show.

20 • In or about 2017, Netflix initially offered Amy Schumer (a White female) eleven million
21 dollars (\$11,000,000.00) as her compensation for her hour-long special comparable to the
22 one proposed to Mo'Nique. Reportedly, Schumer leveraged the fact that Netflix offered so
23 much more to both Chapelle and Rock to get Netflix to increase her offer to thirteen
24 million dollars (\$13,000,000.00), an increase of over fifteen percent (15%) of the original
25 offer.

26 68. Thus, Netflix reportedly offered or paid Rock, Chapelle, Degeneris, and Gervais
27 forty (40) times more per show than it offered Mo'Nique, and it offered Schumer twenty-six (26)
28 times more per show than Mo'Nique. In short, Netflix's offer to Mo'Nique perpetuates the drastic

1 wage gap forced upon Black women in the America’s workforce.

2 **4. Mo’Nique’s protected activities and Netflix’s retaliatory refusal**
3 **to negotiate with her.**

4 69. In response to this discriminatory offer, Mo’Nique objected and engaged in other
5 legally-protected opposition.

6 70. Both personally and through her representatives, Mo’Nique pushed back on the
7 terms of the offer, calling out Netflix for discriminating against Black women.

8 71. Initially, with her explicit authorization and acting on her behalf, Mo’Nique’s
9 representatives wrote Netflix’s executives pleading that they reconsider the “racially and gender
10 biased offer” and noting that Mo’Nique was “blindsided” by it. Mo’Nique’s representatives
11 questioned “what makes Mo’Nique, who has been labeled a living legend based on her awards
12 from around the world, her tenure in the game, and her diverse body of work ... somehow ...
13 worth \$12,500,000 less than Amy Schumer to [Netflix]?” Mo’Nique’s representatives pointed out
14 that her Black male counterparts were even paid seven million dollars (\$7,000,000.00) more per
15 show than Schumer, all of which drove home the point that it made no sense for Mo’Nique to be
16 offered only five hundred thousand dollars (\$500,000.00) for similar work.

17 72. Netflix responded that it purportedly took “very seriously” the concerns raised in
18 the email. It thus agreed to have a call with Mo’Nique’s representatives to discuss her concerns.

19 73. On January 17, 2018, Mo’Nique’s representatives had a call with, *inter alia*,
20 Robbie Praw (Netflix’s Director – Original Stand-up Comedy Programming). In this call, like in
21 the prior communications, Mo’Nique’s representatives inquired as to how Netflix had arrived at
22 its pay valuation for Mo’Nique compared to others explaining the concern that Mo’Nique viewed
23 the offer as discriminatory based on her race/color and gender. In explaining why the offer was so
24 low in their view, Mo’Nique’s representatives reviewed some of her body of work and her history
25 of success, only to be met with the claim that Netflix does not look at “résumés” or “bodies of
26 work” to arrive at pay offers but rather uses an “assumptive approach.” Yet, moments later, when
27 justifying paying Amy Schumer (a White woman) twenty-six (26) times more than Mo’Nique for
28

1 comparable work, Praw justified the disparity by citing the facts that Schumer had sold out
2 Madison Square Garden and had a recent movie released. Mo’Nique’s representative replied that
3 Netflix was citing Schumer’s résumé or “body of work” to justify her pay but at the same time
4 claiming that it did not look at résumés or “bodies of work” and, therefore, it would refuse to look
5 at Mo’Nique’s to make a fair pay offer to her. Obviously, this made little sense. Pressed
6 repeatedly, Praw stuck to Netflix’s party line: Based on its “internal data,” Netflix uses an
7 “assumptive approach” or “anticipatory approach” and that the company “had a process and that’s
8 the way we do it,” steadfastly refusing to negotiate reasonable terms or reconsider the lowball,
9 discriminatory offer.

10 74. At all times during these discussions, Netflix executives (including Praw) made
11 clear that they had the highest respect for Mo’Nique and that they were well aware of her
12 outstanding career. In fact, during one discussion, Praw himself acknowledged “I want you to
13 know I know Mo’Nique is a legend. She is.” Still, they stubbornly refused to make a fair and
14 equitable pay offer to Mo’Nique.

15 75. Indeed, Netflix simply refused to engage in any negotiation and presented its offer
16 on “take-it-or-leave-it” terms. Upon information and belief, in other similar situations involving
17 males and caucasions, Netflix has negotiated increased offers.

