



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE FOX CORPORATION
DERIVATIVE LITIGATION

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

**PUBLIC VERSION FILED
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VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

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GLOSSARY

| <u>Term</u> | <u>Definition</u> |
|-----------------------------------|---|
| “21CF” | Twenty-First Century Fox, Inc., the post-2013 entity that held Fox News and other Fox branded entertainment assets |
| “21CF Spinoff” | The spinoff of Fox from 21CF into a separate publicly traded company on March 19, 2019 when 21CF was sold to Disney |
| “1986 Character Policy Statement” | <i>In the Matter of Policy Regarding Character In Broadcast Licensing</i> , FCC, Jan. 14, 1986 |
| “2013 Derivative Settlement” | <i>In re News Corp. Shareholder Deriv. Litig.</i> , Consol. C.A. No. 6285-VCN (Del. Ch.) |
| “2020 Presidential Election” | The 2020 U.S. Presidential election |
| “Baier” | Bret Baier |
| “Bannon” | Steve Bannon |
| “Bartiromo” | Maria Bartiromo |
| “Bartiromo Dep.” | Excerpts of the deposition transcript of Maria Bartiromo as presented in the Dominion Action. |
| “Biden” | President Joseph R. Biden, Jr. |
| “Board” | Nominal defendant Fox Corporation Board of Directors |
| “BUILDING_” | Bates prefix for Section 220 documents produced to Plaintiff Building Trades Pension Fund of Western Pennsylvania |
| “Burck” | William A. Burck |
| “Carey” | Defendant Chase Carey |
| “Carlson” | Tucker Carlson |
| “Cavuto” | Neil Cavuto |
| “Claffee” | Lily Fu Claffee |
| “Clark” | David Clark |

| <u>Term</u> | <u>Definition</u> |
|-----------------------|--|
| “Company” | Nominal Defendant Fox Corporation |
| “CSC” | Compliance Steering Committees |
| “Defendants” | Rupert Murdoch, Lachlan Murdoch, Chase Carey, Jacques Nasser, Paul Ryan, Anne Dias, Roland A. Hernandez, Viet Dinh, Raj Shah, Suzanne Scott, and Jay Wallace |
| “Demand Board” | The eight-member board of Fox as of the filing of this Complaint |
| “Dias” | Defendant Anne Dias |
| “Dinh” | Defendant Viet Dinh |
| “Dinh Tr.” | Excerpts of the deposition transcript of Viet Dinh as presented in the Dominion Action. |
| “Director Defendants” | Rupert Murdoch, Lachlan Murdoch, Chase Carey, Jacques Nasser, Paul Ryan, Anne Dias, and Roland A. Hernandez |
| “Disney” | Walt Disney Company |
| “Dobbs” | Lou Dobbs |
| “Dominion” | Dominion Voting Systems, Inc. |
| “Dominion Action” | <i>US Dominion, Inc. et al. v. Fox News Network</i> , Case No. N21C-03-257 EMD (Del. Super.) |
| “Dominion Compl.” | <i>US Dominion, Inc. et al. v. Fox News Network</i> , Case No. N21C-03-257 EMD, Complaint (Del. Super. Mar. 26, 2021) |
| “Dominion ISO SJ” | Dominion’s Brief in Support of its Motion for Summary Judgment on Liability of Fox News Network, LLC and Fox Corporation |
| “Dominion SJ Opp.” | Dominion’s Combined Opposition to Fox News Network, LLC’s and Fox Corporation’s Rule 56 Motions for Summary Judgment |
| “Dominion SJ Reply” | Dominion’s Reply Brief in Support of Its Motion for Summary Judgment Against Fox News Network, LLC and Fox Corporation |
| “Duggan” | Ervin S. Duggan |

| <u>Term</u> | <u>Definition</u> |
|----------------------------|--|
| “Duggan-Kristol Objection” | Letter from Ervin Duggan & William Kristol to Secretary of the FCC Marlene Dortch re Application for Television Station License Renewal FOX Television Stations, LLC WTXF-TV, Philadelphia, Pennsylvania, LMS File. No. 0000213362 |
| “Election” | 2020 Presidential Election |
| “Electrical_” | Bates prefix for Section 220 documents produced to Plaintiff Electrical Workers Pension Fund, Local 103, I.B.E.W. |
| “Epps” | James Ray Epps, Sr. |
| “Flynn” | Michael Flynn |
| “FOX 29” | FOX 29 Philadelphia (WTXF-TV) |
| “Fox” | Nominal Defendant Fox Corporation |
| “Fox Business” | Fox Business Network |
| “Fox News” | Fox News Network LLC, a wholly owned indirect subsidiary of Nominal defendant Fox Corporation |
| “Fratto” | Salvatore “Tony” Fratto |
| “Giuliani” | Rudy Giuliani |
| “Griffin” | Kenneth C. Griffin |
| “Hadaway Aff.” | Affidavit of Elizabeth Hadaway in Support of Dominion’s Combined Opposition to Fox News Network, LLC and Fox Corporation’s Motions for Summary Judgment |
| “Hannity” | Sean Hannity |
| “Heinrich” | Jacqui Heinrich |
| “Helpern Aff.” | Affidavit of Noah S. Helpern in Support of Defendant Fox Corporation’s Answering Brief in Opposition to Plaintiff’s Motion for Summary Judgment |
| “Hernandez” | Defendant Roland A. Hernandez |
| “Ingraham” | Laura Ingraham |
| “Kooiman” | Anna Kooiman |
| “Kristol” | William Kristol |

| <u>Term</u> | <u>Definition</u> |
|----------------------|--|
| “Kushner” | Jared Kushner |
| “McConnell” | Mitch McConnell |
| “McCoy” | John McCoy |
| “McDougal Action” | <i>McDougal v. Fox News Network, LLC</i> , No. 19-cv-11161 (MKV) (S.D.N.Y.) |
| “J. Murdoch” | James Murdoch |
| “L. Murdoch” | Defendant Lachlan Murdoch |
| “L. Murdoch Tr.” | Excerpts of the deposition transcript of Lachlan Murdoch as presented in the Dominion Action. |
| “Murdoch” | Defendant Rupert Murdoch |
| “Murdochs” | Rupert Murdoch and Lachlan Murdoch |
| “Nasser” | Defendant Jacques Nasser |
| “OAN” | One America News |
| “Officer Defendants” | Rupert Murdoch, Lachlan Murdoch, Viet Dinh, Raj Shah, Suzanne Scott, and Jay Wallace |
| “Old Fox” | The pre-2013 entity that held all of the Murdochs publicly traded media assets, including Fox, that was then-named News Corporation |
| “Padden” | Preston Padden |
| “Peaslee Aff.” | Affidavit of Katherine Peaslee in Dominion Action |
| “Petition to Deny” | Media and Democracy Project, <i>In the Matter of Application of FOX Television Stations, LLC for Renewal of License of WTXF-TV, Philadelphia, Pennsylvania</i> , FCC, Petition to Deny, LMS File No. 0000213362 (July 3, 2023) |
| “Pirro” | Jeanine Pirro |
| “Pitt” | Harvey Pitt |
| “Pitt Declaration” | Decl. of Harvey Pitt, <i>In re News Corp. S’holder Litig.</i> , No. 6285-VCN (Del. Ch. 2013) |

| <u>Term</u> | <u>Definition</u> |
|-------------------------|--|
| “Plaintiffs” | Tredje AP-Fonden, Sjunde AP-Fonden, Public Service Pensions Board, Electrical Workers Pension Fund, Local 103, I.B.E.W., Local 464A Welfare Service Benefit Fund, Welfare & Pension Funds of Local 464A Welfare Fund, Employees’ Retirement System of Rhode Island, Building Trades Pension Fund of Western Pennsylvania, and Dale Simpson |
| “Powell” | Sidney Powell |
| “PSPB_” | Bates prefix for Section 220 documents produced to Plaintiff Public Service Pensions Board |
| “R. Murdoch Tr.” | Excerpts of the deposition transcript of Rupert Murdoch as presented in the Dominion Action. |
| “Rich Action” | <i>Rich v. Fox News Network, LLC</i> , No. 18-2321-cv (2d Cir.) |
| “Ryan” | Defendant Paul Ryan |
| “Ryan Tr.” | Excerpts of the deposition transcript of Paul Ryan as presented in the Dominion Action. |
| “Sammon” | Bill Sammon |
| “SASB” | Sustainability Accounting Standard Board |
| “SBC” | Fox Corporation’s Standards of Business Conduct |
| “Scott” | Defendant Suzanne Scott |
| “Section 220” | 8 <i>Del. C.</i> § 220 |
| “Shah” | Defendant Raj Shah |
| “Simpson_” | Bates prefix for Section 220 documents produced to Plaintiff Dale Simpson |
| “Sky” | Sky plc |
| “Smartmatic” | Smartmatic USA Corp. |
| “Smartmatic Action” | <i>Smartmatic USA Corp. v. Fox Corp.</i> , Index No. 151136/2021 (N.Y. Sup. Ct.) |
| “Smartmatic Am. Compl.” | <i>Smartmatic USA Corp. v. Fox Corp.</i> , Index No. 151136/2021, First Amended Complaint (N.Y. Sup. Ct. Mar. 8, 2023) |
| “Stirewalt” | Chris Stirewalt |

| <u>Term</u> | <u>Definition</u> |
|--------------------|---|
| “Trump” | Former President Donald J. Trump |
| “Trutanich” | Nicholas Trutanich |
| “Wallace” | Defendant Jay Wallace |
| “Wallace Tr.” | Excerpts of the deposition transcript of Jay Wallace as presented in the Dominion Action. |

Plaintiffs Tredje AP-Fonden, Sjunde AP-Fonden, Public Service Pensions Board, Electrical Workers Pension Fund, Local 103, I.B.E.W., Local 464A Welfare Service Benefit Fund, Welfare and Pension Funds of Local 464A Welfare Fund, Employees' Retirement System of Rhode Island, Building Trades Pension Fund of Western Pennsylvania, and Dale Simpson (collectively, "Plaintiffs"), derivatively on behalf of nominal defendant Fox Corporation ("Fox" or the "Company"), bring this Verified Derivative Complaint (the "Complaint") for breaches of fiduciary duty against (i) "Director Defendants" Rupert Murdoch ("Murdoch"), Lachlan Murdoch ("L. Murdoch"), Chase Carey, Jacques Nasser, Paul Ryan, Anne Dias, and Roland A. Hernandez; and (ii) "Officer Defendants" Murdoch, L. Murdoch, Viet Dinh, Raj Shah, Suzanne Scott, and Jay Wallace (collectively, "Defendants").

Except for allegations specifically pertaining to Plaintiffs and Plaintiffs' own acts, the allegations in the Complaint are based upon information and belief, which include but are not limited to: (i) documents obtained from Fox pursuant to 8 *Del. C.* § 220 ("Section 220"); (ii) Fox's public filings with the United States Securities and Exchange Commission (the "SEC"); (iii) press releases; (iv) media reports; (v) public sources, including court filings; and (vi) counsel's investigation.

INTRODUCTION

1. This stockholder derivative suit arises because Defendants—members of Fox's board of directors (the "Board") and senior management team—allowed

the controlling Murdoch family and on-air personalities to expose Fox to massive third-party liability for intentionally tortious conduct and related regulatory issues, failing to lift a finger to protect the Company.

2. The Board's unwillingness to exercise even rudimentary oversight over Fox's controllers resulted in obvious violations of defamation law and furthered the controllers' desire to maintain their influential status in the conservative political movement. The consequences are as predictable as they are severe: the Company now bears more than \$787 million dollars (and counting) in liability and costs that were easily avoidable, a challenge to the continuation of Fox's broadcasting license for its Philadelphia television station, and an irreparable loss of journalistic credibility and goodwill.

3. This suit seeks to hold Fox's Board members (among other fiduciaries) accountable for their failure to curb the controllers' misconduct, particularly where certain Board members privately complained that the controllers were allowing the Company to act both wrongfully and unlawfully. This action also seeks to ensure that the fiduciaries who either actively steered the proverbial ship right into the rocks or turned a blind eye as it happened bear the consequences of their misconduct, instead of placing the immense cost of their misconduct on the Company and its minority stockholders.

4. Fox is a news media business. Fox wholly owns and controls Fox News Network LLC (“Fox News”). Fox News’s crown jewel asset is Fox News Channel.

5. Fox is controlled by Rupert Murdoch, an approximately 43% stockholder and Chair of its Board (an executive position), and his son Lachlan Murdoch who serves as Executive Chair and CEO of Fox (together, the “Murdochs”).

6. Fox, like its competitors in the news media business, enjoys robust First Amendment protections under the U.S. Constitution, reflecting the critical role that news reporting plays in a democratic society. The protections afforded to the media under the First Amendment, however, are not absolute. News organizations cannot make false statements about a public figure with “actual malice”—*i.e.*, with knowledge that they were false or with reckless disregard of their falsity.

7. Thus, directors of corporations that disseminate the news have a mission-critical, but straightforward, job: they must adopt policies and compliance structures that reasonably attempt to ensure employees report news events in good faith, take action to prevent the entity from knowingly disseminating false and defamatory information, and ensure the existence of a reasonable system to offer corrections or clarifications in the event of inaccurate reporting. The Board failed in all of these respects.

8. When Fox News was still part of Fox’s corporate predecessor—media and entertainment conglomerate News Corporation, which was renamed Twenty-First Century Fox in 2013 after spinning off other media assets (“Old Fox” or “21CF”)¹—the prior board adopted and maintained robust legal compliance structures in large part to oversee the Murdochs. Those systems helped ensure the integrity and reliability of Fox News’s reporting while avoiding civil or criminal liability for weaponizing the news reporting function to violate the legal rights of third parties.²

9. Tellingly, when the current iteration of Fox was created through a 2019 spinoff from 21CF, the Board abandoned many of those pre-existing compliance structures. In doing so, the Board provided the Murdochs and their acolytes in management with unchecked authority to run Fox as they saw fit. The seven Director Defendants were with the Company at the time of the 2019 reorganization, inferably knew that the compliance system was dismantled, and constitute a majority of the eight-member board as of the filing of this Complaint (the “Demand Board”).

¹ “Old Fox” refers to the pre-2013 entity that held all of the Murdochs publicly traded media assets. “21CF” refers to the post-2013 spinoff entity that held Fox News and other Fox branded entertainment assets.

² Ironically, much of Old Fox’s legal compliance structure came about as a result of stockholder litigation arising from a prior news reporting scandal involving the violation of private citizens’ rights.

10. The problems triggering this suit arose from Fox's and Murdoch's own success. Murdoch's personal status and incredible power in the American (and global) conservative political movement grew with Fox News's ever-expanding viewership. That viewership responded well to Fox News focusing its reporting on stories favorable to Republican party causes. As long as Fox News aligned politically with the expectations and preconceived notions of its core viewership, the Company performed well, and advertising dollars flowed. However, Fox's relationship with its core audience was threatened during the 2020 Presidential election (the "2020 Presidential Election" or the "Election").

11. In advance of the Election, then-President Donald J. Trump laid the groundwork for an unprecedented attack on the foundations of American democracy. Months before the Election, Trump began to claim that the only way he could lose was if the vote was tainted by massive fraud.

12. That storyline laid the groundwork for a refusal to hand off power even if Trump lost the Election. Many Defendants, including Murdoch, L. Murdoch, Fox News executives, and Fox director and former Republican Speaker of the U.S. House of Representatives Paul D. Ryan, recognized the danger in Trump's tactic, knew the harm that could come from propagating Trump's unsubstantiated claims of fraud in the event he lost the Election, and understood that Trump's ploy would test the integrity of Fox's news reporting operations.

13. Defendants did not heed pre-Election warnings that the integrity of news reporting would be tested. Defendants, including a majority of the Demand Board, left the real decision-making about what Fox should publicly report to the Murdochs. Other than privately and belatedly discussing the business and societal danger in spreading known falsehoods, the Board did not challenge the Murdochs when they permitted Fox to spread obviously defamatory information.

14. At first, the Murdochs and Fox News CEO Suzanne Scott (“Scott”) accurately reported the Election results. When it became clear to Fox’s election experts on Election day that Trump would lose Arizona, Fox News was the first news organization to call the state for Joseph R. Biden, Jr. (“Biden”). That accurate report triggered Trump’s plan to refuse to relinquish power through demonstrably false assertions.

15. On the Trump team’s first phone call to Murdoch to attack him for letting Fox News do its job, Murdoch initially stuck to his guns, stating: “[T]he numbers are the numbers.”

16. Almost immediately after that call, however, Murdoch determined that he would rather prevent viewer defection, preserve profit, and protect his influence in conservative politics by perpetuating Trump’s falsehoods than prioritize reporting the truth. Murdoch’s unchecked and self-interested decision-making subjected the Company to enormous financial and reputational liability.

17. In the days and weeks following the 2020 Presidential Election, Trump and his allies—led in particular by his counsel and former New York City Mayor Rudolph Giuliani and conspiracy theorist and Trump lawyer Sidney Powell—incessantly beat the election-fraud drum without any credible factual support. Instead of stopping what would become Trump’s attack on the foundations of American democracy, Fox provided Trump and his cohorts a platform to broadcast those lies to the masses.

18. Trump’s efforts to deny the results of the election required focusing his supporters’ anger on a villain. For this, he focused his false claims on, among others, two companies that provide vote counting machines and services integral to running an election—Dominion Voting Systems, Inc. (“Dominion”) and Smartmatic USA Corp. (“Smartmatic”). Without factual support, but with a trusting base, Trump and his backers used every opportunity they could to defame Dominion and Smartmatic, such as asserting on Fox News broadcasts that those companies were owned by enemies of the United States and participated in an unprecedented conspiracy to rig the election for Biden.

19. Internally at Fox News, (i) on-air personalities like Tucker Carlson, Maria Bartiromo, and Bret Baier, (ii) the Fox News “Brainroom” that undertakes Fox News’s fact-checking, (iii) senior news editors, and (iv) executives like the Murdochs, Fox’s Chief Legal and Policy Officer Viet Dinh, and Fox News CEO

Scott, all recognized that the Trump team's assertions of election fraud were a complete fabrication. In fact, the current record strongly suggests that a wide array of Fox News employees *documented and communicated up the chain of command* their recognition that the election fraud story was baseless and that reporting it was highly dangerous.

20. Defendants allowed Fox News to report knowingly false information because Fox News's status as the first network to call Arizona for President Biden caused the Company to come under attack from Trump and his supporters with "an intensity we have not seen[.]"³ And "several conservative accounts with large followings stat[ed] they would stop watching Fox News."⁴

21. As a result, after calling Arizona for Biden, Fox News saw massive declines in its favorability ratings. The Murdochs decided that, until Biden's inauguration in January 2021, they had to support Trump's baseless claims that they knew to be false to prevent massive viewer defection and maintain Fox News's ratings and the Murdochs' leadership position in the conservative movement.

22. To be sure, Murdoch specifically agreed in emails to senior Fox executives and close friends that Fox News needed to "keep the audience who loves

³ Electrical_220_00009062.

⁴ *Id.*

and trusts us . . . we need to make sure they know we aren't [sic] abandoning them and [are] still champions for them.”⁵ Murdoch recognized his perceived importance as a conservative leader by noting that Fox was “losing tons of viewers—but not leadership yet!”⁶

23. Despite several Director Defendants—including at least Ryan and Anne Dias—privately texting and emailing their concerns regarding the grave risk of parroting Trump’s election fraud theories,⁷ Defendants took no action to prevent Fox from spreading defamatory statements and, apparently, never even discussed defamation-related liability risks stemming from Fox’s Election coverage at Board meetings until the Company was sued by Smartmatic and Dominion.⁸ Instead, as shown by numerous private emails and texts sent by executives and directors to Murdoch and L. Murdoch, Defendants completely deferred to the Murdochs’ tortious path of allowing on-air personalities’ rampant defamation. Loose

⁵ Electrical_220_00009054.

⁶ Electrical_220_00009120.

⁷ See *US Dominion, Inc. v. Fox News Network*, Case No. N21C-03-257 EMD (“Dominion Action”), Ex. 620 to Affidavit of Elizabeth Hadaway in Support of Dominion’s Combined Opposition to Fox News Network, LLC and Fox Corporation’s Motions for Summary Judgment (“Hadaway Aff.”), Trans. ID 69291707 (hereinafter referred to as “Ryan Tr.”) at 261-62, 265-66, 270-72.

⁸ See Dominion Action, Ex. E43 to Affidavit of Noah S. Helpen in Support of Defendant Fox Corporation’s Answering Brief in Opposition to Plaintiff’s Motion for Summary Judgment (“Helpen Aff.”), Trans. ID 69280169 (hereinafter referred to as “Dinh Tr.”) at 47-48; Ryan Tr. at 175-75, 409.

suggestions to act like a responsible news organization are no substitute for good faith fiduciary stewardship.

24. Amid concerns that their and Fox's grip on their audience was slipping, the Murdochs chose to ignore their fellow directors' private requests for action in favor of repeatedly endorsing the election fraud story through Fox News personalities like Jeanine Pirro, Lou Dobbs, and Bartiromo.

25. Under attack, Dominion was forced to protect itself from Fox News's incessant defamation. A single "cease and desist" letter should sufficiently put a news agency that inadvertently reported falsities on notice to change course. But unlike Ryan and Dias, Dominion took no chances in ensuring that its message was heard loud and clear, and at every level of Fox's governance structure.

26. After an initial letter laying out the absurdity of Fox News's reporting about fraudulent vote counting machines, *Dominion sent no less than 3,600 emails and other communications to people throughout Fox News and Fox itself*, explaining why Fox News's reporting was defamatory, providing verifiable third-party information to the same effect, and warning that Fox News was destroying Dominion's business and that it intended to protect itself. Smartmatic followed Dominion's lead, notifying Fox News that its election fraud-mongering was defamatory and causing billions of dollars in harm.

27. Many of those emails—describing in detail why the information about Dominion being aired by Fox News was false—were “widely circulated” and discussed by Fox News executives.⁹ Indeed, Dinh was “pretty easily” able to “look up and find out” evidence demonstrating the claims that Fox News was airing about Dominion and Smartmatic were false.¹⁰ Despite knowing the falsity of Fox’s publicly-aired statements, however, Defendants continued to let Fox’s on-air personalities defame Dominion and Smartmatic.

28. Dominion and Smartmatic had no choice but to take legal action to recover damages for the massive harm the Murdochs’ indifference to the truth had caused. Both sued Fox News, Fox, and various individuals associated with Fox for defamation—Dominion in Delaware Superior Court (as defined above, the “Dominion Action”) and Smartmatic in New York Supreme Court (the “Smartmatic Action”). In both cases, the basis for Fox’s liability rested squarely on the Murdochs’ personal roles in directing (or at the very least consciously disregarding) the dissemination of the utterly false and defamatory election fraud conspiracy theories.

⁹ Dominion’s Brief in Support of its Motion for Summary Judgment on Liability of Fox News Network, LLC and Fox Corporation at 95 (“Dominion ISO SJ”).

¹⁰ Dominion’s Combined Opposition to Fox News Network, LLC’s and Fox Corporation’s Rule 56 Motions for Summary Judgment, at 110, 165 (“Dominion SJ Opp.”).

29. In April 2023, on the day trial was set to begin in the Dominion Action, Fox agreed to pay \$787.5 million to settle the case (the “Dominion Settlement”). The Smartmatic Action, seeking \$2.7 billion in damages, continues towards trial.

30. Defendants’ failure to dispatch their fiduciary obligations caused this catastrophic liability.

31. In the four months between the Election and inevitable lawsuits, Defendants took no action of any kind (other than Ryan and Dias sending a few personal emails to the Murdochs) to protect Fox and its stockholders from Fox’s tortious coverage, even though Ryan expressly acknowledged that it was his (and other Board members’) “fiduciary duty” to “separate out . . . claims of voter fraud.”¹¹

32. The Board and the Murdochs had a simple duty: (i) implement and oversee a training and legal compliance program so that employees understand the importance of avoiding defamatory statements and (ii) intervene when lower-level employees are exposing the Company to material liability for clear legal violations. The record is clear that Fox News had no policy or procedure on journalistic standards or ethics and no policy on corrections or retractions.¹²

¹¹ Ryan Tr. at 261-62.

