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FILED  
Superior Court Of California  
County Of Los Angeles

APR 01 2014

Sherri K. Garver, Executive Officer/Clerk  
By: [Signature] Deputy  
Judi Lara

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

12 JERRY KOWAL, an individual,

13 Plaintiff,

14 vs.

15 NETFLIX, INC., a Delaware corporation;  
16 REED HASTINGS, an individual; TED  
17 SARANDOS, an individual;  
18 AMAZON.COM, INC., a Delaware  
19 corporation, and DOES 1 through 50,  
20 inclusive,

21 Defendants.

Case No.

BC 541185

COMPLAINT FOR:

1. DEFAMATION;
2. FALSE LIGHT INVASION OF PRIVACY;
3. CIVIL CONSPIRACY;
4. INTENTIONAL INTERFERENCE WITH EMPLOYMENT RELATIONSHIP;
5. BLACKLISTING;
6. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY – BUSINESS & PROFESSIONS CODE §§ 16600, 16700 ET SEQ.

DEMAND FOR JURY TRIAL

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04/01/2014

CIT/CASE: BC541185  
 LEA/DEF#:   
 RECEIPT #: CHS20872159  
 DATE PAID: 04/01/14 03:57 PM  
 PAYMENT: \$435.00  
 RECEIVED: 3.0  
 CHECK: \$435.00  
 CASH: \$0.00  
 CHARGE: \$0.00  
 CARD: \$0.00

COMPLAINT

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1 Plaintiff Jerry Kowal ("Plaintiff" or "Kowal") hereby brings his complaint against the above-  
2 named Defendants and states and alleges as follows:

3 **I. INTRODUCTION**

4 1. This action involves the proverbial David and Goliath. Here, "Goliath" is defendant  
5 Netflix, Inc. ("Netflix") an international, multi-billion dollar media and entertainment company that  
6 used its considerable financial strength to enlist yet another even larger international media and  
7 entertainment corporation, defendant Amazon.com, Inc. ("Amazon"), to aid in a cutthroat and  
8 unlawful campaign to effectively blacklist a once valued and profitable executive and prevent him  
9 from competing against it.

10 2. After a successful year as a content acquisition executive at Netflix, Kowal decided  
11 he could no longer work in Netflix's cutthroat environment. He decided to instead go work for  
12 Amazon, which, as further described herein, is simultaneously a key service provider to Netflix and  
13 a competitor in the narrow (for Amazon) space of video streaming.

14 3. When Kowal announced his intent to leave, Netflix did everything it could to  
15 dissuade him. Netflix offered him higher compensation and more responsibility, and when that did  
16 not work, also bad-mouthed Amazon, warning Kowal that Amazon's streaming video business  
17 would not last and that he would regret his decision to leave.

18 4. Kowal rejected Netflix's offers, disregarded its warnings, and stood firm in his  
19 decision to join Amazon, specifically its worldwide streaming video business.

20 5. This perceived slight would not go unpunished. Among other things, Netflix  
21 proceeded to:

- 22 • publicly accuse Kowal of stealing confidential information, disclosing  
23 confidential information to Amazon, and using confidential information to  
24 compete against Netflix;
- 25 • blacklist Kowal and prohibit Netflix employees from communicating with or  
26 otherwise dealing with Kowal;
- 27 • interfere with Kowal's employment with Amazon in a malicious attempt to  
28 ruin his reputation and prevent him from working there; and

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1 • leverage its substantial business relationship with Amazon to guarantee that  
2 Kowal would be terminated from his position at Amazon and would be  
3 substantially hindered in his efforts to secure comparable replacement  
4 employment.

5 6. Kowal, in fact, did not “steal” any confidential information, nor disclose any Netflix  
6 information to Amazon or otherwise use such information to compete against Netflix.

7 **II. THE PARTIES**

8 7. At all times mentioned herein, Plaintiff was and is an individual, residing in the  
9 County of Los Angeles, State of California.

10 8. Plaintiff is informed and believes that at all times mentioned herein, Netflix was and  
11 is a Delaware corporation doing business in the County of Los Angeles, State of California.

12 Plaintiff is informed and believes that Netflix is an Internet-based television and film subscription  
13 service that has recently described itself as “the world’s leading Internet television network.”

14 9. Plaintiff is informed and believes that at all times mentioned herein, defendant Reed  
15 Hastings (“Hastings”) was a resident of California and employed by Netflix as its Chief Executive  
16 Officer.

17 10. Plaintiff is informed and believes that at all times mentioned herein, defendant  
18 Theodore Sarandos (“Sarandos”) was a resident of California and employed by Netflix as its Chief  
19 Content Officer.

20 11. Plaintiff is informed and believes that at all times mentioned herein, Amazon was and  
21 is a Delaware corporation doing business in the County of Los Angeles, State of California.

22 Plaintiff is informed and believes that Amazon is an Internet-based company that started as a forum  
23 for goods of all kinds at the lowest possible prices and has successfully expanded into the additional  
24 areas of e-reader manufacturing (Kindle), cloud storage and developer services (Amazon Web  
25 Services), publishing (Kindle Direct Publishing and Amazon Publishing), and video streaming and  
26 content creation (Amazon Studios).

