

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE FOX CORPORATION
DERIVATIVE LITIGATION

CONSOLIDATED
C.A. No. 2023-0418-JTL

VERIFIED AMENDED STOCKHOLDER DERIVATIVE COMPLAINT

Co-Lead Plaintiffs the New York City Employees' Retirement System, New York City Board of Education Retirement System, New York City Fire Department Pension Fund, New York City Police Pension Fund, and New York City Teachers' Retirement System (collectively, the "NYC Funds") and the State of Oregon, by and through the Oregon Attorney General and Oregon State Treasurer on behalf of the Oregon Public Employees Retirement Fund ("Oregon" and together with the NYC Funds, "Co-Lead Plaintiffs"), stockholders of Fox Corporation ("Fox", "Fox Corp." or the "Company"), bring this action on Fox's behalf against the current or former officers and directors identified below ("Defendants"). The allegations in this Verified Complaint are based on the knowledge of Co-Lead Plaintiffs as to themselves, and on information and belief, including the review of publicly available information and documents obtained under 8 *Del. C.* § 220, as to all other matters.

NATURE OF THE ACTION

1. For a media company, a jury verdict for defamation or a related intentional tort can pose an existential threat. That has been clear since at least 2016,

when Gawker Media went into bankruptcy and later was forced to liquidate after the former professional wrestler known as Hulk Hogan obtained a \$140 million jury verdict against the company for invasion of privacy.¹ In 2018, Alex Jones and his company faced multiple defamation lawsuits over Jones's repeated claims, via his *InfoWars* website, that the mass shooting at the Sandy Hook Elementary School in Newtown, Connecticut, was a hoax. In one of those lawsuits, eight families and a first responder were awarded \$965 million in compensatory damages, \$150 million in punitive damages, and attorneys' fees of \$323 million. A separate case led to an award of nearly \$50 million in compensatory and punitive damages. The defamation lawsuits forced Jones and his company to file for bankruptcy protection.²

¹ Maane Khatchatourian, *Hulk Hogan Awarded \$115 Million in Gawker Sex Tape Lawsuit*, Variety (Mar. 18, 2016, 4:04 PM), <https://variety.com/2016/biz/news/hulk-hogan-sex-tape-gawker-lawsuit-1201734113/>; Merrit Kennedy, *Hulk Hogan Reaches Settlement with Gawker Worth Over \$31 Million*, NPR (Nov. 2, 2016, 5:23 PM), <https://www.npr.org/sections/thetwo-way/2016/11/02/500389355/hulk-hogan-reaches-settlement-with-gawker-worth-over-31-million>; First Amended Complaint and Demand for Jury Trial, *Bollea v. Gawker et al.*, No. 12012447-CI-011 (6th Cir. M.D. Fla. Dec. 28, 2012), <https://s3.documentcloud.org/documents/2111332/hogans-amended-complaint.pdf>.

² *Alex Jones, Infowars, and the Sandy Hook Defamation Suits*, First Amendment Watch at New York University (Dec. 2, 2022), <https://firstamendmentwatch.org/deep-dive/alex-jones-infowars-and-the-sandy-hook-defamation-suits/>; *Jones v. Lafferty*, No. X06-UWY-CV-18-60464360-S (Conn. Super. Ct. Nov. 10, 2022) (awarding punitive damages); Voluntary Petition for Non-Individuals Filing for Bankruptcy, *Free Speech Systems LLC*, No. 22-60043 (Bankr. S.D. Tex. July 29, 2022).

2. These precedents teach that the board of directors of a Delaware-incorporated media company cannot be indifferent to the existential threat of broadcasting or publishing falsehoods that constitute actionable defamation. A claim for defamation can expose a media defendant to reputationally damaging discovery and a potentially ruinous judgment.

3. Major media companies generally take precautions to minimize potential defamation claims. They follow established practices and standards about what they will publish, engage in fact-checking, undertake editorial review, and make timely corrections to inaccuracies. When accused of publishing a false story, they investigate and, if warranted, retract the story if it falls short of editorial standards. They apologize to reduce the reputational harm.

4. Fox News Network, LLC, a wholly-owned subsidiary of Fox that operates Fox News Channel, Fox Business Channel, Fox News Radio, and Fox News Digital (collectively, “Fox News”), operates under a different business model. At all relevant times, Rupert Murdoch (“Rupert”) and his son, Lachlan Murdoch (“Lachlan”), caused Fox News to promote political narratives without regard for whether the underlying factual assertions were true or based on sources worthy of credit. Fox News lacks written standards or practices for what it broadcasts. It is

loath to correct factual errors. It chooses to profit from defamation and it treats potential tort claims and settlements as unlikely or as a cost of doing business.

5. Rupert Murdoch and Roger Ailes founded the Fox News Channel in 1996 to cater to conservative audiences.³ A 2018 book co-authored by Harvard Law School professor Yochai Benkler and two other academics affiliated with the Berkman Klein Center for Internet & Society at Harvard University, entitled *Network Propaganda*, uses large-scale data analysis of digital media to understand the place of Fox News within that media ecosystem.⁴ The data analysis demonstrates that Fox News faced new business pressures in 2016 from pro-Trump digital media outlets such as *Breitbart*, and that Fox News successfully responded to those pressures by amplifying Donald Trump's favored political narratives, even if they were factually unfounded. Pressures from within its own media ecosystem meant that Fox News was at risk of losing its audience if it adhered to journalistic standards for fact-checking. Fox News's business model thus created increased risk of defamation claims.

³ Jonathan Mahler and Jim Rutenberg, *How Rupert Murdoch's Empire of Influence Remade the World*, N.Y. Times (Apr. 3, 2019), <https://www.nytimes.com/interactive/2019/04/03/magazine/rupert-murdoch-fox-news-trump.html?action=click&module=Top%20Stories&pgtype=Homepage>.

⁴ Yochai Benkler et al., *Network Propaganda: Manipulation, Disinformation, and Radicalization in American Politics* (2018) [hereinafter *Network Propaganda*], <https://academic.oup.com/book/26406>.

6. In March 2019, Fox was spun-off as an independent company from Twenty-First Century Fox, Inc. (“21CF”), with Rupert serving as Chair of Fox and Lachlan serving as Executive Chair and CEO of Fox. It was incumbent on Fox’s fiduciaries to be attuned to the legal risk and business risk associated with operating a publicly traded mass media company that promotes factually unfounded political narratives. Critically, unlike internet platforms, Fox News did not enjoy legal immunity from defamation risk under 47 U.S.C. § 230. And unlike similarly situated fringe media outlets, Fox News was an inviting litigation target because of its deep pockets. At all relevant times, the board of directors of Fox (the “Board”) knew that Fox News was promoting narratives that created defamation risk. Yet, Fox’s leadership consciously disregarded defamation risk.

7. In May 2017, Fox News manufactured a false story that Democratic National Committee (“DNC”) staffer Seth Rich had been murdered because he hacked DNC emails and provided them to WikiLeaks. This journalistic scandal led Seth Rich’s parents to sue Fox News. In September 2019, the United States Court of Appeals for the Second Circuit upheld their claim for intentional infliction of emotional distress in an opinion that characterized Fox News’s manufacturing of the false story as “a campaign of emotional torture.” Fox’s Audit Committee was informed of that ruling. Yet, the Board took no steps to monitor or mitigate

defamation risk. The case settled for millions of dollars in October 2020, shortly before the scheduled depositions of major Fox News hosts Lou Dobbs and Sean Hannity. Fox's Audit Committee and Board were soon told of that settlement.

8. In the immediate aftermath of Election Day 2020, Fox News incurred the wrath of Trump and his supporters for being the first network to call the State of Arizona for Joseph Biden and for failing to back Trump's claim that he had won the election. In response to massive viewer backlash, Rupert, Lachlan, and Suzanne Scott, the CEO of Fox News, decided to indulge and amplify Trump's election-denial conspiracy theories, which soon included false claims that election technology companies Dominion Voting Systems ("Dominion") and Smartmatic USA ("Smartmatic") were Venezuelan companies that illegally switched votes from Trump to Biden. Dominion and Smartmatic engaged in extensive public relations campaigns and lobbying of Fox News to set the record straight, sent cease-and-desist letters, demanded retractions, and threatened litigation. Fox News did not respond to the letters from counsel for Dominion and Smartmatic and did not elevate them to the Audit Committee or the Board. Fox News hosts continued to promote defamatory accusations against Dominion and Smartmatic.

9. Fox has now entered the pantheon of companies that have incurred massive cost from tort litigation. On April 18, 2023, Fox settled Dominion's

defamation claim for \$787.5 million on the first day of a jury trial. Cross-motions for summary judgment made public shortly before the case settled revealed internal Fox documents and testimony evidencing that Fox News executives and hosts chose to broadcast unsupported and disbelieved conspiracy theories about Dominion. The summary judgment opinion eviscerated Fox's legal defenses. Delaware Superior Court Judge Eric Davis took the issue of falsity away from the jury, ruling (with emphasis in the original) that the "*evidence developed in this civil proceeding demonstrates that [it] is **CRYSTAL** clear that none of the Statements relating to Dominion about the 2020 election are true.*" Dominion's damages theories, including punitive damages, were for the jury to decide, along with the question of whether Fox News had acted with "actual malice" in making the false statements.

10. Shortly before the Dominion settlement, Fox settled for an undisclosed sum a related defamation lawsuit by Venezuelan businessman Majed Khalil, who was accused by Fox News host Lou Dobbs of being a "liaison of Hezbollah" who had committed "a cyber Pearl Harbor" in the 2020 election via Dominion and Smartmatic.

11. Smartmatic's case against Fox News remains pending. Experts have speculated that the settlement value of the case exceeds \$1 billion.

12. Defendants are fiduciaries of Fox and/or Fox News who are responsible for the losses in the above-referenced cases because they consciously disregarded defamation risk. Three related liability theories apply: (i) Defendants adopted an illegal business model by which Fox News pursues profits by committing actionable defamation (known as a *Massey Claim*); (ii) Defendants undertook no good-faith efforts to establish systems or practices for minimizing, mitigating, or monitoring defamation risk (known as an *Information Systems Claim*); and (iii) Defendants took no action in the face of red flags of defamation risk (known as a *Red Flags Claim*), which included the defamatory broadcasts themselves, the public relations campaigns of Dominion and Smartmatic, and their public threats of litigation.

13. A *Massey Claim* takes its name from a case involving a coal mining company that violated safety regulations, which led to a massive mine explosion and a “myriad of direct legal proceedings brought by tort plaintiffs and regulators.”⁵ In the words of then-Vice Chancellor Strine:

Delaware law does not charter law breakers. Delaware law allows corporations to pursue diverse means to make a profit, subject to a critical statutory floor, which is the requirement that Delaware corporations only pursue “lawful business” by “lawful acts.” As a result, a fiduciary of a Delaware corporation cannot be loyal to a Delaware corporation by knowingly causing it to seek profit by violating the law.⁶

⁵ *In re Massey Energy Co.*, 2011 WL 2176479, at *29 (Del. Ch. May 31, 2011).

⁶ *Id.* at *20 (quoting 8 *Del. C.* §§ 101(b), 102).

14. Fox News adopted a tortious business model, which dates back at least to the Seth Rich scandal in 2017. Unlike other major media companies, Fox News gives its executives and hosts free rein to promote factually unfounded political narratives. On November 8, 2020, Rupert, Lachlan, and Scott decided to stem viewer backlash by embracing Trump’s claims of a stolen election. In the words of a November 16 email from Rupert to Scott: “We don’t want to antagonize Trump further Everything at stake here.”⁷

15. Fox News lacked a viable legal defense to the defamation claims of Dominion and Smartmatic. Fox News had broadcast factual assertions of criminal election fraud that were indisputably false. There was ample reason to believe that Fox News acted with actual malice (*i.e.*, knowledge of falsity or reckless disregard as to falsity). Fox News’s failure to operate within the boundaries of tort law necessitated a litigation strategy of arguing for expanded First Amendment protection for broadcasting about a newsworthy subject, including a planned appeal to the United States Supreme Court.⁸ This litigation strategy reflected the weakness

⁷ NYC_220_8987 (PX5328). For purposes of this complaint, “NYC_220_###” refers to documents produced through Plaintiffs’ § 220 requests to Fox News. “PX#####” refers to the Dominion litigation’s plaintiffs’ Exhibits prepared for trial.

⁸ Jim Rutenberg et al., *Missteps and Miscalculations: Inside Fox’s Legal and Business Debacle*, N.Y. Times (May 27, 2023),

of Fox News’s position under existing precedent and it ran counter to the trend of restricting First Amendment defenses to defamation claims. It was also untenable. Facing a foreseeably disastrous trial after having lost its First Amendment defense in motion practice, Fox settled Dominion’s claims for \$787.5 million.

16. After the Dominion settlement, Lachlan reaffirmed Fox’s business model: “There’s no change in programming strategy at Fox News.... It’s obviously a successful strategy.”⁹ This unchanged programming strategy included other false narratives that led to the assertion of defamation claims against Fox News: (i) Fox News host Tucker Carlson repeatedly accused Trump supporter Ray Epps of being a government provocateur who orchestrated the attack on the Capitol on January 6, 2021; and (ii) Fox News repeatedly used a manipulated video to accuse Nina Jankowicz, a 2022 appointee to a minor governmental board without operational authority, of seeking to edit the tweets of private citizens on behalf of the government.

<https://www.nytimes.com/2023/05/27/business/media/fox-news-dominion-voting.html>;
Gabiella Ferrigine, *Ex-prosecutor: Fox plot to appeal defamation case to Supreme Court could badly backfire*, Salon (Apr. 17, 2023, 11:16 AM),
<https://www.salon.com/2023/04/17/ex-prosecutor-fox-plot-to-appeal-defamation-case-to-could-badly-backfire/>.

⁹ Fox Corp., Transcript of May 9, 2023 Earnings Call.

17. The *Information-Systems Claim* is based on the complete absence of any Board-level reporting mechanisms respecting defamation risk, despite the lack of any written editorial standards at Fox News and despite the Board being on clear notice of Fox's defamation problem after the Seth Rich scandal. Defamatory broadcasts respecting Dominion and Smartmatic continued for many weeks, during which time Dominion and Smartmatic sent a cavalcade of missives to Fox News providing factual information and seeking corrections. The Audit Committee and the Board lacked any mechanism for monitoring the situation. Fox's legal function was complicit in allowing Fox executives and hosts to pursue ratings through the dissemination of baseless claims without established policies and practices to minimize, mitigate, and monitor defamation risk.

18. The *Red Flags Claim* is based on the red flags of the Seth Rich settlement and the public character of Fox News's wrongdoing respecting Dominion and Smartmatic. The Board cannot claim ignorance of what Fox News was broadcasting over a span of weeks, or of the public refutations and litigation demands made by Dominion and Smartmatic. Outside director Paul Ryan was in personal contact with a communications advisor to Dominion and he delivered public remarks in November 2020 denouncing Trump's attacks on the integrity of

the election. Yet, Ryan took no Board-level action to mitigate or monitor defamation risk.

19. The simple reality is that the Board abdicated its responsibility of compliance risk oversight respecting the editorial and programming policies of Rupert, Lachlan, and the executive team. Rupert is deferred to as a founder, controller, and impresario who built a global media empire. The Murdoch Family Trust owns approximately 43% of the voting power at Fox. The Murdoch Family Trust also owns approximately 40% of the voting power at News Corp, which owns, among other publications and assets, *The Wall Street Journal* and the *New York Post*.

20. The Murdochs surround themselves with loyalists who share their politics and facilitate their rule. For example:

- a. Outside director Charles D. (“Chase”) Carey started at Fox Broadcasting in 1988 and earned a large fortune as a longtime deputy to Rupert, who has described Carey as his “most trusted adviser” and identified him as a potential successor to lead his media empire.
- b. Outside director Paul Ryan is a former Speaker of the House who became the Republican Party nominee for Vice President in 2012 in large part due to support from Rupert Murdoch and his media

outlets. Ryan is a friend of Rupert and Lachlan. Lachlan and Ryan serve together on the Board of Trustees of the Ronald Reagan Presidential Foundation and Institute. Former outside director Anne Dias is a longtime friend of Ryan's who donated large sums to his political campaigns.

- c. Former outside director Jacques Nasser is a longtime close associate of Rupert's from Melbourne, Australia who, after a disastrous tenure as CEO of Ford Motor Company, served for many years as a purportedly independent director on boards of Murdoch-affiliated companies. Rupert and Nasser are founding members of the American Australian Association's Advisory Council.
- d. Former Chief Legal and Policy Officer Viet Dinh was so close to the Murdochs that he and Lachlan are the godfathers to each other's children. Dinh served as an outside director of corporate predecessors of Fox for fourteen years before taking a position at Fox that paid him total compensation of more than \$24 million in 2019.¹⁰

¹⁰ Ben Smith, *The Lawyer Behind the Throne at Fox*, N.Y. Times (Apr. 4, 2021), <https://www.nytimes.com/2021/04/04/business/media/fox-news-viet-dinh.html>; David

21. The directors never acted as a board respecting defamation risk. They did not convene to raise questions about potential legal liability. Ryan testified in the Dominion litigation that programming content and personnel are not within the ambit of the Board. They are subjects about which Ryan, as a non-confrontational courtier, was only willing to raise informally with the Murdochs. Ryan and Dias each gave friendly advice to the Murdochs to move on from Trump and not to spread conspiracy theories.¹¹ Their advice following the attack on the Capitol on January 6, 2021, betrays their knowledge that they and the Board had allowed Fox News to spread baseless political narratives. Ryan forwarded an article entitled “The Alternate Reality Machine” and expressed his hope that Fox News hosts Tucker Carlson, Laura Ingraham, and Sean Hannity would soon “put down the echoes of falsehoods from our side[.]”¹² Dias forwarded an editorial from *The Financial Times* that described Fox News as having “enabled Mr. Trump for too long” and “been more influential in spreading false beliefs than social media.”¹³

Lat, *Is Viet Dinh The Most Powerful Lawyer in America?*, Original Jurisdiction (Mar. 17, 2021), <https://davidlat.substack.com/p/is-viet-dinh-the-most-powerful-lawyer>; Fox Corp., Proxy Statement (Form 14A) (Sept. 23, 2019).

¹¹ Dominion Combined Opp. to Fox Mot. for Summ. J. (“D SJ Opp.”), *Dominion v. Fox News Network*, No. N21C-03-257 (Del. Super. Ct. Feb. 8, 2022), at 23-24; PX5365; PX5375.

¹² NYC_220_9036-49.

¹³ NYC_220_8993-95.

22. Plaintiffs bring this derivative action because the Murdochs, Scott, Dinh, and the outside directors consciously disregarded the risk of massive tort liability inherent in Fox's business model and throughout Fox News's post-election broadcasting. Defendants chose to invite robust defamation claims, with potentially huge financial liability and potentially larger business repercussions, rather than disappoint viewers of Fox News.

THE PARTIES

Co-Lead Plaintiffs

23. Plaintiffs NYC Funds consist of the following five funds: New York City Employees' Retirement System; the Board of Education Retirement System of the City of New York; the New York City Fire Department Pension Fund; the New York City Police Pension Fund; and the Teachers' Retirement System of the City of New York. The NYC Funds are retirement plans established by law to provide benefits to New York City employees. The NYC Funds' assets under management as of June 30, 2023, total \$253.2 billion. The NYC Funds have been continuous holders of Fox Corp. A and B class stock at all relevant times. As of August 31, 2023, the NYC Funds held 572,946 shares of Fox Class A stock and 285,338 shares of Fox Class B stock worth approximately \$27.7 million.

24. Plaintiff the State of Oregon, by and through the Oregon Attorney General and the Oregon State Treasurer on behalf of the Oregon Public Employees Retirement Fund (“Oregon”), protects and oversees more than \$93 billion in Oregon public assets, including retirement funds held in trust for hundreds of thousands of teachers, police, firefighters, nurses, social workers, and other public employees. Oregon has been a continuous holder of Fox Corp. A and B class stock at all relevant times. As of August 31, 2023, Oregon held 150,146 shares of Fox Class A stock and 76,169 shares of Fox Class B stock worth approximately \$5.2 million.

Nominal Defendant Fox

25. Nominal Defendant Fox is a Delaware corporation that became a standalone publicly traded company on March 19, 2019, upon its spin-off from 21CF. Fox is a controlled company with a dual-class voting structure. Class B stockholders are entitled to vote in all matters on which shareholders have the right to vote, such as director elections, while Class A stockholders vote only on major decisions, such as dissolution or the sale of all assets of the Company.¹⁴ Rupert controls Fox through the Murdoch Family Trust, which owns 43.4% of Fox’s Class B voting shares. The Murdoch family owned 18% of the total Fox shares

¹⁴ Fox Corp., Amended and Restated Cert. of Inc. at Article IV (Ex. 3.1 to Form 10Q) (Feb. 8, 2023).

outstanding in October 2020,¹⁵ which means that the Murdochs' economic exposure to defamation claims against Fox News is not commensurate with the political power the Murdochs wield through their control of the media assets owned by Fox and News Corp.

26. Fox is a news, sports, and entertainment company. Its wholly-owned subsidiaries include Fox News. Other business units of Fox include Fox Entertainment, Fox Television Stations, and Fox Sports. Fox's Cable Network Programming segment, which includes Fox News, Fox Business, and Fox Sports Networks, accounted for 44% of Fox's revenues in 2022, and 99% of Adjusted EBITDA.¹⁶

27. In 2022, Cable Network Programming generated \$4.2 billion in affiliate fees from cable providers, representing over two-thirds of the total revenue for the segment, including advertising revenue.¹⁷

28. "Fox News is Fox Corporation's largest moneymaker."¹⁸ Fox News reaches an estimated seventy-seven million Americans, with the most subscribers of

¹⁵ NYC_220_7641, 7689.

¹⁶ Fox Corp., Annual Report (Form 10-K) at 42) (Aug. 12, 2022).

¹⁷ *Id.*

¹⁸ Dominion Mot. Summ. J. ("D MSJ") Ex. 130 (L. Murdoch Dep. Tr.), *Dominion v. Fox News Network*, No. N21C-03-257, (Del. Super. Ct. Jan. 17, 2023) at 21:14-15.

any cable network in the Fox portfolio.¹⁹ For over twenty consecutive years, Fox News has been the top-rated national cable news channel in weekday primetime and total day viewing.²⁰ Fox News has the largest digital reach of any news company, surpassing CNN.²¹

29. During the period from March 2019 through May 2021, the Board of Directors of Fox had seven members, who are each identified below.

Rupert Murdoch

30. Defendant Rupert Murdoch sits atop a media empire he built and by which he has become one of the richest men in the world. *Forbes* estimates that his family's net worth is \$19.9 billion.²²

31. In the decades after he inherited a newspaper in Adelaide, Australia in 1952, Rupert acquired major newspapers in Australia, New Zealand, Great Britain, and the United States. After founding News Corporation ("News Corp.") in 1980, he acquired the holding company of 20th Century Fox, the broadcasting

¹⁹ Fox Corp., Annual Report (Form 10-K) at 5 (Aug. 12, 2022).

²⁰ *Id.* at 2.

²¹ Joseph A. Wulfsohn, *Fox News Digital Ends 2022 as Top News Brand in Multiplatform Minutes, Views*, Fox News (Jan. 18, 2023, 12:23 PM), <https://www.foxnews.com/media/fox-news-digital-ended-2022-top-news-brand-multiplatform-minutes-views>.

²² *Rupert Murdoch & family*, *Forbes* (last visited Apr. 12, 2024), <https://www.forbes.com/profile/rupert-murdoch/?sh=3691ae12b1af>.

conglomerate Metromedia, and book publisher HarperCollins, among other assets. He launched Fox Broadcasting Company in 1986 and Fox News Channel in 1996.²³

32. Rupert has long been known for his profitable, tabloid approach to his media properties, an insistence on getting his way, and a reckless indifference to the truth of what he publishes. In private correspondence, the Oxford historian Hugh Trevor-Roper, Lord Dacre of Glanton, who served from 1974 through 1986 as a national director of Times Newspapers, which published *The Sunday Times of London*, described Murdoch as a “megalomaniac twister, surrounded by yes-men and hatchet-men.”²⁴ Subsequently, Trevor-Roper’s academic reputation was ravaged when Rupert ordered the publication in 1983 of the forged Hitler Diaries over Trevor-Roper’s last-minute objection, famously saying: “Fuck Dacre.

²³ Pat Bauer, *News Corp.*, Encyclopedia Britannica (last visited Sept. 6, 2023), <https://www.britannica.com/topic/News-Corporation>.

²⁴ *Murdoch a ‘megalomaniac twister’*, The Guardian (July 26, 2010), <https://www.theguardian.com/media/greenslade/2010/jul/26/rupert-murdoch-hugh-trevor-roper>.

Publish.”²⁵ Rupert later defended his decision, saying: “After all, we are in the entertainment business.”²⁶

33. Rupert was Chairman and CEO of News Corp. until 2013, when he became Executive Chairman of the spun-off entities News Corp and 21CF. On July 21, 2016, Rupert became Chairman and acting CEO of Fox News Channel and Fox Business Network, following the resignation of Roger Ailes amidst a sexual harassment scandal.²⁷

34. In 2019, upon the creation of Fox, Rupert became Chair of Fox and Executive Chair of Fox News,²⁸ an officer position that is part of its listed Executive

²⁵ *Id.* See also Robert Harris, ‘The room froze into a tableau of despair. The Deputy Editor slumped against the wall, then slid gently to the floor’: Robert Harris reveals the earth-shaking moment a newspaper found out it had been duped by fake diaries forged to look like Hitler’s, Daily Mail.com (May 20, 2023, 17:26 EDT), <https://www.dailymail.co.uk/news/article-12106601/ROBERT-HARRIS-reveals-moment-newspaper-duped-fake-Hitlers-diaries.html>.

²⁶ Robert Harris, *Selling Hitler* 293 (1986); Michael Hiltzik, *Rupert Murdoch is sliding into retirement. His malign influence isn’t going anywhere* (Sept. 21, 2023, 1:08 PM PT). <https://www.latimes.com/business/story/2023-09-21/column-rupert-murdoch-may-say-hes-stepping-down-but-his-damage-to-politics-and-journalism-is-indelible>

²⁷ Camila Domonoske, *Roger Ailes, Accused of Sexual Harassment, Out as Chairman of Fox News*, NPR (July 21, 2016, 4:31 PM), <https://www.npr.org/sections/two-way/2016/07/21/486938004/roger-ailes-accused-of-sexual-harrassment-out-as-chairman-of-fox-news>.

²⁸ Randall Chase, *New Disclosure of Rupert Murdoch’s Role at Fox News Frustrates Judge in Dominion Case*, PBS (Apr. 12, 2023, 12:30 PM), <https://www.pbs.org/newshour/nation/new-disclosure-of-rupert-murdochs-role-at-fox-news-frustrates-judge-in-dominion-case#:~:text=WILMINGTON%2C%20Del.,up%20at%20a%20Tuesday%20hearing.>

Leadership.²⁹ Rupert’s hands-on role at Fox News is reflected in his compensation from Fox, which totaled \$125,696,313 between 2019 and 2022.³⁰ Rupert remains Executive Chair of News Corp. In the aftermath of the 2020 election, Rupert was closely involved in day-to-day programming decisions at Fox News.

Lachlan Murdoch

35. Ever since 1994, Defendant Lachlan Murdoch has held a number of executive roles at Murdoch-controlled media companies. Upon Fox’s formation in 2019, Lachlan became CEO, Executive Chair, and a director of Fox. His total compensation from Fox between 2019 and 2022 was \$120,689,643.³¹ He is also Co-Chair of News Corp. In the aftermath of the 2020 election, Lachlan was closely involved in day-to-day programming decisions at Fox News.

Chase Carey

36. Defendant Chase Carey has a decades-long close business relationship and personal friendship with Rupert. In 2015, Rupert described Carey as “my close friend and trusted advisor ... and someone I am privileged to call my partner for

²⁹ *Executive Leadership*, Fox News, (last visited Sept. 6, 2023), <https://press.foxnews.com/>.

³⁰ Fox Corp., 2021 Proxy Statement (Schedule 14A) at 42 (Sept. 17, 2021); Fox Corp., 2022 Proxy Statement (Schedule 14A) at 45 (Sept. 19, 2022).