18 76. Mo’Nique herself engaged in additional protected conduct. Among other things,
19 she personally spoke out publicly about the discriminatory offer and called for a boycott of
20 Netflix, including raising the concern that if she did not speak up and out for pay equity for Black
21 women, she would merely be perpetuating the pay equity gap for Black women rather than
22 working to change the inequities for future generations. In Mo’Nique’s words: “I couldn’t accept
23 that low offer because if I did ... I couldn’t sleep at night. If I accepted \$500,000, what does
24 Tiffany Haddish have coming? If I accept that, what does the Black female comedian have
25 coming? Because what they’ll say is, ‘Mo’Nique accepted this and she’s got that.’ So what do
26 they have coming?”

27 77. Unfortunately for Mo’Nique and many other women of color, their challenges
28 when speaking up about pay gap inequality are all the greater because they are met with

1 skepticism, not empathy, when they ask for more money. We celebrated victories of many
2 talented actresses like Emmy Rossum, Jennifer Lawrence, and Ellen Pompeo publicly aired their
3 financial grievances against networks and studios who paid their male colleagues more money
4 than them. This has not been the case for Mo’Nique who to this day has not been made a fair and
5 non-discriminatory offer by Netflix.

6
7 **5. Netflix made other discriminatory, lowball offers to other Black**
8 **female comedians. But, unlike with Mo’Nique, Netflix has**
9 **subsequently negotiated with, and increased its offer to, at least**
10 **one of them after Mo’Nique’s call for a boycott of Netflix over**
11 **its pay inequity practices toward Black women.**

12 78. Mo’Nique was not the only Black women who has had to suffer Netflix’s gender-
13 and race-based pay inequity.

14 79. After Mo’Nique went public revealing the discriminatory offer, fellow comedian
15 Wanda Sykes (also a Black female) acknowledged that she, too, was “offended” at Netflix’s “low-
16 ball[]” offer to her and, in response, “found another home” for her comedy specials. Upon
17 information and belief, thereafter – and only after Mo’Nique call for a boycott of Netflix – Netflix
18 reconsidered and eventually offered Sykes a better and more equitable deal. In Sykes words,
19 “They moved that comma.”

20 80. In contrast, despite having re-negotiated a more favorable deal with Sykes, to this
21 day Netflix retaliatorily has refused to do the same for Mo’Nique and, instead, has to this day
22 refused to make a fair, equitable, and non-discriminatory offer to Mo’Nique – the most vocal,
23 outspoken critic of Netflix’s pay inequity practices.

24
25 **6. Netflix’s algorithm or other pay determination criteria have an**
26 **adverse and detrimental impact on the pay of Black female**
27 **talent.**

28 81. Upon information and belief, Netflix determines the pay it will offer talent such as
Mo’Nique at least in part through an algorithm or other pay determination criteria (such as
Netflix’s reported “internal data”) that adversely and detrimentally impacts Black female talent by
arriving at pay calculations for Black female talent that are less than those for non-Black women.

1 The adverse impact that Netflix’s pay determination criteria has on pay determinations of pay for
2 Black female talent is not justified by any lawful consideration.

3
4 **D. Too little, too late: Netflix finally acknowledges *some* of its diversity
5 problem. But it stands behind its discriminatory offer to Mo’Nique.**

6 82. Upon information and belief, after Mo’Nique’s opposition to Netflix’s inequitable
7 pay practices, Robbie Praw (Netflix’s Director – Original Stand-up Comedy Programming) was
8 asked about the fact that Netflix had not produced any hour-long stand-up shows by Black women
9 in 2017 or 2018. Praw reportedly replied, “I think we have a responsibility, but it’s also what our
10 members want.” The next day, Praw reportedly clarified his comments by conceding that
11 programming so few Black women has been a failure by Netflix. At or around the same time,
12 Praw also reportedly acknowledged that Mo’Nique’s had made an important contribution to the
13 pay equity conversation, but stubbornly maintained that, “There just wasn’t a deal to be made.”
14 Praw insinuated that the usual data relied on by Netflix did not justify offering higher pay to
15 Mo’Nique. In short, to this day, Netflix continues to stand behind and ratify its previous
16 discriminatory offer to Mo’Nique retaliatorily refusing to negotiate fair, equitable and non-
17 discriminatory financial terms with her.