27 12. Plaintiff is informed and believes, and based thereon alleges, that pursuant to  
28 California Code of Civil Procedure section 474, the fictitiously named defendants sued herein as

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1 Does 1 through 50, inclusive, and each of them, were in some manner responsible or legally liable  
2 for the actions, events, transactions and circumstances alleged herein. The true names and capacities  
3 of such fictitiously named defendants, whether individual, corporate, associate, or otherwise, are  
4 presently unknown to Plaintiff and Plaintiff will seek leave of the Court to amend this Complaint to  
5 assert the true names and capacities of such fictitiously named defendants when the same have been  
6 ascertained. For convenience, Netflix, Amazon, Hastings, Sarandos and Does 1-50 are collectively  
7 referred to herein as "Defendants."

8 13. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and  
9 each of them, are and were at all times herein mentioned, the agents, servants, employees, or joint  
10 venturers of each of the other Defendants, and at all times herein mentioned were acting within the  
11 course and scope of said agency, employment, or service in furtherance of the joint venture.

12 **III. FACTUAL BACKGROUND**

13 14. Kowal is an experienced and accomplished senior executive in the media and  
14 entertainment industry, and until the events complained of herein, Kowal was well-regarded in the  
15 industry. Prior to his employment with Netflix and then Amazon, Kowal held senior positions at  
16 several successful media and entertainment companies.

17 15. Kowal has also co-founded a 501(c)(3) non-profit corporation, *Prader Willi Angels*,  
18 to raise research funds and create awareness for a genetic disorder called Prader-Willi Syndrome,  
19 with which Kowal's three-year old daughter is afflicted.

20 **PLAINTIFF'S EMPLOYMENT WITH NETFLIX**

21 16. On or about June 14, 2012, Kowal commenced employment as a Director of Content  
22 Acquisition for Netflix, based in its Beverly Hills, California office. Kowal was responsible for  
23 licensing television and film content for Netflix's subscription video on demand service.

24 17. When Netflix first hired Kowal, Netflix's recruiter described Kowal's annual  
25 compensation as "top of market."

26 18. Netflix employed Kowal on an at-will basis. At no time did Kowal have an  
27 employment agreement or any agreement not to compete with Netflix.

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1           19.     During his employment with Netflix, Kowal initially reported directly to Jason  
2 Ropell, VP Content ("Ropell"). Ropell's employment with Netflix ended on or about August 29,  
3 2012. Ropell then began working for Amazon. Thereafter, Kowal reported directly to Sarandos  
4 until on or about January 1, 2013, whereupon Kowal began reporting directly to Sean Carey, VP  
5 Content ("Carey"), up until the date Kowal resigned from Netflix.

6           20.     From June 14, 2012 through June 4, 2013, Netflix entrusted Kowal with a  
7 tremendous amount of responsibility, including oversight of content acquisition for Canada, the  
8 largest and most profitable of Netflix's international territories. Netflix's Canadian territory grew its  
9 paid subscriber base substantially during that period and also achieved the greatest success of any  
10 international territory in terms of per user metrics (e.g., median hours viewed and subscriber cancel  
11 rates, among others).

12           21.     In addition to tasking Kowal with his primary responsibility of content acquisition,  
13 Netflix asked Kowal to speak to the Canadian media about Netflix's content strategy, to assist the  
14 company in discussions with Canadian governmental authorities, and with myriad other tasks above  
15 and beyond what comparable Director-level employees in the content acquisition team were being  
16 asked to do at the time.

17           22.     Kowal's exceptional performance in running content acquisition in Canada resulted  
18 in Carey granting Kowal additional responsibilities, including content acquisition for a significant  
19 portion of Netflix's US television business, the company's single largest business in terms of  
20 content spend. At the time, Kowal was the only Director-level employee in Netflix's content  
21 acquisition team in Beverly Hills, California with primary oversight for studio content licensing  
22 across multiple territories. Kowal is informed and believes that, typically, only VP-level content  
23 acquisition executives (who earned base salaries in excess of \$1,300,000 per year during calendar  
24 year 2013) had comparable responsibility.

25           23.     Throughout Kowal's employment with Netflix, his reputation within the company  
26 was exceptional.

27           24.     Tawni Crazz, Chief Talent Officer for Netflix, in front of dozens of new hires at  
28 'New Employee Colleges' that Netflix would periodically conduct for recent hires in its Los Gatos,

1 California headquarters, described Kowal as an exemplary Netflix employee because of the way that  
2 Kowal had taken charge of his responsibilities and performed so highly after his then-boss Ropell  
3 had left Netflix in August 2012.

4 25. Kowal also received stellar performance reviews from his boss Carey and other  
5 colleagues as a part of Netflix's annual '360' performance review process.

6 26. Throughout Kowal's employment with Netflix, there was a running theme of  
7 comparing his results in Canada with those in the less successful territories in which Netflix  
8 operated, especially the United Kingdom ("UK"). Indeed, while Kowal was employed at Netflix,  
9 Kowal noticed that Netflix's UK territory floundered and underperformed, incurring millions of  
10 dollars in losses per quarter and generally failing to meet company expectations. In fact, the team at  
11 Netflix responsible for acquiring content for the UK had themselves referred to Netflix's service in  
12 the UK as a "leaky bucket" -- meaning the UK could not retain subscribers for very long. By  
13 comparison, Canada had among the highest subscriber retention rates of any Netflix territory.

14 27. During his employment with Netflix, other employees of Netflix (including  
15 executives tasked with acquiring content for the UK territory) often questioned Kowal about the  
16 performance disparity between the Canadian territory and the UK territory. To better address such  
17 questions with his UK territory counterparts, Kowal downloaded and analyzed various license  
18 agreements, presentations and other documents to determine what might explain the performance  
19 differences between the Canadian territory and the UK territory. Netflix had granted Kowal, in  
20 addition to many other employees at various levels at Netflix, full authorization to access these  
21 documents at any time using customary company login credentials.