³¹ *Id.*

nearly 30 years.”³² Carey thanked Rupert for offering him “the opportunity of a lifetime” and “never-ending support ... as a mentor, colleague and friend.”³³

37. Carey spent approximately three decades working for Murdoch-affiliated entities and owes his career and abundant wealth to the Murdochs. Since 2010, Carey has received over \$230 million from Murdoch-affiliated entities. Carey has served on the board of one or more Murdoch-affiliated entities for the last 32 consecutive years. Those boards include: Fox Corporation (2019-present); 21st Century Fox/News Corp. (1996-2007; 2009-2019); Sky/BSkyB (2003-2009; 2013-2018); Sky Deutschland (2010-2014); DirecTV (2003-2009); Gemstar-TV Guide (2000-2002); News America Inc. (1998-2002); NDS Group Inc. (1996-2002); STAR Group Ltd. (1993-2002); and Fox Entertainment (1992-2002).

38. Carey originally joined Fox Broadcasting in 1988, rising to co-Chief Operating Officer of News Corp. and co-Chief Operating Officer of the Fox Entertainment Group as of his departure in 2002. During that period, Carey helped launch Fox News.

³² *Read the Memos: Rupert Murdoch, Chase Carey on 21st Century Fox Leadership Changes*, Variety (June 16, 2015, 2:18 PM), <https://variety.com/2015/biz/news/rupert-murdoch-chase-carey-memos-21st-century-1201521163/>.

³³ *Id.*

39. In 2003, when News Corp. acquired a de facto controlling interest in DirecTV, Rupert became Chairman of DirecTV and named Carey CEO of DirecTV.³⁴ In 2009, Carey rejoined News Corp. (later 21CF) as Deputy Chairman, President, and Chief Operating Officer.

40. In 2011, a phone hacking scandal at the *News of the World*, Britain's then-best-selling tabloid, required the Murdochs to shutter it and abandon News Corp.'s proposed acquisition of the publicly held stock of British television company BSkyB. Amidst that turmoil, Rupert endorsed Carey, not his son James, as his successor in an emergency situation: "Chase is my partner and if anything happened to me I'm sure he'll get it immediately – if I went under a bus."³⁵ Carey later "helped groom the younger Murdochs James and Lachlan to replace him[.]"³⁶ In 2015, Carey left his executive role at 21CF as part of the transition to the next Murdoch generation. In return for his loyalty and assistance in transitioning leadership for the Murdochs, Carey received an approximately \$70 million payoff over the following three years.

³⁴ Geoff Hiscock, *Murdoch wins DirecTV*, CNN (Apr. 9, 2003, 9:46 PM), <https://www.cnn.com/2003/BUSINESS/04/09/newscorp.directv.biz/>.

³⁵ Yinka Adegoke, *Rupert Murdoch endorses Carey as next in line*, Reuters (Aug. 10, 2011, 9:03 PM), <https://www.reuters.com/article/idUSTRE77967X/>.

³⁶ Matthew Garrahan, *Chase Carey takes the driver's seat at Formula One*, Financial Times (Sept. 9, 2016), <https://www.ft.com/content/f5066048-75d5-11e6-b60a-de4532d5ea35>.

41. In 2022, Carey was not appointed to the Special Committee “composed solely of independent directors not affiliated with the Murdoch family” to investigate a possible combination with News Corp,³⁷ inferably in recognition of Carey’s continued close relationship with the Murdochs. Yet, in November 2023, Carey was named Lead Independent Director of Fox.

Jacques Nasser

42. Defendant Jacques Nasser served as Lead Independent Director of Fox between 2019 and November 2023, and as a member of the Audit Committee. Previously, Nasser was a director of BSkyB (from 2002 to 2012) and 21CF (from 2013 to 2019).

43. Like Rupert, Nasser hails from Melbourne, Australia. Nasser and Rupert are “close both commercially and personally.”³⁸ Among other affiliations, in 2005, they were founding members of the American Australian Association’s exclusive Advisory Council, which reportedly “meets twice a year – usually in a

³⁷ *FOX’s Special Committee of the Board of Directors Provides Update*, Fox, (Dec. 6, 2022), <https://www.prnewswire.com/news-releases/foxs-special-committee-of-the-board-of-directors-provides-update-301695535.html>.

³⁸ Matthew Stevens, *BHP chairman Jac Nasser reflects on 30 years in management*, Australian Financial Review (May 25, 2017, 11:00 PM), <https://www.afr.com/life-and-luxury/bhp-chairman-jac-nasser-reflects-on-30-years-in-management-20170418-gvmsyz>.

Roundtable discussion and dinner to discuss issues and directions for the Association.”³⁹

44. Following Nasser’s disastrous tenure as CEO of Ford Motor Company, which resulted in his firing in 2001, Rupert helped facilitate Nasser’s reentry into the business world and rebuilding of his reputation by personally inviting Nasser to join the BSkyB board as an “independent” director in 2002.⁴⁰ In that role, Nasser loyally repaid Rupert,⁴¹ facilitating the appointment of 30-year old James Murdoch as BSkyB’s CEO in 2003,⁴² advocating for Rupert’s controversial buyback program

³⁹ *About Us: Advisory Council*, American Australian Association <https://web.archive.org/web/20060211171721/http://americanaustralian.org/Aboutus/advisory.php> (archive of Feb. 11, 2006).

⁴⁰ Tim Burt, *Nasser to join board of BSkyB*, Financial Times (Oct. 9, 2002) (“Mr. Nasser, who was ousted from Ford a year ago following a split with Bill Ford, group chairman, was approached by Mr. Murdoch earlier this year.”).

⁴¹ Emiliya Mychasuk, *Jac, the faithful son of Oz*, Financial Times (Aug. 5, 2009).

⁴² *E.g.*, Robert Preston, *Rupert Murdoch’s camp is spinning a load of old Ball*, Sunday Telegraph (Sep. 21, 2003) (“[W]hat on earth is the use of BSkyB’s non-executive directors if they are simply there to rubber-stamp News Corp’s appointments? I am sure the independent non-execs, who include Leighton and Jacques Nasser, the former Ford chief executive, will have a lively discussion at a board meeting tomorrow about the candidates for the CEO slot. Will they go for the Murdoch progeny? Bet on it.”).

in 2005,⁴³ and steadfastly supporting the Murdochs through the phone hacking scandal.⁴⁴

45. Rupert and Nasser addressed concerns about Nasser's independence during his long tenure at BSkyB by moving him in 2013 into a new role, director of 21CF.

Paul Ryan

46. Defendant Paul Ryan, the Chair of the Nominating and Corporate Governance Committee since 2019, was the Republican Party nominee for Vice President in 2012, and the Speaker of the House of Representatives when he retired from Congress in January 2019.⁴⁵ Upon his retirement, the Murdochs immediately

⁴³ E.g., Terry Murden, *Directors woo investors over BSkyB revolt*, Scotland on Sunday (Oct. 30, 2005) (“Lord Rothschild and Jacques Nasser have held meetings with some of the satellite broadcaster’s biggest shareholders to persuade them not to block the company’s share buy-back plan. Some institutional shareholders see the plan as little more than an attempt by Rupert Murdoch to increase his News Corporation’s power in the company whose chief executive is his son James.”).

⁴⁴ E.g., *BSkyB board letter defending James Murdoch – the full text*, The Guardian (Nov. 11, 2011) (“After considering all of these issues, the Independent Directors reached the unanimous conclusion that James should continue as Chairman.”).

⁴⁵ Lisa Mascaro, *Speaker Ryan to retire, leaving big election-year GOP vacuum*, Associated Press (Apr. 11, 2018, 8:11 PM), [https://apnews.com/article/819e75f7fb634531936c8416bf860344#:~:text=WASHINGTON%20\(AP\)%20%E2%80%94%20House%20Speaker,for%20a%20rough%20election%20year.](https://apnews.com/article/819e75f7fb634531936c8416bf860344#:~:text=WASHINGTON%20(AP)%20%E2%80%94%20House%20Speaker,for%20a%20rough%20election%20year.)

recruited Ryan to join the Fox Board. Ryan’s D&O questionnaires acknowledge his friendship with the Murdochs.⁴⁶

47. Rupert was instrumental in Mitt Romney’s selection of Ryan as a running mate in 2012. “The media mogul used a combination of private persuasion, newspaper crusading, and Twitter talk to urge Mitt Romney’s campaign to shake things up.”⁴⁷

48. Ryan’s role as a director is colored by his political and ideological commitments. In a March 2023 podcast, Ryan stated that he is on the Fox Board because he thinks it important to have “strong cultural private institutions that can stand up to what I would call woke conformity.” Ryan also discussed his dislike of the direction of the conservative movement under Trump and the “long process” of redirecting the “big institution” of Fox to “get the conservative movement in a good place in America again.” According to Ryan, Fox “is a big part of the constellation of the conservative movement” and Fox is “going to have to be part of the solution if we are going to solve the problem of the conservative movement because there

⁴⁶ See NYC_220_1256, NYC_220_8175, NYC_220_8774.

⁴⁷ Howard Kurtz, *Rupert Murdoch Gets His Man As Mitt Romney Picks Paul Ryan*, Daily Beast (Aug. 12, 2012, 4:45 AM), <https://www.thedailybeast.com/rupert-murdoch-gets-his-man-as-mitt-romney-picks-paul-ryan>.

isn't a bigger platform than this in America.”⁴⁸ Ryan tried to nudge the Murdochs to tilt the editorial line at Fox News toward his favored political perspective.

Anne Dias

49. Defendant Anne Dias is a “personal friend” of Ryan’s; their friendship predates their time on the Fox Board.⁴⁹ As she acknowledges in her D&O questionnaires, Dias is a longtime “financial supporter of Paul Ryan’s political activities.”⁵⁰ From 2003 to 2015, Dias was married to billionaire Kenneth Griffin, who donated over \$500,000 to federal campaign committees aligned with or controlled by Ryan.⁵¹ Her publicly disclosed political contributions between 2010 and 2016—the last election cycle before Ryan announced that he would retire from Congress—include donations of approximately \$55,600 to “Team Ryan,” “Ryan Prosperity Action, Inc.,” and “Ryan for Congress.”⁵²

50. Dias served on Fox’s Audit Committee and Nominating and Corporate Governance Committee before leaving the Board in November 2023.

⁴⁸ *My Conversation With Paul Ryan*, The Bulwark Podcast (Mar. 6, 2023), <https://www.youtube.com/watch?v=AFeyZ-gcgeo> (39:00 to 44:00).

⁴⁹ D SJ Opp. Ex. 620 (Ryan Dep. Tr.) at 171:11-22.

⁵⁰ NYC_220_1018.

⁵¹ Fed. Election Comm’n, Donor Lookup: Kenneth Griffin (last visited Apr. 12, 2024), <https://www.opensecrets.org/donor-lookup/results?name=kenneth+griffin&order=desc&sort=D>.

⁵² *Id.*

Roland Hernandez

51. Defendant Roland Hernandez, the Chair of the Audit Committee since 2019, and a member of the Nominating and Corporate Governance Committee, is a former CEO and Chair of Telemundo Group, Inc.⁵³

Viet Dinh

52. Defendant Viet Dinh served as Chief Legal and Policy Officer of Fox and a member of the Office of the Chairman from March 2019 through the end of 2023, when he was forced to leave in the wake of the Dominion settlement.⁵⁴ Dinh was not only Fox's top lawyer, he "manage[d] the political operation" of Fox.⁵⁵ Dinh was not a director of Fox.

53. As the top legal officer at Fox, Dinh was responsible for having failed to oversee the implementation, management, and board-level oversight of risk controls respecting defamation, including the real-time management of the response

⁵³ *Roland A. Hernandez*, Fox, <https://www.foxcorporation.com/management/board-of-directors/roland-a-hernandez/>.

⁵⁴ Jeremy W. Peters, *Fox's Chief Legal Officer Will Depart*, N.Y. Times (Aug. 11, 2023), <https://www.nytimes.com/2023/08/11/business/media/viet-dinh-fox-departing.html>; *Viet Dinh To Depart Fox Corporation*, PR Newswire (Aug. 11, 2023, 16:11 ET), <https://www.prnewswire.com/news-releases/viet-dinh-to-depart-fox-corporation-301899062.html>.

⁵⁵ Smith, *The Lawyer Behind the Throne at Fox*, *supra* note 11.

to complaints from Dominion and Smartmatic. Dinh was described in 2021 as “the most powerful lawyer in America[.]”⁵⁶

54. Before joining Fox as an employee, Dinh served as U.S. Assistant Attorney General for Legal Policy from 2001 to 2003, and was later an elite appellate litigator with close connections to senior lawyers in the Republican legal establishment. In 2017, when Dinh worked with former Solicitor General Paul Clement and former Deputy White House Counsel William Burck on a high-profile criminal matter, they were described by *The New York Times* as a “Dream Team of Defense Lawyers.”⁵⁷ Dinh re-assembled the “Dream Team” in 2021 by retaining Clement as outside counsel for Fox in the Dominion and Smartmatic litigations and by bringing in Burck as a new outside director of Fox.

55. Dinh served as an outside director of News Corp. (from 2004 to 2013) and 21CF (from 2013 until 2018).⁵⁸ Dinh became “unusually” close friends with

⁵⁶ David Lat, *Is Viet Dinh The Most Powerful Lawyer in America?*, Above the Law (Mar. 23, 2021, 10:47 AM), <https://abovethelaw.com/2021/03/is-viet-dinh-the-most-powerful-lawyer-in-america/>.

⁵⁷ Benjamin Weiser, *Turkish Gold Trader Builds a Dream Team of Defense Lawyers*, N.Y. Times (Aug. 2, 2016), <https://www.nytimes.com/2016/08/03/nyregion/turkish-gold-trader-builds-a-dream-team-of-defense-lawyers.html>.

⁵⁸ Variety Staff, *Viet Dinh Named Chief Legal and Policy Officer for 21st Century Fox Post-Disney Sale*, Variety (Sept. 17, 2018, 10:34 AM), <https://variety.com/2018/biz/news/viet-dinh-chief-legal-and-policy-officer-for-21st-century-fox-1202944228/>.

Lachlan; they are godfathers to each other's sons.⁵⁹ Dinh's closeness to the Murdochs created controversy when Dinh agreed, as a purported independent director of News Corp., to oversee an internal probe into the company's responsibility for the *News of the World* phone hacking scandal, at which time Dinh gave the following quote: "We are united in support of the senior management team to address these issues."⁶⁰

Suzanne Scott

56. Defendant Suzanne Scott has worked at Fox News since its inception in 1996. In 2018, she was named CEO of Fox News and Fox Business Network, reporting jointly to Rupert and Lachlan. Together with Rupert and Lachlan, Scott forged the business strategy of amplifying Trump's stolen-election claims in the aftermath of Election Day 2020. Scott is not a director or officer of Fox. She is subject to personal jurisdiction in Delaware under 6 *Del. C.* § 18-109(a) as a person who "participates materially in the management of" Fox News Network, LLC, a

⁵⁹ NYC_220_1194; Smith, *The Lawyer Behind the Throne at Fox*, *supra* note 11.

⁶⁰ Ronald Grover and Tom Schoenberg, *News Corp. Director Leading Hacking Inquiry Has Ties to Murdochs*, Bloomberg (Aug. 6, 2011, 9:54 AM), <https://www.bloomberg.com/news/articles/2011-08-06/dinh-s-ties-to-murdoch-under-fire-as-point-man-in-hacking-probe#xj4y7vzkg>; David Gelles, *Friend of the Murdochs to lead internal probe into Now*, Financial Times (July 27, 2011), <https://www.ft.com/content/ad514780-b844-11e0-8d23-00144feabdc0>.

Delaware limited liability company. Scott testified that Rupert and Lachlan are her bosses and that she is in regular, often daily, communication with them.⁶¹

William Burck

57. Non-party William Burck joined the Board in June 2021, soon after Dominion and Smarmatic filed suit. Burck touts that he is known as “the modern day ‘Washington superlawyer’ in the model of Edward Bennett Williams, famously known as ‘the counsel to the situation.’”⁶² He served as Deputy Staff Secretary, Special Counsel and Deputy White House Counsel for President George W. Bush, and he continues to travel in elite Republican Party circles. His client list includes, for example, former White House officials Steve Bannon, Reince Priebus, and Don McGahn in connection with the investigation by special counsel Robert Mueller.⁶³ Burck’s D&O questionnaire acknowledges his two-decade-long friendship with Dinh.⁶⁴

⁶¹ D MSJ Ex. 143 (Scott Dep. Tr.) at 12:5-20 (since becoming CEO in 2018, Scott “run[s]” Fox News, by “oversee[ing] the day-to-day operations of [its] businesses,” and “maintain[ing] a happy and healthy and satisfied workforce”).

⁶² *Attorneys: William A. Burck*, Quinn Emanuel, <https://www.quinnemanuel.com/attorneys/burck-william/>.

⁶³ Darren Samuelsohn, *Russia probe’s most popular lawyer risks conflicts*, Politico (Jan. 25, 2018, 5:01 AM), <https://www.politico.com/story/2018/01/25/mueller-russia-investigation-bannon-lawyer-juggles-clients-367521>.

⁶⁴ NYC_220_00001710.

SUBSTANTIVE ALLEGATIONS

A. Fox News’s Distinctive Lack of Editorial Controls

58. Many media organizations establish guidelines and internal procedures that mitigate defamation risk. These guidelines and procedures emphasize accurate reporting in the first instance and the prompt retraction of errors.

59. National Public Radio (“NPR”), for example, publishes an Ethics Handbook that instructs “immediate correction” and immediate consultation with the legal department about mistakes that could have “legal consequences”:

Corrections

We have a simple standard: Errors of fact do not stand uncorrected. If we get it wrong, we’ll admit it.

Guideline: Mistakes are fixed in a timely manner.

Egregious mistakes—for example, reporting someone’s death when they are in fact still alive or a mistake that could have legal consequences (defamation)—demand immediate correction on the air and/or online (if the information was also posted on NPR.org).

NPR’s legal department should be consulted immediately about mistakes that might have legal consequences—and especially if a purported mistake is brought to our attention by a lawyer or the subject of our reporting and they are claiming or implying that NPR is liable for any damages.⁶⁵

60. The Public Broadcasting Service (“PBS”) publishes Editorial Standards & Practices that say the following about fact-checking:

⁶⁵ *Accountability*, NPR, <https://www.npr.org/about-npr/688414106/accountability> (last visited Aug. 11, 2023) (emphasis in original).

Producers must implement rigorous fact-checking procedures to verify the accuracy of all factual assertions The accuracy of assertions by expert and non-expert interviewees should never be assumed, particularly if such assertions are contentious or otherwise questionable.⁶⁶

61. Reuters publishes “The 10 Hallmarks of Reuters Journalism,” which include “Hold accuracy sacrosanct” and “Correct errors transparently.”⁶⁷ Reuters says the following about reporting rumors: “Reuters aims to report the facts, not rumours. Clients rely on us to differentiate between fact and rumour and our reputation rests partly on that.”

62. *The Washington Post* publishes Policies and Standards, which include a corrections policy that states: “The Washington Post strives for a nimble, accurate and complete news report *It is necessary* to use a correction, clarification or editor’s note to inform readers whenever we correct a significant mistake.”⁶⁸ This policy was instrumental in mitigating defamation risk when *The Washington Post* and other outlets were sued after publishing erroneous information about a teenager’s January 2019 encounter with a Native American activist on the steps of

⁶⁶ *PBS Editorial Standards & Practices*, PBS, at 6, <https://www.pbs.org/about/producing-pbs/editorial-standards.pdf> (last visited Apr. 12, 2024).

⁶⁷ *Reuters Standards & Values*, Reuters, <https://reutersagency.com/en/about/standards-values> (last visited Apr. 12, 2024).

⁶⁸ *Policies and Standards*, Washington Post, <https://www.washingtonpost.com/policies-and-standards/> (emphasis in original) (last visited Apr. 12, 2024).

the Lincoln Memorial. The attorney for the family issued a statement about how they had “agreed to settle with the Post because the Post was quick to publish the whole truth—through its follow-up coverage and editor’s notes.”⁶⁹

63. NBC News has a Standards and Practices team, headed by a Senior Vice President, that is “responsible for making the most critical decisions that shape the fundamentals of this network: our reputation, credibility and integrity.”⁷⁰ CNN, similarly, has an Executive Vice President in charge of its Standards and Practices department.⁷¹

64. *The Wall Street Journal* commits to The Dow Jones Code of Conduct: “Our facts are accurate and fairly presented; [o]ur analyses represent our best independent judgments rather than our preferences, or those of our sources, advertisers, or information providers[.]”⁷²

⁶⁹ Paul Farhi, *Washington Post settles lawsuit with family of Kentucky teenager*, The Washington Post (July 24, 2020, 1:10 PM), https://www.washingtonpost.com/lifestyle/style/washington-post-settles-lawsuit-with-family-of-kentucky-teenager/2020/07/24/ae42144c-cdbd-11ea-b0e3-d55bda07d66a_story.html.

⁷⁰ A.J. Katz, *NBC News Standards and Practices Chief Marian Porges is Stepping Down in March*, TV Newser (Feb. 18, 2021, 12:29 PM), <https://www.adweek.com/tvnewser/nbc-news-standards-and-practices-chief-marian-porges-is-stepping-down-in-march/>.

⁷¹ *CNN Names Calvin Sims Executive Vice President of Standards and Practices*, CNN Press Room (Sept. 22, 2020), <https://cnnpressroom.blogs.cnn.com/2020/09/22/cnn-names-calvin-sims-executive-vice-president-of-standards-and-practices/>.

⁷² *Dow Jones Code of Conduct*, Wall Street Journal, <https://www.dowjones.com/code-conduct/>.

65. Fox News is different. A 2017 article discussed Fox News’s curious silence and inaction after retracting a story respecting the murder of Seth Rich:

When a story of this scale crumbles, most news organizations feel obligated to explain what happened and why.

Not so far at Fox, which stands apart journalistically from its competitors in many ways. Unlike the other networks or major newspapers, for example, Fox has no office or executive dedicated to standards and practices. That falls within the larger portfolio of the network’s general counsel, Dianne Brandi.

. . . .

The late Fox News Chairman Roger Ailes used to boast (incorrectly) that the network had never had to retract a story.

Ailes told colleagues he saw corrections as a sign of weakness rather than a duty

Fox News’ behavior this year, in the months after the Rich story, has little recent parallel among major news organizations—especially for a story with these stakes. No apology. No explanation. And no known consequences.⁷³

66. That aberrant approach remained as of November 20, 2020, when the General Counsel of Fox News received a detailed letter from outside counsel for Dominion (attached hereto as Exhibit A) describing how “Fox hosts and guests have repeatedly aired false allegations that Dominion was actively involved in fraud and

⁷³ David Folkenflik, *No Apology, No Explanation: Fox News and The Seth Rich Story*, NPR (Sept. 15, 2017, 5:06 AM), <https://www.npr.org/2017/09/15/551163406/fox-news-has-yet-to-explain-what-what-wrong-in-seth-rich-story>.

corruption with respect to its voting systems.” Fox distinguished itself from other major media outlets by doing nothing in response to Dominion’s letter:

Such letters often set off internal reviews at news organizations. Fox’s lawyers did not conduct one. Had they done so, they may have learned of an email that Ms. Bartiromo received in November about one of Ms. Powell’s original sources on Dominion.

The source intimated that her information had come from a combination of dreams and time travel. (“The wind tells me I’m a ghost but I don’t believe it,” she had written Ms. Powell.)

Dan Novack, a First Amendment lawyer, said that if he ever stumbled upon such an email in a client’s files, he would “physically wrest my client’s checkbook from them and settle before the police arrive.”

Fox, however, did not respond to the Dominion letter or comply with its requests[.]⁷⁴

67. Lachlan testified in the Dominion litigation that Fox News has no policy against reporting lies, no policy against presenting guests who are unreliable sources, and that Fox News hosts have editorial independence.⁷⁵

68. Scott and Jay Wallace, the President and Executive Editor of Fox News, both testified that Fox News has no written policies on journalistic standards or ethics.⁷⁶

⁷⁴ Rutenberg et al., *Missteps and Miscalculations*, *supra* note 9.

⁷⁵ D MSJ Ex. 130 (L. Murdoch Dep. Tr.) at 315:25-316:22.

⁷⁶ D MSJ Ex. 143 (Scott Dep. Tr.) at 207:20-25; D MSJ Ex. 147 (Wallace Dep. Tr.) at 38:24-39:7.

69. Fox News host Lou Dobbs testified that he received no guidance from Fox News leadership about posting allegations of election fraud on social media or about his episodes featuring Sidney Powell and Rudy Giuliani.⁷⁷

70. Fox News's distinctive lack of editorial standards remains today. On July 25, 2023, Fox News published a false story claiming that the Marine Corps forced a Gold Star family to pay \$60,000 to ship to Arlington Cemetery the remains of Marine Sgt. Nicole Gee, who was killed in a suicide attack during the pullout from Afghanistan in August 2021. The next day, a journalistic enterprise devoted to military subjects published a refutation of the Fox News story, citing the family and the Pentagon.⁷⁸

71. A Freedom of Information Act request and investigative article by *Military.com*, published on August 23, 2023, revealed how, behind the scenes, over a period of several days, the Marine Corps sent a series of emails to Fox News demanding a full retraction of the story, an apology to the family, and a public explanation for any corrections. *Military.com* reported that Fox News made various

⁷⁷ D MSJ Ex. 111 (Dobbs Dep. Tr) at 93:25-95:24.

⁷⁸ Jeff Schogol, *The Pentagon didn't refuse to pay \$60,000 to fly fallen Marine Nicole Gee to Arlington [Updated]*, Task & Purpose (July 26, 2023, 4:18 PM), <https://taskandpurpose.com/news/us-military-marine-nicole-gee-arlington-national-cemetery/>.

edits to the story, before eventually deleting it without a correction or apology to the Gee family:

None of the changes were marked with an update or correction, a common media practice that offers transparency when outlets make a mistake or change a story.

By the following Friday, the article was removed completely without explanation by Fox News, even as outrage over the alleged injustice continued to spread online.⁷⁹

72. The *Military.com* article ignited wider national coverage of the story and backlash against Fox News, which prompted Fox News to issue the following apology and statement on August 26: “The now unpublished story has been addressed internally and we sincerely apologize to the Gee family.”⁸⁰ Oliver Darcy, a senior media for reporter for CNN, wrote about how Fox News operated outside of industry norms:

Deleting an entire story is exceedingly rare in news media and is seen as a last-ditch measure if the entire premise of the article is incorrect. Deleting a story without offering readers an explanation or correction is widely considered to be unethical.

⁷⁹ Drew F. Lawrence, *Inside the Marine Corps’ Fight with Fox News over a False Gold Star Family Story*, *Military* (Aug. 23, 2023), <https://www.military.com/daily-news/2023/08/23/inside-marine-corps-fight-fox-news-over-false-gold-star-family-story.html#:~:text=The%20Marine%20Corps%20worked%20behind%20the%20scenes%20last,in%20Afghanistan%2C%20according%20to%20emails%20obtained%20by%20Military.com>.

⁸⁰ Caleb Howe, *Fox News Apologizes for Since Deleted Story About Fallen Soldier*, *Mediaite* (Aug. 26, 2023, 7:15 PM), <https://www.mediaite.com/news/fox-news-apologizes-for-since-deleted-story-about-fallen-soldier/>.

In this case, Fox News did not publicly address the incident until the Military.com story ignited backlash against the outlet.

While unethical, the behavior is typical for Fox News. The outlet often breaks traditional news ethics and traffics in dishonest reporting and commentary.⁸¹

B. David Frum on Fox News in the Pre-Trump Era

73. Author David Frum, a former speechwriter for George W. Bush, has been a perceptive observer of Fox News. Three of his observations from a decade ago put into context the business model and scandals of Fox News in recent years.

74. *First*, in his 2014 review of a biography of Ailes, Frum wrote about how Fox News cultivated a viewer base by appealing to the attitudes and anxieties of a particular demographic—aging, right-leaning baby boomers: “Here, on this station, the chosen market segment could enjoy security and validation. Out there was depicted a hostile world of threats, danger, crime, and decaying values.”⁸²

75. *Second*, in a 2012 article, Frum described how Fox News communicated with its audience in a manner informed by their common

⁸¹ Oliver Darcy, *Fox News Apologizes to Gold Star Family After Facing Backlash Over False Story*, CNN Business (Aug. 26, 2023, 8:29 PM), <https://www.cnn.com/2023/08/26/business/fox-news-gold-star-family-apology/index.html>.