¹² *See* Dominion Action, Ex. 147 to Affidavit of Katherine Peaslee (“Peaslee Aff.”), Trans. ID 69292449 (hereinafter referred to as “Wallace Tr.”) at 39, 251-52.

33. On the contrary, the Murdochs' self-interest in maintaining their influence over Fox News's viewers by supporting the Trump team's baseless election fraud claims took precedence over reporting the truth or even requiring that Fox News implement policies reflecting basic journalistic ethics. All the while, Defendants knowingly facilitated the Murdochs' personal objectives by refusing to exercise their power to intervene, despite knowing Fox faced grave consequences for broadcasting lies. Even now, despite nearly \$800 million in payments of corporate funds to settle defamation liability and challenges to at least one of Fox's FCC broadcasting licenses from the likes of former Ronald Reagan and George H.W. Bush senior advisor William Kristol, Defendants *still* have refused to cause Fox to issue a retraction or correction *to this day*.

34. Defendants, as Fox fiduciaries, must be held accountable for the damage—both economic and reputational—they caused to the Company.

PARTIES

35. **Plaintiff Tredje AP-Fonden** is a Fox stockholder and has owned Fox common stock at all times relevant to this Complaint.

36. **Plaintiff Sjunde AP-Fonden** is a Fox stockholder and has owned Fox common stock at all times relevant to this Complaint.

37. **Plaintiff Public Service Pensions Board** is a Fox stockholder and has owned Fox common stock at all times relevant to this Complaint.

38. **Plaintiff Electrical Workers Pension Fund, Local 103, I.B.E.W.** is a Fox stockholder and has owned Fox common stock at all times relevant to this Complaint.

39. **Plaintiffs Local 464A Welfare Service Benefit Fund and Welfare and Pension Funds of Local 464A Pension Fund** are Fox stockholders and have owned Fox common stock at all times relevant to this Complaint.

40. **Plaintiff Employees' Retirement System of Rhode Island** is a Fox stockholder and has owned Fox common stock at all times relevant to this Complaint.

41. **Plaintiff Building Trades Pension Fund of Western Pennsylvania** is a Fox stockholder and has owned Fox common stock at all times relevant to this Complaint.

42. **Plaintiff Dale Simpson** is a Fox stockholder and has owned Fox Class A stock at all times relevant to this Complaint (together with Plaintiffs Tredje AP-Fonden, Sjunde AP-Fonden, Public Service Pensions Board, Electrical Workers Pension Fund, Local 103, I.B.E.W., Local 464A Welfare Service Benefit Fund and Welfare and Pension Funds of Local 464A Pension Fund, Employees' Retirement System of Rhode Island, and Building Trades Pension Fund of Western Pennsylvania, "Plaintiffs").

43. **Nominal Defendant Fox** is a Delaware corporation headquartered in New York City. Founded by Murdoch, Fox is a news, sports, and entertainment company that produces and distributes content through various entities, including its wholly owned indirect subsidiary Fox News Network, LLC (previously defined as “Fox News”),¹³ a Delaware corporation which operates the Fox News Channel, Fox Business Network (“Fox Business”), Fox Digital, and Fox News Audio.

44. Fox, in its current iteration, became a publicly traded company on March 19, 2019, when Murdoch spun off Fox from its predecessor, Twenty-First Century Fox, Inc. (previously defined as “21CF”), in connection with a transaction in which The Walt Disney Company (“Disney”) acquired 21CF’s assets, other than its domestic media assets in live news (including Fox News), sports, and entertainment programming (the “21CF Spinoff”). Prior to June 28, 2013, 21CF was named News Corporation (previously defined as “Old Fox”). On June 28, 2013, Old Fox spun off certain assets into a new publicly traded company named News Corp while retaining Fox News and other Fox branded media assets.

¹³ Fox wholly owns Foxcorp Holdings LLC, Foxcorp Holdings LLC wholly owns Fox Television Holdings LLC, and Fox Television Stations LLC wholly owns Fox News Network LLC. Fox News Network LLC is a single member LLC that does not have its own board of directors and does not observe corporate formalities such as keeping board minutes.

45. Fox has Class A and Class B common stock, which are traded on the NASDAQ under the symbols “FOX A” and “FOX,” respectively. Holders of Fox’s Class B common stock are entitled to one vote per share on all matters on which stockholders have the right to vote. Holders of Class A common stock only have voting rights in certain limited circumstances under Delaware law (such as the voting rights guaranteed under 8 *Del. C.* § 242) and as set forth in the Company’s Amended and Restated Certificate of Incorporation, which primarily apply to certain proposals for Fox’s liquidation or sale.

46. **Defendant Rupert Murdoch** has been Chair of the Board and Company since January 2019, and he is one of Fox’s named executive officers. Murdoch also serves as Executive Chair of Fox News. Murdoch “has led 21CF or its subsidiaries or affiliates (including the Company) for 70 years” as part of his global media empire. Fox’s public filings describe Murdoch as “the driving force behind the evolution of the Company from the single, family-owned Australian newspaper he took over in 1953 to the global public media and entertainment company that was 21CF and that, through his vision and efforts, he most recently transformed into the focused news, sports and entertainment company that is FOX today.”

47. Prior to January 2019, Murdoch served as 21CF’s Executive Chairman from 2015 to March 2019, 21CF’s CEO and Chairman from 2013 to 2015, the CEO

of 21CF's predecessor, Old Fox, from 1979 to 2013, and its Chairman from 1991 to 2013. Murdoch (personally or through the Murdoch Family Trust) owns approximately 43% of Fox's Class B common stock and closely controls the Company with his son L. Murdoch. Murdoch is also the controlling stockholder of News Corp—a company that primarily holds Murdoch's publishing assets that were part of Old Fox (then named News Corporation) until he spun them off into News Corp in 2013—and has served as its Executive Chairman since 2013.

48. **Defendant Lachlan Murdoch** has been Executive Chair of the Board and Company since January 2019 and CEO of Fox since October 2018. L. Murdoch is Murdoch's son.

49. L. Murdoch has held numerous positions at his father's entities over the past three decades, including serving as (i) 21CF's Executive Co-Chairman from 2015 to March 2019 and its Co-Chairman from March 2014 to July 2015, (ii) an Old Fox Advisor from August 2005 to 2007, (iii) Old Fox's Deputy Chief Operating Officer from 2000 to August 2005 and its Senior Executive Vice President ("EVP") from 1999 to 2000, and (iv) a director of Old Fox/21CF from 1996 until the 21CF Spinoff. According to Fox's filings, L. Murdoch "supervises all strategic, operational and corporate decisions and oversees the Company's portfolio of news, sports and entertainment assets in addition to leading our Board." L. Murdoch also serves as the Co-Chairman of News Corp with Murdoch.

50. **Defendant Chase Carey** has been a Board member since March 2019, and has served on the Board's compensation committee (the "Compensation Committee") since 2021.

51. Carey began working for Murdoch in the 1980s and has served in numerous director and executive roles at Old Fox and 21CF, including serving as (i) Vice Chairman of the 21CF board from July 2016 to March 2019, (ii) a 21CF consultant from 2016 to 2018, (iii) 21CF's Executive Vice Chairman from July 2015 through June 2016, (iv) Old Fox/21CF's President and Chief Operating Officer ("COO") and Deputy Chairman from 2009 through June 2015 and Co-COO from 1996 to 2002, and (v) an Old Fox director from 1996 to 2007. Carey also served (i) on the Supervisory Board of Murdoch-controlled Sky Deutschland from 2012 to 2014 and as its Chairman from 2010 to 2013 and (ii) on the board of Murdoch-controlled Sky plc ("Sky") from 2003 to 2009 and from 2013 to 2018. Murdoch installed Carey as CEO of DirectTV in 2003 after 21CF acquired a controlling interest in DirectTV.

52. Carey considers Murdoch a "mentor and friend" and Murdoch considers Carey his most-trusted "partner."¹⁴ Carey has amassed generational

¹⁴ *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/>.

wealth in Murdoch's employ. Between 2016 and 2018, 21CF paid Carey \$49 million in consulting fees (which were \$20 million per year) and other compensation, and from 2010 through 2016, Old Fox/21CF paid Carey over \$188 million in total compensation.

53. When Fox announced Carey's appointment to the Board in 2019, it did not describe him as an "independent director[]." He similarly was not considered independent in connection with the Board's 2019 approval of a stock repurchase program and a stockholders agreement with the Murdochs (the "Stockholders Agreement").¹⁵ Fox's SEC filings in 2019 and 2020 also acknowledged that Carey was not an independent director. And when Murdoch sought to combine Fox and News Corp in late 2022, the Board created a special committee to review that potential transaction. That committee included all the Board's directors except for Carey and the Murdochs.

54. **Defendant Jacques Nasser** has been a Board member since March 2019, and has served as the Board's Lead Independent Director, Chair of the Compensation Committee, and a member of the Board's audit committee (the "Audit Committee") since that time.

¹⁵ Electrical_220_00011289.

55. Murdoch and Nasser—who both spent their childhoods in Melbourne, Australia—have been “close both commercially and personally” for decades.¹⁶ Murdoch appointed Nasser to the board of Sky, a Murdoch-controlled UK-based news and media business, in 2002. Nasser served at Sky until 2012. Nasser’s tenure on the Sky Board overlapped with the tenures of Murdoch, L. Murdoch, Carey, and James Murdoch (“J. Murdoch,” Murdoch’s other son who also served as CEO of Sky). Murdoch appointed Nasser to the board of 21CF in 2013, and Nasser served in that position until the 21CF Spinoff in 2019. Nasser also has a personal and professional relationship with J. Murdoch, whom Nasser credits for Sky’s success and describes as “one of the most straightforward, high-values people he ha[s] ever met.”¹⁷

56. **Defendant Paul Ryan** has been a Board member since March 2019, and has served as Chair of the Board’s nominating and corporate governance

¹⁶ Matthew Stevens, *BHP Chairman Jac Nasser Reflects on 30 Years in Management*, AUSTRALIAN FIN. REV. MAG. (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>.

¹⁷ 21st Century Fox/Sky Merger Inquiry, *Summary of Hearing with Jacques Nasser, Independent Director of 21ST Century Fox on 25 October 2017*, COMPETITION & MKTS. AUTHORITY, <https://assets.publishing.service.gov.uk/media/5a02f9ebe5274a0ee28af81d/summary-of-hearing-with-jacques-nasser.pdf>.

committee (the “Nominating and Corporate Governance Committee”) and on the Compensation Committee since that time.

57. Ryan was a Republican congressman representing Wisconsin’s 1st congressional district from 1999 to 2019 and served as Speaker of the U.S. House of Representatives from 2015 to 2019, when he resigned from Congress amidst the Republican party’s embrace of (then-President) Trump. Murdoch and his companies—which have enormous power and influence within the Republican Party and with conservative voters—have been longtime supporters of Ryan. During his time in Congress, Ryan regularly appeared on Fox News and other Fox media outlets to push his policies and agenda, and to campaign for reelection. Murdoch used his vast influence to secure Ryan’s nomination as Mitt Romney’s vice-presidential candidate in 2016, “us[ing] a combination of private persuasion, newspaper crusading, and Twitter talk to urge Mitt Romney’s campaign to [pick Ryan].”¹⁸ After Romney selected Ryan, Murdoch tweeted: “Thank God! Now we might have a real election on the great issues of the day. Paul Ryan almost perfect choice.”¹⁹

¹⁸ 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>.

¹⁹ Rupert Murdoch (@rupertmurdoch), TWITTER (Aug. 11, 2012, 11:07 AM), <https://twitter.com/rupertmurdoch/status/234305139127758848?lang=en>.

58. Ryan admitted in his D&O Questionnaire: “I have a friendship with Lachlan Murdoch.”²⁰ Ryan also serves with both Murdoch and L. Murdoch on the Board of Trustees of the Ronald Reagan Presidential Foundation and Institute.

59. **Defendant Anne Dias** has been a Board member since March 2019, and has served on the Board’s Audit Committee, Compensation Committee, and Nominating and Corporate Governance Committee since that time. Dias’s 2020 D&O Questionnaire confirmed that she has “been a financial supporter of Paul Ryan’s political activities.”²¹ Since 2010, Dias and her now ex-husband, billionaire Kenneth C. Griffin (“Griffin”), have jointly and/or individually donated hundreds of thousands of dollars toward Ryan’s political campaigns.²² Additionally, Griffin is a significant donor to Republican candidates and PACs and, during the 2022 election cycle, donated \$60 million to political candidates and PACs, thus making him the third-largest overall donor.²³

²⁰ BUILDING_220_00001085.

²¹ BUILDING_220_00000850.

²² Individual Contributions to Ryan for Congress and Team Ryan, FEDERAL ELECTION COMMISSION, <https://www.fec.gov/> (follow “Campaign finance data” hyperlink; click on “Raising” hyperlink; click on “Individual contributions” hyperlink; search Recipient Name or ID field for “Ryan For Congress, Inc.” and “Team Ryan,” search Contributor Details field for “Griffin, Kenneth”, “Griffin, Anne”, “Dias, Anne”, and “Citadel” and search Report Time Period field for “1999-2020”).

²³ See *Ken Griffin*, INFLUENCE WATCH, <https://www.influencewatch.org/person/ken-griffin/> (last accessed Sept. 8, 2023).

60. **Defendant Roland A. Hernandez** has been a Board member since March 2019, and has served as Chair of the Audit Committee and on the Nominating and Corporate Governance Committee since that time.

61. **Defendant Viet Dinh** has been Chief Legal and Policy Officer at Fox since 2018. Dinh was an Old Fox/21CF director from 2003 until 2018, when he stepped down from the 21CF board to take his current executive position at Fox. According to Fox’s filings, Dinh “leads all legal, compliance and regulatory matters and oversees government relations and public affairs.”

62. Dinh has a close personal and professional relationship with Murdoch and L. Murdoch, with whom Dinh has been friends for two decades. L. Murdoch admitted in his D&O Questionnaire that he is the godfather to Dinh’s son, and Dinh is godfather to L. Murdoch’s son.²⁴ As a Fox executive and director for two decades, Dinh has amassed a fortune, including \$24.1 million in executive compensation from Fox in 2019, \$12.1 million in 2020, \$12.4 million in 2021, and \$11.1 million in 2022. Dinh’s target compensation for 2023 was at least \$11 million, with the potential to reach far higher. Dinh also has a “two decade[.]”-long²⁵ friendship and professional relationship with current Fox director and nonparty William A. Burck.

²⁴ BUILDING_22000001026.

²⁵ SIMPSON_220_00001539.

63. On August 11, 2023, Fox announced that Dinh would step down as Fox's Chief Legal and Policy Officer effective December 31, 2023 and become a Special Advisor to Fox. On August 9, 2023, Fox and Dinh entered into a Transition and Separation Agreement that will provide Dinh with a lump sum \$23 million cash payment in settlement of the cash severance otherwise payable under his employment agreement and the cash value of all outstanding unvested equity awards. Dinh will also receive health and welfare benefits through June 30, 2025 and \$2.5 million per year for two years to serve as a Special Advisor. Fox and Dinh also agreed not to make any defamatory statements about the other.

64. **Defendant Raj Shah** served as a Fox Senior Vice President from July 2019 until May 2023. Around the time of the 2020 Presidential Election and thereafter, Shah led Fox's "Brand Protection Unit" tasked with monitoring and mitigating criticisms of Fox and Fox News, and was involved with Fox News's programming decisions. Prior to joining Fox, Shah served as (i) White House Deputy Press Secretary for Trump from 2017 to 2019 and (ii) Deputy Assistant to the President and Deputy Communications Director and Research Director for Trump in 2017. Before that, Shah served as Research Director and Deputy Communications Director for the Republican National Committee, handling, among other things, its opposition research during the 2016 presidential election.

65. **Defendant Suzanne Scott** has been CEO of Fox News since May 2018. Scott has worked at Fox News since its founding by Murdoch in 1996, and has held several programming, production, and creative positions at Fox News, including EVP of Programming from 2009 to 2016, Senior Vice President of Programming and Development from 2007 to 2009, Vice President of Programming from 2007 to 2009 and Network Executive Producer from 2005 to 2007.

66. **Defendant Jay Wallace** has been the President and Executive Editor of Fox News since May 2018. Wallace, like Scott, has worked at Fox News since its founding by Murdoch in 1996, and has held several executive positions at Fox News including President of News and Editorial from 2017 to 2018 and EVP of News and Editorial from 2016 to 2017, as well as several other positions including senior vice president of news and politics, New York Bureau Chief, and Executive Producer of News.

67. As defined above, Murdoch, L. Murdoch, Carey, Nasser, Ryan, Dias, and Hernandez are the “Director Defendants.”

68. Murdoch, L. Murdoch, Dinh, Shah, Scott, and Wallace are the “Officer Defendants.”

FACTUAL ALLEGATIONS

I. OVERVIEW OF FOX NEWS AND ITS BUSINESS MODEL

69. Founded by Murdoch in 1996, Fox News is a 24-hour news service that focuses on political and business news.

70. Fox News was initially part of Old Fox, which encompassed Murdoch's entire media empire and was one of the world's largest media companies. In 2013, after shareholder concerns regarding a scandal in which certain Old Fox subsidiaries illegally obtained private personal information from British politicians, members of the Royal Family, and members of the public (the "Hacking Scandal"), Murdoch split Old Fox's assets into two publicly traded companies.

71. Murdoch (i) renamed Old Fox (*i.e.*, News Corporation) "21CF," retaining most of Old Fox's media assets, including Fox News and Fox's movie production business, and (ii) spun off into a new entity called News Corp, which consisted of substantially all of Old Fox's (a) publishing assets, such as *The New York Post*, Dow Jones & Company, Inc. ("Dow Jones," publisher of the *Wall Street Journal* ("WSJ")), and News UK (publisher of *The Sun* and *The Times*), and (b) Australian broadcasting assets.

72. In 2019, after several highly publicized sexual harassment scandals, Murdoch sold most of 21CF's assets to Disney and other buyers, but spun off certain

remaining assets into what became the current iteration of Fox, including Fox News, which he states is “incredibly important” to his media empire.²⁶

73. Fox News, a cable network, was founded to focus on furthering American conservative causes and ideals (which aligned closely with Murdoch’s own politics). Fox News generates a majority of its revenue from monthly affiliate fees it receives from long-term contracts with cable and satellite subscribers, with another sizeable portion from advertising.²⁷ Although Fox does not publicly report a breakdown for just its news channels, in fiscal year 2020, 70% of the revenues for the Cable Network Programing division, which includes Fox News, FS1, FS2, the Big Ten Network, and Fox Deportes, was attributable to affiliate fees, with approximately 21% attributable to advertising.²⁸ In fiscal year 2021, 70% of Fox’s Cable Network Programming revenues was attributable to affiliate fees and approximately 24% was attributable to advertising.²⁹ In August 2020, Fox announced that it had renewed contracts (many of which ran five to seven years)

²⁶ See BUILDING_220_00007286 (Dominion SJ Opp. at 8).

²⁷ Madeline Peltz & John Knefel, *Fox News Wants a Massive Increase in its Cable Fees—Which Will Be Paid for By All Cable Subscribers*, MEDIA MATTERS FOR AM. (Apr. 20, 2023, 11:41 AM), <https://www.mediamatters.org/murdoch-family/fox-news-wants-massive-increase-its-cable-fees-which-will-be-paid-all-cable>.

²⁸ Fox Corporation, Annual Report (Form 10-K) (Aug. 10, 2021) at 4, 42.

²⁹ Fox Corporation, Annual Report (Form 10-K) (Aug. 10, 2021) at 42.

representing 70% of the previous year's affiliate revenue and that only 5% would be up for renegotiation over each of the following two years.³⁰

74. One of Murdoch's most important moves was hiring former Republican media consultant and CNBC executive Roger Ailes as Fox News's first CEO in 1996. Under Murdoch and Ailes, Fox News quickly became the preeminent news outlet for conservatives and Republicans. Ailes served as CEO of Fox News until 2016, when Fox replaced him following numerous allegations of sexual harassment. Scott (who was promoted to Fox News CEO in 2018) and Murdoch continued Ailes's legacy, and Fox remains the dominant media outlet for Republicans and conservatives.

75. Fox touts in press releases and filings that the Fox News Channel, Fox Business, and its other outlets are "available in more than 90 million homes and dominate[] the cable news landscape, routinely notching the top ten programs in the genre," and that Fox News reaches 200 million people each month.³¹ According to a 2019 Pew Research Center survey, 65% of Republican or Republican-leaning

³⁰ Electrical_220_00009306.

³¹ FOX NEWS CHANNEL, <https://www.foxnews.com/about-us> (last visited Sept. 10, 2023); Press Release, *Fox News Digital Continues to Deliver Year-Over-Year Growth With Multiplatform Views and Minutes*, FOX NEWS MEDIA (Aug. 14, 2023), <https://press.foxnews.com/2023/08/fox-news-digital-continues-to-deliver-year-over-year-growth-with-multiplatform-views-minutes-and-unique-visitors>.

individuals in the U.S. trusted Fox News and regularly relied on it for news coverage.³²

76. In 2020, Fox had over 80 million subscribers to its Fox News and Fox Business channels. Fox News Channel alone averaged nearly two million daytime viewers and over 3.5 million viewers during its primetime news programming, giving it the largest audience among total viewers in cable news history.³³ Fox News Channel has been consistently the most watched television news channel for over a decade.³⁴

77. The Murdochs and other senior Fox executives closely followed the perceptions of Fox News among its viewers and overall primetime news viewers by relying upon opinion surveys. Since at least 2019, Fox has had a “Brand Protection Unit” that issues periodic reports to the Murdochs and senior executives of Fox

³² Mark Jurkowitz et al., *U.S. Media Polarization and the 2020 Election: A Nation Divided*, PEW RES. CTR. (Jan. 24, 2020), <https://www.pewresearch.org/journalism/2020/01/24/u-s-media-polarization-and-the-2020-election-a-nation-divided/>.

³³ *FOX News Channel Smashes Records with Highest-Rated Year in Cable News History Across Total Day and Primetime Viewership*, BUSINESSWIRE (Dec. 16, 2020, 2:42 PM), <https://www.businesswire.com/news/home/20201216005919/en/FOX-News-Channel-Smashes-Records-With-Highest-Rated-Year-in-Cable-News-History-Across-Total-Day-and-Primetime-Viewership>.

³⁴ FOX NEWS CHANNEL, <https://www.foxnews.com/about-us> (last visited Sept. 10, 2023).

News (monthly prior to March 2020 and weekly thereafter) that closely followed Fox News's public perception. Those reports measured "net favorability ratings" and how Fox News was perceived in comparison to its competitors (initially CNN and MSNBC, with Newsmax and One America News ("OAN") added to the reports in January 2021).

78. In addition to its television networks, Fox News distributes its news and other content through digital media, including through (i) its website, which receives hundreds of millions of unique visitors per month,³⁵ (ii) the Fox News Mobile App, which has millions of unique visitors per month,³⁶ (iii) Twitter, Facebook, and Instagram accounts that generate tens of millions of social interactions each month,³⁷ and (iv) digital media platforms, such as YouTube and TikTok. Fox News touts in press releases and filings that it has been "the most engaged news brand on social

³⁵ Aisha Majid, *Top 50 News Websites in the US: New York Times Retakes Top Spot as Independent and CBS News are Fastest-Growers*, PRESS GAZETTE (Aug. 21, 2023), https://pressgazette.co.uk/media-audience-and-business-data/media_metrics/most-popular-websites-news-us-monthly-3/.

³⁶ Press Release, *Fox News Digital Sees Year-Over-Year Increases While Leading News Brands With Multiplatform Views and Minutes*, FOX NEWS MEDIA (June 14, 2023), <https://press.foxnews.com/2023/06/fox-news-digital-sees-year-over-year-increases-while-leading-news-brands-with-multiplatform-views-and-minutes>.