18 **FIRST CAUSE OF ACTION**

19 **Race Discrimination (Disparate Treatment) in Violation of the Fair**

20 **Employment & Housing Act Against All Defendants**

21 **(Cal. Gov. Code § 12940, *et seq.*)**

22 83. Plaintiff hereby re-alleges and incorporates by reference all allegations in each and
23 every preceding paragraph as if fully set forth herein.

24 84. At all times mentioned herein, the California Fair Employment and Housing Act
25 (FEHA), California Government Code § 12940, *et seq.*, was in full force and effect and binding on
26 Defendants. Under the FEHA, it is an unlawful employment practice for an employer, because of
27 a person’s race/color/ethnicity/ancestry, to bar the person from employment or to discriminate
28

1 against the person in compensation or in terms, conditions, or privileges of employment.

2 85. At all times mentioned herein, Defendants were employers within the meaning of
3 the FEHA because they employed five or more persons.

4 86. At all times mentioned herein, Plaintiff was a prospective employee of Defendants.
5 Defendants scouted Plaintiff for a job, and Plaintiff agreed to apply herself for an employment
6 relationship with Defendants, after which Defendants sent Plaintiff a job offer including the terms
7 of an employment contract.

8 87. Plaintiff's protected status under the FEHA is her race/ethnicity (African-
9 American), color (Black), and ancestry (African), as well as her gender/sex.

10 88. Defendants knew, perceived, and/or believed that Plaintiff had the aforementioned
11 protected status, described in the preceding paragraph.

12 89. At all times mentioned herein, Plaintiff was qualified to do her job and was able to
13 have performed work competently for Defendants.

14 90. Plaintiff was subjected to an adverse employment action because of her
15 race/ethnicity/color/ancestry. Specifically, Defendants discriminated in the terms and conditions
16 by refusing to pay Plaintiff equitably, comparably and fairly, but instead making a pay offer that
17 was discriminatory based on race/color/ancestry and gender. In short, a Black woman was offered
18 less pay for comparable work than similarly-situated men, caucasians and/or non-Black women.

19 91. Plaintiff's race/ethnicity/color/ancestry (plus her gender) was/were a substantial
20 motivating reason in Defendants' financial and pay decisions that were adverse to Plaintiff.

21 92. In engaging in the foregoing conduct, Defendants aided, abetted, incited,
22 participated in, coerced, and/or compelled unlawful employment practices in violation of
23 California's Fair Employment and Housing Act.

24 93. As a direct and proximate result of Defendants' acts and conduct, Plaintiff has
25 suffered economic losses (the denial of fair and equitable non-discriminatory pay) and will
26 continue to suffer damages in an amount within the jurisdiction of this court, the exact amount to
27 be proven at trial. Plaintiff claims such amount as damages together with pre-judgment interest
28 pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-judgment

1 interest.

2 94. As a further direct and proximate result of Defendants' acts and conduct, Plaintiff
3 has been caused to, and did, suffer and continues to suffer general damages (*e.g.*, emotional and
4 mental distress, loss of enjoyment of life, etc.).

5 95. The aforementioned acts of Defendants were engaged in with a deliberate, cold,
6 callous, fraudulent, and intentional manner in order to injure and damage Plaintiff and/or with a
7 willful and conscious disregard of Plaintiff's rights. Such acts were despicable and constitute
8 malice, fraud, and/or oppression within the meaning of Civil Code section 3294. The malicious,
9 fraudulent and/or oppressive conduct was engaged in by, authorized by and/or ratified by
10 corporate officers, directors and/or managing agents. Therefore, Plaintiff requests an assessment
11 of punitive damages against Defendants in an amount to be assessed at time of trial.

12 96. Plaintiff will also seek and is entitled to recover attorneys' fees in connection with
13 this cause of action under Government Code section 12940, *et seq.*

14
15 **SECOND CAUSE OF ACTION**

16 **Race Discrimination (Disparate Impact) in Violation of the Fair**

17 **Employment & Housing Act Against All Defendants**

18 **(Cal. Gov. Code § 12940, *et seq.*)**

19 97. Plaintiff hereby re-alleges and incorporates by reference all allegations in each and
20 every preceding paragraph as if fully set forth herein.

21 98. At all times mentioned herein, the California Fair Employment and Housing Act
22 (FEHA), California Government Code § 12940, *et seq.*, was in full force and effect and binding on
23 Defendants. Under the FEHA, it is an unlawful employment practice for an employer, because of
24 a person's race/color/ethnicity/ancestry, to bar the person from employment or to discriminate
25 against the person in compensation or in terms, conditions, or privileges of employment.