⁸² David Frum, *Fox News and the Anxious Elderly*, David Frum (Jan. 26, 2014), <https://davidfrum.com/article/fox-news-and-the-anxious-elderly>.

understanding of false conspiracy theories circulating through media other than television:

It's very important to understand that for Fox viewers, Fox is *only the most visible part* of a vast alternative reality. Fox's coverage of the news cannot be properly understood in isolation, but only in conjunction with the rest of that system—and especially the chain emails that do so much to shape the worldview of Fox viewers.⁸³

Frum observed that Fox News hinted at, but did not articulate, these conspiracy theories:

You'll not hear something quite so bizarre as that on television. But Fox News is edited and reported for an audience much of which believes such stories to be true, and edited and reported by producers and on-screen talent highly attuned to those beliefs.⁸⁴

76. *Third*, Frum observed during the Obama presidency how Fox News exercised leverage over Republican politicians due to the strong bond between Fox News and its viewers: “Republicans originally thought that Fox worked for us, and now we are discovering we work for Fox[.]”⁸⁵ In other words, Fox News could

⁸³ David Frum, *The Fox News Wink: Is Obama “Gay”? or “Gay Gay”?*, Daily Beast (Aug. 8, 2012, 1:00 PM), <https://www.thedailybeast.com/the-fox-news-wink-is-obama-gay-or-gay-gay?ref=scroll> (emphasis in original).

⁸⁴ *Id.* (emphasis in original).

⁸⁵ Andrew Edgecliffe-Johnson, *Which way now for Fox News and Trump?*, Financial Times (Sept. 15, 2020), <https://www.ft.com/content/eef2bf60-e3e8-46a4-83f2-d8d4103dd01b>.

operate profitably by appealing to its viewers without promoting the political agenda of the Republican Party, and without a Republican winning the presidency.

77. The dominant influence of Rupert and Fox News remained intact through 2015. For example, in 2012, Murdoch-controlled media outlets successfully pushed Mitt Romney to select Paul Ryan as his nominee for Vice President. A 2014 Pew survey found that respondents who scored as “consistently conservative” reported that their most trusted news sources were Fox News, Sean Hannity, and Rush Limbaugh.⁸⁶ In 2015, Rupert refused to support Trump’s candidacy. Rupert’s publicly reported donation of \$200,000 to the super PAC of candidate John Kasich was emblematic of his search for a Republican alternative to Trump.⁸⁷ Fox News host Megyn Kelly aggressively questioned Trump at the first televised Republican primary debate in August 2015, igniting a public feud with Trump that lasted for eight months.⁸⁸

78. As discussed below, during the 2016 presidential primaries, the Murdochs and Ailes discovered that Trump had a greater hold on the Fox News

⁸⁶ *Network Propaganda* at 73.

⁸⁷ Mahler, *How Rupert Murdoch’s Empire of Influence Remade the World*, *supra* note 4.

⁸⁸ Paola Chavez and Veronica Stracqualursi, *The History of the Donald Trump – Megyn Kelly Feud*, ABC News (May 17, 2016, 9:26 AM), <https://abcnews.go.com/Politics/history-donald-trump-megyn-kelly-feud/story?id=39151987>.

audience than they did. Ailes resigned soon thereafter, in July 2016. These two events marked the end of an era at Fox News.

C. *Network Propaganda on How Fox News Ceded Its Political Narratives to Trump*

79. *Network Propaganda* is grounded in data analysis of the interaction among digital media of just under four million political stories from over 40,000 online news sources between 2015 and 2017.⁸⁹ The book discusses the influence of Fox News within a larger partisan media ecosystem that also consists of talk radio and online media outlets such as *Breitbart* and the *Drudge Report*. The book describes how, during the 2016 presidential primaries, Fox News came under attack from pro-Trump media rivals:

The 2016 elections showed an unusual pattern of support for Trump as a candidate. Some right-leaning outlets, most notably Breitbart, launched attacks not only at Democrats and Trump's Republican rivals but also at media outlets that did not fully support Trump's candidacy. A review of the stories most widely shared during the primary season shows that Jeb Bush, Marco Rubio, and Fox News were major targets of attack from Breitbart and related sites.⁹⁰

80. The attacks on Fox News hurt its reach among viewers:

By February 2016, Breitbart had grown more prominent while Fox had declined This shift reflects the fact that Fox News then received less Twitter attention than it did earlier or later in the campaign, and

⁸⁹ *Network Propaganda* at 46.

⁹⁰ *Id.* at 57.

less attention in particular from users who also paid attention to the core Breitbart-centered sites.⁹¹

81. Fox News successfully responded to the attacks from its pro-Trump media rivals by adopting a pro-Trump editorial position midway through the primaries.⁹² “[A]s the primaries ended, attention to Fox recovered and Fox became more closely integrated with Breitbart and the remainder of the right-wing media sphere.”⁹³ By supporting Trump through Election Day 2016 and into 2017, Fox News reasserted its centrality.⁹⁴ “As a proportion of all links that went to the top 50 media outlets on the left and right, the big positive mover was Fox News[.]”⁹⁵ “Fox News surpassed Breitbart in both inlinks and Twitter shares.”⁹⁶

82. The cost to the Murdochs was that they lost their kingmaker status. The Murdochs could no longer choose to advance the narratives of their favored politicians and political issues. To maintain Fox News’s audience, Fox News needed to advance the narratives favored by Trump.⁹⁷

⁹¹ *Id.*

⁹² *Id.* at 59, 93.

⁹³ *Id.* at 59.

⁹⁴ *Id.* at 60-61.

⁹⁵ *Id.* at 65.

⁹⁶ *Id.* at 66.

⁹⁷ *Id.* at 20.

83. To maintain its centrality within its media ecosystem, Fox News was under business pressure to promote factually unfounded partisan narratives advanced by Trump and otherwise circulating online.⁹⁸ Fox News thus operated at a higher risk of defamation liability than did major media outlets who adhered to journalistic standards and operated in a different political-media ecosystem.⁹⁹

84. *Network Propaganda* analyzes three case studies from 2017 in which Fox News was instrumental in pushing false narratives that served Trump’s objectives: (1) the “deep state” framing of the Robert Mueller investigation;¹⁰⁰ (2) the Uranium One story “recounted by Hannity, Gingrich, Lou Dobbs, and Judge Jeannine—and more than anyone, Donald Trump—that Hillary Clinton as secretary of state gave Russia 20 percent of our uranium,” which was “simply false” and had been “fact-checked extensively” by major media outlets;¹⁰¹ and (3) a lurid tale involving the July 10, 2016, murder of DNC staffer Seth Rich that predictably led to actionable tort claims.¹⁰²

85. The latter two case studies—Uranium One and Seth Rich—were “specifically fact-based cases [in which] Fox News actively promoted these stories

⁹⁸ *Id.* at 73-75 (emphasis added).

⁹⁹ *Id.* at 81.

¹⁰⁰ *Id.* at 146-58.

¹⁰¹ *Id.* at 168; 166-87.

¹⁰² *Id.* at 159-66.

despite the fact that they were repeatedly fact checked and debunked by a wide variety of professional journalists.”¹⁰³ The authors conclude, “Fox shares little but a few visual trappings with the world of professional journalism at the core of the rest of the U.S. media system.”¹⁰⁴

E. Fox’s Seth Rich Scandal

86. On May 16, 2017, when Trump was under pressure for having fired FBI Director James Comey, Fox revived a conspiracy theory from a year earlier: that DNC employee Seth Rich was murdered in July 2016 because he, rather than Russian intelligence, was the source of leaked DNC emails to WikiLeaks.

87. Fox promoted the conspiracy theory through a written story distributed on multiple platforms:

At 4:30 a.m. on May 16, 2017, the Washington, D.C., local Fox 5 reported that a private investigator hired by Seth Rich’s family, Rod Wheeler, had communicated to Fox 5 that Seth Rich had been in touch with WikiLeaks before his death and that a source inside the D.C. police told him that the police were told to stand down the investigation. At 5:40 a.m., Fox and Friends interviewed the Fox D.C. reporter and developed its own story, which first ran at 6:17 a.m., that repeated the story and vouched for Wheeler’s credibility. That story ran again an hour later. Online, Fox News published Malia Zimmerman’s version of the story That evening Sean Hannity made the connection to the Russia investigation explicit. After telling the basic story, Hannity ran an interview he did with Julian Assange in January 2017, in which

¹⁰³ *Id.* at 146.

¹⁰⁴ *Id.* at 147.

Assange said that the email dumps were not from a state actor
Hannity then . . . delivered the core point:

If this is true, and Seth Rich gave Wikileaks these DNC emails . . . this blows the whole Russia collusion narrative completely out of the water.¹⁰⁵

88. It soon became apparent that Fox News had manufactured the story. Rod Wheeler, the Rich family investigator, told CNN that the information he had referenced in his Fox 5 interview came from a Fox News reporter. CNN also reported that Wheeler’s services had been paid for by Ed Butkowsky, a Fox News guest commentator.¹⁰⁶ Fox 5 published a clarification stating that Wheeler had “backtracked” on his statement.¹⁰⁷

89. Nonetheless, on May 18, 2017, Sean Hannity hosted Jay Sekulow, who said that Rich was responsible for the DNC leaks.¹⁰⁸ Fox News personalities Lou Dobbs and Eric Bolling continued to suggest that Rich was murdered because he had leaked DNC emails to WikiLeaks.¹⁰⁹ On May 21, Newt Gingrich appeared on *Fox*

¹⁰⁵ *Id.* at 162-63.

¹⁰⁶ *Id.* at 163.

¹⁰⁷ *Id.*

¹⁰⁸ David Folkenflik, *Fox News Retracts DNC Staffer Conspiracy Story, But Hannity Keeps It Alive*, NPR (May 24, 2017, 10:49 AM), <https://www.npr.org/2017/05/24/529809256/fox-news-retracts-dnc-staffer-conspiracy-story-but-hannity-keeps-it-alive>.

¹⁰⁹ David Folkenflik, *Seth Rich’s Killing was Exploited on Fox News and Online. His Parents are Fed Up*, NPR (June 15, 2022, 5:01 AM), <https://www.npr.org/2022/06/15/1104511732/fox-news-seth-rich-murder>.

& *Friends* and said that Rich was “apparently assassinated.”¹¹⁰ Hannity, in particular, aggressively pushed the Rich story on Fox News, his radio show, and on Twitter.¹¹¹

90. Data analysis attests to the central role of Fox News and the Fox DC affiliate in spreading the Seth Rich story. Other media stories cited Fox, and video clips of Hannity and other Fox News programming about Seth Rich proliferated on YouTube.¹¹²

91. On May 22, *The Daily Beast* reported that Fox News staffers were “increasingly dismayed” and “embarrass[ed]” about the network’s continued promotion of the conspiracy theory. One Fox News political reporter replied to a query as follows: “ARE WE STILL AIRING THAT SHIT?!”¹¹³

92. On May 23, Fox News issued the following statement:

¹¹⁰ Lois Beckett, *Newt Gingrich Repeats Seth Rich Conspiracy Theory in Fox Appearance*, *The Guardian* (May 21, 2017, 16:48), <https://www.theguardian.com/us-news/2017/may/21/newt-gingrich-seth-rich-wikileaks-conspiracy-theory-fox-friends>.

¹¹¹ THR Staff, *Sean Hannity Backs Off Seth Rich Story “For Now” Out of Respect for His Family*, *The Hollywood Reporter* (May 23, 2017, 11:05 PM), <https://www.hollywoodreporter.com/news/general-news/sean-hannity-backs-seth-rich-story-respect-family-999155/>.

¹¹² *Network Propaganda* at 164-65.

¹¹³ Andrew Kirell and Asawin Suebsaeng, *Fox News Staffers ‘Embarrassed’ by Hannity’s Conspiracy Theory Crusade*, *Daily Beast* (May 22, 2017, 5:30 PM), <https://www.thedailybeast.com/fox-news-staffers-embarrassed-by-hannitys-conspiracy-theory-crusade>.

On May 16, a story was posted on the Fox News website on the investigation into the 2016 murder of DNC Staffer Seth Rich. The article was not initially subjected to the high degree of editorial scrutiny we require for all our reporting. Upon appropriate review, the article was found not to meet those standards and has since been removed.

We will continue to investigate this story and will provide updates as warranted.¹¹⁴

This statement did not acknowledge that the article in question was false, and it was limited to a single article posted on the Fox News website. Fox and Fox News said nothing about the original Fox 5 broadcast or any of the subsequent Fox News broadcasts devoted to Seth Rich's murder.

93. On the same night that Fox published the above-quoted statement Hannity stated on his primetime show, "out of respect for the family's wishes, for now, I am not discussing this matter at this time," but added: "Please do not interpret what I'm saying tonight to mean anything. Don't read into this. I promise you, I am not going to stop doing my job. To the extent to my ability, I am not going to stop trying to find the truth."¹¹⁵ On his radio show Hannity stated: "I am not Fox.com or

¹¹⁴ *Statement on Coverage of Seth Rich Murder Investigation*, Fox News (May 23, 2017, 2:03 PM), <https://www.foxnews.com/politics/statement-on-coverage-of-seth-rich-murder-investigation>.

¹¹⁵ THR Staff, *Sean Hannity Backs Off Seth Rich Story "For Now" Out of Respect for His Family*, *supra* note 126.

FoxNews.com. I retracted nothing.”¹¹⁶ Hannity also tweeted: “Ok TO BE CLEAR, I am closer to the TRUTH than ever. Not only am I not stopping. I am working harder. Updates when available. Stay tuned!”¹¹⁷

94. Seven companies stopped advertising on Hannity’s Fox News show due to the Seth Rich scandal.¹¹⁸

95. Controversy over Fox News’s promotion of the Seth Rich conspiracy theory also threatened regulatory approval in the United Kingdom of the then-pending offer of 21CF to buy out the remaining 61% ownership of Sky.¹¹⁹ The British regulatory agency known as Ofcom had ruled in June 2017 that 21CF would be a “fit and proper” owner of Sky, but the Seth Rich scandal prompted further governmental intervention and additional review.¹²⁰ During the pendency of that

¹¹⁶ Hadas Gold, *Fox Didn’t Pressure Hannity on Rich Story*, Politico (May 24, 2017, 5:35 PM), <https://www.politico.com/story/2017/05/24/hannity-fox-news-seth-rich-238788>.

¹¹⁷ *Id.*

¹¹⁸ Adam Gabbatt, *Sean Hannity Hit by Advertiser Exodus in Wake of Bogus Seth Rich Story*, The Guardian (May 26, 2017, 15:07), <https://www.theguardian.com/media/2017/may/26/sean-hannity-advertiser-boycott-fox-news-seth-rich>.

¹¹⁹ Stewart Clarke, *U.K. Government Seeks Advice on ‘New Evidence’ Concerning Fox’s Bid for Sky*, Variety (Aug. 8, 2017, 11:58 AM), <https://variety.com/2017/tv/news/fox-bid-for-sky-1202519403/>.

¹²⁰ Brian Flood, *Attorney Tries to Stop 21st Century Fox’s Bid to Takeover Sky News*, The Wrap (Aug. 7, 2017, 7:27 AM), <https://www.thewrap.com/attorney-21-century-fox-bid-to-takeover-sky-news/>; Taylor Link, *U.K. reconsidering Rupert Murdoch’s acquisition of Sky News following Seth Rich conspiracy on Fox News*, Salon (Aug. 8, 2017, 3:49 PM), <https://www.salon.com/2017/08/08/u-k-reconsidering-rupert-murdochs->

review, the Murdochs decided to shut down Fox News in Britain,¹²¹ offered to insulate Sky's news operations from the influence of the Murdoch family,¹²² and proposed selling Sky News to Disney as part of a full takeover of Sky.¹²³

96. The Seth Rich conspiracy theory was factually unfounded. In April 2019, special counsel Robert Mueller's official report on the investigation into Russian interference in the 2016 presidential election documented that WikiLeaks was communicating with Russian military intelligence officers before and after Seth Rich's death.¹²⁴

acquisition-of-sky-news-following-seth-rich-conspiracy-on-fox-news/; Robert Mitchell and Stewart Clarke, *British Regulator Submits New Report to Government on Fox-Sky Takeover*, Variety (Aug. 25, 2017, 6:25 AM), <https://variety.com/2017/tv/news/fox-sky-takeover-ofcom-british-regulator-submits-new-report-government-1202530962/>.

¹²¹ Laurel Wamsley, *Fox News Goes Off The Air In Britain As U.K. Scrutinizes Company's Bid To Buy Sky*, NPR (Aug. 30, 2017, 4:11 PM), <https://www.npr.org/sections/thetwo-way/2017/08/30/547290745/as-21st-century-fox-seeks-to-take-over-sky-fox-news-goes-off-the-air-in-britain>.

¹²² Danica Kirka, *21st Century Fox offers concession to seal Sky Takeover*, The Seattle Times (Feb. 12, 2018, 5:41 AM), <https://www.seattletimes.com/business/21st-century-fox-offers-concession-to-seal-sky-takeover/>.

¹²³ *21st Century Fox raises Sky bid in battle with Comcast*, France 24 (July 11, 2018, 9:36 AM), <https://www.france24.com/en/20180711-21st-century-fox-raises-sky-bid-battle-with-comcast>.

¹²⁴ Oliver Darcy, *After Mueller Report, brother of Seth Rich calls on those who pushed conspiracy theory to 'take responsibility'*, CNN Business (Apr. 19, 2019, 5:58 PM), <https://www.cnn.com/2019/04/19/media/seth-rich-mueller-report/index.html>; See also Scott J. Shapiro, *Fancy Bear Goes Phishing: The Dark History of the Information Age, in Five Extraordinary Hacks* at 186-88, 207-37 (2023) (discussing methodology of DNC hack).

97. Seth Rich’s parents sued Fox News. On September 13, 2019, Senior Judge Guido Calabresi, a legendary torts scholar, authored the opinion in the United States Court of Appeals for the Second Circuit reversing a District Court dismissal and sustaining their claims. Respecting the claim for intentional infliction of emotional distress, Judge Calabresi wrote:

We have no trouble concluding that—taking their allegations as true—the Riches plausibly alleged what amounted to a campaign of emotional torture. In order to publish a knowingly false article accusing Seth of leaking the DNC emails, Butowsky and Zimmerman needed a reliable source. They settled on a purportedly independent investigator, hired by the Riches. But they had to fabricate that source. So Butowsky—through lies, religious appeals, and financial support—convinced the Riches to hire Wheeler, a Fox News contributor, as their private investigator. Eventually, Butowsky and Zimmerman told Wheeler that an anonymous FBI investigator had seen emails between Seth and WikiLeaks. Wheeler then regurgitated that unsubstantiated information back to Zimmerman, giving her a named source (himself) for her Fox News article. The article emphasized Wheeler’s connection to the Riches, thus lending credibility to his statements. And it suggested that Seth may have leaked the emails because—as his father said—he “wanted to make a difference in the world.” These allegations, taken together, plausibly rise to the level of extreme and outrageous conduct.¹²⁵

98. In upholding the claim that Fox News tortiously interfered with the Rich family’s confidentiality agreement with Wheeler, the Second Circuit rejected the defense that Fox News possessed a legal justification of news gathering:

¹²⁵ *Rich v. Fox News Network, LLC*, 939 F.3d 112, 123 (2d Cir. 2019) (emphasis added).

The allegations—which we have to take as true—are that Zimmerman and Butowsky (i) intentionally planted a biased investigator to gain the trust of a grieving family; (ii) fed false information to the investigator with the sole purpose of exploiting that investigator’s relationship with the family to give credence to a politically motivated story; and (iii) knew, from the very start, that *this story was nothing more than a false conspiracy theory*. All that is more than enough to counter any possible justification.¹²⁶

99. A trove of documents entered the public record from court cases among various persons connected to the Seth Rich story. In an August 2020 exposé about Fox’s Seth Rich scandal, based on those court records, Kelly McBride, a senior vice president and journalism ethics expert at the Poynter Institute, stated: “The most generous way to look at it is Fox News didn’t do their job. The less generous way to look at it would be they didn’t even try to do their job. And if they didn’t even try, the obvious question is ‘Why?’”¹²⁷ The answer to that rhetorical question is that the business model of Fox News was to maintain its centrality in its ecosystem.

100. Seth Rich’s parents settled with Fox News in October 2020, on the eve of the depositions of Dobbs and Hannity. Fox News negotiated to keep the settlement confidential for one month, until after Election Day 2020.¹²⁸ Dinh

¹²⁶ *Id.* at 129 (emphasis added).

¹²⁷ Andy Kroll, *A Murder, a Conspiracy Theory, and the Lies of Fox News*, Rolling Stone (Aug. 16, 2020, 11:40 AM), <https://www.rollingstone.com/politics/politics-features/seth-rich-fox-news-sean-hannity-wikileaks-donald-trump-1040830/>.

¹²⁸ Ben Smith, *Fox Settled a Lawsuit Over Its Lies. But It Insisted on One Unusual*

reported the settlement to Fox’s Audit Committee on November 2 and November 10, 2020, and to the full Board on November 11, 2020. The content of any substantive report or director discussion is either redacted or not recorded.¹²⁹

F. Fox’s Board Pays No Heed to Defamation Risk

101. The board of directors of the newly spun-off, publicly traded Fox was established in March 2019. As of that time, the above-discussed features of the business model of Fox News and related media assets were highly publicized and well known to each member of the Board (*i.e.*, Fox News’s distinctive indifference to fact-checking and corrections and lack of written editorial standards; Rupert’s tabloid approach to broadcasting; Fox News’s promotion of pro-Trump conspiracy theories; the Seth Rich scandal). The directors were also aware of the risks associated with potential claims for defamation or related intentional torts (such as the regulatory impact in the United Kingdom of the phone hacking scandal and the Seth Rich scandal). As stated in Fox’s 10-K filed on August 9, 2019:

Damage to our brands, particularly the FOX brand, or our reputation could have a material adverse effect on our business, financial condition and results of operations.

Condition., N.Y. Times (Jan. 17, 2021), <https://www.nytimes.com/2021/01/17/business/media/fox-news-seth-rich-settlement.html>.

¹²⁹ NYC_220_713; NYC_220_7488; NYC_220_7697; NYC_220_1484.

... Unfavorable publicity regarding our content, the actions of advertisers featured on our broadcast television and cable networks, and governmental scrutiny or fines, could adversely affect the Company's reputation and brands.¹³⁰

102. Nevertheless, the Section 220 record reveals that at all relevant times— at least from March 2019 through December 2020—there was a complete absence of Board-level attention to monitoring or mitigating the potential assertion of defamation claims, or otherwise addressing editorial policy at Fox News.

103. The Audit Committee Charter, adopted in March 2019, provides that the Audit Committee shall “Establish and oversee procedures utilized to evaluate alleged violations of the Standards of Business Conduct.”¹³¹ The Audit Committee Charter also says the following under the heading “*Limitations Inherent in the Audit Committee's Role*”:

Nor is it the duty of the Audit Committee to assure compliance with the Company's Standards of Business Conduct. Furthermore, while the Audit Committee is responsible for reviewing the Company's policies and practices with respect to risk assessment and management, it is the responsibility of the Chief Executive Officer and senior management to determine the appropriate level of the Company's exposure to risk.¹³²

¹³⁰ Fox Corp., Annual Report (Form 10-K) (Aug, 9, 2019), <https://investor.foxcorporation.com/static-files/4d412985-43c5-4e55-a956-c973968a6fbc>.

¹³¹ NYC_220_002823.

¹³² NYC_220_002817-18 (emphasis in original).

104. During the relevant timeframe, defamation risk was not an apparent component of the Standards of the Business Conduct or the oversight work of the Audit Committee.

105. Fox’s Standards of Business Conduct, as amended and restated as of February 3, 2020, does not mention defamation risk or contain written standards of journalistic integrity, such as robust fact-checking for all facets of broadcasting (*e.g.*, the prime-time opinion shows) or making prompt corrections. The Standards of Business Conduct is properly interpreted as embracing a form of First Amendment absolutism that justifies Rupert’s tabloid approach of broadcasting political narratives without regard for their factual foundation:

Audiences look to FOX for news, information, analysis and entertainment because they trust ***our dedication to the core values of our entire business: free inquiry, free speech and free expression.***

We are purveyors of First Amendment activities and defenders of the U.S. Constitution and its rule of law. ***We contribute to the marketplace of ideas by providing our audiences with timely news, clear opinion, and engaging entertainment*** about virtually everything people care about – from politics to sports, business to health, natural disasters to uplifting stories of courage, hope and humanity. Through it all we remain steadfast and focused on our core values in building a culture of trust, integrity and ethical behavior.

Foremost among those values are the accuracy of information, ***clarity of opinion***, and quality of our content....

...

Editorial Independence and Broadcast Standards

The First Amendment and the fundamental values it reflects are integral to who we are and what we do. As an important source of news, information, analysis and media, we play a leading role in the marketplace of ideas. Our flagship news properties are some of the most influential in history, and we respect the significant responsibility that comes with being *a steward for the people’s right to know*. In keeping with the Constitution’s protections for the freedom of the press, *we guard and defend our journalists in their search for the truth.*

We maintain strict separation between revenue sources and our news and opinion content. Our opinions do not drive our news reporting, which pursues the facts wherever they may lead. *And we resist all attempts to silence us.* Indeed, we believe so strongly in these core values that we often come to the defense of our competitors, recognizing that a free press benefits all of us and requires the support of each and every one of us.¹³³

The Standards of Business Conduct does not mention defamation or the limits of First Amendment protection. It is not apparent how the Audit Committee could “evaluate alleged violations” of the Standards of Business Conduct due to defamation risk, and the Section 220 record does not reflect consideration by the Audit Committee of policies or procedures respecting editorial matters. The Board and the Audit Committee deferred without consideration to the Murdochs and management on the subject of defamation risk.

¹³³ NYC_220_00003956-3961 (emphasis added).

106. The Standards of Conduct advises employees that they can seek guidance or report concerns about a “potential Standards violation” by, among other means, calling the “Alertline” hotline.¹³⁴ It is not apparent why an employee would consider reporting internally that an opinion host publicly broadcasting a conspiracy theory lacking a factual foundation is a potential Standards violation. While “accuracy of information” is a value endorsed in the Standards of Conduct, suppressing the promotion of a conspiracy theory could itself be a violation of the Standards of Conduct. After all, the Standards of Conduct embrace “clarity of opinion,” “free inquiry, free speech and free expression,” “the people’s right to know,” “the marketplace of ideas,” guarding and defending Fox “journalists in their search for the truth” and “resist[ing] all attempts to silence us.”

107. The Audit Committee periodically received a summary of Alertline complaints by type (*i.e.*, either “Financial Frauds/Controls/Ethics” or “Editorial” or “HR” or “OTHER”).¹³⁵ At the Audit Committee meeting of June 9, 2020, ten minutes was reserved for reporting on financial fraud investigations, Alertline activity, and HR complaints.¹³⁶ The heavily redacted Alertline report notes that four new Alertline reports were made since January 2020, and one of those four new

¹³⁴ NYC_220_00003982.

¹³⁵ NYC_220_00000144.

¹³⁶ NYC_220_00000079, 137-50.

reports was “‘editorial’-related (Fox News).”¹³⁷ As of the November 10, 2020 Audit Committee meeting, 40 “Editorial” reports had made since Alertline’s inception sixteen years earlier on July 26, 2004, less than three per year on average, with two such reports made since June 30, 2020.¹³⁸ The Section 220 production reflects that the Audit Committee received no information about the content of any of these “Editorial” reports. There is no Section 220 record of any consideration by the Audit Committee of editorial policy respecting defamation risk prior to Dominion and Smartmatic filing suit.

108. The Audit Committee was advised about the Seth Rich litigation (and other significant litigation matters) on November 13, 2019,¹³⁹ and of the settlement in principle of the Seth Rich litigation on November 2, 2020.¹⁴⁰ The Board was advised of the status of the Seth Rich litigation and another defamation action on November 11, 2020.¹⁴¹ There is no Section 220 record of the Audit Committee drawing any lessons from the Seth Rich scandal. And as further discussed below, no process existed for Audit Committee or Board monitoring of *threatened* or

¹³⁷ NYC_220_00000143.

¹³⁸ NYC_220_00007573-74.

¹³⁹ NYC_220_00010528.

¹⁴⁰ NYC_220_00007488.

¹⁴¹ NYC_220_00007697.

potential defamation litigation. The Audit Committee did nothing to protect the Company from future defamation claims before any lawsuit was filed.

109. On June 17, 2021, months after Dominion and Smartmatic had filed suit, the Board received a report on “Editorial Process and Oversight” of the primetime opinion shows (*i.e.*, Carlson, Hannity, and Ingraham).¹⁴² It included a slide devoted to “Pre-Taping & Legal Review” that references “First Amendment & Defamation Legal Training,” “Legal Consultation as Needed Prior to Certain Segments,” “Pre-Taping for Certain Interviews” and “Post-Production Editing & Legal Review (as needed).”¹⁴³ The Section 220 record contains no earlier mention of these concepts by the Board or the Audit Committee. The existence of the June 2021 deck implies that the Board had not previously been educated about its subject matter. As further discussed below, the facts surrounding Fox’s promotion of falsehoods respecting Dominion and Smartmatic reveals the absence of any such preventative measures for the opinion shows between November 2020 and January 2021, such as “Lou Dobbs Tonight,” which embraced Trump’s election lies and was canceled in February 2021.¹⁴⁴

¹⁴² NYC_220_3160, 3213-227; *see* NYC_220_1696-1706.