³⁷ *Id.*

media” for almost a decade, claiming that it averages over 82 million unique multiplatform visitors per month.³⁸

A. The Dissemination of Truthful Information Is “Mission Critical” to Fox and Fox News’s Business

79. Recognizing the foundational role of free and open debate to preserving a democracy, the First Amendment’s freedoms of press and speech grant expansive protections to news publishers. The law provides robust protection from legal scrutiny to news reporting by “narrowly construing what types of content can be deemed actionable.”³⁹ Defendants’ actions (and inaction), however, caused the Company to operate outside the bounds of its First Amendment protections.

80. Although the media is granted expansive First Amendment rights, those protections are not absolute. Under the seminal 1964 case *New York Times v. Sullivan* (“*Sullivan*”), a defendant’s constitutional guarantees do not protect statements about public figures that are published with actual malice, defined as

³⁸ See, e.g., Fox Corporation, Definitive Proxy Statement (Schedule 14A) (Sept. 17, 2021), at 28; Press Release, *Fox News Digital Ends 2022 as the Top News Brand with Multiplatform Views and Minutes*, FOX NEWS MEDIA (Jan. 18, 2023), <https://press.foxnews.com/2023/01/fox-news-digital-ends-2022-as-the-top-news-brand-with-multiplatform-views-and-minutes>.

³⁹ Michael Norwick, *The Empirical Reality of Contemporary Libel Litigation*, MEDIA L. RESOURCE CTR. (Mar. 2022), <https://medialaw.org/chapter-3-the-empirical-reality-ofcontemporary-libel-litigation/>.

“with knowledge that it was false or with reckless disregard of whether it was false or not.”⁴⁰

81. When members of the media and entertainment industry ignore their obligations and knowingly report false information, they face a risk of substantial liability arising from defamatory information about public figures. As the Media Law Resource Center concluded:

Sullivan has not dissuaded public officials or public figures from bringing libel suits; to the contrary, in our experience, the last decade has seen a significant number of these kinds of cases. Nor does the actual malice standard act as an absolute (or even near-absolute) bar to these kinds of claims getting before a jury. Instead, an extensive review of federal and state cases across the country shows that many defamation suits brought by public officials and public figures proceed beyond an early motion to dismiss, and even beyond summary judgment.⁴¹

82. Two highly publicized events in the past few years should have provided a stark warning to Fox of the uniquely catastrophic harm to media and entertainment companies that violate the First Amendment by knowingly failing to prevent or stop defamatory and/or libelous statements about public figures.⁴² Yet,

⁴⁰ *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964).

⁴¹ Ballard Spahr LLP & Davis Wright Tremaine LLP, *The Reality of Contemporary Libel Litigation*, MEDIA L. RESOURCE CTR. (Mar. 2022), <https://medialaw.org/chapter-4-the-reality-of-contemporary-libel-litigation/>.

⁴² See Michael Norwick, *The Empirical Reality of Contemporary Libel Litigation*, MEDIA L. RESOURCE CTR. (Mar. 2022), <https://medialaw.org/chapter-3-the-empirical-reality-ofcontemporary-libel-litigation/>.

these incidents did not cause Fox to implement *any* Board oversight measures—the Company only erected oversight structures *after* the filing of the Dominion and Smartmatic Actions.

83. In *Bollea v. Gawker Media, Inc.*, a jury awarded wrestler Terry Bollea (*i.e.*, Hulk Hogan) a \$140 million judgment for his state law invasion of privacy claim against media company Gawker Media, Inc. (“Gawker”), causing Gawker’s bankruptcy and the liquidation of its assets.⁴³

84. Similarly, in 2017, Disney entered into a \$177 million settlement with beef manufacturing companies for defamation and related state law claims against Disney’s subsidiaries (including American Broadcasting Companies Inc. and ABC News Inc.) surrounding their months-long “disinformation campaign” related to the beef industry.⁴⁴ Although *Sullivan*’s heightened public figure actual malice standard applied, the Court denied ABC’s motion for summary judgment.⁴⁵

⁴³ *Bollea v. Gawker Media, LLC*, 2021 WL 5509624, at *1-2 (M.D. Fla. Nov. 14, 2012); *In re Gawker Media LLC*, 2017 WL 2804870, at *2 (Bankr. S.D.N.Y. June 28, 2017); *Gawker Media Files for Bankruptcy*, REUTERS (June 10, 2016, 1:15 PM), <https://www.reuters.com/article/gawkermedia-bankruptcy/gawker-media-files-for-bankruptcy-idUSL4N1922ML>.

⁴⁴ Complaint at 1, *Beef Prods. Inc. v. Am. Broad. Cos.*, Civ. No. 12-292 (S.D. Cir. Ct., Union Cnty. Sept. 13, 2012).

⁴⁵ Tr. of Ruling on Motions for Summary Judgment and Sanctions at 26, 53, 64, *Beef Prods. Inc. v. Am. Broad. Cos.*, Civ. No. 12-292 (S.D. Cir. Ct., Union Cnty. Feb. 8, 2017), available at <https://www.agri-pulse.com/ext/resources/pdfs/b/bpi-v-abc.pdf>.

85. Fox itself faced several notable defamation and related litigations in the years immediately preceding the 2020 Presidential Election.

86. One such suit was filed by the family of Seth Rich (the “Rich Family”) in March 2018 (the “Rich Action”). The Rich Family asserted claims against Fox for, among other things, intentional infliction of emotional distress, alleging that Fox publicized false news stories about their son’s death. In particular, those stories asserted a conspiracy theory that Seth Rich, a Democratic National Committee (“DNC”) staffer, was assassinated in retaliation for purportedly providing internal DNC materials to WikiLeaks, even though police authorities determined that the murder actually stemmed from a botched robbery. On September 13, 2019, the Second Circuit issued an opinion vacating the district court’s dismissal of the Rich Action, finding, among other things, that the plaintiffs had sufficiently pleaded that the defendants, including Fox News, had engaged in “extreme and outrageous conduct” that “amounted to a campaign of emotional torture.”⁴⁶

87. Fox News invoked the First Amendment as a defense to the Rich Action, but the Second Circuit rejected that argument, finding that the complaint

⁴⁶ *Rich v. Fox News Network, LLC*, 939 F.3d 112, 122-23 (2d Cir. 2019).

sufficiently alleged that the articles publicized by Fox News contained false factual statements and sufficiently alleged actual malice.⁴⁷

88. Fox and the Rich Family agreed to a private settlement on October 12, 2020—just weeks before the Election—but the settlement included a highly unusual provision requiring that the settlement’s existence remain a secret until after the 2020 Presidential Election.⁴⁸

89. Additionally, in December 2019, Karen McDougal (“McDougal”) alleged Fox and Carlson committed slander *per se* after Carlson claimed McDougal extorted then-President Trump for approximately \$150,000 in exchange for her silence about an alleged affair (the “McDougal Action”).⁴⁹

90. Fox leadership was well aware and attentive to the danger defamation liability poses to a news organization. For instance, Scott and L. Murdoch closely followed high profile defamation claims brought against prominent news organizations. For example, on November 2, 2020, the day before the 2020

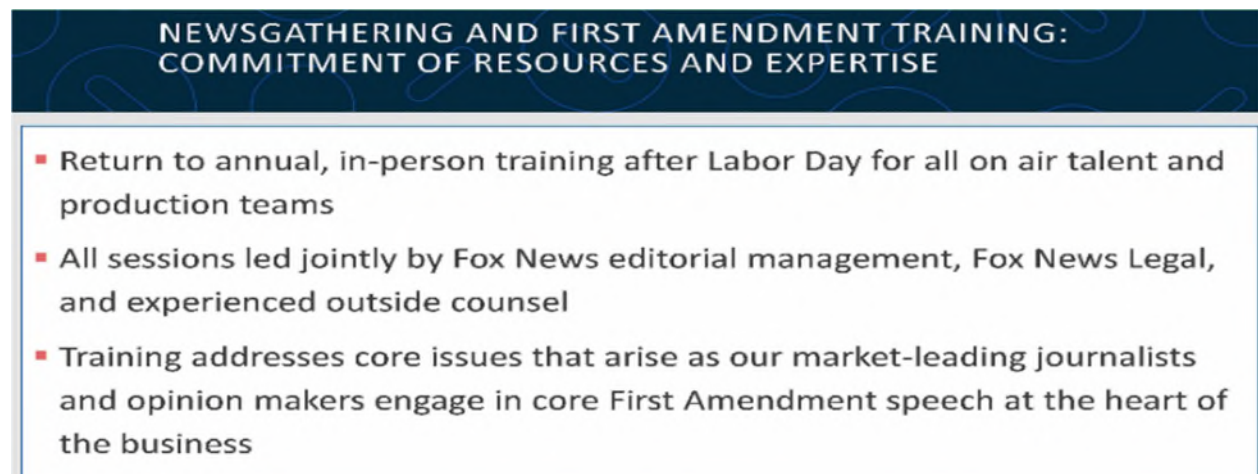
⁴⁷ *Id.* at 125-26.

⁴⁸ Electrical_220_00007488; Ben Smith, *Fox Settled a Lawsuit Over Its Lies. But It Insisted on One Unusual Condition*, N.Y. TIMES (Jan. 17, 2021), <https://www.nytimes.com/2021/01/17/business/media/fox-news-seth-rich-settlement.html>.

⁴⁹ McDougal’s litigation was dismissed on September 24, 2020 after a Court determined that Carlson’s statements were “not statements of fact” and McDougal failed to plead they were made with actual malice. *McDougal v. Fox News Network, LLC*, 489 F. Supp. 3d 174, 188 (S.D.N.Y. 2020).

Presidential Election, the two exchanged text messages commenting on the dismissal of Johnny Depp’s defamation lawsuit against *The Sun* (a News Corp-owned paper) earlier that same day.⁵⁰

91. As Fox itself acknowledged in a June 16, 2022 presentation given to its Audit Committee—long *after* the 2020 Presidential Election and the filing of the Dominion and Smartmatic Actions—engaging in speech that is actually protected by the First Amendment is a “core issue” which is “at the heart of [Fox’s] business.”⁵¹



NEWSGATHERING AND FIRST AMENDMENT TRAINING:
COMMITMENT OF RESOURCES AND EXPERTISE

- Return to annual, in-person training after Labor Day for all on air talent and production teams
- All sessions led jointly by Fox News editorial management, Fox News Legal, and experienced outside counsel
- Training addresses core issues that arise as our market-leading journalists and opinion makers engage in core First Amendment speech at the heart of the business

92. Fox has also acknowledged that its brands, particularly the “FOX brand” itself, are “among [its] most valuable assets[,]” and that “Governmental scrutiny and fines and significant negative claims or publicity regarding the

⁵⁰ Electrical_220_00009002.

⁵¹ BUILDING_220_00004035.

Company or its operations, content, products, management, employees, practices, advertisers or other business partners may damage the Company’s reputation and brands . . . [I]f our reputation is harmed for any reason, it could have a material adverse effect on our business, financial condition and results of operations.”⁵²

93. Furthermore, since Fox uses its own local and national television stations to disseminate its news reporting, it must maintain broadcasting licenses from the Federal Communications Commission (“FCC”), which in turn, requires Fox to satisfy various “character” tests regarding reliability in its reporting systems. Among other things, Fox is subject to the FCC’s Policy Concerning Character Requirements in Broadcast Licensing, adopted through policy statements in 1986 and 1990 (collectively, the “Character Policy”).

94. Thus, it was the responsibility of the Board (and management) to oversee such issues critical to Fox’s operations, ensure that Fox’s management team and employees understood the importance of good faith reporting, and prevent Fox from knowingly promoting false, inaccurate, or defamatory statements through its television and digital media outlets.⁵³

⁵² Fox Corporation, Annual Report (Form 10-K) (Aug. 10, 2020) at 19.

⁵³ The Sustainability Accounting Standard Board (“SASB”) accounting disclosure requirements for media and entertainment companies—of which Fox is a classified member—further confirm that First Amendment compliance is at the heart of any successful media and entertainment company, both financially and reputationally.

95. The Murdochs and the rest of management, however, failed to heed even the internal fact-checking systems Fox had in place, and their conscious disregard of those findings figured heavily in the Dominion Action—contributing to Fox’s colossal \$787.5 million settlement with Dominion.

96. Indeed, in denying Fox’s motion for summary judgment in the Dominion Action, Delaware Superior Court Judge Eric M. Davis noted the fact that Fox’s internal recognition that the published statements were false was consciously ignored, despite the presence of fact-checking controls and requests made by top Fox News executives like Scott to “get [] the facts about the Dominion situation.”⁵⁴

The SASB requires media and entertainment companies to disclose an accounting metric for “journalistic integrity.” SASB, MEDIA & ENTERTAINMENT: SUSTAINABILITY ACCOUNTING STANDARD (2018) at 6. SASB asks both (i) “[w]hat is the company’s exposure to legal risks associated with libel and slander?” and (ii) “[w]hat internal controls does the company have in place to ensure accuracy of content and journalistic integrity?” SASB, ENGAGEMENT GUIDE FOR ASSET OWNERS & ASSET MANAGERS (2019) at 88, <https://www.sasb.org/wp-content/uploads/2019/01/SASB-EngagementGuide2.pdf?hsCtaTracking=eab5b6dd-eb37-4f42-afe9-50f94117f626%7C6ba62f83-276a-4db3-8f28-2455280628da>. In response, Fox has provided the following disclosure in its three annual CSR Reports: “As an important source of news, information, analysis and media, we recognize our responsibility to build a culture of trust, integrity and ethical behavior.” *Corporate Social Responsibility Report (2020)*, FOX CORP., at 90; *Corporate Social Responsibility Report (2021)*, FOX CORP., at 85; *Corporate Social Responsibility Report (2022)*, FOX CORP., at 45.

⁵⁴ *U.S. Dominion, Inc. v. Fox News Network, LLC*, 2023 WL 2730567, at *9 (Del. Super. Ct. Mar. 31, 2023).

97. As a result, Judge Davis laid the predicate for Dominion to meet the high standard of actual malice under *Sullivan* at trial. It is clear that the Board failed to adequately supervise this “mission critical” aspect of the Company’s business—at great cost.

B. Correcting Objectively Inaccurate News Reporting Is Fundamental to the News Media Business

98. Even when media and entertainment companies knowingly disseminate false and/or inaccurate information and face the risk of defamation liability, there is a tried and true method to limit their liability or avoid being sued in the first place. Nearly two-thirds of all U.S. states have so-called “retraction” statutes, which can allow a defendant to mitigate defamation and libel damages if he or she publishes a retraction, correction, or even an apology. Moreover, even some states without typical retraction statutes, like New York, allow a defendant the opportunity to use a retraction, or even an offer to retract, to prove mitigating circumstances and reduce punitive damages.⁵⁵ Other states, like California, limit a plaintiff’s damages award so long as prior to litigation, the defendant makes a timely and publicized retraction following the plaintiff’s pre-suit retraction demand.⁵⁶

⁵⁵ N.Y. CIV. RIGHTS LAW § 78; *Kehoe v. New York Tribune*, 229 A.D. 220, 223 (1st Dep’t 1930).

⁵⁶ CAL. CIV. CODE § 48a. *See also* N.J. STAT. ANN. § 2A:43-2.

99. Even the extreme “alt-right” media company OAN removed articles related to election fraud conspiracies tying Dominion and Smartmatic to fraud in the 2020 Presidential Election, as well as stories about Powell and Giuliani, after it appeared that litigation by Dominion and Smartmatic might be imminent. By January 2021, after Dominion’s attorney sent retraction demands to OAN’s CEO and President (but prior to the filings of the Dominion and Smartmatic Actions against Fox), OAN removed several stories about Dominion and Smartmatic’s purported role in election fraud during the 2020 Presidential Election.⁵⁷

100. Fox itself has also issued retractions in the past for false reporting. For instance, on October 20, 2017, Fox issued both an online and on-air correction regarding an October 8 story aired on Fox News reporting that glass artist John Garofalo (“Garofalo”), who created a presidential glass seal he hoped to present to Trump, was a Vietnam veteran, member of the Navy SEAL team, and decorated war hero. In the subsequent corrections, Fox stated: “Unfortunately, all of Garofalo’s

⁵⁷ Jacob Shamsian, *Trump-Ally Media Outlet OAN Quietly Deleted Articles About Dominion Despite Publicly Doubling Down on Election Conspiracy Theories*, BUSINESS INSIDER (Jan. 20, 2021), <https://www.businessinsider.com/oan-deletes-articles-about-dominion-voting-election-conspiracy-2021-1>.

claims turned out to be untrue We apologize to our viewers, especially veterans and servicemen and women.”⁵⁸

101. In another example, on May 23, 2017, Fox posted a statement on the Fox News website explaining that after “appropriate review” it had “removed” an article about the murder of Seth Rich it had posted a week earlier because the “article was not initially subjected to the high degree of editorial scrutiny we require for all our reporting” and “the article was found not to meet those standards”⁵⁹

102. In an October 5, 2015, airing of Fox & Friends, host Anna Kooiman (“Kooiman”) falsely claimed that during a government shutdown, then-President Barack Obama held a press conference to announce he would personally fund the continued operations of the Museum of Muslim Culture. Two days later, on October 7, Fox spokesperson Dana Klinghoffer told the Associated Press that “*Fox’s policy is to correct mistakes on the same show where they are made*” and that “*Fox will correct the mistake on air*”⁶⁰

⁵⁸ *Correction: Veteran, Glass Artist Falsified His Military Record*, FOX NEWS (Oct. 20, 2017, 12:26 PM), <https://www.foxnews.com/us/correction-veteran-glass-artist-falsified-his-military-record>.

⁵⁹ *Statement on Coverage of Seth Rich Murder Investigation*, FOX NEWS (May 23, 2017, 11:00 PM), <https://www.foxnews.com/politics/statement-on-coverage-of-seth-rich-murder-investigation>.

⁶⁰ Mike Burns, *Fox Falls for Fake Story About Obama Personally Funding Muslim Museum During Shutdown*, MEDIA MATTERS FOR AM. (Oct. 5, 2013, 2:49 PM)

103. On October 12, 2015, Kooiman issued an on-air correction stating: “We made a bad mistake by reporting a story based on poor research that was not true. We apologize for not checking the facts, and for allowing the story to make air.”⁶¹

104. Indeed, at his deposition in the Dominion Action, Murdoch testified that although “we shouldn’t” air “dangerous stuff[,]” sometimes “accidents happen” and, in the event that “things get on the air” that are “wrong[,]” the proper course of action is to “apologize.”⁶²

105. Thus, just like every other major news organization, Fox News understands the legal significance of issuing retractions when reporting is objectively false. However, when even rival, far-right networks like OAN backed away from the same false claims, Fox failed to follow established journalistic practice. To this very day, Fox has refused to retract, correct, or apologize for its facially false and defamatory statements in connection with the 2020 Presidential Election, making no legally cognizable attempt to avoid being sued or limit potential liability.

(updated), <https://www.mediamatters.org/fox-friends/fox-falls-fake-story-about-obama-personally-funding-muslim-museum-during-shutdown> (emphases added).

⁶¹ *Fox Apologizes for Muslim Museum Story: “We Made a Bad Mistake . . . Based on Poor Research”*, MEDIA MATTERS FOR AM. (Oct. 12, 2013, 9:55 AM), <https://www.mediamatters.org/fox-friends/fox-apologizes-muslim-museum-story-we-made-bad-mistakebased-poor-research>.

⁶² Deposition Transcript of Rupert Murdoch (“R. Murdoch Tr.”) at 185.

II. THE MURDOCHS CONTROL FOX NEWS AND ITS EDITORIAL CONTENT

106. The Murdochs' level of control over Fox and its news coverage was pervasive. At all times discussed herein, the Murdochs had the responsibility and the power to make editorial decisions for Fox. However, they failed to use that control to prevent the dissemination of false accusations on Fox's air that would cost the Company at least hundreds of millions of dollars.

107. Murdoch and his children own approximately 43% of Fox's voting Class B stock (through the Murdoch Family Trust), control the Board, which includes a majority of directors beholden to the Murdochs, and control Fox's management, occupying the most senior positions and closely managing all aspects of Fox's business.

108. Evidencing the Board's fealty to the Murdochs, on October 1, 2019 the "independent directors," *i.e.*, Nasser, Dias, Hernandez, and Ryan, approved a stock repurchase program (which has been repeatedly increased to its current \$7 billion size) that they *knew* would increase the Murdochs' voting power from the then-current level of 38.9%.⁶³ Under the Stockholders Agreement, the Murdochs agreed to limit their voting power to 44%,⁶⁴ but as a practical matter such voting power is

⁶³ Electrical_220_00011289-92; Fox Corporation, Definitive Proxy Statement (Schedule 14A) at 50 (Sept. 23, 2019).

⁶⁴ Fox Corporation, Annual Report (Form 10-K) (Aug. 10, 2020) at 25.

outcome-determinative on any Company stockholder vote.⁶⁵ Indeed, as illustrated in the table below, based on the Murdochs' stock ownership, Fox's repurchase program, and historical voter turnout among stockholders, the Murdochs only need the support of as little as approximately 1% of unaffiliated voters present for their agenda to carry:

| Class B Shares | Annual Meeting | | | |
|--|----------------|---------------|---------------|---------------|
| | 2019 | 2020 | 2021 | 2022 |
| Rupert and Lachland Murdoch | 103,631,816 | 103,631,816 | 103,631,816 | 103,631,816 |
| Unaffiliated Shares Present* | 133,859,582 | 137,656,573 | 122,240,266 | 108,319,772 |
| Shares Present* | 237,491,398 | 241,288,389 | 225,872,082 | 211,951,588 |
| Outstanding (Record Date) | 266,173,651 | 258,400,118 | 250,153,271 | 241,573,391 |
| % Murdoch (Total Class B) | 38.93% | 40.11% | 41.43% | 42.90% |
| % Unaffiliated Present* for Murdochs to Win | 6.37% | 7.06% | 4.13% | 1.12% |

* Excludes Broker Non-Votes

109. Moreover, the Murdochs are deeply involved in the Company's day-to-day operations. Fox's public SEC filings admit that "Murdoch and L.[] Murdoch ... each are deeply involved with the Company's businesses [and] serve as Chairman and Executive Chairman and Chief Executive Officer, respectively, [which] provides strong leadership to the Board in the execution of the Company's strategy and facilitates the flow of information between the Board and management."

110. Murdoch closely controls his entire media empire, micromanaging many aspects of the business including the editorial content of his media outlets. For

⁶⁵ See, e.g., *Voigt v. Metcalf*, 2020 WL 614999, at *18-19 (Del. Ch. Feb. 10, 2020).

example, Murdoch regularly attends Fox News’s twice-daily editorial meetings and—particularly in key moments such as the 2020 Presidential Election—spoke with Fox News’s CEO Scott frequently, to give “suggestions” on Fox News coverage.⁶⁶ L. Murdoch also frequently attends Fox News editorial meetings and spoke with Scott nearly daily about the “tone and narrative” of Fox’s coverage during the crucial post-Election period.⁶⁷

111. Murdoch—who “admit[s] [he is] a bit of a political junkie and a news junkie”⁶⁸—has consistently ensured that his media outlets reflect his personal political and other views. At his deposition in the Dominion Action, Murdoch volunteered that he is “a journalist at heart” and that he likes advising Fox News’s CEO.⁶⁹ Even in 2011, *Reuters* observed during the Hacking Scandal: “Former senior Murdoch employees in Britain, Australia and the United States say Murdoch is a hands-on media proprietor, as ready with an opinion on a story as he is to dispose of any editor who regularly takes a different stance from his own. Reports of Murdoch pressuring editors until their newspapers reflected his own political leanings are

⁶⁶ See Dominion SJ Opp. at 10-11; Dominion ISO SJ at 102.

⁶⁷ See Dominion SJ Opp. at 10, 152.

⁶⁸ *Id.* at 26.