26 99. At all times mentioned herein, Defendants were employers within the meaning of
27 the FEHA because they employed five or more persons.

28 100. At all times mentioned herein, Plaintiff was a prospective employee of Defendants.

1 Defendants scouted Plaintiff for a job, and Plaintiff agreed to apply herself for an employment
2 relationship with Defendants, after which Defendants sent Plaintiff a job offer including the terms
3 of an employment contract.

4 101. Plaintiff's protected status under the FEHA is her race/ethnicity (African-
5 American), color (Black), and ancestry (African), as well as her gender/sex.

6 102. Defendants maintained employment practice(s) and/or pay determination polic(ies)
7 and/or practice(s) that had a disproportionate adverse impact or effect on African-American
8 women. Specifically, Defendants' method of calculating compensation to be offered to Black
9 women talent resulted in a disparate impact, which caused lower and unjustified discriminatory
10 offers to be made to Black women compared to caucasians and/or non-Black women. The adverse
11 impact constitutes discrimination in the terms, conditions, or privileges of employment,
12 specifically compensation terms.

13 103. The subject employment practice(s) and/or pay determination polici(es) and/or
14 practice(s) are not necessary to Defendants' business operations or purposes. Moreover, to the
15 extent that Defendants articulate any alleged necessity for such practices, there were alternative
16 practices and/or policies that would have accomplished the business purpose equally well with less
17 of an adverse impact on Black women.

18 104. In engaging in the foregoing conduct, Defendants aided, abetted, incited,
19 participated in, coerced, and/or compelled unlawful employment practices in violation of
20 California's Fair Employment and Housing Act.

21 105. As a direct and proximate result of Defendants' acts and conduct, Plaintiff has
22 suffered economic losses (the denial of fair and equitable non-discriminatory pay) and will
23 continue to suffer damages in an amount within the jurisdiction of this court, the exact amount to
24 be proven at trial. Plaintiff claims such amount as damages together with pre-judgment interest
25 pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-judgment
26 interest.

27 106. As a further direct and proximate result of Defendants' acts and conduct, Plaintiff
28 has been caused to, and did, suffer and continues to suffer general damages (*e.g.*, emotional and

1 mental distress, loss of enjoyment of life, etc.).

2 107. Plaintiff will also seek and is entitled to recover attorneys' fees in connection with
3 this cause of action under Government Code section 12940, *et seq.*

4
5 **THIRD CAUSE OF ACTION**

6 **Sex/Gender Discrimination (Disparate Treatment) in Violation of the**

7 **Fair Employment & Housing Act Against All Defendants**

8 **(Cal. Gov. Code § 12940, *et seq.*)**

9 108. Plaintiff hereby re-alleges and incorporates by reference all allegations in each and
10 every preceding paragraph as if fully set forth herein.

11 109. At all times mentioned herein, the California Fair Employment and Housing Act
12 (FEHA), California Government Code § 12940, *et seq.*, was in full force and effect and binding on
13 Defendants. Under the FEHA, it is an unlawful employment practice for an employer, because of
14 a person's sex/gender, to bar the person from employment or to discriminate against the person in
15 compensation or in terms, conditions, or privileges of employment.

16 110. At all times mentioned herein, Defendants were employers within the meaning of
17 the FEHA because they employed five or more persons.

18 111. At all times mentioned herein, Plaintiff was a prospective employee of Defendants.
19 Defendants scouted Plaintiff for a job, and Plaintiff agreed to apply herself for an employment
20 relationship with Defendants, after which Defendants sent Plaintiff a job offer including the terms
21 of an employment contract.

22 112. Plaintiff's protected status under the FEHA is her sex/gender (female) plus her
23 race/color/ancestry.

24 113. Defendants knew, perceived, and/or believed that Plaintiff had the aforementioned
25 protected status, described in the preceding paragraph.

26 114. At all times mentioned herein, Plaintiff was qualified to do her job and was able to
27 have performed work competently for Defendants.

28 115. Plaintiff was subjected to an adverse employment action because of her sex/gender.

1 Specifically, Defendants discriminated in the terms and conditions by refusing to pay Plaintiff
2 equitably, comparably and fairly, but instead making a pay offer that was discriminatory based on
3 sex/gender and/or race/color/ancestry. In short, a Black woman was offered less pay for
4 comparable work than similarly-situated men, caucasians and/or non-Black women.

5 116. Plaintiff's gender (plus her race/ethnicity/color/ancestry) was/were a substantial
6 motivating reason in Defendants' financial and pay decisions that were adverse to Plaintiff.