¹⁴³ NYC_220_00003219.

¹⁴⁴ Stephen Battaglio, *Fox News cancels Lou Dobb’s show; pro-Trump host not expected to be back on air*, L.A. Times (Feb. 5, 2021, 3:10 PM),

110. The Board meeting of June 17, 2021 also addressed amending the Audit Committee Charter to provide for Audit Committee oversight of Fox’s Corporate Ethics and Compliance Program.¹⁴⁵

G. Fox’s Defamation of Dominion and Smartmatic

(a) Trump Fights the Election Results, Against the Public Advice of the Murdochs

111. Late in the evening on November 3, 2020, Election Day, the election desk at Fox News evaluated the work of in-house election data specialists and concluded that Biden would win the State of Arizona’s electoral votes, which seemingly would be sufficient for Biden to prevail nationally. Fox News made the call at 11:20 p.m. Trump’s team badgered Fox unsuccessfully to reverse the call. At Trump’s direction, Jared Kushner spoke to Rupert, and Fox News’s Senior Vice President and Managing Editor of the Washington Bureau Bill Sammon spoke to White House Chief of Staff Mark Meadows.¹⁴⁶ Trump political adviser Jason Miller tweeted:

<https://www.latimes.com/entertainment-arts/business/story/2021-02-05/fox-news-cancels-lou-dobbs-tonight#:~:text=Lou%20Dobbs'%20show%20on%20Fox%20Business%20Network%20has%20been%20canceled.&text=Fox%20News%20Media%20has%20canceled,election%20C%20The%20Times%20has%20learned.>

¹⁴⁵ NYC_220_00002072, 3303.

¹⁴⁶ D MSJ at 18.



Jason Miller ✓
@JasonMillerinDC



WAY too soon to be calling Arizona...way too soon. We believe over 2/3 of those outstanding Election Day voters are going to be for Trump. Can't believe Fox was so anxious to pull the trigger here after taking so long to call Florida. Wow.

11:27 PM · Nov 3, 2020

5,419 Retweets 1,116 Quotes 29.7K Likes 77 Bookmarks

112. Trump declared himself the winner of the national election in the early morning hours of November 4 and alleged widespread election fraud. Fox News's most reputable news host, Chris Wallace, rejected Trump's declaration, stating: "This is an extremely flammable situation and the president just threw a match into it. He has not won these states. Nobody is saying he won these states. The states haven't said he's won."¹⁴⁷

113. Initially, Rupert tried to influence Trump to concede the presidential election. On the evening of November 5, the Murdoch-controlled *New York Post*

¹⁴⁷ Harriet Alexander, *Fox News' Chris Wallace says Trump 'threw a match at a flammable situation'*, *The Independent* (Nov. 4, 2020, 14:20), <https://www.independent.co.uk/news/world/americas/us-election-2020/chris-wallace-trump-fox-news-election-b1588603.html>; Chris Wallace left Fox News in December 2021. See Michael M. Grynbaum, *Chris Wallace Says Life at Fox News Became 'Unsustainable'*, *N.Y. Times* (Mar. 27, 2022), <https://www.nytimes.com/2022/03/27/business/media/chris-wallace-cnn-fox-news.html#:~:text=%E2%80%9CBefore%2C%20I%20found%20it%20was,unsustainable%20as%20time%20went%20on.%E2%80%9D>.

ran an article entitled, “Downcast Trump makes baseless election fraud claims in White House address[.]”¹⁴⁸

114. Rupert told Scott on November 6 that it was “very hard to credibly cry foul everywhere.”¹⁴⁹ Rupert testified in the Dominion litigation that the 2020 election “was not stolen” from Trump and that he always thought that the vote-counting process was on the “up-and-up.”¹⁵⁰

115. On November 7, Fox News and several other media outlets called the national election for Biden. Rupert emailed Lachlan: “We should and could have gone first [to call the election] but at least being second saves us a Trump explosion!”¹⁵¹

116. Rupert and Lachlan helped edit a November 7 *New York Post* editorial calling for Trump to stop pushing baseless conspiracy theories of a stolen election:

[T]he president’s aides have shown no evidence that the election was “stolen.” . . . It undermines faith in democracy, and faith in the nation, to push baseless conspiracies. Get Rudy Giuliani off TV....

¹⁴⁸ Ebony Bowden, *Downcast Trump makes baseless election fraud claims in White House address*, N.Y. Post (Nov. 5, 2020), <https://nypost.com/2020/11/05/trump-to-speak-from-white-house-as-vote-count-leans-toward-biden/>.

¹⁴⁹ NYC_220_8972.

¹⁵⁰ D SJ Opp. Ex. 600 (R. Murdoch Dep. Tr.) at 57:13, 64:19-23.

¹⁵¹ NYC_220_8999.

If Trump persists in wild talk to the contrary, he'll lead his people into irrelevance and marginalize his own voice.¹⁵²

After the editorial was published, Scott disseminated it widely within Fox. Rupert thanked her for doing so.¹⁵³

117. That same day, the Trump campaign filed suit in Arizona claiming that Maricopa County “incorrectly rejected votes[.]”¹⁵⁴ More lawsuits would follow, along with more accusations of election fraud that Trump’s lawyers were not willing to put in signed pleadings, such as the accusations that Dominion and Smartmatic engaged in criminal election fraud.

(b) Fox News Faces a Viewer Exodus and Trump Pressure

118. By defying Trump’s claim that he had won the election, Fox News triggered a massive, immediate, negative viewer reaction.

119. Trump supporters appeared outside of the election department in Maricopa County, Arizona, chanting “Fox News sucks[.]”¹⁵⁵

¹⁵² Post Editorial Board, *President Trump, your legacy is secure – stop the ‘stolen election’ rhetoric*, N.Y. Post (Nov. 7, 2020), <https://nypost.com/2020/11/07/president-trump-your-legacy-is-secure-stop-the-stolen-election-rhetoric/>; D SJ Opp. at 16-17.

¹⁵³ D SJ Opp. Ex. 600 (R. Murdoch Dep. Tr.) at 239:7-17.

¹⁵⁴ Irene Snyder et al., *Trump campaign, RNC file lawsuit in Maricopa County for ‘incorrectly rejected votes’*, FOX 10 Phoenix (Nov. 12, 2020), <https://www.fox10phoenix.com/news/trump-campaign-rnc-file-lawsuit-in-maricopa-county-for-incorrectly-rejected-votes>.

¹⁵⁵ Mayank Aggarwal, *Trump fans chant ‘Fox News sucks’ outside Arizona count as*

120. In the week between November 4 and November 11, 2020, Fox News’s ratings cratered. Fox’s own internal tracking of viewer favorability showed that viewers of primetime Fox News shows (hosted by Tucker Carlson, Sean Hannity, and Laura Ingraham), who had a net favorability impression of Fox News of over 70% shortly before Election Day, had just a 25% net favorability impression as of November 11.¹⁵⁶

121. Fox’s top hosts and executives watched the backlash with alarm. Carlson emailed Scott, “I’ve never seen a reaction like this, to any media company. Kills me to watch it.” Scott relayed the email to Lachlan.¹⁵⁷ Lachlan testified in the Dominion litigation that crashing ratings were “absolutely” a concern that would “keep [him] awake.”¹⁵⁸

122. A weekly “Brand Protection” report sent to Rupert, Lachlan, and Dinh included the tracking of viewer favorability along with a “summary of the strong

anchor replies to angry tweets, Independent (Nov. 5, 2020, 8:32), <https://www.independent.co.uk/news/world/americas/us-election-2020/trump-fox-news-supporters-angry-tweets-bret-baier-b1610673.html>; D MSJ at 18, Ex. 195 (Fox’s Chief White House Correspondent telling Fox News President “Our viewers are . . . chanting ‘Fox News sucks’, something I never heard before[.]”).

¹⁵⁶ NYC_220_9075-77.

¹⁵⁷ D MSJ Ex. 211, 212.

¹⁵⁸ D MSJ Ex. 130 (L. Murdoch Dep. Tr.) at 145:20-147:24.

conservative and viewer backlash to Fox that we are working to track and mitigate.”

The report warned:

This week we continued to see ***extremely high levels of conservative discontent towards Fox News***, both on social media and in the pro-Trump commentariat. Roughly half of the top 100 tweets and a third of the top 100 Facebook posts mentioning Fox News were from angry conservatives criticizing Fox or threatening to boycott the network. ***Both Donald Trump and Newsmax have taken active roles in promoting attacks on Fox News***, including by pushing leaked footage and false reports about Fox News talent.¹⁵⁹

123. Noteworthy attacks on Fox News included a November 9 story by Rush Limbaugh entitled, “Fox News Turned Its Back on Its Base”¹⁶⁰ and a November 12 article in *Axios* entitled “Scoop: Trump eyes digital media empire to take on Fox News.”¹⁶¹

124. Trump was pressuring Fox News to support his fight against the election results. On the evening of November 12, Hannity and Dobbs unleashed attacks on Dominion, garnering Trump’s approval:¹⁶²

¹⁵⁹ NYC_220_9075 (emphasis added).

¹⁶⁰ NYC_220_9076; Rush Limbaugh, *Fox News Turned Its Back on Its Base*, The Rush Limbaugh Show (Nov. 9, 2020), <https://www.rushlimbaugh.com/daily/2020/11/09/fox-news-turned-its-back-on-its-base/>.

¹⁶¹ NYC_220_9076; Mike Allen, *Scoop: Trump eyes digital media empire to take on Fox News*, *Axios* (Nov. 12, 2020), <https://www.axios.com/2020/11/12/trump-fox-news-digital-media-competitor>.

¹⁶² Donald J. Trump (@realDonaldTrump), Twitter (Nov. 12, 2020, 10:46 PM), <https://twitter.com/realDonaldTrump/status/1327095398712946695>.

1291.Nov 12th 2020 - 10:46:13 PM EST
66k 319k Hide



125. On November 15, Trump tweeted praise of competitor networks One America News and Newsmax, which both claimed that Trump had won the 2020 election. He wrote: “Many great alternatives are forming & exist. Try @OANN & @newsmax, among others!”¹⁶³

126. Fox News’s daytime and primetime audience declined by 34% and 37% respectively, while Newsmax’s daytime audience increased nearly six-fold and its primetime audience tripled.¹⁶⁴

¹⁶³ Donald J. Trump (@realDonaldTrump), Twitter (Nov. 15, 2020, 7:25 AM), <https://twitter.com/realDonaldTrump/status/1327950785959915520?s=20>.

¹⁶⁴ Ruling on Cross-Mots. for Summ. J. (“MSJ Ruling”) at 15-16, *Dominion v. Fox News Network*, No. N21C-03-257, (Del. Super. Ct. Mar. 31, 2023).

(c) The Murdochs Decide to Amplify Trump’s Claims of Election Fraud

127. Rupert fretted that Fox News had mishandled the call of Arizona, and he became more actively engaged in Fox News programming going forward.¹⁶⁵ He and Lachlan were in close contact with Scott from November 2020 through January 2021 about the content and direction of Fox News, including narratives, topics, and guests, and how to cover Trump’s claims of a stolen election.¹⁶⁶

128. Certain Fox hosts amplified Trump’s election fraud theories. On the morning of November 8, Fox host Maria Bartiromo aired a pre-taped interview with Sidney Powell, who, together with Giuliani, was leading Trump’s legal team filing election-fraud lawsuits. Powell had forwarded Bartiromo an email that Powell said constituted evidence of voter fraud. The writer blamed election irregularities on Dominion and claimed she had learned the information in her “dreams.” The writer also proclaimed that she was “internally decapitated,” that “[t]he Wind tells me I’m a ghost, but I don’t believe it,” and that she was able to “time-travel in a semi-

¹⁶⁵ Sarah Ellison, *Top Fox News managers depart amid Murdoch’s concerns over controversial Arizona election night projection*, Washington Post (Jan. 19, 2021, 6:01 PM), https://www.washingtonpost.com/lifestyle/media/fox-news-stirewalt-sammon-murdoch-arizona/2021/01/19/a54e9f72-5a8f-11eb-a976-bad6431e03e2_story.html.

¹⁶⁶ D SJ Opp. at 10-11.

conscious state.”¹⁶⁷ That email and that November 8 interview was the ultimate source of the entire conspiracy theory about Dominion.¹⁶⁸

129. On air with Bartiromo, Powell contended that there had been a “massive and coordinated effort to steal this election” that involved “flipping votes in the computer system, or adding votes that did not exist[.]”¹⁶⁹

130. Later that day, on November 8, Rupert complained to Scott about CNN coverage describing Fox News as “enabling and encouraging Trump’s election denialism.”¹⁷⁰

131. Shortly thereafter on November 8, Rupert, Lachlan, and Scott had a “long talk” about mounting viewer backlash and the direction of Fox coverage in light of Trump contesting the election, and decided that Fox News would amplify

¹⁶⁷ Cheryl Teh and Jacob Shamsian, *Sidney Powell cited woman who claimed to be headless, time-traveling entity in email pushing election conspiracy theories*, Business Insider (Feb. 17, 2023, 12:53 AM), <https://www.businessinsider.com/sidney-powell-voter-fraud-claims-headless-time-travel-dominion-fox-2023-2>.

¹⁶⁸ Brian Stelter, *Network of Lies: The Epic Sage of Fox News, Donald Trump, and the Battle for American Democracy*, at 115, 238-40 (2023).

¹⁶⁹ *Sunday Morning Futures with Maria Bartiromo*, Fox News, at 7:00AM PST (Nov. 8, 2020), <https://www.foxnews.com/transcript/trump-legal-team-to-file-new-ballot-lawsuits>.

¹⁷⁰ D SJ Opp. at 19; Teh and Shamsian, *Sidney Powell cited woman who claimed to be headless, time-traveling entity in email pushing election conspiracy theories*, *supra* note 184.

Trump's lawsuits and claims of election fraud while waiting for Trump to concede.¹⁷¹

132. This strategy of rebuilding Fox News's audience by indulging Trump's claims is reflected in two subsequent emails between Rupert and Scott. On November 9, Scott wrote the following in response to Rupert's suggestion of pivoting coverage to topics other than the presidential election:

Pivot but keep the audience who loves and trusts us... we need to make sure they know we aren't abandoning them and [are] still champions for them.¹⁷²

On November 16, Rupert emailed Scott:

Trump will concede eventually and we should concentrate on Georgia [Senate run-off], helping any way we can. *We don't want to antagonize Trump further*, but Giuliani taken with a large grain of salt. *Everything at stake here.*¹⁷³

133. Rupert testified in the Dominion litigation that "nobody wants Trump as an enemy," explaining "we all know that Trump has a big following. If he says, 'Don't watch Fox News,' maybe some don't."¹⁷⁴

¹⁷¹ D SJ Opp. at 19-20.

¹⁷² NYC_220_8973 (emphasis added).

¹⁷³ NYC_220_8987 (emphasis added).

¹⁷⁴ Jeremy Barr et al., *Murdoch admits some Fox hosts 'were endorsing' election falsehoods*, The Washington Post (Feb. 27, 2023, 8:08 PM), <https://www.washingtonpost.com/media/2023/02/27/ruPERT-murdoch-testimony-fox-dominion/>.

134. Rupert also testified that he had “seen no evidence” that Dominion committed election fraud, and that he did not believe Dominion had done so.¹⁷⁵

(d) Fox’s Lies About Dominion and Smartmatic

135. As noted above, Judge Davis made the following observation when ruling on cross-motions for summary judgment in the Dominion litigation (with emphasis in the original): “*The evidence developed in this civil proceeding demonstrates that [it] is **CRYSTAL** clear that none of the Statements relating to Dominion about the 2020 election are true.*”¹⁷⁶

136. There were four categories of “Statements” at issue in the Dominion litigation:

- (i) the “election lie” (*i.e.*, that Dominion manipulated or tampered with the election results);
- (ii) the “algorithm lie” (*i.e.*, that a fraudulent Dominion algorithm design flipped votes);
- (iii) the “Venezuela lie” (*i.e.*, that Dominion is owned by a company founded in Venezuela to rig elections for Hugo Chavez); and

¹⁷⁵ D SJ Opp. Ex. 600 (Rupert Dep. Tr.) at 23:25-2:5.

¹⁷⁶MSJ Ruling at 43.

- (iv) the “kickback lie” (*i.e.*, that Dominion pays kickbacks to election officials).

137. The “Statements” are set forth in an appendix to the judicial opinion (attached hereto as Exhibit B) and they include the following statements:

- November 8, 2020, statements by Maria Bartiromo with Sidney Powell and Rudy Giuliani, including:

“Sidney, we talked about the Dominion software. I know that there were voting irregularities.”

“Can you walk us through what has taken place here as you see it.”

- November 12, 2020, statements by Lou Dobbs with Rudy Giuliani, including:

“And by the way, the states, as you well know, they have no ability to audit meaningfully the votes that are cast because the servers are somewhere else and are considered proprietary and they won’t touch them.”

“Rudy, we’re glad you’re on this case and pursuing what is the truth and straightening out what is a very complicated and difficult story.”

- November 13, 2020, statements by Lou Dobbs with Sidney Powell, including, after Powell stated that Dominion “was created to produce

altered voting results in Venezuela for Hugo Chavez and then shipped internationally to manipulate votes for purchase in other countries”:

“Well, that’s straightforward.”

“Sidney, we’re glad that you are on the charge to straighten out all of this.”

- November 14, 2020, tweet by Lou Dobbs (with embedded tweet by Rudy Giuliani stating that Dominion is a foreign company and a front for Smartmatic) stating:

“Read all about the Dominion and Smartmatic voting companies and you’ll soon understand how pervasive this Democrat electoral fraud is, and why there’s no way in the world the 2020 Presidential election was either free or fair.”

- November 14, 2020, statements by Fox News host Judge Jeanine Pirro with Sidney Powell, including:

“Now you’ll hear from Sidney Powell in a few minutes who will explain what she has unearthed in the creation of Dominion.”

“I assume that you are getting to the bottom of exactly what Dominion is, who started Dominion, how it can be manipulated if it is manipulated at all[.]”

- November 15, 2020, statements by Maria Bartiromo on Fox and Friends, including:

“There is much to understand about Smartmatic, which owns Dominion Voting Systems.”

“Sidney Powell is also talking about potential kickbacks that government officials who were asked to use Dominion actually also enjoyed benefits to their families.”

- November 15, 2020, statements by Maria Bartiromo with Rudy Giuliani and Sidney Powell, including:

Powell stating: “We have identified mathematically the exact algorithm they used and planned to use from the beginning to modify the votes[.]”

Giuliani stating: “this company has tried-and-true methods for fixing elections[.]”

Bartiromo eliciting factual assertions about electoral fraud and stating:

“Right.”

“Wow. This is explosive.”

- November 16, 2020, statements by Lou Dobbs with Sidney Powell, including:

“This is people trying to blind us to what is going on.”

“The radical Dems, the RINOS, corporate left wing national media, of course, quick to dismiss any concern about Dominion voting machines being manipulated as a, quote-unquote, conspiracy theory.”

- November 18, 2020, statements by Lou Dobbs with Rudy Giuliani, including:

“I want to share with the audience one of the affidavits that has been given to us by an unidentified whistleblower, and it pertains to Dominion.”

“It’s outrageous,” in response to Giuliani’s assertions about Dominion and Smartmatic.

- November 19, 2020, statements by Lou Dobbs with Sidney Powell, including:

“[Powell] will be providing more details on how Dominion vote machines and Smartmatic software were used to help Joe Biden.”

“We have just watched, to everyone in this audience tonight, our election is run by companies, the ownership of which we don’t know.”

Powell stating: “Dominion machines run the Smartmatic software or parts of the key code of it, and that is what allows them to manipulate the votes in a way the operators choose to manipulate them[.]”

- November 21, 2020, statements by Fox News host Judge Jeanine Pirro with Trump attorney Lin Wood, including:

“[W]hy was there an overnight popping of the vote tabulation that cannot be explained for Biden?”

“[T]he President’s lawyers offered evidence by way of affidavits, which I told you last Saturday as a Judge from a legal perspective, are sworn statements of individuals signed under penalty of perjury, meaning they know they face the penalty of prosecution and five years if they lie. These sworn statements are factual allegations are part of virtually every lawsuit[.]”

- November 24, 2020, statements by Lou Dobbs with Sidney Powell, including:

“Let’s start with the ownership of these voting firms. I know you’re focusing on that part of the electoral fraud that’s been perpetrated this year in this election. Why don’t we know who they are?”

“I think many Americans have given no thought to electoral fraud that would be perpetrated through electronic voting; that is, these machines, these electronic voting companies including Dominion, prominently Dominion, at least in the suspicions of a lot of Americans.”

Powell stating “they were manipulated by the software used in the Dominion machines—and used by other machines in the United States, frankly, and we are just continuing to be inundated by evidence of all the frauds here[.]”

- November 30, 2020, statements by Lou Dobbs with Sidney Powell, including:

Powell stating “all the machines are infected with the software code that allows Dominion to shave votes for one candidate and give them to another[.]”

Dobbs stating “no one knows [Dominion’s] ownership, has no idea what’s going on in those servers, has no understanding of the software, because it’s proprietary.”

- November 30, 2020, statement by Sidney Powell with Sean Hannity:
“The machine ran an algorithm that shaved votes from Trump and awarded them to Biden. They used the machines to trash large batches of votes that should have been awarded to President Trump. And they used a machine to inject and add massive quantities of votes for Mr. Biden.”
- December 4, 2020, statements by Lou Dobbs, including:

“At the center of it all, Dominion Voting Systems. Are they the culprit here? Not only the culprit, but are they the principal culprit?”

“Dominion Voting Systems, with—you have described it, with algorithms in which—which were designed to be inaccurate rather than to be a secure system.”

“Give us your sense of who is driving all of this.”

- December 10, 2020, tweet by Lou Dobbs with embedded document:

“The 2020 Election is a Cyber Pearl Harbor: The leftwing establishment have aligned their forces to overthrow the United States government #MAGA #AmericaFirst #Dobbs.”

“We have technical presentations that prove there is an embedded controller in every Dominion machine We have the architecture and systems, that show how the machines can be controlled from external sources, via the internet, in violation of voting standards, Federal law, state laws, and contracts.”

- December 10, 2020, statements by Lou Dobbs with Sidney Powell, including:

Powell stating “they designed and developed the Smartmatic and Dominion programs and machines, that include a controller module that

allows people to log in and manipulate the vote, even as it's happening. We're finding more and more evidence of this. We now have reams and reams of actual documents from Smartmatic and Dominion, including evidence that they planned and executed all of this.”

Dobbs stating “We have tremendous evidence already but—of fraud in this election[.]”

- December 10, 2020, tweets by Lou Dobbs:

“@SidneyPowell1 reveals groundbreaking new evidence indicating our Presidential election came under massive cyber-attack orchestrated with the help of Dominion, Smartmatic, and foreign adversaries.”

“Exposing Dominion: @SidneyPowell1 joins Lou at 5pm ET to share new information that could have massive consequences in the Battle for the White House.”

- December 12, 2020, statements by Rudy Giuliani on Fox & Friends:

“[W]e have a machine, the Dominion machine . . . was developed to steal elections and being used in the states that are involved.”

“I've got every piece of evidence. And I've got a mountainful of evidence[.]”

- January 26, 2021, statements by MyPillow CEO Mike Lindell with Tucker Carlson:

“I’ve been all in trying to find the machine fraud and I—we found it. We have all the evidence.”

“No, I have the evidence. I dare people to put it on. I dared Dominion to sue me, because then it would get out faster.”

(e) Fox’s Hostility to Fact-Checking Trump’s Claims

138. There was no shortage of timely, readily available information about the absence of any factual basis to support the “election lie,” the “algorithm lie,” the “Venezuela lie,” or the “kickback lie.” Fox News received no factual support from the Trump campaign or its pro-Trump guests. Fox News fact-checkers rejected Trump’s claims. Dominion and Smartmatic provided abundant fact-checking communications. Fox News executives and hosts knew that the claims of election fraud were false. Yet Fox News endorsed and promoted defamatory election lies over a span of many weeks. No institutional safeguards prevented Fox News from broadcasting defamatory election lies.

139. Fox News’s fact-checking department is called the Brainroom. Fox News Senior Vice President for Weekend News and Programming David Clark testified in the Dominion litigation that a claim should not be aired if the Brainroom

concludes that the claim is false.¹⁷⁷ By November 13, 2020, the Brainroom had produced two memos widely distributed within Fox rejecting claims made by the Trump campaign that Dominion voting machines had deleted or switched votes:¹⁷⁸

Slug	Writer	Create Date	Audio Time	Modify Date	Modified By
Background: Dominion Voting Systems & Criticism / Accusations - Fact Checks	balducci	11/13/20 13:35:06	11:17	11/13/20 13:37:41	balducci
CATEGORY				UNIT	STORY
Len Balducci					

<p>FACT</p> <p>Claims about Dominion switching or deleting votes are 100% false. Dominion systems continue to reliably and accurately count ballots, and state and local election authorities, as well fact checkers, have publicly confirmed the integrity of the process.</p>
--

<p>FACT</p> <p>Dominion has no company ownership relationships with any member of the Pelosi family, the Feinstein family, or the Clinton Global Initiative. Dominion works with all political parties; our customer base and our government outreach practices reflect this nonpartisan approach.</p>

¹⁷⁷ Amanda Terkel et al., *Here's what Fox News was trying to hide in its Dominion lawsuit redactions*, NBC News (Mar. 29, 2023, 2:37 PM), <https://www.nbcnews.com/politics/elections/dominion-releases-previously-redacted-slides-fox-news-lawsuit-rcna77257>.

¹⁷⁸ *Id.*

From: Balducci, Leonard [REDACTED]
Sent: Friday, November 13, 2020 3:26 PM
To: Ilievski, Megan [REDACTED]
Cc: Ward, Kevin <[REDACTED]>
Subject: BRAINROOM: Background: Dominion Voting Systems & Criticism / Accusations - Fact Checks

TRUMP: "REPORT: DOMINION DELETED 2.7 MILLION TRUMP VOTES NATIONWIDE. DATA ANALYSIS FINDS 221,000 PENNSYLVANIA VOTES SWITCHED FROM PRESIDENT TRUMP TO BIDEN. 941,000 TRUMP VOTES DELETED. STATES USING DOMINION VOTING SYSTEMS SWITCHED 435,000 VOTES FROM TRUMP TO BIDEN."

THE FACTS: There's no evidence of widespread fraud in the 2020 election, or of major problems with Dominion's systems. Election officials from both political parties have stated publicly that the election went well, and international observers confirmed there were no serious irregularities.

140. Beginning on November 12, 2020, and continuing into 2021, Dominion sent Fox News a multitude of "Setting the Record Straight" emails, detailing all the public source evidence refuting the Trump campaign's lies being broadcast by the network. In total, Dominion sent 3,682 emails to Fox recipients seeking to correct the record.¹⁷⁹

141. One such "Setting the Record Straight" email, sent by Dominion's media relations specialist Tony Fratto to Maria Bartiromo on November 14 (attached as Exhibit C hereto), is a two-page document with hyperlinks and text supporting the following six propositions:

- i. Vote-deletion/switching assertions are completely false;
- ii. Dominion is a nonpartisan U.S. company;

¹⁷⁹ D MSJ at 92-96.

- iii. There were no Dominion software glitches and ballots were accurately tabulated. The results are also 100% auditable;
- iv. No unauthorized or last-minute software updates occurred;
- v. There were no issues with the use of Sharpie pens; and,
- vi. Assertions of voter fraud conspiracies are 100% false.

142. Smartmatic promptly embarked on its own campaign to combat misinformation.¹⁸⁰

143. The decision of the Murdochs and Scott to cater to Trump and Fox News's audience by airing Trump's election conspiracies overrode the available facts. Throughout Fox News, Scott and her executive team institutionalized hostility to fact-checking Trump, Fox News's hosts, and the Trump surrogates they presented.

144. As one example, Fox News reporter Jacqui Heinrich fact-checked Trump's tweet of November 12, which praised Hannity and Dobbs for attacking

¹⁸⁰ *Fact check: Smartmatic CEO is not on Biden's team, Smartmatic software is not on Dominion voting machines*, Reuters (Nov. 20, 2020, 10:37 AM), <https://www.reuters.com/article/uk-factcheck-smartmatic-ceo-biden-team-d/fact-checksmartmatic-ceo-is-not-on-bidens-teamsmartmatic-software-is-not-on-dominion-voting-machines-idUSKBN2801ZJ/>.