22 **KOWAL PRESENTS AT NETFLIX'S APRIL QUARTERLY BUSINESS REVIEW**

23 28. Every quarter, Netflix held a "Quarterly Business Review" meeting (the "QBR").  
24 The QBR was a large, internal two-day offsite meeting that Netflix held usually a few weeks before  
25 that quarter's company earnings were to be announced to the market at large. QBRs were typically  
26 attended by approximately 200 employees of Netflix (including all employees at the Director level  
27 and above and, frequently, members of the company's Board of Directors as well). At QBRs,  
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1 multiple executives and employees of Netflix presented on both the prior quarter's performance as  
2 well as future projects and initiatives of import.

3 29. Netflix asked Kowal to present at the April 2013 QBR, held from April 11-12, to  
4 update the audience on the company's successful Canadian operations. Kowal did so, and was  
5 personally commended by senior executives of Netflix, including by Defendant Sarandos, for the  
6 quality of his presentation.

7 30. Also at the April 2013 QBR, several other presenters made comparisons between  
8 Netflix's performance in its Canadian territory versus its performance in its other international  
9 territories, namely the UK.

### 10 KOWAL CHOOSES TO LEAVE NETFLIX

11 31. Notwithstanding his success in performing his duties while working at Netflix, and  
12 the excellent relationships he cultivated with his peers at Netflix, Kowal did not feel comfortable in  
13 the company's working environment. The atmosphere at Netflix was cold and hostile. Kowal is  
14 informed and believes that senior employees and executives routinely berated and bullied their direct  
15 reports and facilitated a cutthroat, "winner takes all" atmosphere that made teamwork and  
16 collaboration impossible.

17 32. Kowal is informed and believes that Netflix cultivated a toxic culture in which  
18 employees were constantly petrified of losing their jobs, and simultaneously willing to do almost  
19 anything to keep them -- no matter what the cost. Kowal is informed and believes that Netflix even  
20 fired one employee after that employee refused his supervisor's command to access and make use  
21 of, for the benefit of Netflix, trade secret information belonging to the supervisor's former employer,  
22 a large studio that licenses a significant amount of content to Netflix.

23 33. During his period of employment with Netflix, Kowal witnessed, among other things,  
24 (i) employees conspiring to undermine and ensure the termination of a boss whom they personally  
25 disliked, (ii) executives making hostile and derogatory remarks about colleagues and business  
26 partners and consistently working to undermine both, and (iii) senior executives publicly and falsely  
27 accusing former employees, who voluntarily left Netflix for other opportunities, of incompetence  
28 and worse.

1           34. For example, at the January 2013 QBR, Kowal witnessed Defendant Sarandos, in  
2 front of over 200 Netflix employees and members of the Board of Directors, make several  
3 unsolicited, disparaging remarks about Ropell, including derogatory comments about his  
4 competence and false statements about the seniority of his new position with Amazon.

5           35. After nearly a year working in this hostile environment at Netflix, Kowal was ready  
6 for a change. An opportunity to join the Digital Video team at Amazon arose and Kowal jumped at  
7 the chance.

8           36. Netflix and Amazon have a long-running relationship that is primarily defined by  
9 Netflix's status as a highly-valued Amazon customer. First, Netflix is one of Amazon Web  
10 Services' ("AWS") most significant customers. Annually, Netflix pays Amazon hundreds of  
11 millions of dollars for use of AWS's cloud computing/storage platform service, which supports the  
12 entirety of Netflix's operations, including storage of all content that is streamed to Netflix users.  
13 Upon information and belief, Netflix is by far Amazon's largest AWS customer, in terms of  
14 Netflix's annual spend with Amazon/AWS. Second, Amazon has designed its extremely popular  
15 Kindle to enable Kindle owners who are also Netflix subscribers to access the Netflix service  
16 through the Kindle.

17           37. Both Netflix and Amazon offer video streaming services, though Kowal is informed  
18 and believes that while streaming video is Netflix's core business, it is just one of many aspects of  
19 Amazon's.

20           38. On June 4, 2013, Kowal gave notice of his resignation from Netflix to Carey, stating  
21 that he would be taking a position in the Digital Video team at Amazon.

22           39. Carey asked Kowal whether in his new role at Amazon he would be reporting to  
23 Ropell because, if that were the case, Carey stated, "then that would be a problem," indicating  
24 Netflix's desire for Kowal not to be employed in a position that would compete with Netflix.

25           40. Netflix, through Carey, then offered Kowal more money and greater responsibility if  
26 Kowal would stay with Netflix. Kowal declined.

27           41. Carey repeated Netflix's offer of more money and Sarandos also made several false  
28 and disparaging remarks about Amazon in an effort to dissuade Kowal from working there. Among



1 other things, Sarandos stated that Amazon forced employees to “share hotel rooms” during business  
2 travel and that the company would exit the streaming video business “within 2 years.” The last  
3 words Sarandos spoke to Kowal were that he “would regret going to Amazon.”

4 42. Despite Kowal’s offer to stay for two weeks to help with a transition, Netflix asked  
5 Kowal to leave immediately and not return.