7 117. In engaging in the foregoing conduct, Defendants aided, abetted, incited,
8 participated in, coerced, and/or compelled unlawful employment practices in violation of
9 California's Fair Employment and Housing Act.

10 118. As a direct and proximate result of Defendants' acts and conduct, Plaintiff has
11 suffered economic losses (the denial of fair and equitable non-discriminatory pay) and will
12 continue to suffer damages in an amount within the jurisdiction of this court, the exact amount to
13 be proven at trial. Plaintiff claims such amount as damages together with pre-judgment interest
14 pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-judgment
15 interest.

16 119. As a further direct and proximate result of Defendants' acts and conduct, Plaintiff
17 has been caused to, and did, suffer and continues to suffer general damages (*e.g.*, emotional and
18 mental distress, loss of enjoyment of life, etc.).

19 120. The aforementioned acts of Defendants were engaged in with a deliberate, cold,
20 callous, fraudulent, and intentional manner in order to injure and damage Plaintiff and/or with a
21 willful and conscious disregard of Plaintiff's rights. Such acts were despicable and constitute
22 malice, fraud, and/or oppression within the meaning of Civil Code section 3294. The malicious,
23 fraudulent and/or oppressive conduct was engaged in by, authorized by and/or ratified by
24 corporate officers, directors and/or managing agents. Therefore, Plaintiff requests an assessment
25 of punitive damages against Defendants in an amount to be assessed at time of trial.

26 121. Plaintiff will also seek and is entitled to recover attorneys' fees in connection with
27 this cause of action under Government Code section 12940, *et seq.*

28

1 **FOURTH CAUSE OF ACTION**

2 **Sex/Gender Discrimination (Disparate Impact) in Violation of**
3 **the Fair Employment & Housing Act Against All Defendants**

4 **(Cal. Gov. Code § 12940, *et seq.*)**

5 122. Plaintiff hereby re-alleges and incorporates by reference all allegations in each and
6 every preceding paragraph as if fully set forth herein.

7 123. At all times mentioned herein, the California Fair Employment and Housing Act
8 (FEHA), California Government Code § 12940, *et seq.*, was in full force and effect and binding on
9 Defendants. Under the FEHA, it is an unlawful employment practice for an employer, because of
10 a person's sex/gender, to bar the person from employment or to discriminate against the person in
11 compensation or in terms, conditions, or privileges of employment.

12 124. At all times mentioned herein, Defendants were employers within the meaning of
13 the FEHA because they employed five or more persons.

14 125. At all times mentioned herein, Plaintiff was a prospective employee of Defendants.
15 Defendants scouted Plaintiff for a job, and Plaintiff agreed to apply herself for an employment
16 relationship with Defendants, after which Defendants sent Plaintiff a job offer including the terms
17 of an employment contract.

18 126. Plaintiff's protected status under the FEHA is her sex/gender (female), plus her
19 race/color/ancestry.

20 127. Defendants maintained employment practice(s) and/or pay determination polic(ies)
21 and/or practice(s) that had a disproportionate adverse impact or effect on women (and particularly
22 African-American women). Specifically, Defendants' method of calculating compensation to be
23 offered to female talent (especially Black females) resulted in a disparate impact, which caused
24 lower and unjustified discriminatory offers to be made to women (especially Black women)
25 compared to men. The adverse impact constitutes discrimination in the terms, conditions, or
26 privileges of employment, specifically compensation terms.

27 128. The subject employment practice(s) and/or pay determination polici(es) and/or
28 practice(s) are not necessary to Defendants' business operations or purposes. Moreover, to the

1 extent that Defendants articulate any alleged necessity for such practices, there were alternative
2 practices and/or policies that would have accomplished the business purpose equally well with less
3 of an adverse impact on women and specifically Black women.

4 129. In engaging in the foregoing conduct, Defendants aided, abetted, incited,
5 participated in, coerced, and/or compelled unlawful employment practices in violation of
6 California's Fair Employment and Housing Act.

7 130. As a direct and proximate result of Defendants' acts and conduct, Plaintiff has
8 suffered economic losses (the denial of fair and equitable non-discriminatory pay) and will
9 continue to suffer damages in an amount within the jurisdiction of this court, the exact amount to
10 be proven at trial. Plaintiff claims such amount as damages together with pre-judgment interest
11 pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-judgment
12 interest.