⁶⁹ See R. Murdoch Tr. at 78.

common”⁷⁰ Murdoch’s editors “factor[ed] in Rupert even though he was 12,000 miles away You could almost see them thinking, ‘what will Rupert think of this?’”⁷¹

112. Murdoch’s editorial control over his media outlets is foundational to his business, as his “corporate control facilitates and is facilitated by his ability to intervene in the editorial policies of his vast holdings.”⁷² And Murdoch’s empire is so expansive and diverse that his pervasive control over the information disseminated by his properties enables him to exert “disproportionate control over public opinion [which] provides him with considerable political leverage” that he frequently uses to, among other things, pressure governments and other companies to serve his personal or professional interests.⁷³ Murdoch’s iron grip on his empire is also long-standing: as *The Guardian* observed more than a decade ago about

⁷⁰ Mark Hosenball & Kate Holton, *Special Report: Rupert Murdoch, a Hands-On Newspaperman*, REUTERS (July 19, 2011, 4:16 AM), <https://www.reuters.com/article/us-newscorp-murdoch-papers/special-report-rupert-murdoch-a-hands-on-newspaperman-idUSTRE76I1IT20110719>.

⁷¹ *Id.*

⁷² Bulent Kenes, *Rupert Murdoch: A Populist Emperor of the Fourth Estate*, EUR. CTR. FOR POPULISM STUD. (Dec. 22, 2020), <https://www.populismstudies.org/rupert-murdoch-a-populist-emperor-of-the-fourth-estate/>.

⁷³ *Id.*

Murdoch's then-30-year reign, "Rupert Murdoch is a man driven not so much by market forces as a deep desire to optimize his empire's power and influence."⁷⁴

113. Murdoch's private and principal professional focus—because it is his greatest source of political influence and has consistently served as the loudest mouthpiece for his political agenda—is Fox News. Murdoch serves as Fox News's Executive Chairman, keeps his office above the Fox News studio in Midtown Manhattan, and was, among other things, heavily involved in Fox News's coverage of Trump during the 2016 presidential election.

114. When Ailes resigned from Fox News in 2016, Murdoch even appointed himself Fox News's interim CEO, and then appointed a new executive team of loyalists (including Scott) that allowed Murdoch and L. Murdoch to continue to micromanage Fox News and its editorial content. Scott and other Fox News executives report directly to the Murdochs, who are regularly and fully informed about and exercise control over Fox News content.

⁷⁴ David Puttnam, *News Corporation Has Sought to Undermine Elected Governments*, THE GUARDIAN (Apr. 28, 2012, 4:00 PM), <https://www.theguardian.com/commentisfree/2012/apr/28/news-corporation-governments>.

III. FOX HAD NO BOARD-LEVEL CONTROLS CONCERNING ETHICS, COMPLIANCE, AND TRUTHFUL REPORTING AFTER THE BOARD ACTIVELY DISMANTLED PREVIOUSLY ESTABLISHED OVERSIGHT MECHANISMS

115. Despite the importance of ensuring a news organization does not act outside the protections of the First Amendment, Fox had no Board-level controls or oversight concerning training of employees in ethical reporting, the truthful dissemination of information, and/or the broadcast of false and defamatory information until *after* it was sued by Dominion and Smartmatic. This state of affairs at the time of the 2020 Presidential Election was a result of the Murdochs' and Fox leadership's decision to decommission previously existing controls, and failure to implement new ones.

A. Old Fox/21CF and News Corp Maintain Board-Level Oversight Controls Over Its Ethics and Compliance

116. In 2012, News Corp and Fox were part of one publicly traded company named News Corporation (referred to herein as Old Fox). That year, Old Fox faced significant public scrutiny, government civil and criminal investigations, and civil litigation following the revelation that News Corporation affiliates had engaged in systematic (and, necessarily, Murdoch-approved) cell phone hacking and other improper tactics to obtain stories for publication (*i.e.*, the Hacking Scandal). That

scandal resulted in enormous costs and payouts, leading to a settlement of stockholder derivative litigation in this Court (the “2013 Derivative Settlement”).⁷⁵

117. The 2013 Derivative Settlement was reached shortly before the planned separation of Old Fox into two publicly traded entities: News Corp and 21CF. The 2013 Derivative Settlement required both companies to adopt compliance reforms and they did so.

118. Most significantly, the reforms included the creation of Compliance Steering Committees (“CSC”) chaired by a Chief Compliance Officer that would report to their respective boards of directors “to provide management and oversight of compliance matters and strengthen controls across all businesses.”⁷⁶

119. The 2013 Derivative Settlement, in relevant part, tasked the CSCs with the following responsibilities and obligations:

- to receive advice from experienced outside legal counsel and compliance experts to help guide its operations;
- to review and respond to internal reports and external data that may raise concerns regarding the effectiveness of [the company’s] compliance programs, and compliance concerns arising from investigations (both internal and external), or significant litigation and claims, and to discuss these matters with outside counsel, and

⁷⁵ The 2013 Derivative Settlement also addressed questionable related party transactions. The Murdochs, Carey, and Dinh were named Defendants in that lawsuit.

⁷⁶ *Company-Wide Compliance Reforms: Creation of Compliance Steering Committee*, NEWS CORP, <https://newscorp.com/corporate-governance/uk-newspaper-matters/company-wide-compliance-reforms/>.

with the [company's] Audit Committee and independent directors of the [company's] Board; and

- subject to the oversight of the [company's] Audit Committee and Board, to adopt critical compliance policies and oversee their implementation on a global basis; ensure that employees receive appropriate training; review and, where necessary, strengthen internal compliance controls at every business unit in the Company; investigate and remediate any compliance issues that may arise; audit and otherwise verify the effectiveness of the [company's] implementation of its compliance policies; and, make recommendations to the [company's] Audit Committee and Board for strengthening the compliance function.

120. The 2013 Derivative Settlement required the CSC to report to the Audit Committee at least once per quarter, to the company's independent directors at least twice per year, and to the Board as a whole at least annually.⁷⁷

121. The 2013 Derivative Settlement also required Old Fox to amend its Audit Committee Charter to specifically detail that it was responsible for overseeing the CSC and all aspects of the Company's compliance program (and News Corp's new Audit Committee Charter to reflect the same).⁷⁸ Each Company's Chief Compliance Officer reported directly to his or her respective Audit Committee regarding compliance matters.⁷⁹

⁷⁷ Stipulation of Settlement, Ex. D, at 1, *In re News Corp. S'holder Litig.*, No. 6285-VCN (Del. Ch. 2013).

⁷⁸ *Id.* at 2.

⁷⁹ *Id.* at 3.

122. The premise and purpose of those reforms was to require the News Corp and 21CF Boards (and not merely the Murdochs and their cohorts) to engage in direct oversight of each company’s employee compliance training programs and operations so that each company could monitor and ensure its news reporting was conducted with journalistic integrity.

123. Former SEC Chairman Harvey Pitt (“Pitt”) submitted a declaration to the Court setting forth his independent professional assessment of the corporate governance reforms included in the 2013 Derivative Settlement, in which he expressed his belief that the reforms would significantly benefit the companies by emphasizing the importance of ethical compliance and board oversight.⁸⁰ In discussing the reforms set forth above, Pitt stated that the Board would have “direct contact with compliance matters” and “that the Board itself will have ultimate responsibility for the Company’s compliance”⁸¹

124. Although, the 2013 Derivative Settlement only required those controls to remain in place for four years, post-21CF Spinoff News Corp maintained those measures through the 2020 Presidential Election, continues to maintain them today,

⁸⁰ See generally Decl. of Harvey Pitt, *In re News Corp. S’holder Litig.*, No. 6285-VCN (Del. Ch. 2013) (“Pitt Declaration”).

⁸¹ Pitt Declaration § 8.5.8.

and touts them on its website⁸²—thus helping to promote ethical reporting in the Murdoch-controlled news publications. Fox employed a decidedly different strategy, swiftly abandoning those controls as soon as it could.

B. Fox’s Board Abandoned the Purpose and Intent of the CSC and Related Obligations From the 2013 Derivative Settlement

125. 21CF could not easily abandon this board level oversight reporting program midstream without making public disclosures that would raise red flags to the market and it maintained these controls while it remained a public entity. However, with the sale of 21CF to Disney in March 2019 and the spinoff of Fox into a new publicly traded entity, it could abandon Board oversight of the Murdochs’ operational control with little fanfare and it did so.

126. Having previously seen the Hacking Scandal emerge when editorial control belonged to the Murdochs alone, the Board knowingly abdicated its responsibility to engage in reasonable oversight and to ensure employees were appropriately trained to conduct their news reporting with journalistic integrity.

⁸² *Company-Wide Compliance Reforms: Creation of Compliance Steering Committee*, NEWS CORP, <https://newscorp.com/corporate-governance/uk-newspaper-matters/company-wide-compliance-reforms> (stating that the News Corp CSC “provides active, top-level leadership, management and oversight of the Company’s compliance program and internal controls, which it adjusts and improves as necessary; ***keeps the Board of Directors fully informed of the program’s status; and performs other compliance-related functions as directed by the Board***” (emphasis added)).

Under the circumstances, dismantling restrictions intended to protect Fox and its public stockholders from the Murdochs serves to illustrate the Board's deference to and control by the Murdochs.

127. Plaintiffs' Section 220 demands and related investigation confirmed Fox had no Board-level reporting requirement concerning the truthful dissemination of information or the training of employees on its importance until well after the 2020 Presidential Election.

128. For example, in Fox's 2020 Corporate Social Responsibility Report (the "2020 CSRC"), Fox claimed to have a "Chief Ethics and Compliance Officer ("CECO") [that] leads the Company's ethics and compliance program and assists the Board of Directors in fulfilling its oversight duties concerning compliance with applicable laws, regulations, and accounting standards and the dissemination of true and accurate information."⁸³ However, the 2020 CSRC states that the CECO reports "regularly to senior management" as opposed to the Board.⁸⁴ And Fox's books and

⁸³ *Corporate Social Responsibility Report (2020)*, FOX CORP., at 73, <https://media.foxcorporation.com/wp-content/uploads/prod/2020/09/22233420/FOX-CSR-Report-2020-DOWNLOAD.pdf>.

⁸⁴ *Corporate Social Responsibility Report (2020)*, FOX CORP., at 73, <https://media.foxcorporation.com/wp-content/uploads/prod/2020/09/22233420/FOX-CSR-Report-2020-DOWNLOAD.pdf>.

records illustrate that whatever title was given to a person called the CECO, he or she did not enjoy the powers and reporting responsibilities set forth in the 2013 Derivative Settlement.

129. Indeed, Plaintiffs’ counsel asked Fox’s counsel to identify who led Fox’s ethics and compliance program at all relevant times and Fox’s counsel identified John McCoy (“McCoy”) from the time of the 21CF Spinoff through early 2021.⁸⁵ However, the *only* time McCoy is mentioned in the Company’s production in response to the Section 220 demands is as part of a long list of thirty-one initial officers of Fox that were appointed by the Board in connection with the 21CF Spinoff in March 2019.⁸⁶

130. When the Board adopted resolutions electing each Fox officer at its November 11, 2020 meeting (*i.e.*, one week after the 2020 Presidential Election), McCoy was not one of the seventeen officers listed.⁸⁷ That strongly suggests McCoy

⁸⁵ See E-mail from Kyle Lachmund, counsel for Fox, to David MacIsaac (Aug. 4, 2022, 5:22 PM) (on file with Plaintiffs’ counsel).

⁸⁶ Although that initial list of all officers called McCoy “Senior Vice President and Deputy General Counsel and Chief Ethics and Compliance Officer,” Fox’s counsel stated his title was “Senior Vice President, Group Compliance Officer,” suggesting McCoy was not referred to as CECO internally at Fox. Similarly, the press release announcing the hiring of Nicholas Trutanich (“Trutanich”) discussed below suggests that Trutanich was hired to fill a newly created position and did not replace anyone.

⁸⁷ BUILDING_220_00001318. The most junior officer listed appears to be Leonard Fondetto—Vice President, Tax Reporting. In contrast, in November 2021 and November 2022, Trutanich, who was named CECO in March 2021, is included in a

did not function as CECO internally at Fox or, at the very least, Fox did not consider the position to be an officer position or senior enough to reference as such by the time of the 2020 Presidential Election.⁸⁸

131. Regardless of his title, McCoy never even attended a Board or Board committee meeting and therefore never reported to the Board or a Board committee.

132. Moreover, Fox did not create a Compliance Steering Committee when it spun off from 21CF. Fox's Statement of Corporate Governance did not discuss ethics and compliance matters other than harassment issues.⁸⁹ No Board level committee was responsible for overseeing the training and compliance of its employees with journalistic ethics.⁹⁰ The Board had no committee charged with overseeing Fox's journalism activities. While the Board and Audit Committee met regularly, minutes and materials from those meetings do not reflect any substantive

similar list as EVP of Litigation & CECO. BUILDING_220_00003767; BUILDING_220_00006001.

⁸⁸ Notably, the Board resolutions from this meeting also elect Murdoch as Chairman and describe his role as an executive position. Fox's proxy filings also confirm Murdoch served as a Fox executive. Fox attempted to conceal Murdoch's executive role during the Dominion Action, which resulted in the appointment of a special master to investigate Fox's representations to the Superior Court. The Dominion Action settled before the special master made any recommendations or determinations regarding Fox's concealment of Murdoch's executive status.

⁸⁹ See BUILDING_220_00003395.

⁹⁰ Fox's Board only has three standing Committees: the Audit Committee, the Compensation Committee, and the Nominating and Governance Committee.

discussions concerning those matters prior to the Smartmatic Action's filing. The Audit Committee only discussed similar issues months after Dominion and Smartmatic actually filed litigation, despite Fox receiving thousands of retraction or correction demands before lawsuits were filed.

133. In his deposition, Defendant Wallace admitted that Fox News had no policies or procedures on journalistic standards or ethics and no policy on corrections or retractions.⁹¹ In his view, no policies were required and all such matters should be dealt with "case by case."⁹²

134. The Audit Committee's Charter did provide the Audit Committee the responsibility to establish and oversee procedures to evaluate alleged violations of the Company's Standards of Business Conduct (the "SBC"). However, the closest the Audit Committee came to establishing such policies appears to be the "Audit Committee Policy for Complaint Handling Procedures."⁹³

135. That policy sets forth procedures for employees to make complaints through Fox's "Alertline" and for how those complaints are handled. The policy only applies, however, to "accounting and auditing-related complaints and allegations" and defines the covered "allegations" only as those concerning certain

⁹¹ Wallace Tr. at 39, 251-52.

⁹² *Id.* at 39.

⁹³ BUILDING_220_00003406.

categories of financial reporting issues.⁹⁴ Indeed, the summary of the policy at the Audit Committee’s initial meeting on May 6, 2019, states that it only concerns “complaints/allegations relating to accounting, audit and securities law matters as required by the Sarbanes-Oxley Act and the Audit Committee Charter.”⁹⁵

136. The policy also states that while employees can make “any complaint, claim or allegation . . . [through] FOX’s Alertline [website], as discussed in FOX’s [SBC],”⁹⁶ the Audit Committee only discusses the “Responsibilities of [the] Audit Committee *with Respect to Specified Complaints*.”⁹⁷

137. The reports the Audit Committee received concerning the Alertline appear to be limited to summaries of fraud investigations, discussions about the general categories of complaints received, and HR-related complaints. The Audit Committee’s minutes do not reflect any substantive discussions of complaints. Instead, management merely “summarized the various *types* of complaints received and investigations undertaken[.]”⁹⁸

⁹⁴ *Id.*

⁹⁵ Electrical_220_00009732.

⁹⁶ BUILDING_220_00003406.

⁹⁷ BUILDING_220_00003406 (emphasis added).

⁹⁸ See e.g., BUILDING_220_00000241; BUILDING_220_00003105; BUILDING_220_00002986 (emphasis added).

138. Thus, the Audit Committee claimed no responsibility for overseeing the SBC or ethics and compliance matters beyond a narrow category related to financial reporting.⁹⁹

139. One clear indication that Fox had no Board-level controls concerning the dissemination of truthful and accurate information is the lack of timely discussion about retraction demands at the Board level.

140. Dominion and Smartmatic sent Fox numerous retraction demands for its defamatory statements, but those demands were never discussed by the Board or a Board committee until after Smartmatic filed its lawsuit in February 2021. None of the emails produced by Fox to Plaintiffs in response to their Section 220 demands show the retraction demands being sent to the Board or any other discussion of the retraction demands by Fox's directors.

141. Moreover, neither the Board nor the Audit Committee even held a meeting during the time when the most significant defamatory statements were being aired. Before Smartmatic filed its lawsuit in February 2021, the last Audit

⁹⁹ The Audit Committee did receive a "Fox News Media Compliance and Culture Update Report [that] highlighted certain actions and achievements in the evolution of Fox News Media's culture since the appointment of a new management team in 2016." *See* BUILDING_220_00002986. However, that report appears to concern reforms put into place following Ailes's termination, including the creation of a Workplace Professionalism and Inclusion Council, to address a culture of sexual harassment.

Committee meeting was held on November 10, 2020, and last Board meeting was held on or around November 11 and 12, 2020.

142. The Board's complete delegation to the Murdochs to ensure Fox operated within the bounds of the First Amendment proved catastrophic when management participated in and allowed the defamation of Dominion, Smartmatic, and others in the wake of the 2020 Presidential Election.

IV. FOX NEWS'S COVERAGE OF THE 2020 PRESIDENTIAL ELECTION AND ITS CONSEQUENCES

A. Trump's False Predictions of Election Fraud Lay the Groundwork for Impugning the Integrity of the 2020 Presidential Election

143. The 2020 Presidential Election was a major event for every national news organization and a watershed moment in U.S. history. It also proved to be a defining moment for Murdoch, challenging his treasured position as a leader and powerful player in American politics.

144. Months before the election, then-President Trump began planting unfounded seeds of doubt about the integrity of the Election. By August 2020, Trump was already publicly claiming that "the only way we're going to lose this election is if the election is rigged."¹⁰⁰

¹⁰⁰ Tal Axelrod, *A Timeline of Donald Trump's Election Denial Claims, Which Republican Politicians Increasingly Embrace*, ABC NEWS (Sept. 8, 2022, 5:03 AM),

145. Fox immediately recognized the danger in Trump’s unsubstantiated predictions. For instance, Ryan later testified: “[P]rior to the 2020 Presidential Election, [Trump] was making these baseless claims of election fraud should he lose . . . laying the predicate if [he] did lose to blame election fraud.”¹⁰¹ Ryan recalled Trump “making these noises before the election” and confirmed that these early warning signs of his “stolen election” narrative were “well known.”¹⁰²

146. Fox’s Politics Editor at the time, Chris Stirewalt (“Stirewalt”), testified that Trump had “laid [the] predicate down throughout the spring and into the summer [of 2020] . . . that the only way that he could lose the election was by fraud, or that the only way that he would not prevail would be if [the Election] was stolen.”¹⁰³ According to Stirewalt, it was “very well-known and understood by everybody in the business that this was the gambit that [Trump] was making.”¹⁰⁴ Stirewalt testified before the January 6th Congressional Committee that he and his team “had gone to pains” to inform Fox viewers prior to the Election that early returns would favor Republican candidates “because the Trump campaign and the President had

<https://abcnews.go.com/Politics/timeline-donald-trumps-election-denial-claims-republican-politicians/story?id=89168408>.

¹⁰¹ Dominion SJ Opp. at 166.

¹⁰² *Id.* at 165-66.

¹⁰³ Dominion ISO SJ at 16.

¹⁰⁴ *Id.* at 16-17.

made it clear that they were going to try to exploit” this “Red Mirage” phenomenon of the 2020 Presidential Election to buttress claims that the Election was stolen.¹⁰⁵

147. Murdoch himself also understood before the 2020 Presidential Election that “officials at all levels of government” were already “concerned about false narratives of fraud emerging”¹⁰⁶ as a consequence of Trump’s incendiary rhetoric.

B. Murdoch Panders to Trump, Perpetuating Election Lies at the Expense of Fox’s Reputation and Minority Stockholders

148. The 2020 Presidential Election took place on November 3, 2020. Biden was elected the 46th President of the United States.

149. The Murdochs’ editorial control was evident around the time of the 2020 Presidential Election. During that time, Murdoch regularly attended Fox News’s twice-daily editorial meetings and spoke with Scott several times a week (if not every day) through phone calls and emails that included “‘suggestions’ on hosts,

¹⁰⁵ *Final Report of the Select Committee to Investigate the January 6th Attack on the United States Capitol*, H.R. Rep. No. 117-663, at 200-01 (2022), <https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/pdf/GPO-J6-REPORT.pdf>. The “Red Mirage” referred to the appearance of a Trump victory on Election night, despite Biden’s win, due to “partial results that come in quickly from in-person polling places that don’t reflect millions of mail-in ballots that are still getting processed or haven’t arrived.” Marshall Cohen, *Deciphering the ‘Red Mirage,’ the ‘Blue Shift,’ and the Uncertainty Surrounding Election Results this November*, CNN (Sept. 1, 2020, 6:49 PM), <https://www.cnn.com/2020/09/01/politics/2020-election-count-red-mirage-blue-shift/index.html>.

¹⁰⁶ Dominion SJ Opp. at 166.

narratives, topics, and guests—including on issues related to the 2020 Presidential Election; how to cover the conspiracy claims; how to treat Trump; the hosts of the accused broadcasts; and guests like Rudy Giuliani.”¹⁰⁷ L. Murdoch also attended Fox News editorial meetings and spoke daily or almost daily with Scott regarding the “specific direction on both the tone and narrative of Fox’s news coverage” during the November 2020 to January 2021 period.¹⁰⁸

150. On Election night, Fox News was the first media outlet to call Arizona—one of the key battleground states that helped seal Biden’s eventual victory—for Biden. In immediate response to Fox’s correct Arizona call, Trump privately and publicly insisted that Fox rescind its announcement.

151. Murdoch was directly involved with Fox News’s Election night coverage and was “very much aware” that Trump was not happy with Fox News Channel’s Arizona call for Biden, but he and L. Murdoch determined not to change that call.¹⁰⁹ In fact, that evening, Murdoch received a call from his “friend[,] Jared Kushner” (“Kushner”), Trump’s son-in-law and senior advisor.¹¹⁰ Kushner expressed his disapproval of Fox’s “terrible” decision to call Arizona for Biden

¹⁰⁷ *Id.* at 10-11; Dominion ISO SJ at 102.

¹⁰⁸ Dominion SJ Opp. at 10.

¹⁰⁹ *Id.* at 13.

¹¹⁰ *Id.* at 12.

despite the call being accurate.¹¹¹ Murdoch testified that, on the call, he “could hear Trump’s voice in the background shouting.”¹¹² Initially, Murdoch stood firm, telling Kushner: “[T]he numbers are the numbers.”¹¹³

152. And on November 6, 2020, Murdoch directed Scott on how Fox News hosts should handle false claims that President Trump had won the election, stating: “Everything seems to be moving to Biden and if Trump becomes a sore loser we should watch Sean [Hannity] especially and others don’t sound the same. Not there yet, but a danger.”¹¹⁴

153. However, shortly after Fox called Arizona for Biden and the Murdochs expressed their skepticism about Trump and his voter fraud claims, Fox News received “heavy backlash”¹¹⁵ and began to lose viewers to its rapidly growing competitors such as Newsmax and OAN, which Fox feared could be “[d]evastating to [its business].”¹¹⁶

154. In response, despite immediately understanding the falsity of Trump’s election fraud claims, Murdoch chose protecting his political power and influence

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* at 12.

¹¹⁴ *Id.* at 15; Electrical_220_00009053.

¹¹⁵ BUILDING_220_00006543 (Dominion ISO SJ at 18).

¹¹⁶ Dominion ISO SJ at 24.

over protecting Fox News’s credibility as a news provider, even when doing so required spreading dangerous lies and subjected Fox to enormous liability.

155. The morning after the 2020 Presidential Election, at the daily editorial meeting of Fox’s senior executives—a meeting that Murdoch and L. Murdoch regularly attended—Fox News leadership, including Scott, Shah, and Wallace, discussed the prior night’s Election results, including Fox’s Arizona call.

156. Fox’s Election coverage then abruptly shifted. Despite the fact that the Murdochs, other Board members, and senior leadership privately recognized that Trump’s claims of election fraud were a sham, beginning on November 5, 2020 (*i.e.*, before the Election itself was even called for Biden), Fox News flooded its outlets with allegations that “massive fraud” had resulted in a “stolen election.”