6 43. On June 6, 2013, Carey sent an email message to the entire Content Acquisition team  
7 in Beverly Hills informing them that Kowal was leaving for Amazon “in an unspecified role in the  
8 Digital Video team” and that “appropriate measures were being taken to limit our competitive  
9 exposure going forward.”

10 44. On or about June 21, 2013, Kowal began his new role with Amazon, and spent the  
11 week of June 24 traveling to Europe to meet the local Digital Video teams in each territory. As this  
12 was only his first full week working for Amazon, Kowal was primarily a silent observer during this  
13 “orientation” period and did not directly participate in deal negotiations or strategy sessions.

14 **NETFLIX’S RETALIATORY CAMPAIGN AGAINST KOWAL**

15 45. Kowal is informed and believes that Netflix held its July 2013 QBR in San Francisco,  
16 California from July 1-2, 2013, only a week after Kowal had begun working at Amazon.

17 46. Kowal is informed and believes that at the July 2013 QBR, Hastings and Sarandos  
18 announced in front of approximately 200 employees and Board members that Kowal was under  
19 investigation for having given Netflix’s confidential and proprietary documents and information to  
20 Amazon and for using that information to compete against Netflix.

21 47. Kowal is informed and believes that Hastings and Sarandos instructed those in  
22 attendance to cease any contact whatsoever with Kowal irrespective of whatever personal,  
23 professional or preexisting relationships may exist. Neither Hastings nor Sarandos made any effort  
24 to prevent those in attendance from disseminating these false statements outside of the company  
25 until they had been investigated and/or verified.

26 48. Kowal is informed and believes that Netflix’s employees have repeatedly  
27 disseminated these false and defamatory statements to one another, as well as to business partners,  
28 former employees of Netflix, and friends and family, thereby damaging Kowal’s reputation.

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1           49.     Kowal is informed and believes that Kowal is now being described by employees of  
2 Netflix to others in the media and entertainment industry as a “traitor” and thief.

3           50.     Kowal is informed and believes that Netflix, through executives Hastings and  
4 Sarandos, has publicly stated that Kowal will “never work in this industry again.”

5           51.     On July 8, 2013, approximately one week after the July 2013 QBR in which Hastings  
6 and Sarandos vilified Kowal, Kowal received a letter from Netflix’s lawyers, addressed to both  
7 Kowal and Andrew DeVore, Vice President and Assistant General Counsel for Amazon  
8 (“DeVore”), falsely accusing Kowal of using confidential Netflix information to compete unfairly  
9 with Netflix in his new role with the Digital Video team at Amazon (the “Netflix Demand Letter”).

10          52.     Among other demands, Netflix demanded access to Kowal’s *personal* computer and  
11 *personal* email accounts to conduct a forensic analysis to determine whether any documents  
12 belonging to Netflix (the “Netflix Documents”) at issue had been disseminated to Amazon.

13          53.     On that same date, after receiving the Netflix Demand Letter, Amazon placed Kowal  
14 on mandatory leave, seized his work laptop, disabled his work email account and blocked any  
15 further access to the company’s servers.

16          54.     On July 9, 2013, Amazon instructed Kowal to meet with Harry Korrell (“Korrell”), a  
17 partner with the law firm Davis Wright Tremaine in Seattle who would be serving as Amazon’s  
18 outside counsel in connection with the issues Netflix raised.

19          55.     Kowal acknowledged that some Netflix information may still exist on some of his  
20 personal devices from his prior work at Netflix but he emphatically denied the accusations in the  
21 Netflix Demand Letter that he had given any such information to Amazon or used it to otherwise  
22 compete against Netflix.

23          56.     During his meeting with Kowal on July 9, 2013, Korrell informed Kowal that he had  
24 represented Amazon in several similar such matters in the past and that the company had a fairly  
25 standard procedure in place for taking the appropriate steps necessary to investigate and resolve such  
26 claims. Korrell told Kowal that “such ‘sour grapes’ accusations from ‘spiteful’ former employers”  
27 were relatively common, and further downplayed any potential resulting employment-related  
28 consequences for Kowal, stating that it would “all blow over.”

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1           57.     Kowal was led to believe by Korrell in the July 9, 2013 meeting that the matter would  
2 soon simply blow over if Kowal and Amazon simply acquiesced to Netflix's demands, no matter  
3 how unreasonable or unfounded.

4           58.     In the very worst case, Korrell stated that Amazon might consider modifying certain  
5 of Kowal's job responsibilities in an effort to appease and mollify Netflix, such that, for instance,  
6 Kowal might be prohibited for some brief period of time from working in a territory in which  
7 Netflix directly competes with Amazon. Korrell stated, however, that this concession was certainly  
8 not something that he felt compelled to offer to Netflix at this early stage in the matter.

9           59.     Neither Korrell nor Amazon made any statement to Kowal that suggested or implied  
10 that Amazon had any policy mandating termination of employment in the event a former employer  
11 makes such accusations against a current employee.

12           60.     In fact, Korrell and, through him, others at Amazon, led Kowal to believe quite the  
13 opposite -- that his employment with Amazon would be secure and, further, that he would be  
14 provided reasonable protection from his vindictive and anti-competitive former employer, if he did  
15 what Amazon and Korrell asked of him as part of a coordinated response to the Netflix Demand  
16 Letter.