13 131. As a further direct and proximate result of Defendants' acts and conduct, Plaintiff
14 has been caused to, and did, suffer and continues to suffer general damages (*e.g.*, emotional and
15 mental distress, loss of enjoyment of life, etc.).

16 132. Plaintiff will also seek and is entitled to recover attorneys' fees in connection with
17 this cause of action under Government Code section 12940, *et seq.*

18
19 **FIFTH CAUSE OF ACTION**

20 **Retaliation in Violation of the Fair Employment & Housing**

21 **Act Against all Defendants**

22 **(Cal. Gov. Code § 12940, *et seq.*)**

23 133. Plaintiff hereby re-alleges and incorporates by reference all allegations in each and
24 every preceding paragraph as if fully set forth herein.

25 134. At all times mentioned herein, the California Fair Employment and Housing Act
26 (FEHA), California Government Code § 12940, *et seq.*, was in full force and effect and binding on
27 Defendants.

28 135. During her application process for employment by Defendants, Plaintiff opposed

1 and objected to what she reasonably believed was unlawful conduct – specifically, a
2 discriminatory pay offer as detailed above and the subsequent refusal to negotiate.

3 136. After Plaintiff voiced her complaints and objections, or sought protections of
4 and/or to exercise her rights under the Fair Employment and Housing Act, she was subjected to
5 additional adverse employment actions as described above, including the retaliatory refusal to
6 fairly and equitably negotiate her pay.

7 137. The foregoing described adverse employment actions were taken in part or in
8 whole because of Plaintiff's objections and opposition to Defendants' efforts to discourage
9 Plaintiff from pursuing her rights under the Fair Employment and Housing Act.

10 138. In engaging in the foregoing conduct, Defendants aided, abetted, incited,
11 participated in, coerced, and/or compelled unlawful employment practices in violation of
12 California's Fair Employment and Housing Act.

13 139. As a direct and proximate result of Defendants' acts and conduct, Plaintiff has
14 suffered economic losses (the denial of fair and equitable non-discriminatory pay) and will
15 continue to suffer damages in an amount within the jurisdiction of this court, the exact amount to
16 be proven at trial. Plaintiff claims such amount as damages together with pre-judgment interest
17 pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-judgment
18 interest.

19 140. As a further direct and proximate result of Defendants' acts and conduct, Plaintiff
20 has been caused to, and did, suffer and continues to suffer general damages (*e.g.*, emotional and
21 mental distress, loss of enjoyment of life, etc.).

22 141. The aforementioned acts of Defendants were engaged in with a deliberate, cold,
23 callous, fraudulent, and intentional manner in order to injure and damage Plaintiff and/or with a
24 willful and conscious disregard of Plaintiff's rights. Such acts were despicable and constitute
25 malice, fraud, and/or oppression within the meaning of Civil Code section 3294. The malicious,
26 fraudulent and/or oppressive conduct was engaged in by, authorized by and/or ratified by
27 corporate officers, directors and/or managing agents. Therefore, Plaintiff requests an assessment
28 of punitive damages against Defendants in an amount to be assessed at time of trial.

1 Plaintiff as detailed herein.

2 155. Plaintiff was subjected to an adverse employment action because of her
3 race/color/ethnicity/ancestry – specifically, Defendants refused to pay Plaintiff equitably,
4 comparably and fairly, but instead made a pay offer that was discriminatory. In short, a Black
5 woman was offered less pay for comparable work than similarly-situated non-Black women.

6 156. Plaintiffs’ race, color, ethnicity, and/or ancestry was/were a motivating factor and
7 indeed even a substantial or determining factor in the discriminatory conduct and practices and
8 disparate treatment described herein and above.

9 157. At all relevant times, Defendants had actual and constructive knowledge of the
10 discriminatory conduct described and alleged herein above, and condoned, ratified, participated in
11 and/or allowed the discrimination to exist all at least in reckless disregard of Plaintiff’s federally-
12 protected rights.

13 158. As a direct and proximate result of Defendants’ acts and conduct, Plaintiff has
14 suffered economic losses (the denial of fair and equitable non-discriminatory pay) and will
15 continue to suffer damages in an amount within the jurisdiction of this court, the exact amount to
16 be proven at trial. Plaintiff claims such amount as damages together with pre-judgment interest
17 pursuant to any provision of law providing for pre-judgment interest.

18 159. As a further direct and proximate result of Defendants’ acts and conduct, Plaintiff
19 has been caused to, and did, suffer and continues to suffer general damages (*e.g.*, emotional and
20 mental distress, loss of enjoyment of life, etc.).