157. That day, Bartiromo—the host of the Fox News program *Sunday Morning Futures with Maria Bartiromo* and a named defendant in the Smartmatic Action—hosted former Trump advisor Steve Bannon (“Bannon”) on her Fox News show. Bannon claimed: “Trump won an overwhelming victory on Tuesday night”¹¹⁷ Bartiromo also posted on Twitter entirely fictional allegations of vote “dumps,” insisting that votes for Trump had been surreptitiously discarded.¹¹⁸

¹¹⁷ Dominion SJ Opp. at 14; Electrical_220_00009198.

¹¹⁸ Dominion ISO SJ at 20.

158. That night, Sean Hannity (“Hannity”)—whose show *Hannity* held Fox News Channel’s coveted 9:00 p.m. primetime weekday slot, and was the most watched cable news program from 2017 to 2020¹¹⁹—told his show’s audience that it “will be impossible to ever know the true, fair, accurate election results”¹²⁰ Tellingly, Hannity’s producer had cautioned his team on November 5 that they should be “super careful on any allegations” since they could be said to be “pushing that [the] American democratic system can’t be trusted.”¹²¹ But Hannity enjoyed the Murdochs’ support, so he disregarded his producer’s instructions.

159. The reason for the abrupt shift in Fox News’s Election coverage and the patently false election fraud claims in the immediate aftermath is clear—fear of loss of ratings and influence as a result of backlash from Trump and his loyal supporters, regardless of the truth. On November 6, 2020, right after Fox News’s call of Arizona for Biden, L. Murdoch and others received a Brand Protection Unit Roundup that was like nothing they had ever seen. The Roundup noted:

This week saw a high spike in negative conservative commentary about Fox News in response to election coverage and calls made by the Fox News Decision Desk. There has been a 237% increase in tweets with negative sentiment mentioning FNC [Fox News Channel] this week,

¹¹⁹ A.J. Katz, *These Are the Top-Rated Cable News Shows of 2022*, ADWEEK (Jan. 3, 2023, 2:00 PM), <https://www.adweek.com/tvnewser/these-are-the-top-rated-cable-news-shows-of-2022/521247/>.

¹²⁰ Dominion ISO SJ at 20.

¹²¹ *Id.*

largely driven by conservative criticism, rather than liberal critics. Beyond the increase in volume is an intensity we have not seen since beginning this type of monitoring over a year ago, with several conservative accounts with large followings stating they would stop watching Fox News.¹²²

160. The Murdochs were so concerned by the conservative backlash from Fox's call of Arizona for Biden that, just one day after, on November 6, 2020, Scott and L. Murdoch exchanged texts about Fox's Arizona decision and "whether we should pull our call."¹²³ Notably, there is no indication that they questioned the veracity or reliability of "[their] call." Rather, they were consciously contemplating changing their reporting of facts to prevent viewer defection and loss of revenue and to preserve power.

161. Indeed, the next day, Murdoch told Australian journalist Col Allan ("Allan"), "I hate our Decision Desk people! And pollsters! Some of the same people I think. Just for the hell of it still praying for Az to prove them wrong!"¹²⁴

162. Because the Murdochs' influence and political power was largely derivative of their influence with Fox's audience, the backlash to the Arizona call threatened the empire they had built over the last three decades. As such, on November 8, 2020, the Murdochs and Scott had a long discussion regarding viewer

¹²² Electrical_220_00009062.

¹²³ Electrical_220_00009024.

¹²⁴ Dominion SJ Opp. Ex. 615.

backlash, how to win back viewers and “the future of Fox going forward.”¹²⁵ Ultimately, the Murdochs decided to reverse course and permit Fox News to report the “wild claims” of election fraud so as not to “abandon[]” their audience, because, as Murdoch explained in an email to Scott, “[l]ots of sane Fox viewers still believe in Trump.”¹²⁶ As one Fox News Channel senior communications executive put it, the Murdochs and Scott were now “ok with hosts going on air to undermine the election.”¹²⁷

163. The next day, L. Murdoch told Scott that Fox needed “constant rebuilding without any missteps”¹²⁸ and Scott responded: “[W]e will highlight our stars and plant flags letting the viewers know we hear them and respect them [T]oday is day one and it’s a process”¹²⁹ Scott criticized the “arrogance” in former Fox News executive and Decision Desk supervisor Bill Sammon’s (“Sammon”) decision to call Arizona and stated that “as a top executive” it is Sammon’s job “to protect the brand.”¹³⁰

¹²⁵ Dominion SJ Opp. at 19-20.

¹²⁶ *Id.* at 20-21; Electrical_220_00009054.

¹²⁷ Dominion SJ Opp. at 19.

¹²⁸ Dominion ISO SJ at 26; Electrical_220_00009028.

¹²⁹ Dominion SJ Opp. at 21; Electrical_220_00009028-29.

¹³⁰ Dominion ISO SJ at 26. Two weeks after the election, Murdoch emailed Scott. with L. Murdoch copied, that it was “[m]aybe best to let Bill [Sammon] go right

164. That same day, Scott, having “just spoke[n] to Lachlan” instructed Fox News PR Chief Irena Briganti to “call Raj [Shah] and walk through everything we are doing”¹³¹ After Scott ensured that Shah, and by extension, the Brand Protection Unit, were in lockstep with the Murdochs’ “rebranding,” Shah asked YouGov about pricing for a “custom poll” of “Fox News viewers” focused primarily on “Newsmax and OAN” and “a few deeper questions about [Fox News Channel].”¹³²

165. Later on November 9, 2020, Scott emailed Murdoch “For discussion,” and forwarded an email she had received from Carlson with the subject line “Going forward” in which Carlson laments, “I’ve never seen a reaction like this, to any media company.”¹³³

166. From that point forward, the Murdochs continued to direct Fox News’s coverage to support the false narrative regarding voter fraud in the 2020 Presidential Election promoted by President Trump and his affiliates.

away . . . [The n]ext few weeks will be very sensitive and we can’t have [him] sneering at events. And [it would] be a big message with Trump people.” Electrical_220_00009056. Minutes later, Scott confirmed that Sammon was told he was being let go that day. *Id.*

¹³¹ Dominion SJ Opp. Ex. 647.

¹³² Dominion SJ Opp. Ex. 623.

¹³³ Dominion ISO SJ Ex. 212.

167. For example, L. Murdoch: (i) instructed Scott on November 14, 2020 on how to cover a post-election Trump rally: “News guys have to be careful how they cover this rally. So far 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”;¹³⁴ (ii) instructed that a reporter he deemed “[s]mug and obnoxious” towards Trump be told to “cut it out”;¹³⁵ and (iii) told Scott “the ticker at bottom of screen [*i.e.*, the chyron that scrolls across the screen during Fox News broadcasts] is all wrong. Way too wordy and long. And anti trump whenever possible.”¹³⁶ And on November 16, 2020, Murdoch advised Scott that Fox News “should concentrate on Georgia, helping any way we can. We don’t want to antagonize Trump further Everything at stake here.”¹³⁷

C. Fox Board Members and Leadership Internally Recognize that Fox News Is Amplifying False Claims and Privately Identify the Possible Harm to Fox and Fox News

168. In the days and weeks that followed, one of the most common election fraud claims proliferated by numerous Fox hosts and guests given a platform by Fox News was that the voting machines used in the 2020 Presidential Election—

¹³⁴ Dominion SJ Opp. at 25-26; Electrical_220_00008997.

¹³⁵ Dominion SJ Opp. at 26.

¹³⁶ *Id.*

¹³⁷ *Id.* at 28; Electrical_220_00008999.

including those manufactured by Dominion and Smartmatic—were rigged, and had been used as part of a widespread plot to “steal” the Election from Trump. Those assertions were made without any factual support.

169. Behind the scenes, many at Fox understood from the beginning that the election fraud claims disseminated by Fox News were false and privately shared their concerns with the persons at Fox who were best placed to stop it: the Murdochs.

170. In fact, nearly everyone in Fox’s chain of command, between the news hosts presenting their own lies and amplifying those of others and Murdoch himself, were aware that the election fraud claims were false. They openly discussed that reality amongst themselves, privately expressing serious concerns about the harmful consequences of disseminating such claims. Many became increasingly uncomfortable as Fox continued to disseminate those allegations and conspiracy theories in the wake of the 2020 Presidential Election and were vocal in calling on their superiors to take corrective action. But no one, from the Board down to lower levels of management, intervened to stop the defamatory statements aired by Fox.

171. Indeed, as evidenced by his phone call with Kushner on Election night, Murdoch recognized, even on November 3, 2020, that Trump’s mantra of election fraud was itself the fraud. Thereafter, on January 5, 2021, Murdoch told Scott that

it was a “Trump myth that the election was stolen.”¹³⁸ Murdoch even alluded to Trump’s claims of election fraud as “stolen election bullshit” when he emailed his son L. Murdoch the day after Biden’s inauguration.¹³⁹ In keeping with those private reflections, Murdoch later testified that even “from the very beginning” he “seriously doubted any claim of massive election fraud[.]”¹⁴⁰

172. Murdoch even testified that he called Mitch McConnell (“McConnell”), the Republican Senate majority leader, immediately following the Election, “probably . . . urg[ing] [McConnell] to ask other senior Republicans to refuse to endorse Mr. Trump’s conspiracy theories and baseless claims of fraud.”¹⁴¹ On November 5, 2020, the *New York Post*, an entity controlled by the Murdochs, published an article with the headline “Downcast Trump makes baseless election fraud claims in White House address.”¹⁴² But when faced with the obligation to protect Fox News from massive liability for strengthening those very conspiracy

¹³⁸ Electrical_220_00009076.

¹³⁹ Electrical_220_00009460.

¹⁴⁰ Dominion SJ Opp. at 12.

¹⁴¹ *Id.* at 13.

¹⁴² 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/>.

theories and baseless fraud claims, Murdoch opted to play along to avoid alienating Trump and his supporters.

173. Ryan also stated that “from the beginning” he “didn’t believe the election was stolen” and found “the whole theory” of voting machines being used to rig the Election “ludicrous to anybody who follows elections.”¹⁴³ Ryan believed that Fox “should labor to dispel conspiracy theories if and when they pop up.”¹⁴⁴

174. Ryan considered the time period following the 2020 Presidential Election “a pretty important inflection point . . . for the [C]ompany” as well as “for the country”¹⁴⁵ He also understood that Fox was “clearly amplify[ing] that [conspiracy theory] news . . . by covering it,”¹⁴⁶ and testified that, in the months following the 2020 Presidential Election, he consistently advised the Murdochs that Fox should “move on from Donald Trump and stop spouting election lies.”¹⁴⁷

175. Others at Fox also immediately recognized the danger and irresponsibility of broadcasting false election claims. The November 5 statements

¹⁴³ *Id.* at 165.

¹⁴⁴ *Id.* at 23.

¹⁴⁵ *Id.* See also Electrical_220_00009037.

¹⁴⁶ Dominion SJ Opp. at 23.

¹⁴⁷ *Id.* at 24.

by Bartiromo, Bannon, and Hannity about the supposed election fraud (quoted above) stirred concern in many quarters.

176. Fox’s Chief Legal and Policy Officer, Dinh, responded to a group email chain bringing Hannity’s broadcasts questioning the Arizona call to his attention, and observed that “Hannity is getting awfully close to the line with his commentary and guests tonight.”¹⁴⁸ In response, L. Murdoch emailed Dinh privately and admonished him that it was “[n]ot for you to comment to this group” and “[l]et’s keep editorial discussions between us.”¹⁴⁹ Effectively subordinating legal liability concerns to the wishes of the Murdoch family, Dinh apologized to L. Murdoch for sharing his advice and warning with the larger group.¹⁵⁰

177. Dinh later testified that he was “skeptical” of the allegation that Dominion had rigged the election or that its software algorithms had manipulated the vote count from the time the false claims were first made.¹⁵¹ Furthermore, “Dinh testified that he was “pretty easily” able to “look up and find out” evidence

¹⁴⁸ Electrical_220_00009187.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Dominion SJ Opp. at 161-62.

demonstrating the claims that Fox News was airing about Dominion and Smartmatic were false.¹⁵²

178. Baier—Fox’s Chief Political Correspondent and executive editor and anchor of *Special Report with Bret Baier*—privately stated on November 5 that “[t]here is NO evidence of fraud. None.” He told one of Fox News’s managing editors that “[w]e have to prevent this stuff We need to fact check.”¹⁵³

179. In a conversation with his producer that day, Carlson—Fox News’s most high-profile anchor and host of *Tucker Carlson Tonight* from 2016 to 2023—agreed that “many on ‘our side’ are being reckless demagogues.”¹⁵⁴ Even so, recognizing Murdoch’s and his own priorities, Carlson said that Trump could “easily destroy us if we play it wrong.”¹⁵⁵

180. On November 6, Murdoch privately stated in an email to Scott that it was “very hard to credibly cry foul everywhere” and discussed what Fox hosts should say regarding the false narrative that Trump had won the election if Trump “becomes a sore loser.”¹⁵⁶ In a separate email to Scott the same day, Murdoch stated

¹⁵² Dominion SJ Opp. at 110, 165.

¹⁵³ Dominion ISO SJ at 20.

¹⁵⁴ *Id.* at 19.

¹⁵⁵ *Id.*

¹⁵⁶ Electrical_220_00009053.

that it “[s]eems like Rudy G[iuliani] giving Trump lots of bad advice and some family being more realistic!!”¹⁵⁷

181. In yet another email to Scott that same day, Murdoch relayed: “It would be great if we call it for Biden as soon as he gets over, say, 35,000 [votes] ahead in Pennsylvania[.] Whenever we do it it will all be over.”¹⁵⁸ In an email to Australian journalist Allan the same day, Murdoch described a Trump statement alleging widespread fraud without any factual support as “half bullshit and damaging.”¹⁵⁹

182. Thus, it is clear that almost as soon as Fox’s false election claims hit the air, key players at Fox, including Murdoch, L. Murdoch, Ryan, and Dinh, were already well aware that those claims were false. They also understood the devastating potential corporate and societal consequences of those false claims.

D. Even After the Election Is Called for Biden, Fox Leadership Allows False Election Fraud Claims to Continue

183. On November 7, 2020, the major U.S. news networks (including Fox News) called the 2020 Presidential Election for Biden. The duality of Fox’s Election coverage (and the motives behind it) were apparent. Even as Fox fanned the flames

¹⁵⁷ Electrical_220_00009050.

¹⁵⁸ Electrical_220_00009083.

¹⁵⁹ Electrical_220_00009171.

with tales of widespread election fraud, it called the Election for Biden because, as the Murdochs and others in charge knew, the numbers could not be disputed.

184. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁶⁰

185. With respect to Pennsylvania, Murdoch admitted that Fox News “should and could have gone first but at least being second saves us a Trump explosion!”¹⁶¹ When asked about this email during his deposition, Murdoch testified: “Trump still had a huge following; and, you know, when he gets mad, he stirs people up Nobody wants Trump as an enemy.”¹⁶² L. Murdoch agreed, stating that he thought it was “good to be careful. Especially as we are still somewhat exposed on Arizona.”¹⁶³ Fox waited until other networks acted first, and then swiftly followed them in making the official calls.

¹⁶⁰ Dominion ISO SJ at 19.

¹⁶¹ Electrical_220_00009105.

¹⁶² R. Murdoch Tr. at 80.

¹⁶³ Electrical_220_00009105.

186. On November 7, the *New York Post*, an entity controlled by the Murdochs, published an editorial entitled “President Trump, Your Legacy is Secure—Stop the ‘Stolen Election’ Rhetoric.” The article—which was personally reviewed and edited by both Murdochs prior to publication¹⁶⁴—stated that “[Trump’s] aides have shown no evidence [that] the election [was] ‘stolen’” and urged Trump to “stop the ‘stolen election’ rhetoric” and “[g]et Rudy Giuliani off TV.”¹⁶⁵ The article recognized: “It undermines faith in Democracy, faith in the nation, to push baseless conspiracies.”¹⁶⁶ Scott made sure the article received wide distribution, and, behind the scenes, Murdoch thanked her for doing so.¹⁶⁷

187. While privately thanking Scott for speaking honestly, the Murdochs continued to permit (and thereby condone) the baseless election fraud claims being aired on Fox News.

¹⁶⁴ Dominion ISO SJ at 22; Electrical_220_00009111.

¹⁶⁵ Dominion ISO SJ at 14, 22; Dominion SJ Opp. at 16; *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/>.

¹⁶⁶ *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/>.

¹⁶⁷ Dominion ISO SJ at 22.

E. Despite Calling the Election for Biden, Fox News Continues to Promote Election Fraud

188. Even after Fox News called the Election for Biden, Fox did not distance itself from or walk back its election fraud claims: those claims continued just as loudly on Fox’s most prominent programming for the weeks that followed.

189. On November 8, Bartiromo interviewed Trump lawyer Powell on Bartiromo’s show, focusing on the supposed election fraud. Powell specifically claimed that Dominion’s voting machines had been part of a “massive and coordinated effort to steal this election.”¹⁶⁸ Rather than question the basis for those claims, Bartiromo agreed and endorsed Powell’s accusations, stating, among other things: “I know there were voting irregularities. Tell me about that.”¹⁶⁹

190. Although not disclosed to the viewers, Powell’s only source for her outlandish claims was an unsolicited email from a private citizen which itself provided no evidence, and which Bartiromo later admitted in her deposition testimony was “nonsense” and inherently unreliable.¹⁷⁰ In fact, Powell’s claims were so nonsensical and unbelievable that Trump himself could hardly believe what he was being told. During a conference call from the Oval Office, after Powell

¹⁶⁸ *Id.* at 24.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 119 (citing Deposition Transcript of Maria Bartiromo at 134, 141).

repeated claims of foreign interference in the 2020 Presidential Election, Trump muted his speakerphone, laughed at Powell, and said “[t]his does sound crazy, doesn’t it?”¹⁷¹

191. Bartiromo’s November 8 broadcast catapulted Powell’s conspiracy theories about rigged voting machines into the mainstream.¹⁷²

192. As the false claims continued to air on Fox News, L. Murdoch and Scott exchanged multiple emails and texts on November 9, which, rather than focusing on the Company’s rapidly growing exposure to defamation liability if false election fraud claims persisted, centered instead on the Fox News audience’s negative reaction to the network’s Arizona call, and its “impact to the brand.”¹⁷³

F. At Fox’s November 2020 Board Meeting, the Board Does Nothing to Stop False Election Fraud Claims

193. In the midst of Fox disseminating false claims of election fraud, the Company held a Board meeting from November 10-12, 2020, which all Board members and business unit leaders attended. Despite this opportunity to address and correct Fox’s Election coverage, there is no evidence that the Board meaningfully

¹⁷¹ *Final Report of the Select Committee to Investigate the January 6th Attack on the United States Capitol*, H.R. Rep. No. 117-663, at 219 (2022), <https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/pdf/GPO-J6-REPORT.pdf>.

¹⁷² Dominion ISO SJ at 29.

¹⁷³ *Id.* at 26.

discussed Fox News's coverage or the serious ramifications of broadcasting false claims. The detailed agenda and Board minutes from that meeting do not even mention the Election.¹⁷⁴

194. In fact, in his CEO review to the Board, L. Murdoch actually *praised* Fox News's coverage of the Election, stating: "As we emerge from the presidential election, I could not be prouder of the team at Fox News for the quality and integrity of our coverage" ¹⁷⁵ L. Murdoch also understood the far reach and ramifications of Fox News's broadcasting, stating that "Americans tuned to Fox News above all others on election night" and commending Fox News for being "the #1 network in all of television, breaking the all-time cable news viewership record for election coverage with 14 million viewers" ¹⁷⁶

195. At this meeting, the Board received an update about the Rich Action and the McDougal Action.¹⁷⁷ The Board was thus presumably aware that Fox had just settled the Rich Action concerning what the Second Circuit described as

¹⁷⁴ BUILDING_220_00001315-1320; Electrical_220_00009163.

¹⁷⁵ Electrical_220_00007660.

¹⁷⁶ *Id.*

¹⁷⁷ PSPB_220_00001231. The Audit Committee received a similar update on November 10, 2020. PSPB_220_00001024. The Audit Committee materials for that meeting also include a presentation on "FOX News Media Compliance and Culture" that (tellingly) has been completely redacted as non-responsive. PSPB_220_00001115-34.

allegations that Fox subjected the Rich Family to a “campaign of emotional torture” in a baseless attempt to tie Seth Rich’s murder to the disclosure of DNC emails to WikiLeaks, and that Fox had required the fact of that settlement to remain confidential until after the 2020 Presidential Election. Despite that awareness, the Board held no formal discussion during the November 10-12, 2020 meeting about legal risk related to Fox’s ongoing coverage of the 2020 Presidential Election.

196. The meeting ended and neither the Board nor its purportedly independent directors took action to address the false claims being disseminated by Fox News. Despite the lack of formal action, Board members were well-attuned to the bizarre dynamic playing out at Fox News. On the last day of the Board meeting, Defendant Dias forwarded Ryan an *Axios* article with the tagline “Trump Eyes Digital Empire to ‘Wreck Fox[,]’” and commented: “[E]xactly as you described it: Trump needs a scapegoat, and it’s now Fox.”¹⁷⁸ Thus, while the Board meeting did not include any formal discussion of Fox’s coverage of Trump’s false election fraud conspiracy, Board members informally discussed the topic, but took no action to restrain Fox’s defamatory coverage.

¹⁷⁸ Dominion SJ Opp. at 22-23; Electrical_220_00008990.

G. Dominion Repeatedly Informs Fox that Its Election Fraud Claims Are False and Requests Retractions, But Fox News Knowingly Continues Its Defamatory Broadcasts

197. On November 12, 2020, barely a week after the 2020 Presidential Election (and the same day the Board held a meeting), Dominion sent a letter to Scott and Wallace to directly protest Fox’s false allegations about Dominion. A reasonably structured internal reporting mechanism, which Fox lacked, would have identified that letter as a material risk facing Fox. Yet that letter was merely the beginning of a months-long campaign by Dominion to counter and specifically refute the falsehoods about Dominion being broadcast by Fox.

198. Indeed, Dominion’s November 12 letter was the first of what would eventually be thousands of emails from Dominion to Fox executives and employees presenting evidence that Fox’s allegations about Dominion were false and requesting that Fox cease its defamatory coverage. Dominion’s letters and “setting the record straight” emails directly addressed and sought to dispel Fox’s claims of widespread election fraud, “providing facts about Dominion and links to public information debunking lies about Dominion.”¹⁷⁹ Those communications also presaged what any responsible Board or management team would have understood to be the inevitable

¹⁷⁹ Dominion ISO SJ at 32.

endpoint of persistently and unrepentantly airing claims known to be false: defamation liability.

199. Also on November 12, Tony Fratto (“Fratto”), Dominion’s communications consultant, personally reached out to his contacts among the hosts and executives at Fox and raised concerns about the allegations. On November 16, Fratto wrote directly to Fox News CEO Scott and Fox News President Wallace: “[A]s you know . . . [Dominion] has received a great deal of attention on Fox[]News and from the President. An enormous amount of misinformation—actually, completely and verifiable [sic] wrong information—is finding its way on-air I think this situation is crossing dangerous lines.”¹⁸⁰

200. During that same timeframe, Fratto contacted Bartiromo (a personal acquaintance of Fratto) multiple times to tell her that Powell’s claims about Dominion were false.¹⁸¹

201. Even as Dominion put Fox on notice of the falsity of its reporting (and despite Fox’s obligations to correct false reporting and issue retractions), Fox News continued to air false claims. Behind the scenes, even some who had originally

¹⁸⁰ *Id.* at 33.