17           61.     While Korrell had disclosed to Kowal his prior representation of Amazon in similar  
18 such matters, he failed to disclose that his wife Elizabeth Wellinghoff Korrell had for several years  
19 served as CEO of Bezos Expeditions, the personal investment arm of Jeffrey Bezos (Chief  
20 Executive Officer of Amazon), up until her death in November 2010. Kowal was thus never made  
21 aware of just how far Korrell's relationship with Amazon extended beyond the typical attorney-  
22 client relationship and how unlikely it was that Korrell could provide Kowal with adequate  
23 independent representation in this matter.

24           62.     The next day, July 10, 2013, Amazon proposed to Kowal a "joint representation"  
25 structure in which Korrell would represent both Kowal and Amazon. Korrell made it clear that  
26 Kowal did not need to obtain separate legal representation and that Kowal's and Amazon's interests  
27 were aligned. In a conflict waiver letter dated July 15, 2013, Korrell informed Kowal that: "We do  
28 not see any present conflict in jointly representing Amazon.com and Mr. Kowal. Your interests are

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1 aligned at this point, and no divergence of interest is presently anticipated.” Korrell advised Kowal  
2 that he would notify the parties if he saw a conflict developing, and that if a conflict did develop,  
3 Kowal would need to seek independent counsel, as in such a case Korrell would continue to  
4 represent his long-time client Amazon, even if such representation were adverse to Kowal.

5 63. In good faith reliance upon Korrell’s statements and in an effort to remain in good  
6 standing with his then-employer Amazon (and at the time unaware of the unusually close  
7 relationship between Korrell and Amazon as described in Paragraph 61 above), Kowal agreed to this  
8 “joint representation” structure.

9 64. Although eager to clear his name of any wrongdoing and eager to assure Amazon that  
10 Netflix’s accusations were untrue, Kowal was suspicious of Netflix’s motives and, therefore,  
11 initially strongly resisted complying with Netflix’s demands to access his personal devices and  
12 personal email account.

13 65. On or about July 12, 2013, Amazon, through Korrell, convinced Kowal to relinquish  
14 his *personal* devices to Netflix. In a good faith attempt to stay in the good graces of his employer  
15 Amazon, and due to assurances from its agent Korrell (allegedly acting on *Kowal’s* behalf and  
16 engaged to protect *Kowal’s* interests) that this would blow over and Kowal would keep his job if he  
17 just acquiesced on this point, Kowal reluctantly agreed to relinquish his *personal* devices (including  
18 access to his *personal* email account and a *personal* USB thumb drive device) to Netflix’s hand-  
19 picked forensic analysis firm, SFL Data.

20 66. On or about July 26, 2013, after investigating each of the *personal* devices Kowal  
21 had made available, SFL Data confirmed that Kowal had *not* disseminated any of the Netflix  
22 Documents in question to Amazon. SFL Data also confirmed that Kowal had *not* printed any  
23 Netflix Documents *nor* had Kowal copied any Netflix Documents onto any other cloud storage  
24 system or any other hardware device.

25 67. Kowal is informed and believes that also on or about July 26, 2013, Amazon  
26 concluded an independent internal investigation that also confirmed that Kowal had *not* downloaded  
27 any Netflix Documents onto Amazon’s servers, and that Kowal had *not* shared any Netflix  
28 Documents with Amazon’s employees. Knowing that false statements about the circumstances of

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1 Kowal's termination from Amazon have been circulated within the industry, Amazon has refused to  
2 provide written verification of the results of its investigation, which would enable Kowal to rebut  
3 the false statements.

4 68. Kowal is further informed and believes that on or about July 22, 2013, before either  
5 of the above investigations had concluded, Netflix and defendant Hastings leveraged Netflix's status  
6 as a key Amazon customer and contacted the highest levels of Amazon's senior management to  
7 secure Amazon's assurance and guarantee that Kowal's employment with Amazon would be  
8 terminated irrespective of the results of the investigation.

9 69. One week later, on the afternoon of Monday, July 29, 2013 Korrell, for the very first  
10 time, informed Kowal that Amazon's interests had now diverged from Kowal's and that Amazon  
11 was ending the "joint representation." Korrell stated he would continue to represent Amazon and  
12 advised Kowal to seek independent counsel.

13 70. On Tuesday, July 30, 2013, Kowal -- at this point still employed by Amazon --  
14 received a package from Amazon that had been sent to him overnight (via UPS) from Amazon's  
15 Seattle headquarters -- i.e., on Monday, July 29, 2013 -- the same day Korrell first advised Kowal  
16 that Amazon's interests had diverged from Kowal's. This package contained accrued but unpaid  
17 compensation owed to Kowal by Defendant Amazon up through Wednesday, July 31, 2013.

18 71. On the next day, Wednesday, July 31, 2013, notwithstanding the fact that the sham  
19 investigations and forensic results had by then confirmed that Netflix's allegations were untrue and  
20 that Kowal had not taken any Netflix Documents to Amazon, Amazon nonetheless terminated  
21 Kowal.

22 72. On July 31, 2013, in addition to certain housekeeping items related to his  
23 termination, Amazon sent Kowal via email a Termination Letter and a Severance Agreement, legal  
24 documents which Kowal is informed and believes had been discussed, prepared and finalized by and  
25 between Amazon and its attorneys well before July 31, 2013.

26 73. When Kowal inquired why he was being terminated despite the fact that all of the  
27 forensic data confirmed that Kowal had not taken any Netflix Documents to Amazon, Amazon  
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1 informed Kowal that it had a "strict liability" policy which mandated Kowal's termination in this  
2 case.