21 160. Defendants committed the acts herein alleged with malice and/or reckless
22 indifference to Plaintiff’s federally-protected rights such that punitive damages are proper to
23 punish and/or make an example of Defendants. The corporate employer Defendants are liable for
24 punitive damages because a management official of said Defendant personally acted with malice
25 or reckless indifference to Plaintiff’s federally-protected rights and/or because and/or because such
26 individuals authorized, ratified or engaged in such conduct. Thus, Plaintiff is entitled to punitive
27 damages from Defendants in an amount according to proof.

28 161. Plaintiff will also seek and is entitled to recover attorneys’ fees in connection with

1 this cause of action under 42 U.S.C. section 1988.

2
3 **EIGHTH CAUSE OF ACTION**

4 **Retaliation Against All Defendants**

5 **(42 U.S.C. § 1981)**

6 162. Plaintiff hereby re-alleges and incorporates by reference all allegations in each and
7 every preceding paragraph as if fully set forth herein.

8 163. Under 42 U.S.C. section 1981, “[a]ll persons within the jurisdiction of the United
9 States shall have the same right in every State and Territory to make and enforce contracts, to sue,
10 be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the
11 security of persons and property as is enjoyed by white citizens....” 42 U.S.C. §1981(a).

12 164. Plaintiff is African-American who engaged in legally-protected activity by
13 opposing and raising concerns or making reports about Defendants’ discriminatory pay offer as
14 detailed herein.

15 165. After Plaintiff voiced her complaints and objections to the discriminatory
16 treatment, she was subjected to additional adverse employment actions as described above,
17 including the retaliatory refusal to fairly and equitably negotiate her pay. Plaintiff’s protected
18 conduct was/were a motivating factor and indeed even a substantial or determining factor in the
19 retaliatory conduct and practices described herein and above. Defendants’ adverse action(s) are
20 causally connected to Plaintiff’s protected activity/activities.

21 166. At all relevant times, Defendants had actual and constructive knowledge of the
22 retaliatory conduct described and alleged herein above, and condoned, ratified, participated in
23 and/or allowed the retaliatory conduct to exist all at least in reckless disregard of Plaintiff’s
24 federally-protected rights.

25 167. As a direct and proximate result of Defendants’ acts and conduct, Plaintiff has
26 suffered economic losses (the denial of fair and equitable non-discriminatory pay) and will
27 continue to suffer damages in an amount within the jurisdiction of this court, the exact amount to
28 be proven at trial. Plaintiff claims such amount as damages together with pre-judgment interest

1 pursuant to any provision of law providing for pre-judgment interest.

2 168. As a further direct and proximate result of Defendants' acts and conduct, Plaintiff
3 has been caused to, and did, suffer and continues to suffer general damages (*e.g.*, emotional and
4 mental distress, loss of enjoyment of life, etc.).

5 169. Defendants committed the acts herein alleged with malice and/or reckless
6 indifference to Plaintiff's federally-protected rights such that punitive damages are proper to
7 punish and/or make an example of Defendants. The corporate employer Defendants are liable for
8 punitive damages because a management official of said Defendant personally acted with malice
9 or reckless indifference to Plaintiff's federally-protected rights. Thus, Plaintiff is entitled to
10 punitive damages from Defendants in an amount according to proof.

11 170. Plaintiff will also seek and is entitled to recover attorneys' fees in connection with
12 this cause of action under 42 U.S.C. section 1988.

13
14 **NINTH CAUSE OF ACTION**

15 **Discrimination in Violation of the Unruh Civil Rights**

16 **Act Against All Defendants**

17 **(Cal. Civ. Code §51)**

18 171. Plaintiff hereby re-alleges and incorporates by reference all allegations in each and
19 every preceding paragraph as if fully set forth herein.

20 172. The Unruh Civil Rights Act, found in California Civil Code section 51, provides in
21 part that: "All persons within the jurisdiction of this state are free and equal, and no matter what
22 their sex, race, color, ancestry, national origin ... are entitled to the full and equal
23 accommodations, advantages, facilities, privileges, or services in all business establishments of
24 every kind whatsoever."

25 173. Defendants are business establishments for purposes of the Unruh Civil Rights Act.
26 As part of the operation of their business, Defendants provide facilities, privileges, services, etc. to
27 permit the streaming of online content.