¹⁸¹ Dominion ISO SJ Ex. 119, Deposition Transcript of Salvatore Fratto at 215-17. *See also* Dominion ISO SJ at 123.

bolstered those conspiracy theories were souring on them: Hannity said privately on November 11 that Giuliani “is acting like an insane person.”¹⁸²

202. On November 12, however, Dobbs—host of Fox News’s *Lou Dobbs Tonight* from 2011 to 2021 and a defendant in Smartmatic’s defamation lawsuit—invited Giuliani onto his show. When Giuliani again presented false assertions about Dominion, Dobbs agreed, stating: “[It] looks to me like . . . the endgame to a four-and-a-half year-long effort to overthrow the president of the United States.”¹⁸³

203. Those assertions were not only outrageous, they were readily debunked. Dinh later testified that he found Giuliani’s assertions (which Dobbs amplified) that Dominion was owned by a Venezuelan company founded “to rig elections for [Venezuelan dictator] Hugo Chavez” so “extraordinary” that he independently researched them. Dinh was “pretty easily” able to “look up and find out” evidence demonstrating that Giuliani and Dobbs were lying.¹⁸⁴

204. Fratto reached out again on behalf of Dominion after Dobbs’ November 12 show, forwarding part of the transcript to Wallace and telling him: “More fucking [] lies. Honestly. He is a disgrace.” Although Fratto and Wallace then spoke over the phone for an “off the record briefing from Dominion to walk through the business

¹⁸² *Id.* at 151.

¹⁸³ *Id.* at 30.

¹⁸⁴ Dominion SJ Opp. at 110, 165.

and [Dominion's] concerns[,]"¹⁸⁵ Fox took no action to stop Dobbs and continued to disseminate lies regarding Dominion.

205. Many of Fox's officers knew it was disseminating lies about Dominion in the days following the 2020 Election. By November 14, 2020, Dominion had sent Fox so many "setting the record straight" emails that, when another such email was forwarded internally to Fox News's Senior Vice President, David Clark, he jokingly replied: "Oh I have it tattooed on my body at this point."¹⁸⁶

H. Fox's Own Fact-Checking Division Confirms that the Election Fraud Claims Are False, But Fox News Continues to Disseminate Those Lies

206. Fox's own internal fact-checking department, the Brainroom, "concluded the charges [of election fraud] were false by November 13."¹⁸⁷

207. Internal fact checking departments like the Brainroom are designed to keep news organizations in line with their responsibilities under the First Amendment and prevent the significant harm that defamatory conduct could cause by putting its executives on notice of the falsity of a proposed publication or report before publication, thereby preventing issues related to the falsity of content from developing into costly legal matters that harm the company. Internal fact checking

¹⁸⁵ Dominion ISO SJ Ex. 235, 236.

¹⁸⁶ Dominion ISO SJ Ex. 234.

¹⁸⁷ Dominion ISO SJ at 9.

departments are also crucial for maintaining credibility with viewers. But the utility of that preventative control is entirely eliminated where, as here, the department's conclusions that certain proposed statements are false are utterly ignored by the Company, its executives, and its Board.

208. Following the 2020 Presidential Election, Fox News executives Scott, Wallace, and Tom Lowell, the EVP and Managing Editor of News, requested that the Brainroom “separate fact from fiction” about Dominion and Smartmatic. In response, the Brainroom's November 13 fact check stated “[t]here's no evidence of widespread fraud in the 2020 election” and specifically debunked claims about Dominion and Smartmatic.¹⁸⁸ Like Dominion, the Brainroom cited multiple public fact checks disproving the accusations being made.¹⁸⁹ That should have been the end of Fox News's dissemination of these lies. As Fox Senior Vice President for Weekend News and Programming David Clark (“Clark”) put it: “If the Brainroom . . . concluded that the charges were, in fact, false, they never should have been aired.”¹⁹⁰

¹⁸⁸ *Id.* at 34.

¹⁸⁹ *Id.* at 33-34, 92.

¹⁹⁰ *Id.* at 33.

209. Despite Dominion and Fox’s own fact-checking division warning Defendants that Fox’s election fraud claims were false, Defendants continued to let the network broadcast those claims.

210. On November 13, 2020, Pirro—the host of the Fox News program *Justice w/ Judge Jeanine*, and a defendant in the Smartmatic Action—received from her producer a copy of one of Dominion’s “setting the record straight” emails, which documented Dominion’s ownership structure and listed public sources debunking the election fraud claims.¹⁹¹ Pirro’s producer told her that Dominion’s denials would need to be included if she made any accusations about Dominion on air. That same day, Scott told L. Murdoch: “We are staying close on [Pirro’s] open script[.]”¹⁹²

211. The next day, November 14, Scott told L. Murdoch: “we should be over-promoting [Pirro’s show] . . . so they are fixing that[.]”¹⁹³ Pirro’s producer submitted a draft of the opening of Pirro’s November 14 show to the Brainroom for fact checking.¹⁹⁴ The Brainroom concluded that several of Pirro’s assertions were false, including an allegation that voting software was used to switch votes from Trump to Biden. The Brainroom also sent a separate document entitled

¹⁹¹ *Id.* at 136.

¹⁹² Electrical_220_00008996.

¹⁹³ Electrical_220_00008997.

¹⁹⁴ Dominion ISO SJ at 136.

“Background: Dominion Voting Systems & Criticism/Accusations – Fact Checks,” which cited Dominion’s recent email to Fox as well as public sources debunking claims that Dominion had deleted or switched votes.¹⁹⁵

212. Despite being provided with all of that evidence, Pirro hosted Powell on her November 14 show. When Powell (predictably) repeated indefensible conspiracies about election fraud, Pirro gave her the Fox News platform to spread her lies, never confronting Powell with any of the accumulated evidence showing that Powell’s claims were false.

213. Also on November 14, 2020, Murdoch responded to an article alleging the Election was stolen, sent to him by Robert Thomson, the CEO of News Corp, asking: “Ok. But where is the evidence? West Coast too? If this is all true there must be something somewhere to prove it.”¹⁹⁶

214. On November 15, Fox News aired a broadcast hosted by Bartiromo, featuring both Giuliani and Powell as guests. The interviews were pre-recorded, so Bartiromo, her producer, and Clark each knew which false claims Giuliani and Powell made before Fox disseminated them. Their actions and inactions indicate that non-interference with Trump’s election fraud theory was a top-down decision.

¹⁹⁵ *Id.*

¹⁹⁶ Electrical_220_00009181.

215. Clark emailed Meade Cooper (Fox News EVP of Primetime Programming) and Wallace during the pre-tape about an unrelated comment that Giuliani made in the interview, but said nothing about the false claims about Dominion. Even though every one of those individuals knew by this time that Giuliani and Powell were repeatedly fabricating wild allegations, no one at Fox intervened, and the broadcast went forward without any of the false claims challenged, moderated, or removed.¹⁹⁷

216. In that broadcast, Giuliani and Powell repeated what had become a prevailing conspiracy theory about Dominion: that it was owned by a Venezuelan company founded to rig elections for Hugo Chavez. Like the other Fox hosts giving a platform to those false allegations, Bartiromo neither questioned nor challenged them on air. Fox's leadership was purposely ensuring that Fox News was and would continue to be a platform for these defamatory statements.

I. Instead of Correcting Persistently Aired False Claims, Fox Leadership Cracks Down on Truthful Reporting

217. In mid-November 2020, Murdoch was still expressing concerns behind the scenes, yet did not intervene to correct Fox's coverage. On November 16, he emailed Scott, stating "Trump will concede eventually and we should concentrate on [the runoff election in] Georgia We don't want to antagonize Trump further,

¹⁹⁷ Dominion ISO SJ at 121-22.

but Giuliani taken with a large grain of salt. Everything at stake here[,]”¹⁹⁸ apparently referring to the threat posed by Newsmax, OAN, and other more extreme news outlets as competitors.

218. Although Murdoch recognized the many problems with continuing to put Giuliani on Fox’s programs, Murdoch was evidently more concerned with maintaining his and Fox News’s standing with Trump and his supporters, who Trump had sent running to other outlets by publicly disparaging Fox News. If the Murdochs lost their influence over those supporters, their political clout (and revenues) would crumble.

219. The reason for the Murdochs’ concern was clear: the conservative movement that Murdoch sought to lead and upon whom Fox News relied for its viewership was deeply angry with Fox News for even the slightest failure to support claims by Trump about the Election.

220. On November 11, 2020, L. Murdoch received an email from Shah entitled “Tracking Data Shows Another Drop” and stating: “I believe the bleeding won’t stop until there’s a clear and public admission of mistakes on election night coverage and a display of accountability.”¹⁹⁹

¹⁹⁸ *Id.* at 34; Electrical_220_00009077.

¹⁹⁹ Electrical_220_00009242.

221. Just two days later, in a Brand Protection Unit Update on November 13, 2020, L. Murdoch and other senior executives were told:

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.²⁰⁰

222. On November 16, 2020, the bad news continued, with Shah informing L. Murdoch: “We are now underwater with our viewers in 3-day tracking, and continue to show declines in 1 and 2-week averages. Social media was also hostile and from the right led by attacks from the President and the weekend rally.”²⁰¹ As a result, Murdoch acknowledged that ratings were becoming a real worry²⁰² and L. Murdoch acknowledged that he had told people that “Fox News’ ratings troubles were keeping [him] awake at night.”²⁰³

223. Despite the serious problems at Fox News, a November 17 editorial in the Murdoch-controlled *WSJ* (whose readership differs from the viewership of Fox News) stated that a “phalanx of federal agencies, state officials across the country

²⁰⁰ Electrical_220_00009059.

²⁰¹ Electrical_220_00009182.

²⁰² See R. Murdoch Tr. at 290.

²⁰³ See Deposition Transcript of Lachlan Murdoch (“L. Murdoch Tr.”) at 147.

overseeing elections and voting-equipment vendors said last week that ‘there’s no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised.’”²⁰⁴ Dominion forwarded the editorial to Fox the following day, “emphasizing a complete lack of evidence to support recent claims against Dominion.”²⁰⁵

224. On November 17, Carlson privately confronted Powell about her election fraud claims: “You keep telling our viewers that millions of votes were changed by the [voting] software. I hope you will prove that very soon. You’ve convinced them that Trump will win. If you don’t have conclusive evidence of fraud at that scale, it’s a cruel and reckless thing to keep saying.”²⁰⁶

225. On November 18, Carlson told Laura Ingraham (“Ingraham”), the host of the Fox News program *The Ingraham Angle*: “Sidney Powell is lying . . . I caught her. It’s insane.” Ingraham responded: “[Powell] is a complete nut. No one will work with her. Ditto with Rudy [Giuliani].” “It’s unbelievably offensive to me[,]” Carlson responded: “Our viewers are good people and they believe it.”²⁰⁷

²⁰⁴ Alexa Corse, *Voting Machine Supplier Criticized by Trump in Spotlight on Election Integrity*, WALL ST. J. (Nov. 17, 2020, 9:46 AM), <https://www.wsj.com/articles/voting-machine-supplier-criticized-by-trump-in-spotlight-on-election-integrity-11605624361>.

²⁰⁵ Dominion ISO SJ at 94.

²⁰⁶ *Id.* at 10.

²⁰⁷ *Id.* at 35.

226. Despite knowing that the election fraud claims were lies, Ingraham did not use her platform to directly confront or openly challenge them. Instead, soon after her discussion with Carlson, Ingraham told Fox News's viewers that the "[E]lection was rife with problems and potential fraud" and pushed Trump's "right and obligation . . . to pursue legitimate legal challenges to this outcome."²⁰⁸

227. Carlson briefly challenged Powell during his Thursday, November 19 show because of her failure to present evidence of voter fraud, and immediately received significant backlash from Fox's viewers. In an email that weekend about Carlson's November 19 show, Shah reported to L. Murdoch and others: "Social media interactions were decidedly negative since his initial segment from online conservatives from Thursday night to Sunday afternoon" and "this isn't an audience that can easily be persuaded and are willing to believe just about anything."²⁰⁹ Carlson immediately backed off, telling his viewers on Monday: "You've heard a lot over the past few days about the security of our electronic voting machines. This is a real issue, no matter who raises it or who tries to dismiss it out of hand as a

²⁰⁸ Olivia Rubin, *What Fox News Hosts Allegedly Said Privately Versus On-Air About False Election Fraud Claims*, ABC NEWS (Apr. 24, 2023, 12:01 PM), <https://abcnews.go.com/Politics/fox-news-hosts-allegedly-privately-versus-air-false/story?id=97662551>.

²⁰⁹ Electrical_220_00009008.

conspiracy theory. Electronic voting is not as secure as traditional hand counting. Period.”²¹⁰

228. Ingraham, Carlson, and Fox’s other hosts and leadership promoted the election fraud claims because Fox News feared Trump and his legion of loyal supporters. Murdoch testified at his deposition, in response to the question “why did Fox not want to antagonize Trump further on November 16th 2020?”, that “[Trump] had a very large following, and they were probably mostly viewers of Fox, so it would have been stupid.”²¹¹ He further acknowledged that “Trump’s crazy attacks on Fox [] hurt ratings” and explained that, even though Fox News had supported those claims at least 50 times in the immediate aftermath of the Election, “[t]hat wasn’t enough for him.”²¹²

229. Notably, during the three weeks following the Election, Fox viewership dropped 29%, while upstart conservative news media rival Newsmax saw a

²¹⁰ Olivia Rubin, *What Fox News Hosts Allegedly Said Privately Versus On-Air About False Election Fraud Claims*, ABC NEWS (Apr. 24, 2023, 12:01 PM), <https://abcnews.go.com/Politics/fox-news-hosts-allegedly-privately-versus-air-false/story?id=97662551>.

²¹¹ R. Murdoch Tr. at 245-46.

²¹² *Id.* at 291-92.

staggering 277% boost.²¹³ At his deposition, L. Murdoch acknowledged that Newsmax's growth came at Fox's expense.²¹⁴

230. Indeed, when a friend wrote to Carlson on November 20, shocked that he was getting such pushback for his November 19 questioning of “obvious bullshit artist” Powell, Carlson pointed to the same motive as the Murdochs: “I’ll never go along with this shit But a lot of it is being driven by Newsmax, which sees an opening. There’s a large business element to this.”²¹⁵

231. Defendants plainly elevated appeasing Trump over truthful reporting.

232. On November 19, 2020, Fox News broadcast the entirety of a press conference by Giuliani and Powell that repeated the now-familiar false claims about Dominion. In a contemporaneous email with the subject line “Watching Giuliani![,]” Murdoch said the press conference was “[r]eally crazy stuff. And damaging.”²¹⁶ Murdoch separately emailed Scott that the press conference was “[t]errible stuff damaging everybody, I fear. Probably hurting us too. Seems chaotic.”²¹⁷ Shah also acknowledged to L. Murdoch, Scott, and Dinh that “Powell

²¹³ Electrical_220_00009306.

²¹⁴ L. Murdoch Tr. at 221-22.

²¹⁵ Dominion ISO SJ at 41.

²¹⁶ Dominion ISO SJ at 35.

²¹⁷ Electrical_220_00009001.

offered no evidence for” what was described as her “outlandish vote fraud claims.”²¹⁸ But instead of publicly reporting that those claims had no basis in fact, Fox continued to book Powell on its air.

233. Moreover, notwithstanding those behind-the-scenes comments from Murdoch and others, Fox’s leadership began to criticize their personnel for attempting to provide truthful reporting.

234. For instance, on November 9, Fox anchor Neil Cavuto (“Cavuto”) made the decision to cut away from a Trump campaign press conference when it veered into claims of election fraud, stating: “[U]nless [Press Secretary Kayleigh McEnany] has more details to back that up, I can’t in good countenance [sic] continue to show you this [T]hat’s an explosive charge to make.”²¹⁹

235. Fox’s Brand Protection Unit, led by Shah, referred to Cavuto’s action as a “Brand Threat” and escalated it to senior Fox News and Fox leadership. In a text message to Scott that same day, L. Murdoch commented “Cavuto was bad today I hear” and Scott agreed.²²⁰

236. On November 18, Fox News’s SVP of Primetime Programming and Analytics referred to Cavuto’s decision to turn away from the Trump campaign press

²¹⁸ Electrical_220_00009008.

²¹⁹ Dominion ISO SJ at 27.

²²⁰ Electrical_220_00009028-29.

conference as an “unforced error[.]” “Do not ever give viewers a reason to turn us off[.]” Ron Mitchell insisted to Scott and Wallace.²²¹

237. On November 13, 2020, Fox reporter Jacqui Heinrich (“Heinrich”) issued a tweet fact-checking a November 12 Trump tweet that included false claims about Dominion.²²² Heinrich correctly concluded that Trump’s tweet was baseless, but her tweet was later removed.²²³ Heinrich’s conclusion had been the same as the Brainroom’s around the same time: “[There was] no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised.”²²⁴ The only difference is that Heinrich had said it publicly.

238. Rather than uphold its journalistic responsibility to ensure truthful reporting and challenge falsehoods on air, Fox chose to pander to its audience by continuing to proliferate the false election fraud claims that came to dominate the conservative narrative. Fox made no attempt to stop the spread of false accusations on its air until it finally banned Giuliani and Powell from its airwaves on December

²²¹ Dominion ISO SJ at 35.

²²² Jonathan Chait, *Tucker Carlson Tried to Get Fox News Reporter Fired for Fact-Checking Trump*, N.Y. MAG. (Feb. 17, 2023), <https://nymag.com/intelligencer/2023/02/tucker-carlson-wanted-to-fire-reporter-who-corrected-trump.html>.

²²³ *Id.*

²²⁴ *Id.*

12, 2020, based on legal concerns. Despite the ban, Fox News never reported retractions, corrections or clarifications for its false election coverage.

J. Fox’s False Election Fraud Claims Continue Even After Dominion Makes the Prospect of Defamation Liability Clear

239. When Dominion did not receive a substantive response—let alone a retraction—in the week following its initial outreach, and Fox’s false on-air allegations continued, Dominion contacted Fox News’s legal team directly. On November 20, 2020, Dominion sent a letter to Fox News’s then-General Counsel, Lily Fu Claffee (“Claffee”).²²⁵

240. Dominion’s letter enumerated the multiple Fox broadcasts since the 2020 Presidential Election that had given a platform to Giuliani, Powell, and others, with Fox hosts often reiterating their false assertions. Those “false and defamatory allegations” about Dominion, the letter explained, were so improbable that “only a reckless person would have made them or provided . . . a forum to air [them].”²²⁶ Dominion also pointed out again that many of Fox’s claims had already been publicly disproven, and directed Fox News’s counsel to a recently released memorandum published by the federal agency overseeing U.S. election security, which declared the 2020 Presidential Election “the most secure in American history”

²²⁵ Dominion Compl. Exh. 11.

²²⁶ *Id.* Ex. 11 at 1-2.

and reaffirmed that there was “no evidence that any voting system . . . was in any way compromised.”²²⁷

241. By November 20, 2020, Dominion could also detail the human repercussions of Fox’s decision to persistently disseminate false claims about the 2020 Presidential Election. Even beyond “exacerbat[ing] the incredible harm to Dominion’s reputation[,]” Dominion informed Fox News that “the vitriol that has found voice on Fox” had already “resulted in threats to the safety of Dominion employees and their families.”²²⁸

242. The November 20 letter made clear that Dominion was “prepared to do what is necessary to protect its reputation and the safety of its employees” and stated that Fox’s election fraud claims showed “reckless disregard for truth and blatant disregard for Dominion’s reputation.”²²⁹ Dominion expressed hope that Fox would “correct the most outlandish of the false allegations it has helped perpetuate, and will also ensure that future reporting about Dominion is both fair and accurate.”²³⁰

²²⁷ *Id.* Ex. 11 at 1.

²²⁸ *Id.*

²²⁹ *Id.* Ex. 11 at 4.

²³⁰ Electrical_220_00010709, 10712.

243. The letter closed by stating: “We trust that Fox is committed to truth and will redouble its efforts to avoid further unwarranted damage to Dominion.”²³¹

244. The language of Dominion’s letter, mirroring the “actual malice” legal standard for defamation liability (*i.e.*, knowledge of falsity or reckless disregard for the truth), made it evident that Fox leadership was exposing the Company to a very real risk of defamation lawsuits by failing to correct its coverage and ensure the veracity of Fox News’s broadcasts going forward. Even with the clear threat of defamation liability, Fox’s dissemination of falsehoods (and Murdoch’s refusal to intervene despite senior management and Board members looking to him to do so) continued.

245. On November 20, the Brainroom was again asked to fact check a draft opening for Pirro’s show. Her producer also forwarded the opening to Clark and described it as “rife [with] conspiracy theories and bs and is yet another example why this woman should never be on live television.”²³²

246. The Brainroom concluded that, once again, multiple assertions in Pirro’s opening were false. Among other things, Pirro reiterated the objectively debunked conspiracy theory that Dominion and Smartmatic had been started in

²³¹ *Id.* at 10714.

²³² Dominion ISO SJ at 137-38.

Venezuela and were “capable of flipping votes[,]” and repeated the lie that there had been an “overnight popping of the vote tabulation that cannot be explained for Biden.”²³³

247. Pirro “refus[ed] to drastically change the open despite the fact check.” The opening aired on November 21, leaving intact the majority of the statements the Brainroom had confirmed to be false.²³⁴

248. In a November 21 text to Trump Campaign lawyer Jenna Ellis, Carlson called Pirro’s claims that Dominion had “rigged” the Election “shockingly reckless,” noting that there were no “internal Dominion documents or copies of the software showing that they did it.”²³⁵

249. The fact that Pirro’s producer and supervising editorial vice president were both powerless to stop her highlights a significant reality within Fox at the time: Murdoch was signaling, from the ship’s helm and with no opposition from the Board, that he condoned broadcasting false claims of election fraud.

²³³ *Id.*

²³⁴ *Id.* at 138; Jeremy Barr, *Fox News ‘Brain Room’ Debunked 2020 Claims. Jeanine Pirro Still Aired Them.*, WASH. POST, (April 3, 2023, 5:55 PM), <https://www.washingtonpost.com/media/2023/04/03/fox-dominion-jeanine-pirro-brain-room/>.

²³⁵ *Id.* at 10.

250. One would expect a controller seeing his or her employees lay the groundwork for the company to be sued for defamation to take protective action, but Murdoch did no such thing. On November 23, 2020, Preston Padden, a former Fox executive, emailed Murdoch a *Mediaite* article criticizing Fox News opinion hosts for amplifying conspiracy theories about the Election.²³⁶ The article discussed how Fox had to decide between reporting the news truthfully or appeasing the part of its audience that began to sample Newsmax and OAN—which the article called a short-term reaction. Murdoch responded that there was “[s]ome truth” to the article and that we “[j]ust have to hold our nerve and up our game!”²³⁷ Of course, Murdoch was navigating the situation by allowing Fox to defame Dominion and Smartmatic in order to quell viewer defection, preserve profit and hold onto his leadership position in political circles.

251. Murdoch’s inaction pointedly signaled that hosts could keep pressing Election lies, because Fox’s Board and leadership refused to stand up to Murdoch. That situation reflected an increasingly corrosive cycle, in which even Fox’s editors

²³⁶ Colby Hall, *Fox News Identity Crisis: Indulge Trump’s Election Conspiracy or Reject It...and Watch Its Audience Flee?*, MEDIAITE (Nov. 23, 2020, 8:10 AM), <https://www.mediaite.com/tv/fox-news-identity-crisis-indulge-trumps-election-conspiracy-or-reject-it-and-watch-its-audience-flee/>.

²³⁷ Electrical_220_00009120.

had no power to take action because their leader and controller would not step in and the Board took no steps to protect the Company from Murdoch's reckless inaction.

252. Indeed, when both Dobbs and Hannity again hosted Powell on their shows on November 30, Powell yet again repeated the false claim that voting machines had used an algorithm to reallocate votes from Trump to Biden and add votes for Biden in order to "steal" the Election. With Murdoch remaining silent while editors and producers privately raged, Powell met no resistance from Dobbs or Hannity.²³⁸ The tone from the top let the subordinates know what was expected.

253. Dominion's Fratto reached out to Fox yet again after that broadcast, writing to Wallace personally: "You guys know this is all bullshit. Everyone knows it This is reckless."²³⁹

254. On December 22, 2020, Dominion sent another retraction demand letter²⁴⁰ to Claffee stating that Dominion had recently sent a retraction letter to Powell and summarizing additional information learned by Dominion since the date of its initial retraction demand. The December 22 letter discussed Carlson's invitation to Powell to appear on his show and present evidence to support her claims of election fraud and Dominion's involvement—which Powell ignored. Despite

²³⁸ Dominion ISO SJ at 37-38.

²³⁹ *Id.* at 37.