Smartmatic's response to misinformation, Smartmatic (last visited April 24, 2024), available at <https://www.smartmatic.com/us/media/article/smartmatic-s-response-to-misinformation/>; *Smartmatic USA Corp. v. Fox Corp.*, Index No. 151136/2021, 2023 WL 2734442 (N.Y. Sup. Ct. Mar. 6, 2023) Ex. 81, <https://www.courthousenews.com/wp-content/uploads/2021/02/smartmatic-fox-hooper-la.pdf>.

Dominion.¹⁸¹ In a group text thread with Ingraham and Hannity, Carlson lambasted Heinrich's tweet:

“Please get her fired. Seriously... It's too much.”

“What the fuck? I'm actually shocked.”

“It needs to stop immediately, like tonight. It's measurably hurting the company. The stock price is down. Not a joke.”

“I just went crazy on [Executive Vice President] Meade [Cooper] over it.”

“Why would we allow some 27 year old fake reporter to wreck our network?”¹⁸²

145. A Fox News senior executive advised Scott about Heinrich's tweet:

Sean [Hannity] texted me—he's standing down on responding but not happy about this doesn't understand how this is allowed to happen from anyone in news. She [Heinrich] has serious nerve doing this and if this gets picked up, viewers are going to be further disgusted. Her job is to report—not to taunt the President of the United States and our biggest talent to further her career.”¹⁸³

146. Heinrich's tweet was soon deleted and replaced with a different fact-checking tweet—one that did not reference Trump's November 12 tweet praising Hannity and Dobbs for their “takedown” of Dominion.¹⁸⁴ Fox News *reporters* were

¹⁸¹ D MSJ Ex. 231.

¹⁸² D MSJ Ex. 230 at FNN035_03890511-12.

¹⁸³ D MSJ Ex. 233.

¹⁸⁴ Jacqui Heinrich (@JacquiHeinrich), Twitter (Nov. 13, 2020, 4:01 PM), <https://twitter.com/JacquiHeinrich/status/1327355959849541633/photo/3>.

prohibited from fact-checking conspiracy-mongering Fox News *hosts*, directly or indirectly.¹⁸⁵

147. Giuliani and Powell held a press conference on November 19 that an article in *Vanity Fair* summarized as follows:

Hair and makeup malfunctions aside, the first thing you need to know about this press conference, in which Giuliani and company alleged they have evidence of mass, coordinated voter fraud, is that despite such claims, they to reporters they can't actually provide any evidence of them at this time.¹⁸⁶

148. Rupert watched the news conference and texted: "Really crazy stuff. And damaging."¹⁸⁷ In an email, he wrote: "Just watched Giuliani press conference. Stupid and damaging. The only one encouraging Trump and misleading him. Both increasingly mad."¹⁸⁸

149. Yet, Fox News's White House correspondent, Kristen Fisher, was reprimanded for fact-checking Giuliani and Powell. She received a call from her bureau chief, who "emphasized that higher-ups at Fox News were also unhappy

¹⁸⁵ Brain Stelter (@brianstelter), Twitter (Feb. 17, 2023, 3:53 PM), <https://twitter.com/brianstelter/status/1626686377235722240>.

¹⁸⁶ Bess Levin, *Rudy Giuliani's Hair Dye Melting Off His Face Was the Least Crazy Part of His Batshit-Crazy Press Conference*, *Vanity Fair* (Nov. 19, 2020), <https://www.vanityfair.com/news/2020/11/rudy-giuliani-hair-dye-press-conference> (emphasis added).

¹⁸⁷ D MSJ at 35; D MSJ Ex. 156.

¹⁸⁸ NYC_220_9008.

with” her live shot and told her to “do a better job of . . . ‘respecting our audience.’”¹⁸⁹

150. Similarly, on November 19, Fox News reporter Jason Donner tweeted the following about Giuliani’s press conference: “At this presser, Rudy Giuliani keeps claiming voter fraud in Philadelphia, but he said this to a Pennsylvania court: ‘This is not a fraud case.’”¹⁹⁰ Donner alleges in a wrongful termination lawsuit that a supervisor reprimanded him for that tweet.¹⁹¹

151. On another occasion, Fox News anchor Eric Shawn devoted a segment to debunking Trump’s claims of election fraud, including claimed vote-switching by Dominion voting machines.¹⁹² Scott emailed another senior executive respecting Shawn’s on-air fact-checking of Trump:

This has to stop now.

¹⁸⁹ D MSJ at 35-36 & D MSJ Ex. 118 at 36.

¹⁹⁰ Jason Donner (@jason_donner), Twitter (Nov. 19, 2020, 12:34 PM), https://twitter.com/jason_donner/status/1329478155074154497.

¹⁹¹ Stephen Battaglio, *Former Fox News staffer says he was fired for challenging Jan. 6 and election fraud reporting*, L.A. Times (Nov. 14, 2023, 11:32 AM), <https://www.latimes.com/entertainment-arts/business/story/2023-11-14/former-fox-news-staffer-says-he-was-fired-for-opposing-false-election-fraud-reporting>; Dennis Romero, *Ex-Fox News reporter sues network, saying he was fired for challenging lies about 2020 election*, NBC News (Nov. 13, 2023, 10:58 PM), <https://www.nbcnews.com/politics/donald-trump/fox-news-reporter-jason-donner-sues-saying-fired-lies-2020-election-rcna125016>.

¹⁹² Emily Czachor, *Fox News Host Shreds Election Fraud Claims Trump Made on Network Hours Earlier*, Newsweek (Nov. 29, 2020, 4:05 PM), <https://www.newsweek.com/fox-news-host-shreds-election-fraud-claims-trump-made-network-hours-earlier-1551029>.

I'm going to address this with you and Jay [Wallace] and [Tom] Lowell tomorrow.

This is bad business and there clearly is a lack of understanding what is happening in these shows.

The audience is furious and we are just feeding them material.

Bad for business.”¹⁹³

(f) The Board Consciously Disregards Fox News's False Accusations Against Dominion and Smartmatic

152. At no time during the post-Election Day period did the Board or any Board committee convene a formal discussion of, or take any action respecting, any of the following: (i) Fox News's coverage of Trump's election lies; (ii) the accusations of election fraud against Dominion and Smartmatic broadcast by Fox News; (iii) the campaigns of Dominion and Smartmatic to seek retractions; (iv) editorial controls; or (v) defamation risk.

153. The Board convened for regularly scheduled committee meetings and a Board meeting on November 10-12, 2020, in Los Angeles. At the time, Fox News viewer outrage was at its peak. Trump had initiated litigation over the election results, Maria Bartiromo had interviewed Sidney Powell, and the Murdochs and

¹⁹³ Terkel et al., *Here's what Fox News was trying to hide in its Dominion lawsuit retractions*, *supra* note 194.

Scott had decided to indulge Trump’s conspiracy theories. It was also the first Board meeting after Fox had reached a temporarily confidential settlement with the parents of Seth Rich.

154. The Board was certainly aware of Trump’s post-election pressure campaign against Fox. After the Board meeting, Dias emailed Ryan, forwarding him the *Axios* article about Trump potentially creating a competitor to Fox News, and stating: “It’s exactly as you described it: Trump needs a scapegoat, and it’s now Fox.”¹⁹⁴

155. But these events did not result in any decision-making or action by the Board. Dinh reported on the Seth Rich settlement. The substance of his report is redacted. There is no indication of any report on governance issues or business issues arising out of the Seth Rich scandal or of any formal Board discussion of business issues or legal issues arising out of Fox News’s promotion of Trump’s election-denial lies.

156. On November 24, 2020, Ryan spoke publicly about Trump’s election-denial conspiracy theories at a Bank of America conference. Ryan stated: “I think it’s really important that we’re clear about this, which is the mere fact that the president’s lawyers throw these sort of baseless conspiracy theories out at press

¹⁹⁴ NYC_220_8948.

conferences but offer no evidence of these in court tells you that there is not the kind of widespread voter fraud or systemic voter fraud that would be required to overturn the outcome of this election.” Ryan insisted: “these legal challenges to the outcome and the attacks on our voting system need to stop, in my opinion.”¹⁹⁵

157. After delivering those remarks, Ryan received a text from his former spokesperson, Michael Steel, who was then working on behalf of Dominion. Steel offered to provide Ryan any information necessary relating to the baseless attacks on Dominion.¹⁹⁶ Ryan testified in the Dominion litigation that he was unaware of any credible evidence that Dominion engaged in election fraud.¹⁹⁷

158. Notwithstanding his knowledge of the Dominion/Smartmatic facts and the Seth Rich settlement, Ryan consciously disregarded the risk of defamation claims by Dominion and Smartmatic. So did the rest of the Board. They made no inquiries and established no protocols or reporting systems to mitigate the risk of defamation liability. There is no Section 220 record of any outside director seeking

¹⁹⁵ Anna Palmer et al., *POLITICO Playbook PM: New: What Paul Ryan is saying about Biden and Trump*, Politico (Nov. 24, 2020, 12:51 PM EST), <https://www.politico.com/newsletters/playbook-pm/2020/11/24/new-what-paul-ryan-is-saying-about-biden-and-trump-490985>.

¹⁹⁶ D SJ Opp. Ex. 620 (Ryan Dep. Tr.) at 255:6-256:25; *Michael Steel*, Business Roundtable, <https://www.businessroundtable.org/about-us/staff/michael-steel-senior-vice-president-communications-business-roundtable>.

¹⁹⁷ D SJ Opp. Ex. 620 (Ryan Dep. Tr.) at 96:2-8.

to marshal support from any other director or taking any official action concerning defamation risk at Fox.

159. Ryan has tried to excuse his passivity at Fox by claiming that, on “the board, you don’t decide content and personnel.”¹⁹⁸ But Ryan did, in fact, in his capacity as a director, provide the Murdochs with political and business advice about Fox News’s coverage of Trump. For example, on December 7, 2020, Ryan texted Lachlan:

Morning guys! Happy to chat Trump if you want. I think we are entering a truly bizarre phase of this where he has actually convinced himself of this farce and will do more bizarre things to delegitimize the election.

I see this as a key inflection point for Fox, where the right thing and the smart business thing to do line up nicely. A solid pushback (including editorial) of his baseless calls for overturning electors, etc. will undoubtedly accrue pushback and possibly a momentary ratings dip, but will clearly redound to our benefit in terms of credibility. Trump is going to wear thin and look crazier by the day.

Let him cleave off the fringe for his DTC venture and we can keep the largest pool of people (the center and center right). Fox is stronger than he is now and later IMO.

Just a few thoughts at this pivotal time.¹⁹⁹

¹⁹⁸ Bulwark Podcast, *My Conversation With Paul Ryan*, *supra* note 59 (38:40-38:50).

¹⁹⁹ NYC_220_9012.

(g) Dinh Neither Responds to Demand Letters Nor Elevates Them To the Audit Committee

160. There is no Section 220 record of Dinh or the legal department advising the Audit Committee or the Board about threatened litigation from Dominion or Smartmatic. Nor is there any Section 220 record of any outside director requesting information on defamation risk, even after Dominion and Smartmatic publicly threatened litigation.

161. On November 20, Dominion's outside counsel sent a detailed letter (Exhibit A hereto) to the General Counsel of Fox News about how "several Fox News (Fox) hosts have broadcast false and defamatory allegations about Dominion that were offered by sources whose veracity was in serious doubt." With special focus on Dobbs, Dominion wrote, "Fox hosts were all to[o] ready to ignore countless indicia of unreliability with respect to the information they were being provided, often times adopting the false allegations as their own. Considering the totality of the circumstances, these hosts acted with reckless disregard for truth and blatant disregard for Dominion's reputation." Dominion stated that it was "prepared to do what is necessary to protect its reputation and the safety of its employees."

162. On December 10, 2020, litigation counsel for Smartmatic sent a 20-page, single-spaced letter (Exhibit D hereto) to the General Counsel of Fox News.

The letter detailed nine categories of false statements that Fox had broadcast, and made one basic point:

The most obvious transgression is your repeated claims that Smartmatic committed, perpetrated, and/or participated in a widespread voter fraud scheme for the 2020 U.S. election and switched millions of votes from President Trump to President-elect Biden. Discovery that this claim was factually inaccurate and impossible took nothing more than learning whether *Smartmatic's technology* was widely used during the 2020 U.S. election. It was not. It *was used in one county*. From this simple truth, it was (or would have been) readily apparent that the statements being made about Smartmatic were factually inaccurate. (Emphasis added).

Smartmatic's letter threatened litigation seeking "hundreds of millions, if not billions, of dollars" and demanded that Fox News take immediate action:

Fox News had no right to defame my client when covering the 2020 U.S. election. Smartmatic demands a full and complete retraction of all false and defamatory statements reports published by Fox News. This retraction must be done with the same intensity and level of coverage that you used to defame the company in the first place. Further, Smartmatic requests that you take all necessary steps to preserve communications, videos/recordings, documentation, drafts, and all other material related to the Reports. This letter serves as notice of potential legal claims against Fox News, its reporters, anchors, producers, and on-air guests by my client.

. . . Please confirm by December 15, 2020, that Fox News will publish this retraction

163. On December 14, 2020, Smartmatic publicly announced "that it is issuing legal notices and retraction demand letters to Fox News, Newsmax and One

America News Network for publishing false and defamatory statements.” Smartmatic’s public announcement added that it was reserving all of its legal rights, including the right to pursue defamation and disparagement claims.²⁰⁰

164. On December 22, 2020, outside counsel for Dominion sent a letter to the General Counsel of Fox News (Exhibit E hereto) following up on Dominion’s letter of November 20, to which Fox News had not responded. This new letter stated:

Unfortunately, *after* Dominion had provided Fox with the facts and requested a retraction and even *after* Mr. Carlson’s realization Ms. Powell was playing Fox’s viewers and had no evidence to back up her inherently improbable claims, Lou Dobbs and Sean Hannity repeatedly featured Ms. Powell—and Jeanine Pirro featured Ms. Powell’s former client, convicted felon Michael Flynn—and they, along with Maria Baritoromo [sic], repeated demonstrably false accusations against Dominion. To be clear, Mr. Dobbs did not simply give Ms. Powell a platform; he himself credited and repeated her false claims.

165. Dominion’s December 22 letter demanded a retraction and insisted that any future stories about Dominion be fact-checked and vetted. Dominion’s letter also highlighted death threats received by Dominion employees.

166. Dominion publicized its letter of December 22, which gave rise to news coverage of Dominion’s threat of litigation.

167. *The Daily Beast* wrote:

²⁰⁰ *Smartmatic Demands Justice for Defamation*, Smartmatic (Dec. 14, 2020), <https://www.smartmatic.com/us/media/article/smartmatic-demands-justice-for-defamation/>.

High-powered libel attorney Tom Clare, of the aggressive law firm Clare Locke, told *The Daily Beast* he has fired off legal letters to Newsmax, Fox, and OAN on behalf of Dominion Voting Systems, predicting the matter will end up in court.

“I think it’s fair to say in January we will be pulling the trigger on multiple litigation matters. The damage that they’ve done has already been enormous,” he said about the networks airing blatant falsehoods about voter fraud.

“The time for a retraction is not now it was weeks ago. I’m certain a retraction does not undo the damage but it’s the right thing regardless of litigation,” he added.

...“What this company is going through in terms of the threats to its business as a result of the reputational harm no company should have to go through,” Clare added.

“You’ve got provable false allegations that have been rejected time and time again by the courts with no evidence ever been shown to support them and massive damage.”²⁰¹

168. CNBC wrote an article entitled, “Dominion Voting warns Fox News, Sean Hannity, other conservative outlets that defamation lawsuits are imminent.”²⁰²

²⁰¹ Lachlan Cartwright and Justin Baragona, *Voting Company Dominion Threatens to Sue Trump-Boosting Networks Over Election Conspiracies*, *Daily Beast* (Dec. 23, 2020, 5:13 PM), <https://www.thedailybeast.com/dominion-threatens-to-sue-trump-boosting-networks-over-election-conspiracies>.

²⁰² Dan Mangan, *Dominion Voting warns Fox News, Sean Hannity, other conservative outlets that defamation lawsuits are imminent*, *CNBC* (Dec. 24, 2020, 2:38 PM), <https://www.cnbc.com/2020/12/24/dominion-voting-warns-fox-news-lawsuits-are-imminent.html>.

169. On January 28, 2021, outside counsel for Smartmatic sent an updated retraction demand to outside counsel for Fox News (Exhibit F hereto).

170. Fox did not mitigate the reputational damage to Dominion and Smartmatic. Fox News did not respond to any of the above letters or retract any assertions that Dominion and Smartmatic committed election fraud.

171. In the absence of any retractions by Fox News in response to these litigation threats, Dominion and Smartmatic were empowered to seek maximum financial compensation from Fox News, including punitive damages. If Fox News could not obtain dismissal of the claims at the pleading stage, Dominion and Smartmatic would be positioned to present their damages claims at trial. As occurred in the Gawker/Hulk Hogan case, a plaintiff might be financially incentivized to litigate as long as necessary to maximize the recovery, rather than look to settle early and minimize litigation costs.

H. Fox Lacked a Viable Legal Defense

172. On February 4, 2021, Smartmatic sued Fox, Fox News, Lou Dobbs, Maria Bartiromo, Jeanine Pirro, Rudy Giuliani, and Sidney Powell in the Supreme

Court of the State of New York. Smartmatic sought actual, consequential, and special damages of no less than \$2.7 billion, plus punitive damages.²⁰³

173. On March 26, 2021, Dominion sued Fox News in Delaware Superior Court, seeking punitive and economic damages for defamation *per se*. Dominion sought lost profits of not less than \$600 million, lost enterprise value of not less than \$1 billion, and expenses of \$1.3 million for security and combatting disinformation.²⁰⁴

174. Fox News lacked a viable legal defense to these lawsuits. As a matter of law and fact, Fox News engaged in actionable defamation of Dominion between November 2020 and January 2021.

175. Fox News's litigators needed to defend the consequences of the Murdochs' fateful business decision on November 8, 2020, to retain viewers by pushing Trump's election lies. The Section 220 production and the sparse privilege log (attached hereto as Exhibit G) do not appear to reflect any real-time legal advice

²⁰³ Initial Complaint, *Smartmatic USA Corp. v. Fox Corp.*, Index No. 1551136/2021 (N.Y. Sup. Ct. Feb. 4, 2021), available at <https://www.documentcloud.org/documents/23702351-smartmatic-initial-complaint>.

²⁰⁴ Initial Complaint, *U.S. Dominion, Inc. v. Fox News Network, LLC*, Case No. N21C-03-257 EMD, (Del. Super. Ct. Mar. 26, 2021), available at <https://www.documentcloud.org/documents/20527880-dominion-v-fox-news-complaint>.

(*i.e.*, between November 8 and December 10, 2020) given to Fox News executives or hosts vetting planned broadcasts or tweets respecting Dominion and Smartmatic.

176. Fox News could not reasonably expect to prevail at the pleading stage on the basic elements of a defamation claim: (i) a false statement; (ii) publication; (iii) fault (*i.e.*, actual malice); (iv) injury. Fox News hosts repeatedly presented, amplified, and endorsed false assertions that Dominion and Smartmatic engaged in criminal election fraud, which is defamatory *per se*.

177. Fox News could reasonably expect that Dominion and Smartmatic would adduce evidence of actual malice. Fox News's internal documents made clear that the accusations levied against Dominion and Smartmatic were unsupported, refuted, and disbelieved by senior executives within Fox News, including Rupert. Moreover, Fox News lacked any written editorial standards, and Fox News was motivated by ratings and profits to amplify and endorse Trump's "stolen election" claims.

178. Additionally, the events of January 6, 2021, negated any notion that election fraud accusations were mere entertainment; many people believed them.

179. Nor could Fox News point to any retractions as an argument to reduce the claimed damages.

180. Fox News’s chosen litigation strategy reflects an awareness of the above problems. As explained below, that litigation strategy is itself so flawed that it further evidences Fox News’s culpability.

181. *The New York Times* reported that Dinh favored a litigation strategy of trying to win on appeal in the United States Supreme Court by creating broadened First Amendment protection for media coverage of a newsworthy subject. Fox’s retention in early 2021 of a leading appellate lawyer, former Solicitor General Paul Clement, heralded that strategy.²⁰⁵

182. Lawyers for Fox News placed much weight on the so-called “neutral reportage privilege,” which, when it has been recognized, protects good faith reporting on defamatory statements that are newsworthy. This defense is disfavored by First Amendment lawyers, as reported in *The New York Times*:

[T]he neutral reportage privilege is not universally recognized. Longtime First Amendment lawyers who agree with the principle in theory had their doubts that it would work, given that judges have increasingly rejected it.

“Most astute media defamation defense lawyers would not, and have not for a very long time, relied on neutral reportage — certainly as a primary line of defense, because the likelihood that a court would accept it as a matter of First Amendment law has continued to diminish over time,” said Lee Levine, a veteran media lawyer.²⁰⁶

²⁰⁵ Rutenberg et al., *Missteps and Miscalculations*, *supra* note 9; Ferrigine, *Ex-prosecutor*, *supra* note 9.

²⁰⁶ Rutenberg et al., *Missteps and Miscalculations*, *supra* note 9.

183. The so-called “neutral reportage privilege” was not only dubious as a matter of law, it was not a good fit factually to the conduct of Fox News’s hosts. Presenting guests who spout unsupported false assertions of criminal election fraud and then endorsing those false assertions is distinguishable from neutral news gathering. As one observer stated after the Dominion settlement, “despite hundreds of pages of pretrial filings, Fox never managed to identify a single instance of legitimate newsgathering that would have been credibly endangered in the future if Dominion prevailed[.]”²⁰⁷

184. Existing First Amendment precedent respecting opinion journalism was also not a good fit for the conduct of Fox News hosts such as Lou Dobbs or Maria Bartiromo. A timely law review article from 2020 by leadings torts scholars on the intersection between tort law and First Amendment law discussed how United States Supreme Court precedent did not protect statements of opinion premised on false facts:

The *Milkovich* case has thus come to stand for the proposition that a defendant cannot deflect a claim that he or she made a false statement of fact about another merely by declaring that the statement was couched as an opinion.

²⁰⁷ Ankush Khardori, *Why Fox News had to settle the Dominion suit*, Politico (Apr. 18, 2023, 8:17 PM EDT), <https://www.politico.com/news/2023/04/18/why-fox-news-had-to-settle-the-dominion-suit-00092708>.

...In short, *there was First Amendment protection*, subject to the standards we have identified, *against liability for defamation, except when a statement constituted an opinion premised on false facts* and in defamation suits between private parties regarding statements not involving matters of public concern.²⁰⁸

185. Essentially, to avoid liability, Fox News needed to expand First Amendment protection for broadcasting defamatory material in the context of a political dispute. In the Dominion litigation, that would mean appealing to the United States Supreme Court an adverse judgment in the Delaware courts.

186. As a practical matter, that litigation strategy contemplates Fox bearing massive reputational injury during discovery, trial, an adverse money judgment, and for years thereafter during the pendency of appellate proceedings, which could derail future business initiatives.

187. As a legal matter, seeking to broaden First Amendment protection on appeal was problematic because the conservative majority on the United States Supreme Court was not a natural constituency for creating a new “newsworthiness” defense for broadcasting false accusations of criminal conduct with actual malice. The recent trend in conservative legal thought was to *restrict* or *eliminate* First

²⁰⁸ Kenneth S. Abraham and G. Edward White, *First Amendment Imperialism and the Constitutionalization of Tort Liability*, 98 Tex. L. Rev. 813, 837 (2020) (emphasis added); *See also* Kenneth S. Abraham and G. Edward White, *Tort Law and The Construction of Change*, Ch. 4 (2022) .

Amendment defenses to defamation claims, which originated in the landmark 1964 decision *New York Times Co. v. Sullivan*, which imposed the “actual malice” element for a defamation claim against a public figure.

188. In 2019, Justice Clarence Thomas issued a concurring opinion in which he characterized “*New York Times* and the Court’s decisions extending it” as “policy-driven decisions masquerading as constitutional law.”²⁰⁹ Justice Thomas’s opinion concluded: “The States are perfectly capable of striking an acceptable balance between encouraging robust public discourse and providing a meaningful remedy for reputational harm. We should reconsider our jurisprudence in this area.”

189. A practitioner observed that Justice Thomas’s concurrence “provides momentum for critics of *New York Times* and room for courts to reexamine the standard,” and noted the ferment to do so: “Criticisms of defamation laws are growing increasingly popular on social media and from our current administration. The president has previously weighed in on the state of our libel laws calling it a ‘disgrace’ and suggesting that the laws as written do not provide a ‘meaningful recourse in our courts.’”²¹⁰ A former Reagan Administration official wrote an article

²⁰⁹ *McKee v. Cosby*, 139 S. Ct. 675, 676 (2019) (Thomas, J., concurring in the denial of certiorari).

²¹⁰ Natasha Cooper, *Reevaluating New York Times v. Sullivan in the Wake of Modern Day Journalism*, American Bar Association (Feb. 27, 2019),

in a conservative magazine endorsing Justice Thomas’s call to eliminate the requirement of proving actual malice because it creates “a perverse journalistic incentive for fake news.”²¹¹

190. By July 2, 2021, Justice Gorsuch had joined Justice Thomas in seeking to revisit *New York Times v. Sullivan* in light of “momentous changes in the Nation’s media landscape since 1964,” such that “the deck seems stacked against those with traditional (and expensive) journalistic standards[.]”²¹²

191. The litigation strategy of seeking broadened First Amendment protection on appeal in the United States Supreme Court tacitly acknowledges Fox’s weak position on the facts under existing law. Eventually, the Board recognized the need to confront this reality. The litigation strategy of seeking to prevail on appeal was discarded in favor of a massive settlement with Dominion on the first day of trial.

<https://www.americanbar.org/groups/litigation/committees/woman-advocate/practice/2019/reevaluating-new-york-times-v-sullivan-in-the-wake-of-modern-day-journalism/>.

²¹¹ Bruce Fein, *End the First Amendment Sanctuary for Fake News*, *The American Conservative* (Feb. 27, 2019, 1:00PM), <https://www.theamericanconservative.com/end-the-first-amendment-sanctuary-for-fake-news/>.

²¹² *Berisha v. Lawson*, 141 S. Ct. 2424, 2428, 2430 (2021) (Gorsuch, J., dissenting from the denial of certiorari).

I. The Dominion Litigation

192. On December 16, 2021, Judge Davis denied Fox’s motion to dismiss in an opinion that rejected various Fox News defenses for pleading purposes.

193. Judge Davis rejected the neutral reportage defense, observing that it “seems to run contrary to United States Supreme Court precedent” and was not clearly available under New York law.²¹³ And even if it was, Judge Davis concluded, it did not warrant dismissal because Dominion’s allegations “support the reasonable inference that Fox’s reporting was not accurate or dispassionate[,]” as it involved “skewing questioning and approving responses in a way that fit or promoted a narrative in which Dominion committed election fraud.”²¹⁴

194. Judge Davis further concluded that Dominion had sufficiently alleged actual malice: “The Complaint supports the reasonable inference that Fox either (i) knew its statements about Dominion’s role in election fraud were false or (ii) had a high degree of awareness that the statements were false. For example, Fox possessed countervailing evidence of election fraud from the Department of Justice, election experts, and Dominion at the time it had been making its statements.”²¹⁵

²¹³ Denial of Fox News Network’s Motion to Dismiss Defamation Lawsuit (“MTD Ruling”), *U.S. Dominion, Inc. v. Fox News Network, LLC*, Case No. N21C-03-257 EMD, (Del. Super. Ct. Dec. 16, 2021) at 41.

²¹⁴ *Id.* at 43.

²¹⁵ *Id.* at 51.

Additionally, “the Complaint alleges that several of Fox’s personnel openly disclaimed the fraud claims as false. Yet, certain Fox personnel (*e.g.*, Mr. Dobbs) continued to push the fraud claims.”²¹⁶

195. On March 31, 2023, Judge Davis ruled on cross-motions for summary judgment that Dominion was entitled to summary judgment on falsity and that the statements in question were defamatory *per se*. Judge Davis ruled that genuine issues of material fact existed as to actual malice.²¹⁷

196. Judge Davis again rejected the neutral reportage privilege, holding that he was bound by a 1982 New York Appellate Division decision that had been affirmed by the Court of Appeals. Judge Davis further held that “the evidence does not support that [Fox News] conducted good-faith, disinterested reporting.”²¹⁸

197. Judge Davis’s rulings at the summary judgment stage meant that a jury trial would go forward with the jury deciding (i) the question of actual malice, and (ii) the calculation of damages, including potential lost profits and lost enterprise value, as well as punitive damages.

²¹⁶ *Id.*

²¹⁷ MSJ Ruling at 62-64.

²¹⁸ *Id.* at 72.