3 74. This "policy" had never been communicated to Kowal by Korrell or by anyone  
4 employed by Amazon. Quite the opposite, Korrell and Amazon continuously promised Kowal that  
5 by complying with Netflix's demands in the Netflix Demand Letter, his employment with Amazon  
6 would not be in jeopardy. The existence of any such "strict liability" policy conflicts directly with  
7 the representations of Amazon's agent Korrell that there was no conflict prohibiting his joint  
8 representation of Amazon and Kowal and that their interests were aligned.

9 75. Based on information and belief, Netflix has continued to disseminate false and  
10 defamatory information -- both internally and outside of Netflix -- about the circumstances  
11 surrounding Kowal's termination by Amazon. On at least one such occasion, executives of Netflix  
12 announced and gloated before dozens of other employees of Netflix that Kowal's employment had  
13 been terminated by Amazon.

14 **FIRST CAUSE OF ACTION**

15 **(Defamation)**

16 **(Against Defendants Netflix, Hastings, Sarandos and Does 1-25**

17 **(collectively, the "Netflix Defendants"))**

18 76. Kowal re-alleges and incorporates herein paragraphs 1 through 75 of the Complaint  
19 as though fully set forth herein.

20 77. Kowal is informed and believes that over the last several months, the Netflix  
21 Defendants have made several false and defamatory statements about Kowal to third parties (the  
22 "Statements").

23 78. For example, Kowal is informed and believes that at the July 2013 QBR, the Netflix  
24 Defendants advised over 200 Netflix employees and Board members that Kowal gave confidential  
25 Netflix documents to Amazon and was using those documents to compete against Netflix.

26 79. Additionally, Kowal is informed and believes that at the July 2013 QBR and in  
27 subsequent meetings, the Netflix Defendants stated that Kowal was under investigation for  
28 providing confidential Netflix documents to Amazon, was a traitor and that Netflix would make sure

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1 Kowal never worked in this industry again.

2 80. The Statements were of and concerning Kowal and persons who heard them  
3 reasonably understood them to be references to Kowal.

4 81. The Statements are false and defamatory *per se* and expose Kowal to hatred,  
5 contempt, ridicule and obloquy and cause him to be shunned, avoided and tend to injure him in his  
6 occupation.

7 82. Kowal is informed and believes that the Netflix Defendants made these false and  
8 defamatory Statements with knowledge of their falsity and/or with reckless disregard for their truth  
9 or falsity.

10 83. As a direct and proximate result of the above-described conduct of the Netflix  
11 Defendants, Kowal has suffered general and special damages in an amount to be determined at trial  
12 but believed to be no less than \$1,000,000, including without limitation, damage to Kowal's  
13 reputation, career and standing in the community.

14 84. Kowal is informed and believes that the Netflix Defendants acted with oppression,  
15 fraud and malice and their conduct justifies an award of punitive damages in an amount to be proven  
16 at trial.

17 **SECOND CAUSE OF ACTION**

18 **(False Light)**

19 **(Against the Netflix Defendants)**

20 85. Kowal re-alleges and incorporates herein paragraphs 1 through 75, and 77 through 84  
21 of the Complaint as though fully set forth herein.

22 86. Kowal is informed and believes that over the last several months, the Netflix  
23 Defendants have made several false Statements about Kowal to third parties.

24 87. For example, Kowal is informed and believes that at the July 2013 QBR, the Netflix  
25 Defendants advised over 200 Netflix employees and Board members that Kowal gave confidential  
26 Netflix documents to Amazon and was using those documents to compete against Netflix.

27 88. Additionally, Kowal is informed and believes that at the July 2013 QBR and in  
28 subsequent meetings, the Netflix Defendants stated that Kowal was under investigation for

1 providing confidential Netflix documents to Amazon, was a traitor and that Netflix would make sure  
2 Kowal never worked in this industry again.

3 89. The Statements were of and concerning Kowal and persons who heard them  
4 reasonably understood them to be references to Kowal.

5 90. The Statements are false and expose Kowal to hatred, contempt, ridicule and obloquy  
6 and cause him to be shunned, avoided and tend to injure him in his occupation.

7 91. To the extent that all or any part of the Statements are found not to be defamatory of  
8 Kowal, they place Kowal in a false light which would be highly offensive to a reasonable person.

9 92. Kowal is informed and believes that the Netflix Defendants made the Statements  
10 with knowledge of their falsity and/or with reckless disregard for their truth or falsity.

11 93. Upon information and belief, Kowal alleges that the Statements were made by the  
12 Netflix Defendants in a grossly irresponsible manner with want of due care.

13 94. As a direct and proximate result of the above-described conduct of the Netflix  
14 Defendants, Kowal has suffered general and special damages in an amount to be determined at trial  
15 but believed to be no less than \$ 1,000,000, including without limitation, damage to Kowal's  
16 reputation, career and standing in the community.

17 95. Kowal is informed and believes that the Netflix Defendants acted with oppression,  
18 fraud and malice and their conduct justifies an award of punitive damages in an amount to be proven  
19 at trial.

20 **THIRD CAUSE OF ACTION**

21 **(Civil Conspiracy)**

22 **(Against All Defendants)**

23 96. Kowal re-alleges and incorporates herein paragraphs 1 through 75, 77 through 84,  
24 and 86 through 95 of this Complaint as though fully set forth herein.

25 97. Kowal is informed and believes that the Defendants conspired with each other to  
26 defame Kowal and place him in a false light such that Kowal's reputation would be ruined in this  
27 industry making him unemployable, which the conspirators knew would result from such  
28 conspiracy.