28 174. As alleged herein, Plaintiff contends she was made an offer of "employment"

1 within the meaning of the California Fair Employment & Housing Act. However, to the extent
2 that it is determined that the offer was not one of “employment” within the meaning of the
3 California Fair Employment & Housing Act, then alternatively Plaintiff alleges that she was
4 seeking to avail herself of the provision of facilities, privileges, services, etc. supplied by
5 Defendants in order to stream online comedy content.

6 175. As alleged herein, Defendants intentionally discriminated against Plaintiff – a
7 Black woman – by offering her financial terms that were discriminatory – *i.e.*, less money for
8 substantially similar services compared to non-Black women. By doing so, Defendants denied
9 Plaintiff equal access to and provision of facilities, privileges, services, etc. to stream online
10 content.

11 176. As a direct and proximate result of Defendants’ acts and conduct, Plaintiff has
12 suffered economic losses (the denial of fair and equitable non-discriminatory pay) and will
13 continue to suffer damages in an amount within the jurisdiction of this court, the exact amount to
14 be proven at trial. Plaintiff claims such amount as damages together with pre-judgment interest
15 pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-judgment
16 interest.

17 177. As a further direct and proximate result of Defendants’ acts and conduct, Plaintiff
18 has been caused to, and did, suffer and continues to suffer general damages (*e.g.*, emotional and
19 mental distress, loss of enjoyment of life, etc.).

20 178. Defendants’ violation(s) of the Unruh Civil Rights Act entitles Plaintiff to recover
21 statutory damages of a maximum of three times the amount of actual damages or a minimum of
22 four thousand dollars (\$4,000.00) pursuant to California Civil Code section 52(a).

23 179. The aforementioned acts of Defendants were engaged in with a deliberate, cold,
24 callous, fraudulent, and intentional manner in order to injure and damage Plaintiff and/or with a
25 willful and conscious disregard of Plaintiff’s rights. Such acts were despicable and constitute
26 malice, fraud, and/or oppression within the meaning of Civil Code section 3294. The malicious,
27 fraudulent and/or oppressive conduct was engaged in by, authorized by and/or ratified by
28 corporate officers, directors and/or managing agents. Therefore, Plaintiff requests an assessment

1 of punitive damages against Defendants in an amount to be assessed at time of trial.

2 180. Plaintiff will also seek and is entitled to recover attorneys' fees in connection with
3 this cause of action under Civil Code section 52(a).

4
5 **TENTH CAUSE OF ACTION**

6 **Unlawful and Unfair Business Practices Against All Defendants**

7 **(Cal. Bus. & Prof. Code § 17200, *et seq.*)**

8 181. Plaintiff hereby re-alleges and incorporates by reference all allegations in each and
9 every preceding paragraph as if fully set forth herein.

10 182. As detailed herein, Netflix maintains unlawful policies and/or practices of paying
11 Black women less than non-Black women for performing substantially equal or similar work.
12 Netflix maintains a business practice of doing so because Netflix's acts and omissions as alleged
13 herein have been done repeatedly over a significant period of time, and in a systematic manner, to
14 the detriment of Plaintiff.

15 183. Netflix's acts and omissions, as alleged herein, violate California and federal law
16 relating to discrimination and pay equity, and they violate the spirit of the California Equal Pay
17 Act, as amended, Labor Code § 1197.5, and therefore constitute unlawful business practices
18 prohibited by Business & Professions Code § 17200, *et seq.*

19 184. Netflix's business practice of paying Black women less than non-Black women for
20 substantially equal or similar work causes harm to Plaintiff that outweighs any reason Netflix may
21 have for doing so.

22 185. Netflix's business practice as alleged herein is also immoral, unethical, oppressive,
23 unscrupulous, and offensive to the established public policies of ensuring women and men are
24 paid equally for performing substantially equal or similar work, as reflected in numerous statutes
25 including the California Equal Pay Act (Labor Code § 1197.5), the federal Equal Pay Act (29
26 U.S.C. § 206(d)), the California Fair Employment and Housing Act (Government Code § 12940,
27 *et seq.*), Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e, *et seq.*), and Section 1981
28 (42 U.S.C. §1981).

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all issues so triable in the Complaint, or any other pleading filed in this matter.

DATED: November 14, 2019

Schimmel & Parks, APLC

The deRubertis Law Firm, APC

By: 

By: 

Michael W. Parks
Attorneys for Plaintiff
Monique Hicks

David M. deRubertis
Attorneys for Plaintiff
Monique Hicks