198. In the aftermath of the embarrassing discovery and devastating summary judgment rulings, the Board retained its own counsel.²¹⁹

199. On April 18, 2023, the first day of trial, Fox settled with Dominion for \$787.5 million.²²⁰

200. The settlement contributed to Fox Corp.'s \$50 million net loss for the third quarter 2023, compared to a net income of \$290 million in the prior year's third quarter.²²¹ Increased expenses for the quarter were due in large part to "higher legal costs at FOX News Media."²²²

H. The Smartmatic Litigation

201. On February 14, 2023, the Supreme Court of the State of New York, Appellate Division, First Judicial Department issued an Order holding that Smartmatic's "meticulously detailed complaint" satisfied the New York statutory standard for stating a defamation claim.

202. The Appellate Division observed:

[T]he complaint alleges in detailed fashion that in their coverage and commentary, Fox News, Dobbs, and Bartiromo effectively endorsed and participated in the statements with reckless disregard for, or serious

²¹⁹ Rutenberg et al., *Missteps and Miscalculations*, *supra* note 9.

²²⁰ Fox Corp., Report (Form 8-K) (Apr. 18, 2023), <https://investor.foxcorporation.com/node/12251/html>.

²²¹ Fox Corp., Report (Form 8-K) (May 9, 2023) at 1, <https://investor.foxcorporation.com/static-files/85a1a4bf-f464-4211-b070-73d53751fcad>.

²²² *Id.* at 3.

doubts about, whether the assertions or implications that plaintiffs had participated in election fraud had any basis in truth or were supported by any reliable evidence.

In fact, according to the allegations in the complaint, Fox News, Dobbs, and Bartiromo stated that Smartmatic’s election technology and software were widely used in the 2020 election and in Dominion machines to switch votes, when they actually knew, or easily could have known had they not purposefully avoided publicly available knowledge, that in 2020, the Smartmatic technology was used only in Los Angeles County and that the vote switching claims otherwise had no support[.]²²³

203. The Appellate Division also “decline[d] to find that plaintiffs should be deemed limited purpose public figures required to allege facts that, if true would ‘clearly and convincingly’ show defamation with actual malice[.]”²²⁴

204. Smartmatic’s case against Fox remains in discovery. On April 25, 2023, the Supreme Court of New York expanded on the discovery required from the Fox defendants, observing that “recent disclosures in the *Dominion* matter demonstrate that there are many possible witnesses to the defamation and to Fox defendants’ motives.”²²⁵

²²³ *Smartmatic USA Corp. v. Fox Corp.*, 183 N.Y.S.3d 402, 404 (N.Y. Sup. Ct. 2023).

²²⁴ *Id.* at 405.

²²⁵ *Smartmatic USA Corp. v. Fox Corp.*, 2023 WL 3075267, at *4 (N.Y. Sup. Ct. Apr. 25, 2023).

205. Experts have speculated that the settlement value of the Smartmatic litigation exceeds that of Dominion, and could be approximately \$1 billion.²²⁶

206. Trial is expected in 2025.²²⁷

J. The Khalil Litigation

207. On December 1, 2021, Venezuelan businessman Majed Khalil sued Fox, Fox News, and Lou Dobbs for defamation.

208. Khalil's case centered on tweets and a broadcast by Dobbs on December 10, 2020, which are discussed above. *See supra* at ¶ 137.

209. Dobbs's tweet stating that the 2020 election is a "Cyber Pearl Harbor" attached a document identifying Khalil as "right hand and business front man of Jorge Rodriguez. He has been the effective 'COO' of the election project, under Chavez and Maduro. Khalil is a liaison with Hezbollah."²²⁸

²²⁶ Jacob Shamsian, *Fox News paid a record-breaking sum to settle Dominion's defamation lawsuit. Smartmatic could get even more money.*, Business Insider (July 17, 2023, 11:53 AM), <https://www.businessinsider.com/fox-news-potential-smartmatic-settlement-record-dominion-2023-7>.

²²⁷ Lillian Rizzo, *Fox faces similar defamation case from Smartmatic after Dominion settlement*, CNBC (Apr. 19, 2023, 3:37 PM), <https://www.cnbc.com/2023/04/19/fox-smartmatic-defamation-case-dominion.html>.

²²⁸ Lou Dobbs (@LouDobbs), Twitter (Dec. 10, 2020, 4:56 PM), <https://twitter.com/LouDobbs/status/1337154346795012098>.

210. On September 26, 2022, Judge Louis L. Stanton of the U.S. District Court of the Southern District of New York upheld Khalil’s defamation claim on a motion to dismiss.²²⁹

211. Judge Stanton rejected Fox’s neutral reportage defense because (i) “Sidney Powell was not a responsible source”; (ii) the defendants did not merely report but rather “espoused and concurred in the charges” and “adopted Powell’s claims” by tweeting out the above-quoted document; (iii) “the Dobb’s [*sic*] reporting was neither accurate nor dispassionate”; and (iv) Khalil is not a public figure.

212. Judge Stanton also concluded that Khalil had sufficiently pleaded actual malice:

Defendants repeatedly maintained their claims about Khalil long after Powell’s election fraud theories were challenged. Numerous reports that declared the falsity of the claims against Dominion and Smartmatic and rejected Powell as an accurate source of information gave Defendants reasons to doubt Powell’s veracity and the accuracy of her reports.... [T]he Complaint adequately alleges that the defendants purposefully avoided the truth, given the amount of public information regarding the lack of fraud in the election.²³⁰

213. The case settled for an undisclosed amount in April 2023, days before the scheduled beginning of the Dominion trial.

²²⁹ *Khalil v. Fox Corp.*, 630 F. Supp. 3d 568 (S.D.N.Y. 2022).

²³⁰ *Id.* at 585.

K. The Defamation Claim of Ray Epps

214. Even after the initiation of the Dominion and Smartmatic litigation, the Murdochs remained committed to the Fox News business model of propagating conspiracy theories without regard for the risk of defamation liability. Following the January 6, 2021, Capitol riots, Tucker Carlson engaged in a months-long vilification campaign against Ray Epps, a private individual whom Carlson accused of being a government agent who incited the attacks.

215. Epps was a Trump supporter who answered Trump's call to come to Washington, D.C. on January 6. On the evening of January 5, 2021, Epps was present for a disturbance incited by pro-Trump protestors on Black Lives Matter Plaza where a right-wing provocateur known as Baked Alaska livestreamed Epps shouting: "Tomorrow, we need to go into the Capitol! Into the Capitol! Peacefully!," and Baked Alaska shouting back: "Fed! Fed!"²³¹ On January 6, Epps was videotaped

²³¹ Bill Whitaker, *Ray Epps, a Jan. 6 Protester Now at the Center of a Far-Right Conspiracy, Says He Relives the Capitol Riot Every Day*, CBS News (Apr. 23, 2023, 7:00 PM), <https://www.cbsnews.com/news/ray-epps-jan-6-capitol-protest-60-minutes-transcript-2023-04-23/>; Keith Zubrow, *Jan. 6 Committee Staffer: "Zero Evidence That Ray Epps was a Federal Agent"*, CBS News (Apr. 23, 2023, 7:00 PM), <https://www.cbsnews.com/news/jan-6-committee-staffer-zero-evidence-that-ray-epps-was-a-federal-agent-60-minutes-2023-04-23/>; Alan Feuer, *New Evidence Undercuts Jan. 6 Instigator Conspiracy Theory*, N.Y. Times (May 5, 2022), <https://www.nytimes.com/2022/05/05/us/jan-6-ray-epps-evidence.html>; *Baked Alaska vs. Ray Epps the night before J6 exclusive video*, Meme Ranch (Jan. 26, 2023), https://www.youtube.com/watch?v=_gw3m92cyTo; Complaint, *Epps v. Fox News*

on the Capitol grounds whispering in the ear of another protester just before that protester and others charged through a police barricade.²³²

216. Epps’s photo initially appeared on an FBI website seeking information about January 6. Epps called an FBI tip line and explained that he tried to calm a fellow protester. That protester corroborated Epps’s story. The FBI determined that Epps did not enter the Capitol and was not a person of interest and removed his photo from the FBI website.²³³

217. Epps was the only known rank-and-file Trump supporter to admit on camera, prior to January 6, that the Trump supporters who heeded Trump’s call to come to Washington planned to storm the Capitol. In order to maintain the narrative that the storming of the Capitol by the rank-and-file was spontaneous and not planned, a conspiracy theory developed on social media that the attack on the Capitol was a “false flag” operation and that Epps was a government agent who incited and entrapped Trump supporters.²³⁴

Network, LLC, Case No. N23C-070-063 DJB, ¶ 30 (July 10, 2023) [hereinafter “Epps Complaint”].

²³² Whitaker, *Ray Epps*, *supra* note 251; Epps Complaint ¶ 33.

²³³ Zubrow, *Jan. 6 Committee Staffer*, *supra* note 251; Feuer, *supra* note 251.

²³⁴ Seth Abramson, *The Story Behind the “Ray Epps” Conspiracy Theory Now Burning Through Congress and Far-Right social media*, Proof (Jan. 12, 2022), <https://sethabramson.substack.com/p/the-story-behind-the-ray-epps-conspiracy>; Daniel Funke, *U.S. Hearings Revive Baseless Conspiracy Theory About Capitol Riot*, AFP Fact Check (June 17, 2022, 11:57), <https://factcheck.afp.com/doc.afp.com.32CF2ZM>.

218. On June 14, 2021, an online media outlet, *Revolver News*, published an article claiming that there was a “strong possibility” that unindicted January 6 co-conspirators were actually federal informants and undercover operatives.²³⁵ The next day, Tucker Carlson reinforced this theory, claiming on his Fox News show that “FBI operatives were organizing the attack on the Capitol.”²³⁶

219. On October 25, 2021, *Revolver News* published an article entitled, “Meet Ray Epps: The Fed-Protected Provocateur Who Appears to Have Led the Very First 1/6 Attack on the US Capitol.”²³⁷ That same day, Carlson presented the author of the *Revolver News* article, which Carlson described as a “very detailed—very well reported—piece, that again I would recommend to everyone watching tonight.”²³⁸

220. In November 2021, the January 6 Committee of the U.S. House of Representatives interviewed Epps. On January 11, 2022, major media reported the January 6 Committee’s findings that Epps was not a government agent, that there

²³⁵ Funke, *U.S. Hearings Revive Baseless Conspiracy Theory About Capitol Riot*, *supra* note 254.

²³⁶ *Id.*

²³⁷ *Meet Ray Epps: The Fed-Protected Provocateur Who Appears to Have Led the Very First 1/6 Attack on the U.S. Capitol*, *Revolver* (Oct. 25, 2021), <https://www.revolver.news/2021/10/meet-ray-epps-the-fed-protected-provocateur-who-appears-to-have-led-the-very-first-1-6-attack-on-the-u-s-capitol/>.

²³⁸ *From the October 25, 2021, edition of Fox News’ Tucker Carlson Tonight*, (Undated), *Media Matters*, <https://www.mediamatters.org/media/3983705>.

was no evidence that he ever entered the Capitol or committed violent acts, and that conspiracies about him were unsupported.²³⁹ January 6 House Committee member Adam Kinzinger tweeted a thread about how the conspiracy theory about Epps was unfounded.²⁴⁰

221. Over a period of many months, Carlson continued to accuse Epps of being a government provocateur.²⁴¹ On January 12, 2022, Carlson said that Epps had “stage-managed the insurrection.” Carlson also said that Kinzinger was “lying.” A week later, Carlson added, “Clearly, they’re lying about Ray Epps; there is no question about that.”²⁴² More recently, on March 11, 2023, Carlson appeared on the *Redacted* podcast and spoke about his ongoing work with Fox producers reviewing January 6 footage. Carlson stated: “Ray Epps clearly was working for somebody. He was not a pure civilian.”²⁴³

²³⁹ Luke Broadwater and Alan Feuer, *Jan. 6 Panel Seeks to Debunk Unfounded Theory About F.B.I. Role in Riot*, N.Y. Times (Jan. 11, 2022),

<https://www.nytimes.com/2022/01/11/us/politics/ray-epps-january-6-committee.html>;

Philip Bump, *Another Jan. 6 conspiracy theory suffers a reality-inflicted blow*,

Washington Post (Jan. 11, 2022, 5:03 PM),

<https://www.washingtonpost.com/politics/2022/01/11/another-jan-6-conspiracy-theory-suffers-reality-inflicted-blow/>; Feuer, *supra* note 251; Abramson, *supra* note 254.

²⁴⁰ Adam Kinzinger @AdamKinzinger, Twitter (Jan. 11, 2022, 5:07 PM),

<https://twitter.com/AdamKinzinger/status/1481024966468460547>.

²⁴¹ Epps Complaint ¶¶ 41-55.

²⁴² Aaron Blake, *Fox News’s trouble with Tucker Carlson and Ray Epps*, Washington Post (July 13, 2023, 6:31 PM ET),

<https://www.washingtonpost.com/politics/2023/07/13/tucker-carlson-ray-epps-fox/>.

²⁴³ Epps Complaint ¶ 55.

222. On March 23, 2023, counsel for Epps sent Fox a formal retraction demand letter and notice of potential litigation for defamation and portraying him in a false light. Epps’s counsel demanded that Carlson and Fox News “retract the claim that Mr. Epps was working for the FBI or any governmental entity when he attended the January 6th events and the claim that Mr. Epps acted as an instigator or provocateur of the insurrection.”²⁴⁴

223. In April 2023, Epps spoke publicly for the first time in a CBS interview on 60 Minutes. In its broadcast, 60 Minutes played tape of Carlson saying: “Ray Epps? He is on video several times encouraging crimes, riots, breaches of the Capitol . . .” and reported that Carlson has focused on Epps more than twenty times on his top-rated show, including a half-dozen times so far in 2023.²⁴⁵ Epps said that Carlson was “obsessed” with him and “going to any means possible to destroy” his life, and that Epps is facing harassment so severe that he and his wife were forced to abandon their home and business and now live in an RV in an undisclosed location.²⁴⁶

²⁴⁴ *Tucker Carlson and Fox News Hit With Cease and Desist Letters for Continuing Their Lies About Ray Epps*, Just Security (Mar. 23, 2023, <https://www.justsecurity.org/wp-content/uploads/2023/04/Tucker-Carlson-Fox-News-Cease-and-Desist-Letter.pdf>).

²⁴⁵ Whitaker, *Ray Epps*, *supra* note 251.

²⁴⁶ *Id.*

224. Epps filed suit against Fox News on July 10, 2023, for defamation and false light, seeking compensatory damages and punitive damages in a jury trial.

L. The Defamation Claim of Nina Jankowicz

225. On April 27, 2022, the Department of Homeland Security (“DHS”) publicly announced that it had created a Disinformation Governance Board to coordinate countering misinformation related to homeland security, and that Nina Jankowicz was its Executive Director.²⁴⁷ The Disinformation Governance Board lacked operational authority; its job was to gather best practices in addressing the threat of disinformation and to disseminate information.²⁴⁸

226. Three weeks later, on May 18, 2022, DHS employees stated that the Disinformation Governance Board was being “paused,” and Jankowicz resigned her

²⁴⁷ Bridget Johnson, *DHS Standing Up Disinformation Governance Board Led by Information Warfare Expert*, Homeland Security Today (Apr. 27, 2022), <https://www.hstoday.us/federal-pages/dhs/dhs-standing-up-disinformation-governance-board-led-by-information-warfare-expert/>; Eugene Daniels et al., *POLITICO Playbook: Fauci pulls out of WHCD. Is Biden next?*, Politico (Apr. 27, 2022, 6:58 AM), <https://www.politico.com/newsletters/playbook/2022/04/27/fauci-pulls-out-of-whcd-is-biden-next-00028131>.

²⁴⁸ *User Clip: Mayorkas Announces Disinformation Board*, C-SPAN (Apr. 27, 2022), <https://www.c-span.org/video/?c5013090/user-clip-mayorkas-announces-disinformation-board>; Aaron Blake, *The tempest over DHS’s Disinformation Governance Board*, The Washington Post (Apr. 29, 2022, 3:05 PM EDT), <https://www.washingtonpost.com/politics/2022/04/29/disinformation-governance-board-dhs/>.

position. The cause was a coordinated campaign by Fox News and like-minded media outlets who attacked the Disinformation Governance Board and Jankowicz.²⁴⁹

227. Within hours of the public announcement of the creation of the Disinformation Governance Board, far-right influencer Jack Posobiec posted tweets accusing the Biden Administration of creating a “Ministry of Truth.”²⁵⁰ Fox News soon joined in. Within one week, Fox covered Jankowicz or the Disinformation Governance Board during ninety-three of its one-hour programs (*i.e.*, 70% of them).²⁵¹ Over a span of eight months, Fox talked about Jankowicz more than 300 times.²⁵²

228. On April 29, 2022, eleven different speakers referenced Jankowicz and the Disinformation Governance Board in eleven separate segments on Fox.²⁵³ In

²⁴⁹ Taylor Lorenz, *How the Biden administration let right-wing attacks derail its disinformation efforts*, The Washington Post (May 18, 2022, 10:28 AM), <https://www.washingtonpost.com/technology/2022/05/18/disinformation-board-dhs-nina-jankowicz/>.

²⁵⁰ *Id.*

²⁵¹ Complaint (“Jankowicz Complaint”), *Jankowicz v. Fox News Network, LLC and Fox Corp.*, Case No. N23C-05-098, ¶ 22 (Del. Super. Ct. May 10, 2023), <https://www.documentcloud.org/documents/23809460-2023-05-10-jankowicz-complaint-as-filed>.

²⁵² *Id.* ¶ 1.

²⁵³ *Id.* ¶ 36.

one of many such segments, Hannity described Jankowicz as “the person that polices our thoughts.”²⁵⁴

229. In a recently filed defamation action in Delaware Superior Court, Jankowicz accuses Fox of lying about her repeatedly in three different ways:

First, over the course of a year, Fox built a narrative calculated to lead consumers to believe that Jankowicz intended to censor Americans’ speech. Anyone consuming Fox between April and December 2022 understood that Fox was telling them that Jankowicz and the Board were out to censor them and that they should be afraid of her. Second, former star host Tucker Carlson and current host Jesse Watters lied that Jankowicz was fired from her post at the Board. In fact, as Carlson and Watters both knew, Jankowicz resigned due to harassment arising from Fox’s defamation. Third, Fox hosts, guests, and commentators falsely claimed that Jankowicz wanted to give verified Twitter users the power to edit others’ tweets. They relied extensively on an obviously manipulated video—the full version of which was publicly available—to transform her description (and indeed, skepticism) of a developing beta feature on Twitter into a false declaration that she would supposedly police online speech.²⁵⁵

230. Jankowicz further alleges that Fox’s false reporting provoked a barrage of unrelenting harassment against her. Over a period of one year, 131 tweets that referenced her Twitter handle threatened violence, hostile action, or advocated the use of Jankowicz’s personal information to target her. Jankowicz was told to expect

²⁵⁴ *Id.*

²⁵⁵ *Id.* ¶ 10; *See also id.* ¶ 86 (citing Sophia Tulp, *Old comments by disinformation board director misrepresented online*, Associated Press (May 14, 2022, 6:04 PM EDT), <https://apnews.com/article/Fact-Check-Disinformation-Board-Director-Twitter-049631150022>).

death an untold number of times, and a security consultant advised her not to remain in her family home.²⁵⁶ Her personal information was publicly disseminated, resulting in threats to her mother, husband, and infant son.²⁵⁷

231. Jankowicz seeks compensatory damages, including for emotional injury, and punitive damages.

M. The Pending Campaign to Strip Fox of Broadcast Licenses

232. The Murdochs' decision to embrace Trump's claims of a stolen election not only led to the \$787.5 million settlement payment to Dominion, but also endangered Fox's broadcast licenses. Fox owns and operates twenty-nine television stations in the United States, including in fourteen of the top fifteen markets.²⁵⁸ Licenses require renewal by the Federal Communications Commission ("FCC") every eight years.

233. On July 6, 2023, the Media and Democracy Project ("MAD"), a nonpartisan non-profit, and various individuals filed a petition to deny the license renewal of Fox affiliate WTFX-TV in Philadelphia, the only Fox license currently

²⁵⁶ Jankowicz Complaint ¶ 97; Heidi Przybyla, *'A surreal experience': Former Biden 'disinfo' chief details harassment*, Politico (Mar. 8, 2023, 4:30 AM), <https://www.politico.com/news/2023/03/08/former-biden-disinfo-chief-details-harassment-00085981>.

²⁵⁷ Jankowicz Complaint ¶¶ 95-98.

²⁵⁸ *Our Brands*, Fox Careers, <https://foxcareers.com/OurBrands> (last visited Sept. 5, 2023).

up for renewal, arguing that Fox “lacks the character to remain a licensee.”²⁵⁹ MAD explained: “The question before the Commission is not whether FOX had a right to lie, rather it is about the consequences of those lies and the impact on FOX’s qualifications to remain an FCC licensee.”²⁶⁰

234. MAD’s petition has received bipartisan support. Former Republican FCC Chairman Alfred Sikes filed an objection to the license renewal.²⁶¹ Former PBS President Ervin S. Duggan and former Weekly Standard Editor William Kristol filed a joint objection, stating:

As media veterans, we are acutely aware of the power afforded to those who control the information broadcast on our nation’s airwaves. The evidence presented in the Dominion case, considered in the light of the Commission’s Character Policy, leaves no room for doubt: Rupert and Lachlan Murdoch’s role in failing to stop, and indeed in perpetuating, election falsehoods broadcast on the FNM channels in connection with the 2020 election stands as a blatant violation of the character

²⁵⁹ In the Matter of Application of Fox Television Stations, LLC for Renewal of License of WTXF-TV, Petition to Deny, LMS File No. 0000213362, at I (July 3, 2023), available at

https://www.mediaanddemocracyproject.org/_files/ugd/f9547d_d59f128ca09d4106b82930d09c12c94f.pdf.

²⁶⁰ In the Matter of Application of Fox Television Stations, LLC for Renewal of License of WTXF-TV, Reply to Opposition of Fox Television Stations, LLC, LMS File No. 0000213362, at 16 (Aug. 22, 2023), available at

https://www.mediaanddemocracyproject.org/_files/ugd/f9547d_ae070ed7cbc7454bb9999a0e9b3c019a.pdf.

²⁶¹ Ltr. from Alfred Sikes to FCC (Aug. 20, 2023),

<https://www.fcc.gov/ecfs/document/10825951416089/1>.

requirements expected from public trustees controlling broadcast licensees.²⁶²

235. Jamie Kellner, the founding President of Fox Broadcasting Company, also filed an objection.²⁶³

236. MAD's petition seeks "an evidentiary hearing into Fox's misdeeds," and MAD filed a request for an open proceeding. Ordinarily, FCC license renewal proceedings are restricted and not open to public comment. On August 23, 2023, the FCC determined that it served the public interest to permit public participation in the proceeding.²⁶⁴

237. Harold Feld, an expert on telecom law and policy,²⁶⁵ analyzed MAD's petition and stated that it raised "some very interesting questions from an FCC law perspective" and was "not a frivolous claim."²⁶⁶ Feld observed that the FCC's

²⁶² Re: Application for Television Station License Renewal , Ltr. From Ervin S. Duggan and William Kristol to Marlene H. Dortch, at 10 (July 31, 2023), available at https://drive.google.com/file/d/1T_Dr5pkDw9v3R2ZE0bXoBNojOM2Gf29c/view.

²⁶³ Letter from Jamie Kellner, Founding President of Fox Broadcasting Co., to Marlene H. Dortch, Secretary of the FCC (Aug. 22, 2023) (on file with the FCC).

²⁶⁴ Federal Communications Commission Public Notice, MB Docket No. 23-293 (Aug. 23, 2023), available at <https://docs.fcc.gov/public/attachments/DA-23-752A1.pdf>.

²⁶⁵ *Profile of Harold Feld, Senior Vice President*, Public Knowledge, https://publicknowledge.org/team_member/harold-feld.

²⁶⁶ Harold, *My Insanely Long Field Guide to the Fox29 Philadelphia (WTFX-TV) License Renewal Challenge*, Wetmachine, (Aug. 29, 2023, 7:35AM), <https://wetmachine.com/tales-of-the-sausage-factory/my-insanely-long-field-guide-to-the-fox29-philadelphia-wtfx-tv-license-renewal-challenge/>.

decision to open the license renewal hearing to public comment is a “highly unusual step.”²⁶⁷

DEMAND FUTILITY

238. On June 17, 2021, the Fox Board expanded from seven members to eight and elected William Burck as a new director. Demand is futile if four directors out of the eight directors in office at the time of the initial complaint (*i.e.*, the seven director defendants and Burck) are disabled from impartially considering a demand.

239. There are two separate bases for demand futility: (i) at least four directors at the time of the defamation of Dominion, Smartmatic, and Khalil face a substantial likelihood of personal liability for a *Massey Claim*, an *Information Systems Claim*, and/or a *Red Flags Claim*; and (ii) at least two outside directors (out of Carey, Ryan, Nasser, and Burck) lack independence from one or more of the officers who face a substantial likelihood of personal liability. Additionally, all of the outside directors failed to act independently even after Dominion and Smartmatic filed suit.

A. Rupert and Lachlan Face a Substantial Likelihood of Liability

240. Rupert and Lachlan directed the strategies and operations of Fox and Fox News that gave rise to the defamation claims of Dominion, Smartmatic, and

²⁶⁷ *Id.*

Khalil and which make them personally responsible for a *Massey Claim*, an *Information Systems Claim*, and a *Red Flags Claim*.

241. Both are deeply engaged in Fox News’s daily operations. Lachlan regularly attends the twice-daily editorial leadership team meeting to discuss topics, segments, guests, and monologues, and Rupert attends those meetings when he is in New York. Both speak to and email Scott regularly, sometimes on a daily basis.²⁶⁸ Rupert routinely suggests potential Fox News and Fox Business stories to Scott, and recommends guests.²⁶⁹ Lachlan works closely with the managers of the newsrooms to get the positioning and messaging right²⁷⁰ and regularly texts Scott his comments and feedback on Fox News’s coverage.²⁷¹

242. Additionally, Rupert and Lachlan are advised twice daily on viewership through (i) a preliminary rating assessment referred to as “overnights” that gets

²⁶⁸ David Folkenflik, *Rupert Murdoch says Fox stars ‘endorsed’ lies about 2020. He chose not to stop them*, NPR (Feb. 28, 2023, 5:00 AM ET), <https://www.npr.org/2023/02/28/1159819849/fox-news-dominion-voting-rupert-murdoch-2020-election-fraud>.

²⁶⁹ Barr et al., *Murdoch admits some Fox hosts ‘were endorsing’ election falsehoods*, *supra* note 191.

²⁷⁰ D MSJ Ex. 130 (L. Murdoch Dep. Tr.) at 62:5-12 (discussed Tucker Carlson’s on-air comments regarding immigrants making America “dirtier” and “poorer” with Scott); *id.* at 71:5-9 (Lachlan sends Scott stories that Fox News should report on); 79:8-80:9 (unable to think of a single instance where Scott and Fox News refused to air a story Lachlan believed should be aired).

²⁷¹ *See, e.g., id.* at 80:15-81:7 (texting Scott that Laura Ingraham’s being at the Trump 2020 watch party was not a “good look”); *see also* NYC_220_8951 (texting Scott about how to cover Trump rally); NYC_220_9172 (same).

distributed early in the morning covering the previous day and (ii) an “executive scorecard” of ratings which is prepared daily for the executive team.²⁷² Lachlan also receives weekly emails with Fox News Network’s audience and social media favorability reports.²⁷³

243. Rupert and Lachlan were particularly mindful of Fox’s coverage of Trump to ensure it was favorable. For example, Lachlan told Scott to change the tone of coverage of a Trump rally, saying the hosts needed to “be careful” and that “some of the side comments are slightly anti, and they shouldn’t be. The narrative should be this is a huge celebration of the president.”²⁷⁴ Lachlan was so engrossed in the details of Fox’s Trump coverage that he complained about a chyron (the text that runs at the bottom of the screen) that he felt was too negative about Trump.²⁷⁵

244. Rupert and Lachlan greenlighted and directly oversaw on a day-to-day basis the weeks-long programming strategy of cultivating an audience of Trump supporters by presenting hosts and guests who propagated Trump’s election-denial

²⁷² SMAC ¶ 167.

²⁷³ See, e.g., NYC_220_9070.

²⁷⁴ Jeremy W. Peters, *Inside the 3 Months That Could Cost Fox \$1.6 Billion*, N.Y. Times (Mar. 20, 2023), <https://www.nytimes.com/2023/03/20/technology/fox-news-dominion-texts.html>; NYC_220_8951.