1           98. Kowal is informed and believes that the Netflix Defendants discussed and planned  
2 with each other in advance of the July 2013 QBR to use the QBR platform and abuse defendant  
3 Hastings' and defendant Sarandos' positions of power as officers and leaders of Netflix to defame  
4 Kowal in front of over 200 employees and Board members of Netflix by:

5           a. stating that Kowal gave confidential Netflix Documents to Amazon and was  
6 using those Netflix Documents to unfairly compete against Netflix;

7           b. stating that Kowal was under investigation for providing Netflix Documents  
8 to Amazon;

9           c. portraying Kowal as a traitor and implying that Netflix would make sure  
10 Kowal never worked in this industry again;

11           d. instructing employees of Netflix, irrespective of any pre-existing relationship  
12 with Kowal, not to speak to or interact with Kowal in any way; and

13           e. encouraging employees and Board members of Netflix to further disseminate  
14 the false and defamatory Statements made by defendants Hastings and Sarandos at the July 2013  
15 QBR, to further expose Kowal to hatred, contempt, ridicule and obloquy and cause him to be  
16 shunned, avoided and to injure him in his occupation.

17           99. The Amazon Defendants participated in and furthered this conspiracy by, among  
18 other things, terminating Kowal's employment at Netflix's behest and in violation of public policy  
19 and refusing to provide Kowal with the written verification he requested that would help him  
20 address and rebut the false charges.

21           100. Kowal is informed and believes that Does 1-50 actively participated in this  
22 conspiracy prior to, during and after the July 2013 QBR. Kowal intends to discover the true  
23 identities of Does 1-50 who participated in the aforesaid conspiracy and plans to seek leave of Court  
24 to amend this Complaint to assert and incorporate the true names and capacities of such fictitiously  
25 named defendants when the same have been ascertained.

26           101. As a proximate result of the aforesaid acts of Defendants, Kowal has suffered actual,  
27 consequential and incidental financial losses, including without limitation, loss of future earning  
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1 potential and benefits, and the intangible loss of employment related opportunities in his field and  
2 damage to his professional reputation, all in an amount subject to proof at the time of trial.

3 102. Kowal is informed and believes that the Defendants acted with oppression, fraud and  
4 malice, as evidenced by numerous factors, including, without limitation, the Netflix Defendants'  
5 failure to investigate the truth of the Statements, the Netflix Defendants' excessive publication of the  
6 Statements far beyond that purportedly necessary for any group interest, the Netflix Defendants'  
7 pattern and practice of defaming former Netflix employees who go to work at Amazon, the Amazon  
8 Defendants' deliberate concealment of the results of their internal investigation of the Statements,  
9 and the Amazon Defendants' termination of Kowal's employment even after investigations of the  
10 Statements established their falsity. Therefore, Defendants' conduct justifies an award of punitive  
11 damages in an amount to be proven at trial.

12 **FOURTH CAUSE OF ACTION**

13 **(Intentional Interference with Employment Relationship)**

14 **(Against the Netflix Defendants)**

15 103. Kowal re-alleges and incorporates herein paragraphs 1 through 75; 77 through 84, 86  
16 through 95, and 96 through 102 of this Complaint as though fully set forth herein.

17 104. At all material times, the Netflix Defendants had knowledge of Kowal's employment  
18 with Amazon.

19 105. The Netflix Defendants knowingly and intentionally disrupted that relationship and  
20 induced Amazon to terminate it by (1) by defaming Kowal, including through those Statements  
21 made by Hastings and Sarandos at the July 2013 QBR, which were largely repeated and conveyed to  
22 Amazon in the letter dated July 8, 2013, from counsel for Netflix to Amazon, and (2) by leveraging  
23 its status as a key customer of Amazon to intervene in the early stages of its investigation and ensure  
24 that Netflix's desired outcome -- namely, the termination of Kowal's employment -- would take  
25 place irrespective of the results of such investigation.

26 106. As a proximate result of the Netflix Defendants' interference with the Kowal's  
27 employment with Amazon, Kowal has suffered damages in an amount to be proven at trial.

28 107. Kowal is informed and believes that the Netflix Defendants acted with oppression,

1 fraud and malice and their conduct justifies an award of punitive damages in an amount to be proven  
2 at trial.

3 **FIFTH CAUSE OF ACTION**

4 **(Misrepresentation in Violation of Labor Code § 1050 - Blacklisting)**

5 **(Against the Netflix Defendants)**

6 108. Kowal re-alleges and incorporates herein paragraphs 1 through 75, 77 through 84, 86  
7 through 95, 96 through 102, and 103 through 107 of this Complaint as though fully set forth herein.

8 109. Kowal is informed and believes that the Netflix Defendants have acted in a manner  
9 and shared information in regard to this matter and Kowal's termination from Amazon that has been  
10 intended to prevent Kowal from successfully obtaining substitute employment.

11 110. Kowal is informed and believes and alleges that Netflix has provided, on at least one  
12 occasion, a prospective employer with false information of a negative nature concerning Kowal.

13 111. Kowal is informed and believes and alleges that this information and these statements  
14 regarding his termination were communicated with the intent to retaliate against Kowal for having  
15 left Netflix to work for its key competitor (i.e., to make Kowal "regret" going to Amazon), and to  
16 blacklist Kowal from future employment.