²⁴⁰ Dominion Compl. Ex. 23.

promising that she would produce evidence supporting her claims, Powell appeared on Dobbs' program on December 10 and failed to provide anything to either Carlson or Dobbs. Dominion further explained that Dobbs gave credit to and repeated Powell's false allegations.

255. Dominion also presented information challenging the veracity of claims made by several individuals—such as Giuliani and Trump's former National Security Advisor Michael Flynn ("Flynn")—who had appeared on Fox News programs and "echoed Ms. Powell's false claims about Dominion."²⁴¹ Remarkably, even after Dominion sent its retraction demands, Dobbs and Hannity continued to feature Powell on their programs, while Pirro featured Flynn on her program.

256. Dominion also stated that as a result of Fox News's dissemination of false claims about Dominion, its employees had been harassed and received death threats.²⁴² Dominion advised Fox News that it was drafting a defamation complaint against Powell and others, and provided Fox with another opportunity to issue a retraction to avoid being named in Dominion's forthcoming lawsuit.²⁴³ Fox ignored Dominion's express warning and failed to issue a retraction.

²⁴¹ *Id.* Ex. 23 at 2.

²⁴² *Id.* Ex. 23 at 6.

²⁴³ *Id.* Ex. 23 at 7.

257. When asked why Fox still refuses to issue a retraction in light of these death threats, Murdoch callously testified that he did not “believe [Dominion employees] are getting death threats today” and that it would not make a difference since it was now “two years later.”²⁴⁴

K. Fox’s Board and Leadership Continue Their Willful Inaction, Even As They Privately Recognize the Harm Murdoch is Causing

258. Internally, Fox personnel continued to raise concerns. In late November 2020, Baier repeatedly raised the idea of an hour-long special to “debunk the leading myths bolstering Trump’s baseless claims of fraud” with colleagues and Fox News executives, as “an important way to show Fox’s audience that it was taking their concerns seriously while presenting them with the facts about the election.”²⁴⁵ Although Baier continued to advocate for the special to “debunk the leading myths” until early January, Fox News leadership never approved that plan.²⁴⁶

259. For its part, the Board continued its complete deference to the Murdochs and took no action to protect Fox or its minority investors.

²⁴⁴ R. Murdoch Tr. at 333.

²⁴⁵ Davis Folkenflik, *The Loneliness of Fox News’ Bret Baier*, NPR (Apr. 10, 2023, 5:00AM), <https://www.npr.org/2023/04/10/1168753288/the-loneliness-of-fox-news-bret-baier>.

²⁴⁶ *Id.*

260. Ryan testified that a month after the election, he was still only privately communicating with the Murdochs, trying to persuade them to change course. On December 5, 2020, Robert Doar, the head of the American Enterprise Institute, texted Ryan urging him to get Carlson, Hannity, Ingraham, and Dobbs to push back on Trump's claims, noting: "If the Murdochs tell those four to do it, they will."²⁴⁷

261. The next day, December 6, 2020, Ryan texted the Murdochs: "we are entering a truly bizarre phase where [Trump] 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." Ryan specifically called for Fox to put out "solid pushback (including editorial [content by Fox's opinion hosts]) of [Trump's] baseless calls for overturning electors[.]"²⁴⁸

262. In response to Ryan's text, Murdoch wrote to L. Murdoch on December 7: "Call me later re Trump and [Ryan]. Trump on Saturday sounded really crazy[.]" referring to Trump pressuring Georgia governor Brian Kemp to overturn the Election.²⁴⁹ Murdoch spoke with Scott the same day and again commented on Trump's "crazy" performance the previous Saturday, as well as the

²⁴⁷ Electrical_220_00009036.

²⁴⁸ Dominion SJ Opp. at 31; Electrical_220_00009037.

²⁴⁹ Dominion SJ Opp. at 31-32; Electrical_220_00009086.

“horrible” plan Trump had begun spreading among his supporters to disrupt the presidential inauguration by holding his own “second inauguration” on the same day. Murdoch asked to “talk through this” with Scott and L. Murdoch.²⁵⁰

263. None of those discussions led to full Board discussions or changes in the Company’s conduct. While the inference that the entire Board had to be aware of Fox’s defamatory actions regarding Dominion is inescapable (in light of the public nature of Fox News’s coverage of the Election, public reporting about that Coverage, and the inference that the directors of a news media company follow its coverage of presidential elections, the biggest political event in each four-year cycle), no such inference is even needed as to the Murdochs, Ryan and Dias. They were actively discussing Trump’s “crazy” conspiracy claims and the need for Fox to refute them.

264. Ryan’s testimony further reveals the reason for the Board’s abject failure to take any action at this critical time: after the 2020 Presidential Election, “Fox was trying to navigate this dynamic between a core group of Trump loyalists who were ignoring the truth and the truth itself.”²⁵¹

²⁵⁰ Dominion SJ Opp. at 31-32.

²⁵¹ Dominion SJ Opp. at 32.

265. In the end, the internal communications at Fox that have since come to light from the days and weeks after the 2020 Presidential Election demonstrate that Fox knew its coverage was false at the time, but absent action from the Company's controller, nobody—including the members of the Board—was willing to take action to protect Fox from devastating consequences.

L. Smartmatic Demands That Fox Retract Its False Claims or Face Liability for Defamation

266. The Murdochs, Ryan and countless others at Fox were well aware of the risk of liability to Smartmatic while discussing Trump's dangerous conspiracy theories. On December 10, 2020, Smartmatic sent its own retraction demand letter to Fox News. The 20-page letter "identified many of the false and misleading statements published by Fox, explained the reasons the statements were false and misleading, and requested a full and complete retraction."²⁵²

267. Like Dominion, Smartmatic pointed out the consequences of Fox's actions, even beyond financial and reputational harm, stating: "Your disinformation campaign has created personal risk for the men and women who work at the company. Smartmatic and its employees and management have received countless threats in the wake of your Reports . . . including threats of death and personal

²⁵² Smartmatic Am. Compl. at 170.

violence” and even threats to “[f]amily members, including children, of Smartmatic’s executives.”²⁵³

268. Smartmatic fared no better than Dominion in reasoning with Fox, which refused to correct its coverage. As Smartmatic’s eventual complaint pointed out, both Murdochs admitted they have the authority to require Fox News to issue corrections or retractions.²⁵⁴ The Murdochs chose not to use that power, even though Smartmatic’s retraction demand stated that Fox’s “pattern of behavior qualifies as either knowingly publishing factually inaccurate information, or a reckless disregard for the truth” and reserved its “right to pursue defamation and disparagement claims” if Fox News did not confirm that it would issue a retraction by December 15.²⁵⁵

269. To this day, Fox News still refuses to issue any retraction relating to its false election fraud reporting.

M. Fox’s Perpetuation of False Election Fraud Claims Precipitates a Violent Attack on the U.S. Capitol, Disrupting the Certification of the 2020 Presidential Election

270. On January 5, 2021, with the 2020 Presidential Election set to be certified by Congress and the Fox-promoted election fraud claims now legitimized among countless Fox viewers, Murdoch emailed Scott, noting half-heartedly that it

²⁵³ Smartmatic Am. Compl. Ex. 77.

²⁵⁴ Smartmatic Am. Compl. at 96.

²⁵⁵ Smartmatic Am. Compl. Ex. 77.

had “been suggested our prime time three should independently or together say something like ‘the election is over and Joe Biden won,’” which “would go a long way to stop the Trump myth that the election [was] stolen.”²⁵⁶ However, Fox did not take that step—or any other—to try to undo the damage Fox caused by airing (for months) false claims of a stolen Election.

271. On January 6, 2021, the date the 2020 Presidential Election was to be certified, a Trump-led rally stoked the fire for a violent attack on the U.S. Capitol. That horrifying outgrowth of the election fraud claims that Fox News had been propagating *finally* caused Fox’s leadership to take action.

272. When Trump called into Dobbs’ program on January 6—while the U.S. Capitol was still under attack—Scott and Wallace blocked Trump from going on air. As Fox Business News President Lauren Petterson explained, it would have been “dangerous” and “irresponsible to put him on the air” and “could impact a lot of people in a negative way.”²⁵⁷

273. After hearing of Trump’s call to Dobbs, Murdoch finally took action and ultimately told Scott not to have any more Trump appearances on the Fox News

²⁵⁶ Electrical_220_00009076.

²⁵⁷ Dominion ISO SJ at 12, 110.

Channel.²⁵⁸ On January 16, 2021, Murdoch and Scott discussed over emails ways to get rid of Dobbs.²⁵⁹ On February 5, 2021, Fox canceled Dobbs' show.

V. DRIVEN BY THE MURDOCHS' INFLUENCE, FOX'S LEADERSHIP TOOK NONE OF THE STEPS WITHIN THEIR POWER TO PREVENT CORPORATE HARM FROM DEFAMATION

274. During the critical time period following the Election, the Murdochs' single-minded focus on preserving their political power and influence overran any willingness by Fox's leadership and Board to take any steps to prevent or moderate the harm to Fox and its stockholders. Murdoch plainly admitted his editorial control over Fox in the Dominion Action, testifying that he "never believed"²⁶⁰ the claims of massive election fraud from the outset and "could have" stopped certain Fox News coverage of the election fraud lies "[b]ut [] didn't."²⁶¹ Indeed, both the Murdochs testified that although they failed to do so, they had the power at any point during the events described above to (i) prevent re-broadcasts of false information regarding Dominion or Smartmatic, (ii) prohibit individuals—*e.g.*, Giuliani or Powell—from

²⁵⁸ Dominion SJ Opp. at 33.

²⁵⁹ Electrical_220_00009057.

²⁶⁰ BUILDING_220_00006944 (Dominion's Reply Brief in Support of Its Motion for Summary Judgment Against Fox News Network, LLC and Fox Corporation (Feb. 20, 2023) ("Dominion SJ Reply")) at 2.

²⁶¹ Dominion SJ Opp. at 30.

appearing on Fox News, (iii) direct Scott to cease all false statements regarding Dominion/Smartmatic, and (iv) make retractions.²⁶²

275. Instead, the Murdochs made clear that they were pleased with Scott's performance following the 2020 Presidential Election. After an outside organization suggested Scott was in danger of losing her job in January 2021, L. Murdoch called it a "hit job" and suggested to his father that Fox announce an extension of her contract as a "good show of support for her" and Murdoch agreed it was a "[g]reat idea. Absolutely right."²⁶³

276. The Murdochs' control extended to the Fox and Fox News legal departments, which are headed by Dinh, the most senior lawyer in Fox's entire corporate structure.

277. Dinh has a close personal and professional relationship with Murdoch and L. Murdoch (with whom Dinh has been friends for two decades, each serving as the godfather to the other's son), was an Old Fox/21CF director for 15 years prior to his leading Fox's legal affairs, and is so trusted by the Murdochs that he has been described as "Fox's power center" and is known to have helped lead Fox during

²⁶² See Dominion SJ Opp. at 167; *see also* Dominion SJ Reply at 2, 45-46; Murdoch Tr. at 331-332.

²⁶³ Electrical_220_00009102.

periods when the Murdochs were absent or focused on other matters (*e.g.*, when L. Murdoch moved to Australia in 2021).²⁶⁴

278. The Murdochs’ control over Dinh and the Fox legal department was particularly obvious around the time of the 2020 Presidential Election. Indeed, although Dinh knew (or recklessly disregarded the real possibility) that (i) the election fraud claims broadcast and disseminated by Fox News were false, (ii) Fox had an obligation not to “broadcast election fraud claims that it kn[ew] to be false,”²⁶⁵ and (iii) those “with the power to exercise control” over Fox News had “an obligation to prevent” their hosts and guests from telling lies,²⁶⁶ he seemingly did nothing to even attempt to stop Fox from broadcasting those lies (and if he did, the Murdochs disregarded that advice).

279. Dinh also understood that when a news outlet disseminates false information about a party, which then provides evidence debunking the false claims, the outlet is obligated to publish the corrective “evidence debunking the story” or at least a retraction or correction.²⁶⁷ Dinh understood that Fox’s publication of “bare denials” of the false information was not enough, testifying in the Dominion Action:

²⁶⁴ *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>.

²⁶⁵ Dominion SJ Opp. at 1.

²⁶⁶ *Id.* at 132.

²⁶⁷ *Id.* at 167.

“[R]eporting simply so-and-so denies this, is much less powerful than the publication reporting so-and-so denies this and here’s the information they are providing [to] prove it’s false.”²⁶⁸

280. Yet despite receiving numerous emails and retraction letters from Dominion and Smartmatic detailing that Fox was broadcasting false information about their companies’ roles in the 2020 Presidential Election, Dinh seemingly never took action to stop Fox from broadcasting those lies (and if he did, the Murdochs ignored him). And, the rare times Fox mentioned Dominion’s denials, it did not publish the actual information Dominion had provided to debunk the lies.

281. Of course, Ryan, Dias, and the other members of the Board also had the power to stop Fox from promoting defamatory statements. The non-Murdoch Board members could have (and should have) banded together and pressured the Murdochs to reverse course. The Board even could have terminated the Murdochs as members of management if they refused. That would have been in keeping with the directors’ fiduciary obligation to protect the Company and its stockholders from a preventable harm being perpetuated by its controllers.

282. Instead, the Board took no action. Indeed, Ryan only privately told the Murdochs that Fox News “should not be spreading conspiracy theories,” “should

²⁶⁸ *Id.* at 49.

move on from Donald Trump and stop spouting election lies,”²⁶⁹ and “the right thing and smart business thing to do” was to put forth “solid pushback (including editorial) of [President Trump’s] baseless calls for overturning electors.”²⁷⁰ He admitted at his deposition, however, that even though he believed it was the Board’s role to develop the “strategic decision” of the Company and that he had a “fiduciary duty” to separate out claims of voter fraud, he was not seeking to do so with his message to Murdoch, but was merely offering his “opinion.”²⁷¹

283. In a January 12, 2021 email to the Murdochs, Ryan referenced the “echoes of falsehoods from our side[.]”²⁷² But, despite admitting Fox was spreading false information concerning the election, Ryan took no actual steps to prevent or rectify it.

284. Similarly, Dias (who discussed similar concerns with Ryan previously) emailed Murdoch, L. Murdoch, Dinh, and Nasser on January 11, 2021: “considering how important Fox News has been as a megaphone for Donald Trump, directly or

²⁶⁹ *Id.* at 23-24.

²⁷⁰ *Id.* at 31.

²⁷¹ Ryan Tr. at 261-62, 321-22.

²⁷² Electrical_220_00008927.

indirectly, I believe the time has come for Fox News or for you, Lachlan to take a stance. It is an existential moment for the nation and for Fox News as a brand.”²⁷³

285. After being forwarded the email, Murdoch commented to L. Murdoch that Fox was “pivoting as fast as possible,” but Fox never issued a correction or retraction for its defamatory statements.²⁷⁴ And the Board took no action to assert its authority—further illustrating the Murdochs’ control over Fox and its editorial decisions. In her email, Dias commented: “No doubt we will discuss these items at the board meeting.”²⁷⁵ That never happened, however, since by the time the Board could be bothered to meet, Smartmatic had already filed its litigation. In fact, the record is clear that the Board never discussed the election fraud claims being perpetuated by Giuliani and Powell and disseminated by Fox News at any time prior to the initiation of litigation against the Company.²⁷⁶

VI. SMARTMATIC SUES FOX

286. Smartmatic followed its December 10 retraction demand with another sent to Fox’s counsel on January 28, 2021.²⁷⁷ That letter reiterated the defamatory statements set forth in its initial retraction demand, and identified additional

²⁷³ Dominion SJ Opp. at 34; Electrical_220_00009099-9100.

²⁷⁴ Electrical_220_00009099.

²⁷⁵ Electrical_220_00009100.

²⁷⁶ Dinh Tr. at 46-48.

²⁷⁷ Smartmatic Compl. Ex. 80.

defamatory statements published by Fox News, its anchors and its guests. Despite giving Fox News a second opportunity to issue a retraction and putting Fox News (and its anchors, reporters and guests) on notice of Smartmatic's potential legal claims, Fox did nothing.

287. Smartmatic filed its complaint the following week, on February 4, 2021, in the Supreme Court of New York, New York County. Smartmatic's complaint alleged that Fox, Fox News, and certain prominent on-air Fox personalities (*i.e.*, Dobbs, Bartiromo, Pirro, Powell, and Giuliani) propagated a false narrative about Smartmatic in connection with the 2020 Presidential Election. Smartmatic sought (and still seeks) \$2.7 billion in damages, more than a billion dollars more than the damages sought by Dominion.

288. Smartmatic's complaint highlighted many false claims that could have been readily disproven with only nominal effort—which Fox evidently failed to make or intentionally avoided in pursuit of its “stolen election” narrative. For instance, according to the complaint, Fox asserted that Smartmatic machines were used to alter votes in states where Smartmatic's technology was not even in use, such as Georgia, Pennsylvania, and Arizona. Those claims would have been disproven

by simply checking the public websites of each of these states, which identified the election technology in use.²⁷⁸

289. Smartmatic’s complaint also pointed out that, in addition to ignoring an abundance of public information, Fox’s only contact with Smartmatic in November 2020—after it had already repeatedly broadcast and published multiple false claims about Smartmatic—was merely to request information about what states and counties used Smartmatic’s technology in the 2020 Presidential Election, and to ask if Smartmatic had a role in an inter-agency statement by the U.S. government’s cybersecurity branch, which reaffirmed that there was “no evidence that any voting system . . . was in any way compromised.”²⁷⁹ Fox made no effort at all to confirm the veracity of the statements it had already aired—and subsequently continued to air—about Smartmatic.²⁸⁰

290. On March 8, 2022, New York Supreme Court Justice David B. Cohen denied motions to dismiss by both Fox and Fox News.

291. On February 14, 2023, the New York Supreme Court Appellate Division’s First Department upheld the ruling and allowed the case to proceed against Fox News. Although the First Department held that the complaint had not

²⁷⁸ See Smartmatic Compl. at 148-53.

²⁷⁹ Smartmatic Compl. at 29-30.

²⁸⁰ *Id.* at 147.

presented sufficient allegations to sustain a defamation claim against Fox, it dismissed the claim without prejudice, allowing Smartmatic to replead its claim against Fox with additional detail.

292. On March 6, 2023, Smartmatic filed an amended complaint that greatly expanded upon the role of Fox and its leadership in allowing and propagating the defamatory statements broadcast by Fox News. The current operative Smartmatic complaint emphasizes Fox’s “affirmative role in the publication and spread of disinformation” in connection with the 2020 Presidential Election. It also alleges that the Murdochs “exercise significant control over the content and publishing decisions at Fox News,” and despite the Murdochs’ own recognition that Fox’s claims were false and damaging, they “directed [Fox News] to embrace the disinformation campaign to win back its audience.”

293. Smartmatic’s defamation lawsuit is currently pending and headed toward trial in New York state court.

VII. DOMINION SUES FOX

294. As discussed above, Dominion sent thousands of communications to Fox in the months following the 2020 Presidential Election demonstrating that the claims broadcast by Fox News regarding Dominion were false and exposed Fox to potential defamation liability, but Fox never retracted or corrected those falsehoods.

295. On March 26, 2021, Dominion filed a defamation lawsuit in Delaware Superior Court against Fox News based on the false statements about Dominion voting machines the network had persistently broadcast to bolster the false narrative that the 2020 Presidential Election had been “stolen.” Dominion sought \$1.6 billion in damages.

296. On November 8, 2021, Dominion filed a second defamation lawsuit against Fox directly, pointing to the Murdochs’ control over the entire enterprise, their resulting oversight and control over Fox News, and their personal responsibility for the false claims against Dominion.

297. On December 16, 2021, Delaware Superior Court Judge Eric M. Davis denied Fox News’s motion to dismiss Dominion’s claim, finding that Dominion’s allegations that Fox knew its assertions about Dominion’s role in “election fraud” or “election theft” were false satisfied the high standard of actual malice needed to prove a defamation claim against a news organization like Fox.

298. On June 21, 2022, Judge Davis also denied Fox’s motion to dismiss, finding that Dominion had adequately stated “a standalone claim for defamation *per se* against Fox Corporation” based on the allegation that, “through Rupert and Lachlan Murdoch,” Fox “played a direct role in participating in, approving, and

controlling the defamatory statements at issue.”²⁸¹ The opinion also highlighted Dominion’s assertions that “the executives of Fox Corporation – particularly Rupert and Lachlan Murdoch – have historically exercised a high level of control over the day-to-day operations of Fox News,” and were “closely involved with decisions relating to Fox News’s coverage of the 2020 presidential election.”²⁸²

299. Judge Davis held that Dominion had “successfully brought home actual malice to the individuals at Fox Corporation who it claims to be responsible for the broadcasts” by establishing the reasonable inference that “Rupert and Lachlan Murdoch either knew Dominion had not manipulated the election or at least recklessly disregarded the truth when they allegedly caused Fox News to propagate its claims about Dominion.”²⁸³

300. In December 2022, Dominion’s cases against Fox News and Fox were consolidated for trial.

301. As Dominion noted in its summary judgment briefing in February 2023, nearly two and a half years after Fox had aired its first defamatory claims

²⁸¹ Denial of Fox MTD at 9-10 (internal quotation marks omitted).

²⁸² *Id.* at 15-16.

²⁸³ *Id.* at 20.

about Dominion: “To this day, Fox has never retracted the false statements it broadcast about Dominion.”²⁸⁴

VIII. FOX SETTLES THE DOMINION ACTION FOR \$787.5 MILLION

302. Judge Davis rejected Fox and Fox News’s motions for summary judgment on March 31, 2023, sending the case to trial. In his ruling, in a fully-italicized sentence, Judge Davis found: “*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.*”²⁸⁵

303. On April 18, 2023, the day on which the Dominion Action was to proceed to trial, the parties reached the Dominion Settlement, under which Fox agreed to pay Dominion \$787.5 million.

304. The Dominion Settlement allowed Fox to avoid what many had billed as “the defamation trial of the century[,]” and also “spare[d] Fox executives, including Mr Murdoch, and some of the network’s anchors, from having to testify in one of the most high-profile defamation trials in history.”²⁸⁶ As one legal scholar

²⁸⁴ Dominion ISO SJ at 44.

²⁸⁵ *U.S. Dominion, Inc. v. Fox News Network, LLC*, 2023 WL 2730567, at *21 (Del. Super. Ct. Mar. 31, 2023) (all emphases in original).

²⁸⁶ Peter Hoskins & Michelle Fleury, *Fox News Lawsuit: Can It Afford the \$787.5M Dominion Settlement?*, BBC NEWS (Apr. 19, 2023), <https://www.bbc.com/news/business-65320001>.

observed, had the Dominion trial proceeded, “Fox was going to have to deal with another round of embarrassing revelations.”²⁸⁷

305. Fox’s written statement about the Dominion Settlement acknowledged the court’s findings about the falsehood of Fox’s election fraud claims, but did not contain a retraction or apology.

306. At almost \$800 million, the Dominion Settlement is “one of the biggest ever financial settlements in a defamation case,”²⁸⁸ making the severe potential liability to which the Defendants’ actions (and inactions) exposed the Company a reality. Fox also incurred substantial additional costs in defending the Dominion Action.

307. The many months of publishing false claims and flouting its journalistic responsibility to the truth, condoned or ignored by Fox’s Board and senior management, have now cost Fox huge financial losses.

IX. THE BOARD’S ACTIONS JEOPARDIZED FOX’S ABILITY TO OPERATE ITS BUSINESS BY EXPOSING IT TO THE POSSIBILITY OF LOSING ITS BROADCAST LICENSE

308. Defendants’ breaches of fiduciary duty have not only resulted in massive economic and reputational damages to the Company and caused untold

²⁸⁷ *Id.*

²⁸⁸ *Id.*

societal harm, but they also threaten to deny Fox’s ability to continue operating as a broadcast news media business, which is its core business.

309. On July 3, 2023, the Media and Democracy Project filed a formal Petition to Deny FOX 29 Philadelphia (WTFX-TV)’s (“FOX 29”) application for renewal of its license (the “Petition to Deny”). The Media and Democracy Project describes itself as “a non-partisan, grassroots 501(c)(4)” that is “alarmed by the power that media narratives, as shaped by mainstream journalists and right wing media, wield over our electoral outcomes.”