²⁷⁵ Jeremy W. Peters, *Fox Leaders Wanted to Break From Trump but Struggled to Make It Happen*, N.Y. Times (Feb. 28, 2023), <https://www.nytimes.com/2023/02/28/business/media/fox-news-trump-break.html>.

conspiracy theories, which were predicated in large part on false accusations that Dominion and Smartmatic committed election fraud.

245. Rupert admitted he “could have” stopped Fox from giving airtime to Giuliani but did not, to avoid antagonizing Trump, explaining that Trump “had a very large following, and they were probably mostly viewers of Fox, so it would have been stupid.”²⁷⁶ Rupert agreed there was “some truth” to an article concluding that the “lucrative approach” for Fox was to draw in viewers with conspiracy theories while the journalistically sound approach was to tell the truth.²⁷⁷

246. Lachlan admitted that he weighed in on the specific direction on both the “tone” and “negativ[ity]” of Fox’s news coverage of Trump between November 2020 and January 2021.²⁷⁸

247. From their respective long careers as mass media executives, Rupert and Lachlan knew that it was actionable for a broadcaster or publisher to accuse a private company of engaging in criminal activity without any factual basis. Given

²⁷⁶ D SJ Opp. at 28, 30.

²⁷⁷ *Id.* at 140.

²⁷⁸ Peters, *Fox Leaders Wanted to Break From Trump but Struggled to Make It Happen*, *supra* note 295.

their personal involvement at the relevant time in the programming and operations of Fox News, Rupert and Lachlan also knew the following:

- the on-air accusations of criminal wrongdoing by Dominion and Smartmatic were factually unfounded and not fact-checked;
- Dominion and Smartmatic were communicating directly with Fox News to comprehensively rebut the false claims;
- Dominion and Smartmatic were threatening to sue; and
- Fox News was not mitigating its damages exposure by retracting the false accusations leveled by its hosts and guests.

B. Outside Directors Carey, Nasser, Ryan, Dias, and Hernandez Face a Substantial Likelihood of Personal Liability

248. Each of outside directors Carey, Nasser, Ryan, Dias, and Hernandez faces a substantial likelihood of personal liability under a *Massey Claim*, an *Information Systems Claim*, and a *Red Flags Claim*. At all relevant times, each of them knew that the business model of Fox News was to present political narratives favored by Trump and Fox News viewers, even if those narratives were false, the Seth Rich scandal being a notable example. None of the outside directors organized with each other to protect Fox News from defamation risk. They did not confront the Murdochs or Dinh or Scott. They did not review any procedures, policies, or

standards for reducing defamation risk. They did not obtain legal advice about defamation risk. They did not obtain an internal risk-assessment about defamation. They did not establish reporting protocols about potential or threatened defamation claims. The outside directors did not meet and did not act respecting the threat of significant defamation liability even though Dominion and Smartmatic made significant public efforts to combat misinformation. After correcting Fox News for weeks, Dominion and Smartmatic both publicly threatened litigation. The defamation itself and the responses to it by Dominion and Smartmatic were all red flags waved to, among others, the outside directors of Fox.

249. Certain of the outside directors face a substantial likelihood of liability for additional individualized reasons, as set forth below.

Carey and Nasser

250. Through their long-time involvement with Murdoch-controlled entities, Carey and Nasser understood Rupert's tabloid approach to running media outlets, the legal risks he ran, and the regulatory consequences.

251. Carey was the President and COO of News Corp. during the phone-hacking scandal in 2011. He publicly announced in 2011 that News Corp. had

abandoned its proposed acquisition of BskyB in the face of regulatory and political pressure.²⁷⁹ Nasser was a then-director of BskyB.

252. Carey and Nasser were directors of 21CF in 2017, when the Seth Rich scandal complicated the efforts to 21CF to secure regulatory approval of an acquisition of Sky. Nasser testified to the UK regulator during its merger inquiry about 21CF's lax oversight of Fox News, such as the fact that the board of 21CF did not discuss editorial issues at Fox News.²⁸⁰

253. Carey and Nasser were well-positioned to bring their prior experience to bear on the Fox Board. Nasser was Lead Independent Director of Fox and a member of the Audit Committee. Carey was a member of the Audit Committee.

254. Additionally, the lack of independence of Carey and Nasser from Rupert, discussed below, contributes to their personal liability for their failure to confront the Murdochs and protect Fox from defamation risk.

Ryan

255. Ryan was aware of Fox News airing unfounded attacks on Dominion. He gave a November 24, 2020 speech rebuking Trump's claims of a stolen election,

²⁷⁹ Jeff Bercovici, *News Corp. Ends Bid for BskyB as Pressure Mounts*, Forbes (July 13, 2011, 10:23 AM), <https://www.forbes.com/sites/jeffbervovici/2011/07/13/news-corp-ends-bid-for-bskyb-as-pressure-mounts/?sh=2380d23141a4>.

²⁸⁰ *21st Century Fox/Sky Merger Inquiry (Phase 2) Summary of Hearing with Jacquies*

he was contacted by an agent of Dominion,²⁸¹ and he testified that he was unaware of any credible evidence that Dominion engaged in election fraud.²⁸² Ryan suggested to the Murdochs that Fox News oppose Trump’s “baseless calls for overturning electors, etc.,” but he did not take action to protect Fox from defamation risk. After January 6, 2021, Ryan forwarded to the Murdochs an article entitled “The Alternate Reality Machine” and expressed his hope that Fox News hosts Tucker Carlson, Laura Ingraham, and Sean Hannity would soon “put down the echoes of falsehoods from our side[.]”²⁸³

256. Additionally, the lack of independence of Ryan from the Murdochs, discussed below, contributes to his personal liability for his failure to confront the Murdochs and protect Fox from defamation risk.

Dias

257. Dias was a member of the Audit Committee who understood the role of Fox in spreading pro-Trump conspiracy theories. After January 6, she forwarded to

Nasser, Independent Director of 21ST Century Fox on 25 October 2017, Competition & Markets Authority, at 3, <https://assets.publishing.service.gov.uk/media/5a02f9ebe5274a0ee28af81d/summary-of-hearing-with-jacques-nasser.pdf>.

²⁸¹ Palmer et al. *POLITICO Playbook PM: What Paul Ryan is saying about Biden and Trump*, *supra* note 213 ; D SJ Opp. Ex. 620 (Ryan Dep. Tr.) at 255:6-256:25; *Michael Steel*, Business Roundtable, *supra* note 214.

²⁸² D SJ Opp. Ex. 620 (Ryan Dep. Tr.) at 96:2-8.

²⁸³ NYC_220_9036-49.

the Murdochs an editorial from *The Financial Times* that described Fox News as having “enabled Mr. Trump for too long” and “been more influential in spreading false beliefs than social media.”²⁸⁴

C. Carey, Ryan, Nasser, and Burck Lack Independence from Officers Who Face a Substantial Likelihood of Personal Liability

258. Outside directors Carey, Ryan, Nasser, and Burck each lack independence from one or more of the officers who face a substantial likelihood of personal liability.

Carey

259. Carey lacks independence from Rupert because of their decades-long close business relationship and personal friendship. Rupert has described Carey as “my close friend and trusted advisor ... and someone I am privileged to call my partner for nearly 30 years.”²⁸⁵ Carey has thanked Rupert for offering him “the opportunity of a lifetime” and “never-ending support ... as a mentor, colleague and friend.”²⁸⁶

260. Carey spent approximately three decades working for Murdoch-affiliated entities and owes his career and abundant wealth to the Murdochs. Since

²⁸⁴ NYC_220_8993-95.

²⁸⁵ *Read the Memos: Rupert Murdoch, Chase Carey on 21st Century Fox Leadership Changes*, *supra* note 32.

²⁸⁶ *Id.*

2010, Carey has received over \$230 million from Murdoch-affiliated entities. Carey's continued service on the Fox board means that he has served on the board of one or more Murdoch-affiliated entities for the last 32 consecutive years. Those boards include: Fox Corporation (2019-present); 21CF/News Corp. (1996-2007; 2009-2019); Sky/BSkyB (2003-2009; 2013-2018); Sky Deutschland (2010-2014); DirecTV (2003-2009); Gemstar-TV Guide (2000-2002); News America Inc. (1998-2002); NDS Group Inc. (1996-2002); STAR Group Ltd. (1993-2002); and Fox Entertainment (1992-2002).

261. Carey originally joined Fox Broadcasting in 1988 and served in numerous executive roles until he left Fox in 2002, including Chairman and CEO of Fox Television from 1994 to 2000, co-Chief Operating Officer of News Corp. from 1996 to 2002 and co-Chief Operating Officer of the Fox Entertainment Group from 1998 until 2002. During that period, Carey helped to launch Fox News. According to Comcast Chairman and CEO Brian Roberts, "Chase is the one who got Fox News into every home. It changed history."²⁸⁷

262. In what would become a pattern, despite leaving his role as an executive at Fox in 2002, Carey maintained his close business and personal relationship with

²⁸⁷ Keach Hagey, *How Chase Carey Helped Build Fox into a Major Player*, Wall St. J. (June 16, 2015, 10:43 PM), <https://www.wsj.com/articles/how-chase-carey-helped-build-fox-into-a-major-player-1434509031>.

Rupert, remained on the board of a Murdoch-affiliated entity (News Corp.) and ultimately returned as an executive of a Murdoch-affiliated entity. Specifically, in 2003, when News Corp. acquired a de facto controlling interest in DirecTV, Rupert became Chairman of DirecTV and named Carey CEO of DirecTV.²⁸⁸ Three years later, in 2006, Rupert agreed to transfer News Corp.'s ownership and de facto control of DirecTV to his sometimes ally, sometimes rival John Malone's Liberty Media.²⁸⁹ Carey stayed as DirecTV CEO under Liberty Media, but "remained incredibly close to Rupert Murdoch"²⁹⁰ and continued to serve on the board of Murdoch-affiliated BSkyB. When Carey signed an extended contract as DirecTV CEO in 2007, Rupert endorsed Carey by stating that "I've had the pleasure of working with Chase for almost 20 years and admire and respect him, both as a business leader and

²⁸⁸ Hiscock, *Murdoch wins DirecTV*, *supra* note 35.

²⁸⁹ Paul Bond & Georg Szalai, *News Corp. swaps DirecTV stake with Liberty*, *The Hollywood Reporter* (Dec. 23, 2006, 4:00 AM), <https://www.hollywoodreporter.com/business/business-news/news-corp-swaps-directv-stake-147531/>.

²⁹⁰ Nikki Finke, *EXCLUSIVE: "THE DEAL IS DONE": Chase Carey Will Become Next News Corp No. 2*, *Deadline* (June 3, 2009, 12:28 PM), <https://deadline.com/2009/06/the-deal-is-done-chasey-carey-becomes-news-corp-no-2-replacing-peter-chernin-3-9474/>.

personally.”²⁹¹ In 2009, it was reported that “[t]hough Carey has been at DirecTV since 2003, Murdoch considers him a News Corp. Insider.”²⁹²

263. Carey rejoined News Corp. (later 21CF) in June 2009 as Deputy Chairman, President and Chief Operating Officer. In News Corp.’s press release, Rupert explained: “Chase has been one of my closest advisors and friends for years and I am delighted we’ll once again be working together across our businesses[.]”²⁹³ Rupert echoed the sentiment in an internal memo: “Chase has been an important advisor and a close friend to me for several decades.”²⁹⁴ In 2011, in the midst of the phone hacking scandal, Rupert endorsed Carey, not his son James, as his successor in an emergency situation: “Chase is my partner and if anything happened to me I’m sure he’ll get it immediately – if I went under a bus[.]”²⁹⁵ In the following years,

²⁹¹ DirecTV Group, DIRECTV Announces New Employment Agreement with Chase Carey (Aug. 9, 2007); *see also* Cynthia Littleton, *DirecTV holds on to Carey*, Variety (Aug. 9, 2007, 6:10 PM), <https://variety.com/2007/digital/markets-festivals/directv-holds-on-to-carey-1117970004/>.

²⁹² Sharon Waxman, *Carey to Replace Chernin as Murdoch’s No. 2*, The Wrap (May 31, 2009, 2:02 PM), <https://www.thewrap.com/carey-replace-chernin-murdochs-no-2-3386/>.

²⁹³ News Corp., Chase Carey Returns to News Corporation as Deputy Chairman, President and Chief Operating Officer (June 3, 2009), https://www.sec.gov/Archives/edgar/data/1308161/000118143109028677/rrd244839_28586.htm#:~:text=New%20York%2C%20NY%2C%20June%203,Operating%20Officer%2C%20effective%20July%201.

²⁹⁴ *Memo to News Corp. employees*, Variety (Jun. 3, 2009, 2:37 PM), <https://variety.com/2009/biz/news/memo-to-news-corp-employees-1118004477/>.

²⁹⁵ Adegoke, *Rupert Murdoch endorses Carey as next in line*, *supra* note 38.

Carey “helped groom the younger Murdochs James and Lachlan to replace him,”²⁹⁶ including by bringing “James and Lachlan Murdoch along to negotiations with everyone from distributors to sports leagues.”²⁹⁷

264. In 2015, Carey left his executive role at 21CF as part of the transition to the next Murdoch generation. In the 2015 leadership change, Rupert gave up his CEO role, Lachlan was elevated from Non-Executive Co-Chairman to Executive Co-Chairman alongside Rupert, James became CEO and Carey transitioned from President and Chief Operating Officer to a one-year role as Executive Vice Chairman. Carey and Lachlan, not Rupert, delivered the news to James over lunch that Lachlan was “next in line” and “James would report to him.”²⁹⁸ In 21CF’s press release, Rupert noted: “I can’t thank Chase Carey enough for his friendship, counsel and leadership over the past decades. He will be actively engaged in supporting Lachlan and James as they step in to their new roles.”²⁹⁹ In the same press release, Carey stated: “I am grateful to Rupert for giving me the opportunity of a lifetime I look forward to continuing to work with Rupert to support Lachlan and James in

²⁹⁶ Garrahan, *Chase Carey takes the driver’s seat at Formula One*, *supra* note 39.

²⁹⁷ Hagey, *How Chase Carey Helped Build Fox into a Major Player*, *supra* note 309.

²⁹⁸ Mahler, *How Rupert Murdoch’s Empire of Influence Remade the World*, *supra* note 4.

²⁹⁹ 21st Century Fox, 21st Century Fox Announces Changes to Senior Executive Team Effective July 1, 2015 (June 16, 2015), <https://www.sec.gov/Archives/edgar/data/1308161/000119312515230228/d943935dex991.htm>.

their new positions.” Lachlan and James thanked Carey for his partnership: “We are grateful to Chase for being the leader and partner that he has been, and we are both delighted that his wisdom and sure handedness will continue to serve 21st Century Fox.”³⁰⁰ Rupert and Carey followed up with internal memos. Rupert explained: “Chase Carey, my close friend and trusted advisor, will become Executive Vice Chairman and will serve in that role through June 30, 2016. Chase is a gifted executive and transformative leader and someone I am privileged to call my partner for nearly 30 years. ... I look forward to working with Chase in supporting Lachlan and James as they take on these new roles.”³⁰¹ Carey explained: “I want to thank Rupert for the opportunity of a lifetime and for the never-ending support he has offered me as a mentor, colleague and friend. I look forward to continuing to work with him as well as Lachlan, James, and all of you as we lead 21st Century Fox to new heights.”³⁰²

265. In return for his loyalty and assistance in transitioning leadership for the Murdochs, Carey received an approximately \$70 million payoff over the following three years. Carey was paid \$29.2 million in cash and stock for his one

³⁰⁰ *Id.*

³⁰¹ *Read the Memos: Rupert Murdoch, Chase Carey on 21st Century Fox Leadership Changes, supra* note 32.

³⁰² *Id.*

year in the undefined, largely advisory role of Executive Vice Chairman.³⁰³ That was approximately the same amount as the 16th and 17th highest paid CEOs in 2016, Greg Maffei of Liberty Media at \$29.8 million and Brian Roberts of Comcast at \$28.6 million.³⁰⁴ In the following two years, Carey was paid \$20 million each year in cash for providing part-time consulting services to 21CF while he was simultaneously working as the Chairman and CEO of Formula 1.³⁰⁵ Carey's part-time consulting compensation was more than the median compensation of the top 200 highest paid CEOs for 2017 and 2018 (\$17.5 million and \$18.6 million, respectively).³⁰⁶

266. As in the past, despite Carey no longer being a Fox executive, Carey has and continues to maintain his close business and personal relationship with

³⁰³ 21st Century Fox, 2016 Proxy Statement (Form Schedule 14A), at 42, <https://www.sec.gov/Archives/edgar/data/1308161/000119312516717705/d128342ddef14a.htm>.

³⁰⁴ Jon Huang and Karl Russell, *The Highest-Paid C.E.O.s in 2016*, N.Y. Times (May 26, 2017), <https://www.nytimes.com/interactive/2017/05/26/business/highest-paid-ceos.html>.

³⁰⁵ 21st Century Fox, 2017 Proxy Statement (Schedule 14A), at 62, <https://www.sec.gov/Archives/edgar/data/1308161/000119312517297868/d371706ddef14a.htm>; 21st Century Fox, 2018 Proxy Statement (Schedule 14A), at 61, <https://www.sec.gov/Archives/edgar/data/1308161/000119312518286384/d627771ddef14a.htm>.

³⁰⁶ David Gelles, *Want to Make Money Like a C.E.O.? Work for 275 Years*, N.Y. Times (May 25, 2018), <https://www.nytimes.com/2018/05/25/business/highest-paid-ceos-2017.html>; Peter Eavis, *It's Never Been Easier to Be a C.E.O., and the Pay Keeps Rising*, N.Y. Times (May 24, 2019), <https://www.nytimes.com/2019/05/24/business/highest-paid-ceos-2018.html>.

Rupert and remains on the board of a Murdoch-affiliated entity (21CF and then Fox). As one example of Carey and Rupert's continued close relationship, in 2016, when John Malone's Liberty Media approached Carey to join its bid for Formula 1 and run Formula 1 if its bid was successful, Carey sought and obtained Rupert's support. Rupert overruled the objection of James Murdoch, who wanted Sky to acquire Formula 1.³⁰⁷ In an October 2020 interview, Carey confirmed that he continues to have "the privilege and pleasure of talking to Rupert and engaging with Rupert on both the business world as well as on a personal level."³⁰⁸ In 2022, Carey was not appointed to the "Special Committee composed solely of independent directors not affiliated with the Murdoch family" to investigate a possible combination with News Corp,³⁰⁹ inferably in recognition of Carey's continued close relationship with the Murdochs.

³⁰⁷ Matthew Garrahan, *Murdoch & Sons: Lachlan, James and Rupert's \$62bn empire*, Financial Times (Jan. 26, 2017), <https://www.ft.com/content/a530494c-e350-11e6-8405-9e5580d6e5fb>; Georg Szalai, *Why John Malone Put Chase Carey in Charge of Formula One*, The Hollywood Reporter (Sept. 14, 2016, 5:00 AM), <https://www.hollywoodreporter.com/business/business-news/why-john-malone-put-chase-928385/>.

³⁰⁸ *F1: Beyond the Grid, Chase Carey on his role in shaping F1's future and guiding the sport through a global pandemic*, Formula 1 (Oct. 14, 2020), at 43:28-43:50, <https://www.youtube.com/watch?v=dgZKycrxmxg>.

³⁰⁹ Fox Corporation, *FOX's Special Committee of the Board of Directors Provides Update* (Dec. 6, 2022), <https://investor.foxcorporation.com/news-releases/news-release-details/foxs-special-committee-board-directors-provides-update>.

Ryan

267. Ryan’s D&O Questionnaire acknowledges: “I have a friendship with Lachlan Murdoch, and Rupert Murdoch.”³¹⁰ During his time in office, Ryan traveled in Republican fundraising circles with Rupert³¹¹ and journalists have described them as “friendly for many years.”³¹²

268. Ryan owes the height of his political prominence to the Murdochs. Rupert successfully lobbied Mitt Romney publicly and privately to name Ryan as the Republican Party’s nominee for Vice President in 2012. Murdoch cheered publicly when Ryan, his choice candidate, was selected, describing him as an “almost perfect choice.”³¹³ The *New York Post* supported Ryan’s selection. One outlet noted, “[i]t would be hard to get a more favorable headline than on the Post’s

³¹⁰ NYC_220_00001256.

³¹¹ Kenneth P. Vogel, *Big names top closed-door retreat*, Politico (Mar. 12, 2013, 5:40 PM), <https://www.politico.com/story/2013/03/john-boehner-paul-ryan-dick-cheney-rupert-murdoch-headline-closed-door-retreat-088776>.

³¹² Brian Stelter, *Former Speaker of the House Paul Ryan joins board of Fox Corporation*, CNN Business (Mar. 19, 2019, 12:57 PM), <https://www.cnn.com/2019/03/19/media/paul-ryan-fox-corporation/index.html>.

³¹³ Joel Gehrke, *Murdoch on Romney-Ryan: ‘Now we can choose between Greek and US dream’*, Washington Examiner (Aug. 11, 2012, 4:00 AM), <https://www.washingtonexaminer.com/opinion/beltway-confidential/824596/murdoch-on-romney-ryan-now-we-can-choose-between-greek-and-us-dream/>.

website: ‘Mitt Romney and new running mate Paul Ryan pledge to ‘restore the greatness of this country.’ Not a hint of the tabloid’s usual snark.”³¹⁴

269. When Ryan retired from Congress in the midst of the Trump presidency, the Murdochs provided Ryan with a sinecure. Ryan’s “owingness” to the Murdochs is complemented by his desire to use Fox to advance his political ambitions for the conservative movement and the Republican Party. Ryan serves that ambition by gently nudging the Murdochs to shift the political orientation of Fox News. Ryan acted as a courtier, not as someone who, together with the other directors (such as his political ally Dias) could challenge the Murdochs about the proper governance of Fox News and protect Fox from defamation risk.

270. By not challenging the Murdochs, Ryan has been a welcome guest on Fox News and Fox Business to promote his personal interests: (i) a policy volume

³¹⁴ Kurtz, *Rupert Murdoch Gets His Man As Mitt Romney Picks Paul Ryan*, *supra* note 58.

he compiled,³¹⁵ (ii) his SPAC,³¹⁶ and (iii) his anti-Trump commentary about the 2024 Presidential election.³¹⁷

Nasser

271. Nasser lacks independence from Rupert because of their decades-long close business relationship and personal friendship. Nasser and Rupert both grew up in Melbourne, Australia, and have been close for decades. A 2000 profile of Nasser by their hometown Melbourne newspaper, *The Age*, explained that “News Corporation’s Rupert Murdoch, [is someone] Nasser knows well.”³¹⁸ A 2017 profile by the *Australian Financial Review* observed “[i]t is fitting that these two sons of Melbourne [Nasser and Murdoch] are close both commercially and personally.”³¹⁹

³¹⁵ Kelly Laco, *US must catch up to China’s digital currency capability in order to ‘lead the world’: Paul Ryan policy volume*, Fox News (Nov. 17, 2022, 6:00 AM), <https://www.foxnews.com/politics/us-catch-chinas-digital-currency-lead-world-paul-ryan-policy-volume> (Ryan providing a pre-release interview to Fox News Digital regarding his book); *Paul Ryan: You can’t tax your way out of this problem*, Fox Business (June 16, 2022), <https://www.youtube.com/watch?v=xAmPurV-mLo> (Paul Ryan promoting his book on Fox Business).

³¹⁶ *Paul Ryan makes ‘good bet’ on US oil, gas with SPAC deal*, Fox Business (Oct. 25, 2022), <https://www.foxbusiness.com/video/6314332116112> (Ryan promoting his SPAC and providing anti-Trump commentary on Fox Business).

³¹⁷ *Former Speaker Paul Ryan says Republicans will lose if Donald Trump is nominee*, Fox Carolina (Sept. 26, 2023, 11:39 PM), <https://www.foxcarolina.com/video/2023/09/27/former-speaker-paul-ryan-says-republicans-will-lose-if-donald-trump-is-nominee/> (Ryan providing anti-Trump commentary on Fox affiliate).

³¹⁸ Tony Parkinson, *Jac be nimble, Jac be quick*, *The Age* (Mar. 18, 2000).

³¹⁹ Stevens, *BHP chairman Jac Nasser reflects on 30 years in management*, *supra* note 49.

272. Nasser served on the board of Murdoch-affiliated entities for 21 consecutive years starting in 2002: (i) BSkyB (2002-12); (ii) 21CF (2013-2019); and (iii) Fox (2019-2023).

273. Nasser and Rupert have worked together for decades in overseeing the American Australian Association. The American Australian Association is an “elite networking group”³²⁰ founded by Rupert’s father, Sir Keith Murdoch, in 1948 “that has been passed down through generations of the Murdoch family who continue to advance the legacy of Sir Keith Murdoch today.”³²¹ Nasser and Rupert are both founding members of the American Australian Association’s Advisory Council, which was established in 2005 at an inaugural meeting hosted by Rupert.³²² The exclusive Advisory Council reportedly “meets twice a year – usually in Roundtable

³²⁰ Tom DC Roberts, *The Murdochs: how Keith’s legacy became Rupert’s obsession*, *The Guardian* (Nov. 17, 2015, 16:30), <https://www.theguardian.com/media/2015/nov/18/the-murdochs-how-keiths-legacy-became-ruperts-obsession>.

³²¹ *75th Anniversary Benefit Dinner*, American Australian Association (Nov. 14, 2023), <https://americanaustralian.org/75th-anniversary-benefit-dinner/>; *Opening the American Australian Association Murdoch Center*, American Australian Association (Mar. 17, 2023), <https://americanaustralian.org/opening-the-american-australian-association-murdoch-center/> (Rupert Murdoch: “I remember my father launching the American Australian Association 75 years ago....it means much to me to have Lachlan (Murdoch) here today sharing in this important moment and continuing the family tradition.”).

³²² *American Australian association announces Advisory Council members*, American Australian Association (Nov. 3, 2005), <http://americanaustralian.org:80/Corporate/storydisplay.php?storyId=2088> (archive of Feb. 19, 2006).

discussion and dinner to discuss issues and directions for the Association.”³²³ Nasser and Rupert have continuously served on the Advisory Council from 2005 to the present. Both have been deeply involved in leading, supporting, and being honored by the American Australian Association for at least the last two decades.

274. Nasser has a sense of owingness to Rupert for helping resuscitate Nasser’s business career after his disastrous tenure as CEO of Ford Motor Company. Nasser spent the first 33 years of his career at Ford, taking over as CEO in 1999 when Ford had record profits of \$7.2 billion. By 2001, “under Nasser, Ford had fallen into a sorry state of disrepair,” as the company lost \$5.5 billion for the year and its “\$15 billion cash hoard had dwindled to less than \$1 billion[.]”³²⁴ Bill Ford, who fired Nasser in October 2001, explained: “It wasn’t a gradual decline. It was a massive implosion.”³²⁵ *Fortune* ranked Nasser as one of “History’s 10 worst auto chiefs.”³²⁶ A 2002 *New York Times* article highlighted that Nasser “has yet to land

³²³ *About Us: Advisory Council*, American Australian Association <https://web.archive.org/web/20060211171721/http://americanaustralian.org/Aboutus/advisory.php> (archive of Feb. 11, 2006).

³²⁴ Kathleen Kerwin, *Bill Ford's Long, Hard Road*, Bloomberg (Oct. 6, 2002), <https://www.bloomberg.com/news/articles/2002-10-06/bill-fords-long-hard-road>.

³²⁵ *Id.*

³²⁶ Alex Taylor III, *History’s 10 worst auto chiefs*, *Fortune* (Apr. 3, 2013), <https://fortune.com/2013/04/03/history-10-worst-auto-chiefs/>.

a new job,” noting that “fate is less predictable” for “someone who has taken a company and driven it downhill[.]”³²⁷

275. Rupert helped facilitate Nasser’s reentry into the business world and rebuilding of his reputation by personally inviting Nasser to join the BskyB board as an “independent” director in 2002.³²⁸ As the *Financial Times* put it: “Mr. Nasser relied on his Australian connections after leaving Ford in 2001. His rehabilitation included joining the board of Rupert Murdoch’s BskyB in 2002 when it was in the midst of a nepotism debate over James Murdoch’s hiring.”³²⁹

276. It is not obvious what relevant skillset Nasser brought to his role as a director of a British pay-television company beyond his loyalty to Rupert. Nasser was not British and had no entertainment industry experience. But Rupert needed “independent” directors he could count on to support him as he only controlled 36% of BskyB, was being compelled by stockholder pressure to add new directors to create a majority “independent” board and was planning to appoint James as CEO. Observers noted “the idea that the chairman [Rupert] will no longer be able to get his own way should be taken with a large pinch of salt,” particularly given that

³²⁷ Leslie Wayne, *Falling from Grace, Often to the A-list*, N.Y. Times, (Nov. 10, 2002), <https://www.nytimes.com/2002/11/10/business/falling-from-grace-often-to-the-a-list.html>.