17 112. As a result of said conduct by the Netflix Defendants, Kowal has lost, and will  
18 continue to lose, income in an amount to be proven at the time of trial. Kowal claims said lost  
19 income as damages, together with prejudgment interest, pursuant to California Code of Civil  
20 Procedure § 3287, and any other provisions of law providing for prejudgment interest. Kowal also  
21 seeks treble damages pursuant to California Labor Code § 1054.

22 **SIXTH CAUSE OF ACTION**

23 **(Wrongful Termination in Violation of Public Policy –**

24 **Business & Professions Code §§ 16600, 16700 et seq.)**

25 **(Against Amazon and Does 26-50)**

26 113. Kowal re-alleges and incorporates herein paragraphs 1 through 75, 77 through 84, 86  
27 through 95, 96 through 102, 103 through 107, and 108 through 112 of this Complaint as though fully  
28 set forth herein.

1 114. Kowal and Amazon were at all relevant times herein engaged in an employee-  
2 employer relationship.

3 115. Kowal is informed and believes that, in response to the Netflix Demand Letter, the  
4 Amazon Defendants conducted a "sham investigation," which among other things induced Kowal to  
5 relinquish his personal property despite his strong objections to the contrary.

6 116. Kowal had been assured by Korrell and the Amazon Defendants that his employment  
7 with Amazon would not be in jeopardy if he were only to comply with Netflix's demands, no matter  
8 how unreasonable or unfounded.

9 117. Despite forensic evidence disproving Netflix's false Statements regarding Kowal's  
10 purported misuse of Netflix's Documents, Amazon nevertheless terminated Kowal's employment on  
11 July 31, 2013, citing a pretextual "strict liability" policy, and then refused to provide Kowal with any  
12 writing confirming that Amazon's independent investigation confirmed that Kowal had not  
13 disclosed any Netflix information to Amazon. The Amazon Defendants were aware that rumors  
14 were quickly spreading about Kowal's alleged disclosures; rumors which were only given credibility  
15 with Amazon's sudden termination of Kowal.

16 118. Kowal is informed and believes that Kowal's employment with Amazon was offered  
17 as a sacrifice by Amazon to Netflix, a valued Amazon customer.

18 119. Kowal is informed and believes that Netflix asked Amazon to terminate Kowal's  
19 employment with Amazon in order to restrain him from competing with Netflix, and that Amazon  
20 acquiesced because Netflix was a valued Amazon customer.

21 120. Kowal is informed and believes that Amazon was planning to accede to any demand  
22 made by its valued customer Netflix and that once Netflix intervened into the process and demanded  
23 that Amazon terminate Kowal, Kowal's termination was *a fait accompli* -- irrespective of the results  
24 of the sham investigation and irrespective of whatever promises had been made by the Amazon  
25 Defendants to Kowal regarding his employment.

26 121. Kowal is informed and believes that Amazon terminated the relationship not for any  
27 legitimate reason, such as the results of its investigation or any purported "strict liability" policy, but  
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1 in response to pressure from Netflix to effectuate an unlawful restraint of competition and employee  
2 mobility.

3 122. The termination was a violation of California public policy in favor of open  
4 competition and employee mobility, which is expressed in Business & Professions Code § 16600  
5 and Business & Professions Code § 16720 and 16726, pursuant to which any and all trusts created or  
6 carrying out restrictions in trade or commerce are also against public policy and unlawful.

7 123. Amazon's termination of Kowal's employment at the behest of his former employer  
8 Netflix constitutes an illegal conspiracy against trade in violation of Business & Professions Code  
9 §§ 16600, 16720, 16726, and 16755, and the public policy of the State of California embodied by  
10 those laws.

11 124. As a proximate result of Amazon's termination of Kowal's employment with  
12 Amazon, Kowal has suffered damages in an amount to be proven at trial.

13 125. Pursuant to Business & Professions Code § 16750(a), Kowal requests an award of  
14 three times his actual damages, plus interest pursuant to Business & Professions Code § 16761.

15 126. Pursuant to Business & Professions Code § 16755(a)(1), Kowal requests that a fine  
16 of not more than \$1,000,000 be imposed on Netflix and Amazon, and each of them.

17 127. Kowal is informed and believes that the Defendants acted with oppression, fraud and  
18 malice and their conduct justifies an award of punitive damages in an amount to be proven at trial.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Kowal prays for judgment against Defendants as follows:

- 21 1. For actual and special damages in an amount to be determined at trial, but believed  
22 not to be less than \$1,000,000, with respect to Kowal's first and second causes of action.
- 23 2. For compensatory damages, past and future, in an amount adequate to compensate  
24 Kowal;
- 25 3. For loss of future earnings, according to proof;
- 26 4. For three times Kowal's actual damages with respect to his fifth and sixth causes of  
27 action;
- 28

- 1           5.     For a fine pursuant to Business & Professions Code § 16755(a)(1) in connection with  
2 Kowal's sixth cause of action;
- 3           6.     For exemplary and punitive damages for Defendants' willful and malicious actions;
- 4           7.     For costs of suit, and attorneys' fees, incurred herein;
- 5           8.     For prejudgment and post judgment interest at the maximum rate allowed by law;
- 6           9.     For such other relief that the Court may deem just and proper.

7

8 Dated: April 1, 2014

CYPRESS, LLP

9 By: 

Caroline H. Mankey

Attorneys for Plaintiff JERRY KOWAL

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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury.

Dated: April 1, 2014

CYPRESS, LLP

By: 

Caroline H. Mankey

Attorneys for Plaintiff JERRY KOWAL

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