³²⁸ Burt, *Nasser to join board of BskyB*, *supra* note 51.

³²⁹ Mychasuk, *Jac, the faithful son of Oz*, *supra* note 52.

Nasser “was hardly unknown to Rupe before joining the board.”³³⁰ Nasser loyally supported Rupert’s agenda during his ten years as a BSkyB director, including by supporting the highly contentious appointment of 30-year-old James as BSkyB CEO in 2003,³³¹ advocating Rupert’s controversial buyback program in 2005, which increased News Corp’s ownership stake and the Murdochs’ clout,³³² and steadfastly supporting the Murdochs through the phone hacking scandal.³³³

277. By 2012, Nasser was bumping up against the U.K. Corporate Governance Code provision that a director who has served for more than nine years is presumptively no longer independent.³³⁴ Institutional Shareholder Services was

³³⁰ *Remedies the doctor would not have ordered*, The Guardian (June 15, 2004, 21:00), <https://www.theguardian.com/business/2004/jun/16/7>.

³³¹ *E.g.*, Preston, *Rupert Murdoch’s camp is spinning a load of old Ball*, *supra* note 53 (“[W]hat on earth is the use of BSkyB’s non-executive directors if they are simply there to rubber-stamp News Corp’s appointments? I am sure the independent non-execs, who include Leighton and Jacques Nasser, the former Ford chief executive, will have a lively discussion at a board meeting tomorrow about the candidates for the CEO slot. Will they go for the Murdoch progeny? Bet on it.”).

³³² *E.g.*, Murden, *Directors woo investors over BSkyB revolt*, *supra* note 54 Scotland on Sunday (Oct. 30, 2005) (“Lord Rothschild and Jacques Nasser have held meetings with some of the satellite broadcaster’s biggest shareholders to persuade them not to block the company’s share buy-back plan. Some institutional shareholders see the plan as little more than an attempt by Rupert Murdoch to increase his News Corporation’s power in the company whose chief executive is his son James.”).

³³³ *E.g.*, *BSkyB board letter defending James Murdoch – the full text*, Guardian (Nov. 11, 2011) (“After considering all of these issues, the Independent Directors reached the unanimous conclusion that James should continue as Chairman.”) *supra* note 55.

³³⁴ Nic Fildes & Helen Power, *BSkyB shareholders seek more independent directors*, The Times (July 18, 2011) (noting Nasser was “due to leave the board in the next year ... to comply with corporate governance rules”).

also questioning Nasser’s independence.³³⁵ Rupert and Nasser’s solution was for Nasser to resign from the BSkyB board in November 2012 and join the 21CF board as an “independent” director when 21CF was spun off from News Corp. in 2013.³³⁶

278. Also in 2012, Nasser was honored at an American Australian Association gala in Melbourne.³³⁷ One of the speakers honoring Nasser was long-time Murdoch ally and then-Australian opposition leader Tony Abbott.³³⁸ As explained below, Nasser recently helped facilitate Abbott replacing Nasser as the Australian “independent” director on the Fox board in connection with Abbott’s “close friend” Lachlan becoming Fox CEO.³³⁹ Rupert was honored at the same American Australian Association event in 2006, a year after Rupert and Nasser founded the Advisory Council.³⁴⁰

³³⁵ *Embattled chairman James Murdoch facing BSkyB vote; Judgment day*, Daily Telegraph (Nov. 29, 2011) (“Institutional Shareholder Services, the American investor group, has recommended its members abstain from backing Mr. Murdoch after the News of the World phone-hacking scandal raised doubts over ‘his ability to oversee management adequately.’ It also questioned the independence of Dame Gail Rebeck and Jacques Nasser as non-executive directors.”).

³³⁶ 21st Century Fox, 2013 Proxy Statement (Form Schedule 14A), at 8, 19, <https://www.sec.gov/Archives/edgar/data/1308161/000119312513352464/d586263ddefl4a.htm>.

³³⁷ Angus Thompson, *Stars and stripes for business duo*, Herald Sun (Feb. 9, 2012).

³³⁸ *Id.*

³³⁹ Calum Jaspan, *Tony Abbott and the meeting of minds at Fox*, Sydney Morning Herald (Oct. 13, 2023, 5:00 AM), <https://www.smh.com.au/business/companies/tony-abbott-and-the-meeting-of-minds-at-fox-20231012-p5ebr6.html>.

³⁴⁰ Suzanne Carbone, *Uncle Sam salutes a pal called Lindsay*, The Age (Aug. 5, 2011).

279. In 2014, Nasser and Rupert hosted then-Australian Prime Minister Tony Abbott in New York on behalf of the American Australian Association. Nasser hosted a public lunch with Abbott, and Rupert hosted a private dinner with Abbott the same evening.³⁴¹

280. In 2015, Rupert brought Nasser to a Hudson Institute gala to help celebrate Rupert being presented the Hudson Institute's Global Leadership Award by Henry Kissinger.³⁴² As one observer explained: "Oftentimes VIP's are honored at dinners without bringing their friends however, this night was evidently important to Murdoch who brought Lebanese businessman and former Ford Motor Company CEO, Jacques Nasser, in from Australia for the festivities."³⁴³

281. In 2017, Nasser was profiled by the *Australian Financial Review* in connection with a 30-person event Nasser held at the American Natural History Museum. Nasser insisted that his "guests retain their privacy," but an entire section of the profile is dedicated to "The Murdoch Connection" and notes that Nasser and

³⁴¹ David Crowe, *Have faith in yourself: PM builds bridges in US*, *The Australian* (June 12, 2014); see also <https://www.gettyimages.com/detail/news-photo/chairman-of-bhp-billiton-jac-nasser-speaks-with-australian-news-photo/450681260>.

³⁴² Amanda L. Gordon, *Rupert Murdoch and Jerry Hall Root for U.S. at Think-Tank Gala*, *Bloomberg* (Dec. 1, 2015, 11:01 AM), <https://www.bloomberg.com/news/articles/2015-12-01/rupert-murdoch-and-jerry-hall-root-for-u-s-at-think-tank-gala>.

³⁴³ Lieba Nesis, *New York Evening Hours by Lieba Nesis*, *Lookonline* (Dec. 1, 2015), <https://lookonline.com/tag/new-york-evening-hours-by-lieba-nesis/>.

Rupert are “close both commercially and personally.”³⁴⁴ A few months later, Nasser was scheduled to attend the American Australian Association event hosted by Rupert on the U.S.S. Intrepid for newly elected President Trump, but Nasser was forced to stay in Australia to defend an activist attack by Elliott Management on the Australian mining company at which he was chairman.³⁴⁵

282. In 2023, the American Australian Association, with Nasser and Rupert on the Board of Advisors, honored Rupert and Lachlan twice. In March 2023, the American Australian Association honored Rupert and Lachlan at a ribbon cutting ceremony for the opening of the new American Australian Association Murdoch Center in New York, which “was made possible by a very generous grant from News Corp and Fox Corporation.”³⁴⁶ In November 2023, the American Australian

³⁴⁴ Stevens, *BHP chairman Jac Nasser reflects on 30 years in management*, *supra* note 49.

³⁴⁵ Will Glasgow & Christine Lacy, *Anthony Bell living the good life on a budget*, *The Australian* (May 5, 2017), https://www.theaustralian.com.au/subscribe/news/1/?sourceCode=TAWEB_WRE170_a_GGL&dest=https%3A%2F%2Fwww.theaustralian.com.au%2Fbusiness%2Fmargin-call%2Fanthony-bell-living-the-good-life-on-a-budget%2Fnews-story%2F7bb012e822c17fff60483f12db60e25e&memtype=anonymous&mode=premium&v21=GROUPA-Segment-2-NOSCORE&V21spcbehaviour=append; Patrick Shanley, *Rupert Murdoch Introduces “Friend” Donald Trump at New York Event*, *The Hollywood Reporter* (May 4, 2017, 6:36 PM), <https://www.hollywoodreporter.com/news/general-news/rupe-murdoch-introduces-friend-trump-at-new-york-event-1000436/>.

³⁴⁶ *New Murdoch Center unveiled to toast nonprofit’s 75-year anniversary*, *N.Y. Post* (Mar. 14, 2023), (Rupert: “it means much to me to have Lachlan here today sharing in this important moment and continuing the family tradition.”),

Association honored Rupert and Lachlan at its 75th Anniversary Benefit “for their enduring commitment to the Association and continued support of Sir Keith’s legacy....”³⁴⁷

283. Also in 2023, Nasser continued doing the bidding of the Murdochs by facilitating Abbott replacing Nasser as the Australian “independent” director on the Fox board. As the Fox Lead Independent Director, Nasser was responsible for “supervising the Board’s determination of the independence of its Directors[.]”³⁴⁸ Yet, despite Nasser’s first-hand knowledge of Abbott’s close relationship with the Murdochs, he supervised the Board’s affirmative determination that Abbott was “independent of the Company and its management” and the related disclosure to Fox stockholders in seeking to have Abbott elected.³⁴⁹

<https://nypost.com/2023/03/14/new-murdoch-center-unveiled-to-toast-nonprofits-75-year-anniversary/>.

³⁴⁷ *Celebrating our 75th Anniversary*, American Australian Association, (Nov. 14, 2023). <https://americanaustralian.org/bd23/>; Brian Flood, *Rupert, Lachlan Murdoch honored at American Australian Association’s 75th anniversary dinner*, Fox News (Nov. 15, 2023, 7:50 AM) (“Rupert carried on this vision [of Sir Keith Murdoch], strongly supported by Lachlan. Rupert has embodied the values and ideals underpinning the Association through his own career, becoming one of the greatest Australian business exports of all time. Lachlan has carried on this legacy, through his leadership at FOX and by Co-Chairing the American Australian Association Business Council.”), <https://www.foxnews.com/media/rupert-murdoch-honored-american-australian-association>.

³⁴⁸ Fox Corporation, 2023 Proxy Statement (Form Schedule 14A), at 13, <https://www.sec.gov/ix?doc=/Archives/edgar/data/1754301/000119312523240490/d467449ddef14a.htm>.

³⁴⁹ *Id.* at 12.

284. Nasser knew Abbott was hardly independent of Rupert and Lachlan. Abbott's pre-political career included being a "lead[] writer" for Rupert's *The Australian*.³⁵⁰ In 2009, Lachlan's wife Sarah Murdoch "gave an eloquent and thoughtful launch of Tony Abbott's manifesto for power, his book *Battlelines*, while Lachlan Murdoch and Tony Abbott looked on appreciatively."³⁵¹ In 2013, Rupert endorsed Abbott for Prime Minister on Twitter.³⁵² Rupert, alongside Lachlan,³⁵³ was "throwing the full weight of his media empire behind an effort to oust [then-Prime Minister Kevin] Rudd" in favor of Abbott, prompting a former Murdoch editor to say: "News [Corp.] does not play fair. And it's not always troubled by the

³⁵⁰ Tony Abbott, *Tony Abbott reveals his Liberal beliefs and how his public and private lives shaped him*, The Daily Telegraph (Dec. 1, 2009, 1:36 PM), <https://www.dailytelegraph.com.au/tony-abbott-reveals-his-liberal-beliefs-and-how-his-public-and-private-lives-shaped-him/news-story/93f129604d67537234f4514a9d5dba7c>.

³⁵¹ Paul Sheehan, *Abbott laid out his plans for all to see*, The Sydney Morning Herald (Dec. 1, 2009, 10:41 AM), <https://www.smh.com.au/politics/federal/abbott-laid-out-his-plans-for-all-to-see-20091201-k20p.html>.

³⁵² *Murdoch backs Abbott on Twitter*, SBS News (Aug. 20, 2013, 9:00 AM), <https://www.sbs.com.au/news/article/murdoch-backs-abbott-on-twitter/4t91rq9e7>.

³⁵³ Clive Irving, *Lachlan Murdoch Is Even More of a Right-Wing Ultra Than His Old Man*, Daily Beast (Aug. 8, 2020, 5:09 AM), <https://www.thedailybeast.com/lachlan-murdoch-is-even-more-of-a-right-wing-ultra-than-his-old-man> ("When [Lachlan] returned to the family fold in 2014, the Murdoch papers in Australia, controlling around 65 percent of the total Australian newspaper readership, were at the height of their political power and it was obvious that he shared that power with his father. Two Australian prime ministers, Julia Gillard and Kevin Rudd, blamed their downfalls on pressure from Murdoch papers").

truth.”³⁵⁴ Abbott in return endorsed Rupert as a “hometown hero” and “probably the Australian who has most shaped the world[.]”³⁵⁵ In 2014, Rupert and Nasser hosted Abbott at the American Australian Association event in New York,³⁵⁶ Rupert and Abbott sat next to each other at The Australian’s 50th Anniversary gala,³⁵⁷ Lachlan, Sarah Murdoch and Abbott attended the Champions of the West gala together,³⁵⁸ and Sarah Murdoch helped Abbott host French President Francois Hollande.³⁵⁹ “When Abbott served as prime minister, from 2013 to 2015, he would discuss legislation with the Murdochs’ editors—and occasionally the Murdochs

³⁵⁴ Pip Bulbeck, *Rupert Murdoch’s Newspapers Declare War on Australia’s Prime Minister*, *The Hollywood Reporter* (Sept. 4, 2013, 5:00 AM), <https://www.hollywoodreporter.com/news/general-news/rupert-murdochs-newspapers-declare-war-619379/>.

³⁵⁵ Oliver Laughland, *Tony Abbott hails Rupert Murdoch as 'hometown hero'*, *The Guardian* (Sept. 6, 2013), <https://www.theguardian.com/world/2013/sep/06/tony-abbott-hails-rupert-murdoch-as-hometown-hero>.

³⁵⁶ Crowe, *Have faith in yourself: PM builds bridges in US*, *supra* note 364.

³⁵⁷ *A Night to Remember*, *The Australian* (July 16, 2014), <https://www.theaustralian.com.au/news/a-night-to-remember/image-gallery/5960f5c56183482329e1d87ef11fcb40>.

³⁵⁸ *Champions of the West*, *Daily Telegraph* (June 3, 2014), <https://www.dailytelegraph.com.au/newslocal/macarthur/champions-of-the-west/image-gallery/bf2b0f96cc56bbd423c49b8f1ca0a054>.

³⁵⁹ *French President Francois Hollande Attends Meetings In Sydney And Canberra Following G20 Summit*, *Getty Images* (Nov. 19, 2014), <https://www.gettyimages.com/detail/news-photo/prime-minister-tony-abbott-sarah-murdoch-adam-bull-amber-news-photo/459208820> (“Prime Minister Tony Abbott, Sarah Murdoch, Adam Bull, Amber Scott and French President Francios Hollande pose for a photograph after a performance by the Australian Ballet Company at a lunch at the National Gallery of Australia on November 19, 2014 in Canberra, Australia.”).

themselves—before introducing it.”³⁶⁰ In the years since, Abbott and the Murdochs have remained close, with Abbott attending numerous Murdoch family events, including Lachlan and Sarah Murdoch’s 20th wedding anniversary,³⁶¹ Lachlan and Sarah Murdoch’s annual Christmas parties,³⁶² a private event for U.S. Secretary of State Mike Pompeo at Lachlan’s mansion³⁶³ and a “relaxed evening barbecue” with Rupert, Lachlan and Sarah Murdoch.³⁶⁴

Burck

285. Burck lacks independence from Dinh, who faces personal liability for his role in Fox’s defamation of Dominion and Smartmatic. As Chief Legal and Policy Officer, Dinh functioned as both lawyer and client in supervising Fox News’s

³⁶⁰ Mahler, *How Rupert Murdoch’s Empire of Influence Remade the World*, *supra* note 4.

³⁶¹ Andrew Hornery, *‘The family always comes first’: Murdochs fly in to celebrate at Bondi*, Sydney Morning Herald (Mar. 29, 2019, 8:26 PM), <https://www.smh.com.au/entertainment/celebrity/the-family-always-comes-first-murdochs-fly-in-to-celebrate-at-bondi-20190329-p518sg.html>.

³⁶² *E.g.*, Amanda Meade, *Lachlan Murdoch’s whirlwind week: from US court testimony to Sydney Christmas party as elites rub shoulders*, The Guardian (Dec. 8, 2022, 20:26), <https://www.theguardian.com/media/commentisfree/2022/dec/09/lachlan-murdochs-whirlwind-week-from-us-court-testimony-to-sydney-christmas-party-as-elites-rub-shoulders>; Andrew Hornery, *James Packer’s mixed 2017 ends with a new woman*, Sydney Morning Herald (Dec. 22, 2017, 3:16 PM), <https://www.smh.com.au/entertainment/celebrity/private-sydney-packers-mixed-2017-ends-with-new-woman-20171218-h06oky.html>.

³⁶³ Paddy Manning, *Lachlan Murdoch: Welcome to the cub*, The Monthly (Nov. 2, 2022), <https://www.themonthly.com.au/blog/paddy-manning/2022/02/2022/lachlan-murdoch-welcome-cub>.

³⁶⁴ Pamela Williams, *The war on Malcolm*, The Monthly (Feb. 2019), <https://www.themonthly.com.au/issue/2019/february/pamela-williams/war-malcolm>.

ongoing defamation of Dominion and Smartmatic over a span of several weeks, despite receiving cease-and-desist communications that Dinh chose not to elevate to the Audit Committee or the Board. Dinh has spoken publicly about how he contributed to business decisions at Fox while also providing legal advice.³⁶⁵ Dinh testified as to his perspective on the facts: “There was a period of time when allegations were made that I was skeptical of, but I allowed the possibility that they may be true.”³⁶⁶ Burck is disabled from authorizing suit against any of the individual defendants since any such litigation would implicate his close friend Dinh.

286. Burck’s D&O Questionnaire for Fox states, “I have been a friend of Viet Dinh for two decades. We have both been members of social clubs in the Washington DC area, including the Chevy Chase Club.”³⁶⁷ Burck and Dinh both served in the George W. Bush administration, and more recently, they served as co-counsel on a high-profile criminal matter with Paul Clement.³⁶⁸ Dinh then recruited

³⁶⁵ *A Conversation with Viet D. Dinh JD’93, Chief Legal and Policy Officer, Fox Corporation*, Harvard Law School (Oct. 30, 2023).

<https://clp.law.harvard.edu/knowledge-hub/insights/watch-a-conversation-with-viet-d-dinh/>.

³⁶⁶ D SJ Opp. Ex. 601 (V. Dinh Dep. Tr.) 12:12-18; Hugo Guzman, *Fox Legal Chief Rips Judge in Dominion Case, Says “Illogical” Pre-Trial Rulings “Hamstrung” Company*, LAW.COM (Oct. 18, 2023, 8:52 AM)

<https://www.law.com/corpcounsel/2023/10/18/fox-legal-chief-rips-judge-in-dominion-case-says-illogical-pre-trial-rulings-hamstrung-company/>.

³⁶⁷ NYC_220_00001710.

³⁶⁸ Weiser, *Turkish Gold Trader Builds a Dream Team of Defense Lawyers*, *supra* note 71.

Dwtent'cpf "Ergo gpv"vq"lqkp"Hqz"chgt"F qo kpkqp"cpf "Uo ctvo cve'hkrgf "uwk0"Dwtent'u"
ngi cn'gzr gtvkug'ku'kp"vj g'tgcm "qh'dEtkuku'Ncy "cpf "Utcvgi { ö'cpf "y j kg"eqmct"etko kpcn"
f ghgpug0"F kpj æ'tgetwko gpv'qh'c"twwvgf "r gtuqpcn'cm{ "y kj "uwej "unknu"vq"ugtxg"qp"
vj g'Dqctf "uwi i guw'vj cvj ku'tqrg'ku"vq"r tqvgev'F kpj "cpf "vj g'O wtf qej u0'

D. Carey, Ryan, Nasser, Burck, Dias, and Hernandez All Failed To Act Independently in the Aftermath of the Lawsuits Filed by Dominion and Smartmatic

4: 90 Qwwkf g'f kt gevqtu'Ectg{ .T { cp.'P cuugt.'Dwtent'F kcu."cpf "J gtpcpf g| "cm
hckrgf "vq'cev'lpf gr gpf gpv{ "gxgp"chgt'F qo kpkqp"cpf "Uo ctvo cve'hkrgf "uwk0'

4: : 0 Cu"pqvgf "cdqyg."chgt"vj g"F qo kpkqp"ugwgo gpv."Ncej rcp"tgchko gf
Hqzæ'dwukpguu'o qf gn'dVj gtgæ'pq"ej cpi g'kp"r tqi tco o kpi "utcvgi { "cv'Hqz"P gy u000"
Kæ'qdxkqwu{ "c"uweeguhwi'utcvgi { 0""Vj g'vqt vkwu'cur gev'qh'Hqzæ'dwukpguu'utcvgi { "
j cu"tgo ckpgf "wpej cpi gf 0""F gur kg"dgkpi "kphqto gf "cdqw"vj g"uwdlgev'o cwgt."vj g"
qwwkf g'f kt gevqtu'pgxgt'kpvgtxgpgf "vq'tgf weg'f ghco cvkqp'tkum'cpf "vq"r tqvgev'Hqz'ht qo "
vj g'dwukpguu'o qf gn'hcxqtgf "d{ "vj g'O wtf qej u."qpg'kp"y j lej "Hqz"P gy u'rcem'y tkwgp"
gf kqtkcn'uvcpf ctf u."r tgugpw'r qrk'ecn'pcttcvkgu'y kj qw'hcewcn'hqwpf cvkqp."tgo ckpu"
wpy knkpi "vq"o cng'r tqo r v'eqtgcvkpu."cpf "vj g'Dqctf "cpf "Cwf k'E qo o kwgg'hcknu"vq"
o qpkqt'r qvgpvcn'f ghco cvkqp"erko u'dghqtg"vj g{"ctg'hkrgf 0"

289. The continued bad faith oversight of the outside directors resulted in, for example: (i) Fox News host Tucker Carlson repeatedly falsely accusing Trump supporter Ray Epps of being a government provocateur who orchestrated the attack on the Capitol on January 6, 2021; (ii) Fox News repeatedly using a manipulated video to falsely accuse Nina Jankowicz, a 2022 appointee to a minor governmental board without operational authority, of seeking to edit the tweets of private citizens on behalf of the government; and (iii) Fox News not promptly correcting the false story published on July 25, 2023 claiming that the Marine Corps forced a Gold Star family to pay \$60,000 to ship to Arlington Cemetery the remains of Marine Sgt. Nicole Gee.

290. The failure of the outside directors to act independently of the Murdochs is further seen in the willingness of the outside directors to denominate as “independent” directors who have deep personal and business relationships with the Murdochs.

a. Nasser was determined suitable to continue serving as Lead Independent Director of Fox through November 2023, despite his longstanding personal and business relationship with Rupert, which was known to the other outside directors, especially Carey;

b. Carey was nominated to become Lead Independent Director of Fox in November 2023, and he was named Lead Independent Director at that time, despite his longstanding personal and business relationships with Rupert and Lachlan, which was known to the other outside directors, especially Nasser, the outgoing Lead Independent Director;

c. Abbott was nominated to become a new “independent” director of Fox in November 2023, despite his longstanding personal, business, and political relationships with Rupert and Lachlan, which were known to other the outside directors, especially Nasser, the outgoing Lead Independent Director;

d. Ryan has continued to serve as an “independent” director, despite his longstanding political relationship with Rupert, which was known to the other outside directors, especially Dias;

e. Burck was nominated to become a new “independent” director of Fox in 2021, despite his longstanding friendship and political and legal work with Dinh, who was the subject of scrutiny in connection the defamation claims brought by Dominion and Smartmatic.

CLAIMS FOR RELIEF

COUNT I

Breach of Fiduciary Duty (Against the Officer Defendants)

291. Co-Lead Plaintiffs repeat and reallege all of the allegations above as though fully set forth herein.

292. Rupert and Lachlan owed fiduciary duties of loyalty and care as directors, officers, and controlling stockholders of Fox. Rupert and Lachlan separately owed duties as officers of Fox News to act in the best interest of Fox News and its corporate parent, Fox.

293. Dinh owed fiduciary duties of loyalty and care as an officer of Fox.

294. Scott owed duties as an officer of Fox News to act in the best interest of Fox News and its corporate parent, Fox.

295. Rupert, Lachlan, Dinh, and Scott all acted in bad faith by causing Fox News to pursue profits through tortious misconduct. At all relevant times, Rupert, Lachlan, Dinh, and Scott maintained a tortious business model of propagating factually unfounded, defamatory conspiracy theories, without institutionalized policies of fact-checking, retractions, or assessment of defamation risk.

296. Rupert, Lachlan, Dinh, and Scott were all closely involved in overseeing and implementing the programming strategy of regaining market share

in November 2020 by airing hosts and guests who propagated unfounded conspiracy theories falsely accusing Dominion and Smartmatic of election fraud. Rupert, Lachlan, Dinh, and Scott all knew that Fox News executives, hosts, and guests were disregarding the lack of any credible evidence to support the accusations and the abundant, readily available evidence about the absence of systemic fraud in the tabulation of votes.

297. As executives with deep experience in the management of mass media companies, Rupert, Lachlan, Dinh, and Scott knew that it was tortious to pursue profits by making false, unfounded accusations of criminal misconduct. Rupert, Lachlan, Dinh, and Scott further knew that Dominion and Smartmatic had positioned themselves to seek maximal damages by putting Fox News on notice of the false claims and by making demands for retractions that Fox News ignored.

COUNT II
Breach of Fiduciary Duty
(Against the Outside Director Defendants)

298. Co-Lead Plaintiffs repeat and reallege all of the allegations above as though fully set forth herein.

299. Throughout their tenure on the Board, outside directors Carey, Ryan, Nasser, Dias, and Hernandez acquiesced to a business strategy of pursuing profit through actionable defamation, and they consciously disregarded the risk of tort

liability from actionable defamation. They failed to act in good faith to establish information and reporting systems that mitigate defamation risk, and they disregarded red flags respecting defamation liability to Dominion and Smartmatic.

PRAYER FOR RELIEF

WHEREFORE, Co-Lead Plaintiffs pray for judgment as follows:

- A. Determining that this action is a proper derivative action maintainable under the law and that demand is excused;
- B. Awarding all damages sustained by Fox as a result of the defamation committed by Fox and Fox News, including, without limitation, any damages, amounts paid in settlement, and legal expenses incurred in each of the Dominion litigation, the Smartmatic litigation, and the Khalil litigation;
- C. Awarding equitable relief to reform the governance and operation of Fox and Fox News so that defamation risk is reduced and monitored;
- D. Awarding equitable relief so that directors who are not found to be truly independent directors are not denominated as “independent” directors;
- E. Awarding Co-Lead Plaintiffs the costs and expenses of the action, including reasonable attorneys’ fees and expert fees; and
- F. Granting such further relief as the Court deems just and proper.

FRIEDLANDER & GORRIS, P.A.

/s/ Joel Friedlander

Joel Friedlander (Bar No. 3163)
Jeffrey M. Gorris (Bar No. 5012)
Christopher M. Foulds (Bar No. 5169)
1201 N. Market Street, Suite 2200
Wilmington, DE 19801
(302) 573-3500

Attorneys for Co-Lead Plaintiffs

OF COUNSEL:

Ellen Rosenblum, Attorney General
Brian A. de Haan, Senior Assistant
Attorney General
OREGON DEPARTMENT OF JUSTICE
100 SW Market Street NW
Portland, OR 97201
(503) 378-6002

Attorneys for Plaintiff State of Oregon

Julie Goldsmith Reiser, Special Assistant
Attorney General – State of Oregon
Molly J. Bowen, Special Assistant
Attorney General – State of Oregon
Brendan Schneiderman
COHEN MILSTEIN SELLERS
& TOLL PLLC
1100 New York Avenue NW, 5th Floor
Washington, DC 20005
(202) 408-4600

Richard M. Heimann
Katherine Lubin Benson
LIEFF CABRASER HEIMANN
& BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111
(415) 956-1000

Nicholas Diamand
Gabriel A. Panek
LIEFF CABRASER HEIMANN
& BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10013
(212) 355-9500

Attorneys for Co-Lead Plaintiffs

DATED: April 26, 2024

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2024, I caused a true and correct copy of the **Public Version - Verified Amended Stockholder Derivative Complaint** to be served upon the following counsel of record via File & Serve*Xpress*:

Blake Rohrbacher, Esquire
Kevin M. Gallagher, Esquire
Kyle H. Lachmund, Esquire
Morgan R. Harrison, Esquire
RICHARDS, LAYTON & FINGER, P.A.
920 N. King Street
Wilmington, DE 19801

/s/ Joel Friedlander

Joel Friedlander (Bar No. 3163)