310. The Petition to Deny explains: “This license renewal application for a FOX station offers an opportunity for petitioners, in the public interest, to seek to hold FOX accountable for its broadcasting of knowingly false narratives about the 2020 election.”²⁸⁹ It continues:

Based on extensive record evidence including internal emails and texts, a court has held that the senior management of Fox Television Stations repeatedly disseminated false news. ***To the best of Petitioners’ knowledge, never before has the Commission been confronted with such a judicial finding against an applicant for renewal of a license to broadcast over the public airwaves.*** This false narrative was broadcast on Fox News Channel, and a good deal of that narrative was broadcast on WTFX-TV and other Fox over-the-air television stations. As an FCC broadcast licensee FOX is bound to broadcast in the public

²⁸⁹ Petition to Deny, Media and Democracy Project, *In the Matter of Application of FOX Television Stations, LLC for Renewal of License of WTFX-TV, Philadelphia, Pennsylvania*, FCC, LMS File No. 0000213362, July 3, 2023, at i, https://www.mediaanddemocracyproject.org/_files/ugd/f9547d_d59f128ca09d4106b82930d09c12c94f.pdf (“Petition to Deny”).

interest, convenience, and necessity. Instead, it has repeatedly aired false information about election fraud, sowing discord in the country and contributing to harmful and dangerous acts on January 6, 2021. ***FOX’s intentional news distortion, sanctioned at the highest levels of its corporate structure, and fabricated by management and news hosts amounts to misconduct that violates the FCC’s policy on the character required of broadcast licensees***, and was so egregious as to shock the conscience.²⁹⁰

311. The Petition to Deny “urge[s] the FCC to commence an evidentiary hearing into FOX’s misdeeds, which petitioners believe will lead to the denial of the renewal application, the revocation of FOX broadcast licenses, and a determination that FOX lacks the character to remain a licensee.”²⁹¹

312. The Petition to Deny has received bipartisan support. On July 31, 2023, Ervin S. Duggan (“Duggan”) and William Kristol (“Kristol”) filed a joint informal objection (the “Duggan-Kristol Objection”) to FOX 29’s broadcast license renewal application. Duggan is a veteran of the Lyndon Johnson White House, a former Commissioner of the FCC, and former President of PBS. Kristol served in senior positions in the Ronald Reagan and George H. W. Bush administrations, and for two decades edited *The Weekly Standard* magazine.

313. That high-profile objection agreed with the Petition to Deny and urged the FCC to hold a hearing to examine whether Fox and its leadership violated the

²⁹⁰ *Id.*

²⁹¹ *Id.*

character requirements expected from public trustees granted a broadcast license.²⁹²

According to the Duggan-Kristol Objection, doing so “would enable the [FCC] to develop a record as to the problematic conduct of Fox 29’s parent, [Fox], and its various subsidiaries and to impose appropriate conditions and/or sanctions in light of its findings—up to, but not necessarily including, denial of Fox 29’s license renewal application.”²⁹³

314. The Duggan-Kristol Objection excoriated Fox News for its dangerous reporting in connection with the 2020 Presidential Election:

Two of Fox 29’s corporate sisters—Fox News Channel (“Fox News”) and Fox Business Channel (“FOX Business”)—are engaged in telecast journalism as is Fox 29, but unlike the station are not licensed by the FCC. Driven, it seems, principally by ratings and stock price concerns, these two sister entities were found by a court of law in the Dominion litigation to have *failed over an extended period of time to provide the public with solid facts about a matter of supreme public concern, the*

²⁹² All over-the-air television stations are licensed to operate in the “public interest, convenience, and necessity” under Section 309(a) of the Communications Act. 47 U.S.C § 309(a). Such operating requirements imply that licensed stations are to behave as “public trustees,” as the FCC’s published form for station license renewal announcement states. *License Renewal Applications for Television Broadcast Stations*, FCC (last updated Jan. 3, 2023), <https://www.fcc.gov/media/television/broadcast-television-license-renewal#PREFILING>.

²⁹³ Letter from Ervin Duggan & William Kristol to Secretary of the FCC Marlene Dortch re Application for Television Station License Renewal FOX Television Stations, LLC WTXF-TV, Philadelphia, Pennsylvania, LMS File. No. 0000213362, (July 31, 2023) at 1 (“Duggan-Kristol Objection”), https://drive.google.com/file/d/1T_Dr5pkDw9v3R2ZE0bXoBN0jOM2Gf29c/view.

2020 election—and indeed were found by the judge to have **repeatedly distributed information whose actual falsity was CRYSTAL clear**.²⁹⁴

315. Dugan and Kristol explained that “as a practical matter all of the branches of FOX are in the same business—delivery of content to media consumers—and work together to create value under the control of Rupert Murdoch and the Murdoch Trust.”²⁹⁵ Duggan and Kristol thus implored:

We believe that this failure, which led to consequences dangerous to American democracy that are still unfolding to this day, is **so shocking to the conscience, and so inconsistent with both the public interest and good journalistic practice**, that there is a clear basis under the FCC’s Character Policy for the [FCC] to conduct a hearing (1) to develop under penalty of perjury a full understanding of the situation, (2) to evaluate the safeguards, if any, that FOX has in place to prevent its recurrence, especially with respect to its broadcast stations, and (3) if adequate safeguards are not in place at the licensed broadcast stations, to craft and require such safeguards to protect the public interest.²⁹⁶

316. That one of Fox’s FCC licenses is in jeopardy should not surprise Defendants since, in the words of Duggan and Kristol, it “is not the first time that

²⁹⁴ *Id.* at 2 (emphasis added).

²⁹⁵ *Id.* at 3.

²⁹⁶ *Id.* (emphasis added). See also *In the Matter of Policy Regarding Character In Broadcast Licensing*, FCC, Gen. Docket No. 81-500, Jan. 14, 1986, at 1205 n.60 (“The Commission acknowledges that there may be circumstances in which an applicant has engaged in nonbroadcast misconduct **so egregious as to shock the conscience and evoke almost universal disapprobation** Such misconduct might, of its own nature, constitute *prima facie* evidence that the applicant lacks the traits of reliability and/or truthfulness necessary to be a licensee, and might be a matter of Commission concern even prior to adjudication by another body.”) (emphasis added), <https://docs.fcc.gov/public/attachments/FCC-85-648A1.pdf>, (“1986 Character Policy Statement”).

character issues arising out of journalistic standards and practices at Murdoch-controlled entities have been raised with the FCC.”²⁹⁷ In 2012, Citizens for Responsibility and Ethics in Washington filed a petition to deny the renewal of licenses for Murdoch-controlled stations in Washington, D.C. and Baltimore, based on the results of a British parliamentary inquiry into the conduct of Murdoch-controlled Old Fox in connection with the Hacking Scandal.

317. The FCC denied that petition in 2013, in large part because there was no *adjudicative* finding of misconduct by Old Fox, as the Character Policy requires such finding in order to consider such misconduct in a license renewal proceeding.²⁹⁸ The Chief of the Commission’s Video Division, however, expressly declined to accept the Murdoch entities’ “position that . . . actions of a licensee’s parent or of affiliated companies . . . not directly connected to a station, even though these actions transgress the standards set out in the 1986 Policy Statement or the 1990 Policy

²⁹⁷ Duggan-Kristol Objection at 6.

²⁹⁸ In the Video Division’s decision denying the CREW Petition (*Re: Application for Renewal of License of WUTB, Baltimore, ID No.605552, File No. BRCDT-20120531AJL, et al*, DA 13-1007 (Video Division May 6, 2013), <https://docs.fcc.gov/public/attachments/DA-13-1007A1.pdf>) at pages 6-7, the Chief of the Division notes: “Whether the Commission is reviewing non-FCC misconduct of an applicant, its parent company, or its principals, it looks for adjudicated misconduct. In the 1986 Character Policy Statement, the Commission stated, “there must be an ultimate adjudication by an appropriate trier of fact, either by a government agency or court, before we will consider the activity in our character determinations.”

Statement[,] cannot implicate a station’s renewal application.”²⁹⁹ The Division further stated that if it were presented with adjudicative facts adverse to a licensee (or its parent or affiliates) reflecting “determinations of entities that hold primary responsibility for addressing non-communications related misconduct . . . [, it would] incorporate the result of those entities’ conclusions into its own decisions.”³⁰⁰

318. In the Dominion Action, in contrast and as discussed above, Judge Davis found that “[t]he 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.” The FCC thus may consider Fox’s violations of the Character Policy when deciding whether to grant FOX 29’s application for renewal of its license. Further, Duggan and Kristol note that Fox’s discovery misconduct in the Dominion Action is relevant under the Character Policy, which provides that the truthfulness and reliability of licensees are special concerns to the FCC, and behavior that may indicate a lack of candor in either a civil or criminal case is to be considered in licensing decisions.³⁰¹

319. Further highlighting that the jeopardized status of Fox 29’s FCC license should come as no surprise to Murdoch is former Fox executive Preston Padden’s

²⁹⁹ *Id.* at 7 n.65.

³⁰⁰ *Id.* at 8.

³⁰¹ 1986 Character Policy Statement at 1196 ¶ 36.

(“Padden”) “long series of e-mail exchanges” with Murdoch during the 2020 Presidential Election in which Padden implored Murdoch to halt “the damage that I believe [Fox] is doing to the Country.”³⁰² When Murdoch ignored Padden’s pleas, Padden “disengaged” from Murdoch entirely, despite having “admired” Murdoch for many years.³⁰³ Indeed, Padden submitted a declaration in support of the Petition to Deny, aptly describing Fox as Murdoch’s “candy store” and emphasizing his view that Fox’s false reporting surrounding the 2020 Presidential Election arose from Murdoch’s fears “about repercussions from Trump [and] loss of audience”³⁰⁴

320. At bottom, Defendants’ misconduct has jeopardized the Company’s FCC licenses, a risk that they should have known given prior FCC proceedings. Nevertheless, they proceeded to allow Fox to spread lies about the Presidential Election.

X. FOX FINALLY IMPLEMENTS SOME OVERSIGHT CONTROLS ONLY AFTER ITS DEFAMATORY ELECTION REPORTING PUTS ITS FCC LICENSE AT RISK

321. Fox belatedly began to implement controls to try to ensure journalistic integrity and prevent the issuance of further defamatory statements only after it had been sued by Dominion and Smartmatic and was the focus of a hearing by the House

³⁰² Electrical_220_00009479.

³⁰³ *Id.*

³⁰⁴ Petition to Deny, Ex. 2, Declaration of Preston Padden at 2.

Energy and Commerce Subcommittee on disinformation and extremism in the media.³⁰⁵ By that time it was too late to prevent the significant harm Fox’s defamatory conduct caused.³⁰⁶ Throughout 2021 and 2022, the Board monitored the Dominion and Smartmatic Actions and made tacit admissions that the Board’s monitoring and compliance policies were severely deficient in previous years.

322. In June 2021, Fox amended the Audit Committee’s Charter solely to “[a]dd oversight of the Company’s Ethics & Compliance Program”³⁰⁷ as a responsibility of the Audit Committee, a tacit admission that the Audit Committee did not previously have such oversight responsibility. As part of that change, the

³⁰⁵ BUILDING_220_00001212. *See also* Transcript, *Fanning the Flames: Disinformation and Extremism in the Media: Hearing Before the Subcomm. on Communications & Technology of the Comm. On Energy & Commerce* (Feb. 24, 2021), <https://docs.house.gov/meetings/IF/IF16/20210224/111229/HHRG-117-IF16-Transcript-20210224.pdf>.

³⁰⁶ Plaintiffs do not concede that the controls Fox put in place following the 2020 Presidential Election are sufficient. For example, Fox News is a defendant in an action filed on July 10, 2023 in Delaware Superior Court alleging that, from late 2021 through early 2023, Fox News broadcast unfounded conspiracy theories that James Ray Epps, Sr. (“Epps”) was a federal agent who incited the January 6, 2021 attack on the Capitol, resulting in death threats against Epps and his wife and destroying their livelihood. *Epps v. Fox News Network, LLC*, Case No. N23C-07-063 (Del. Sup. Ct.). The case has since been removed to federal court. *Epps v. Fox News Network, LLC*, Case No. 1:23-cv-00761 (D. Del.).

³⁰⁷ BUILDING_220_00002817. *See also* Electrical_220_00003431 (“Board Agenda Item” includes creating “Board Oversight” by “[a]mend[ing] the Audit Committee Charter to include the responsibility of oversight of the Company’s Ethics and Compliance Program”).

Board amended the Charter to require the CECO to meet periodically with the Audit Committee in executive session and to require the Audit Committee to review and monitor the actual “content and operation of the ethics and compliance program[.]”³⁰⁸

323. Concurrently, Fox’s Nominating and Corporate Governance Committee (the “NCG Committee”) approved amendments to “its Charter and . . . [Fox’s Statement of Corporate Governance (the “SOCG”)] which reflect the adoption of the Company’s Ethics and Compliance Program.”³⁰⁹

324. The 2021 SOCG amendments add a statement saying for the first time that “the Board has adopted and supervises the Company’s Ethics and Compliance Program to enforce [Fox’s SBC] and other Company Policies.”³¹⁰ This is an acknowledgment that prior to these changes in June 2021, the Board had no adequate reporting system in place to ensure Fox’s news division was operating in an ethical and non-defamatory manner.

325. In accordance with the Board’s new responsibilities, Fox hired a new CECO, Trutanich, who began reporting to the Audit Committee on the Company’s Ethics and Compliance Program including on the business case for the program, the

³⁰⁸ See BUILDING_220_00002657. See also Electrical_220_00002830.

³⁰⁹ BUILDING_220_00002269. See also Electrical_220_00002437.

³¹⁰ See BUILDING_220_00003397.

key elements of the program, planned initiatives, and Board and Audit Committee oversight of the program.³¹¹

326. In one presentation attached as Exhibit A,³¹² with much of the substance redacted for privilege, Trutanich discussed that one of the business cases to have an Ethics and Compliance Program was “Duty of Care – *Caremark*,” indicating the program’s importance to directors’ and officers’ fulfilling their fiduciary duties.³¹³ In noting the difference between a “Paper Program v. [a] Cultural Commitment[,]” the same slide claimed that the “New [CECO] will help amplify [the] ‘Tone at the Top,’” and a subsequent slide also included the role of Board oversight in setting the “Tone at the Top.”³¹⁴ Those statements suggest that Fox conceded it merely had a “Paper Program” with no “Cultural Commitment” to ethics and compliance before the 2020 Presidential Election.³¹⁵

³¹¹ BUILDING_220_00001611; BUILDING_220_00003555.

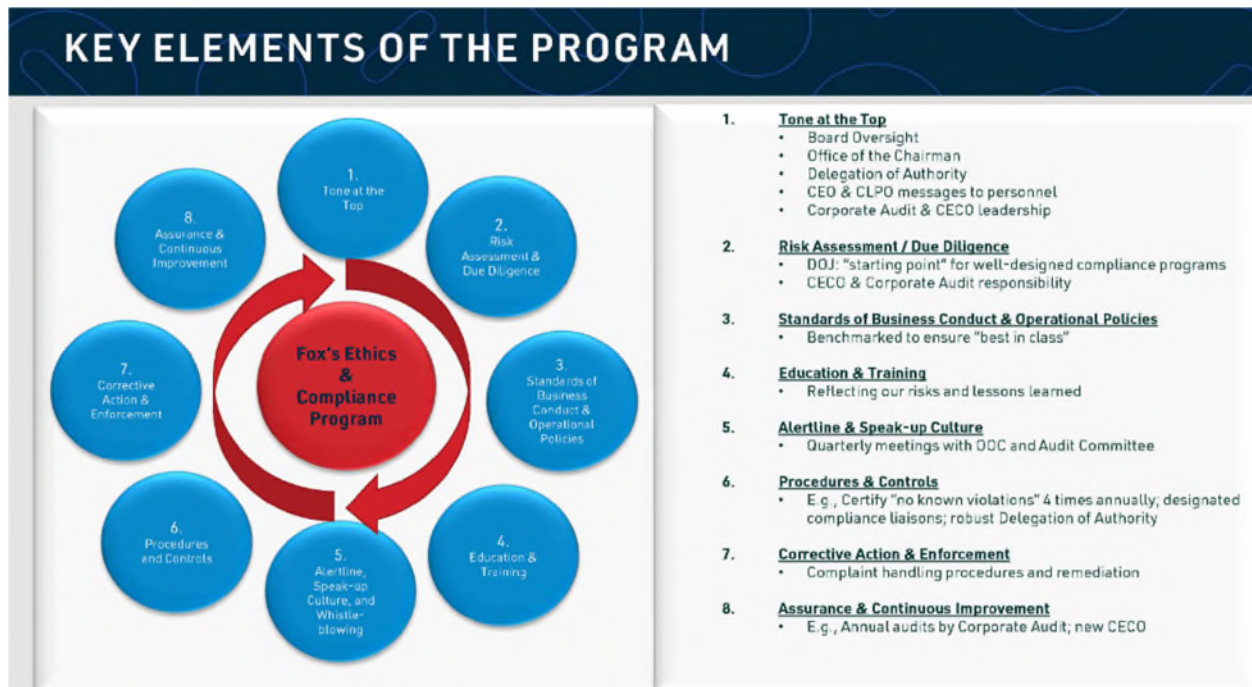
³¹² BUILDING_220_00002792.

³¹³ BUILDING_220_00002793. As this Court knows, *Caremark* duties actually implicate the duty of loyalty, not the duty of care.

³¹⁴ BUILDING_220_00002793-2794.

³¹⁵ The June Audit Committee Materials also included a lengthy memorandum on the Ethics & Compliance Program that is wholly redacted for privilege. BUILDING_220_00002798. Fox’s counsel represented that it would produce documents sufficient to detail the date of the adoption of the Ethics and Compliance Program and the only such documents are dated from or around June 2021, suggesting the Company had no formal program before that time. See E-mail from

327. The presentation explained the key elements of the program graphically:³¹⁶



328. Trutanich also informed the Audit Committee that the Company would undertake a compliance risk assessment and that doing so "is the 'starting point' for evaluating whether an ethics and compliance program is 'well designed.'"³¹⁷

Kyle Lachmund, counsel for Fox, to David MacIsaac (Aug. 4, 2022, 5:22 PM) (on file with Plaintiffs' counsel).

³¹⁶ BUILDING_220_00002794.

³¹⁷ BUILDING_220_00002795.

329. At this time and going forward, management also provided the Audit Committee with reports on Brand Integrity,³¹⁸ Newsgathering & Defamation,³¹⁹ and the Ethics and Compliance program.³²⁰ Those presentations are attached hereto as Exhibits B-F.

330. As shown in a slide included above, those presentations highlighted that training employees not to act beyond the protections of the First Amendment and avoid defamation was a core issue for Fox. The detail in those presentations, all of which post-date the 2020 Presidential Election, illustrates a tacit admission that Fox had no such policies or procedures during the events resulting in this lawsuit.³²¹

331. Some of the topics covered by multiple presentations provided by Dinh and other attorneys on defamation included:³²²

³¹⁸ BUILDING_220_00004033; BUILDING_220_00006242.

³¹⁹ BUILDING_220_00004043; BUILDING_220_00004097.

³²⁰ BUILDING_220_00004218.

³²¹ Likewise, in its Form 10-K for the fiscal year ending June 30, 2021, Fox disclosed for the first time: “Within FOX News Media and FOX Television Stations, we deliver specialized training on the First Amendment, defamation, privacy, infringement and other newsgathering and reporting topics to educate employees on these principles and provide advice on best practices.” Fox Corporation, Annual Report (Form 10-K) (Aug. 10, 2021) at 17. Fox’s earlier SEC filings contained no such disclosure, which is further evidence that Fox had no relevant training programs during the period in question.

³²² BUILDING_220_00004100.

Today's Topics

- Avoiding defamation pitfalls
- Liability for on-air guests
- Privileges for publishing certain kinds of content
- Opinion v. Fact (in the legal sense)
- Privacy claims

332. A November 2, 2022 presentation emphasized the importance of Fox operating within the bounds of the First Amendment and summarized the processes now in place to help ensure it did so:³²³

Overview

- FOX Corporation's Standards of Business Conduct (SOBC), reviewed and approved by the FOX Board of Directors, set forth guiding principles in clear and unambiguous terms to all personnel, including editorial and newsgathering teams
- Besides the SOBC, FOX has processes in place to protect its brand and ensure fair and accurate reporting, including:
 - Editorial Checks
 - Mandatory Training on Newsgathering and the First Amendment
 - Legal Review Processes
 - On-call availability of FOX News Legal
 - Pre-segment consultation with FOX News Legal
 - Pre-taping interviews and segments
 - Post-production editing and review by FOX News Legal
 - Social Media Monitoring and Rapid Response
- Quarterly and ad hoc management reporting on Brand Integrity matters

333. The Audit Committee and Board received no presentations similar to those discussed above prior to the Dominion and Smartmatic Actions. Had the Board implemented and overseen an ethics and compliance program prior to the

³²³ BUILDING_220_00006243.

2020 Presidential Election, Fox would have likely avoided the hundreds of millions of dollars (and growing) of liability it has incurred.

DERIVATIVE ALLEGATIONS

334. Plaintiffs bring this Action derivatively to redress injuries suffered by the Company as a direct result of breaches of fiduciary duty and other misconduct by the Defendants.

335. Plaintiffs currently are beneficial owners of Fox common stock and have owned Fox common stock continuously, at all times relevant to this Complaint.

336. Plaintiffs will adequately and fairly represent the interests of Fox and its stockholders in enforcing and prosecuting their rights and have retained counsel competent and experienced in stockholder derivative litigation.

DEMAND FUTILITY ALLEGATIONS

337. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein. Plaintiffs did not make a demand on the Demand Board to investigate or initiate the derivative claims asserted herein because demand is excused as futile. Demand is excused, because a majority of the eight-director Demand Board (i) faces a substantial likelihood of liability on the claims that are the subject of this Action, (ii) received a material personal benefit from the alleged misconduct that is the subject of this Action, and/or (iii) lacks independence from someone who received a material personal benefit from the alleged misconduct that

is the subject of this Action or who would face a substantial likelihood of liability on the claims that are the subject of this Action.

A. A Majority of the Demand Board Faces a Substantial Likelihood of Liability in This Action

338. As detailed above, seven of the eight members who comprise the Demand Board—*i.e.*, Director Defendants Murdoch, L. Murdoch, Carey, Nasser, Ryan, Dias, and Hernandez—could not impartially evaluate a demand because they face a substantial likelihood of personal liability for (i) completely failing to implement or oversee any reasonable system of monitoring mission-critical aspects of Fox’s business during the relevant time period and/or (ii) failing to respond to countless red flags of wrongdoing, *i.e.*, that the Company was repeatedly defaming Dominion and Smartmatic.

339. As alleged herein, the Director Defendants failed to institute, install or enact policies and procedures that required, among other things: (i) Board authority to oversee compliance with the publication or dissemination of truthful, accurate, non-defamatory and non-libelous information by Fox’s media outlets, (ii) employee training on ethical reporting within the bounds of the First Amendment, (iii) a Board-level committee with oversight responsibilities for truthful reporting and editorial controls, (iv) a direct reporting line between Fox’s Compliance Officer and the Board, (v) a schedule for the Board to consider, on a regular basis, whether any key

compliance risks existed regarding the publication and dissemination of information, (vi) Board oversight over retractions or corrections of inaccurate or false information published or disseminated by Fox or its properties, and (vii) Board oversight over retraction letters, including response procedures and/or investigations.

340. Fox's lack of internal Board level controls concerning those matters is especially stark because the Board deliberately rejected and abandoned the specific types of controls that would likely have prevented the harmful events and lapses set forth above. Indeed, the 2013 Derivative Settlement imposed broadcasting controls and compliance standards and processes on Fox's own former parent company, 21CF. The decision, presumably by the Board, to allow those processes to lapse and to not replace them with any other relevant controls reflects an overriding loyalty to the Murdochs (*i.e.*, a willingness to loosen controls to give them carte blanche to do as they see fit) and an affirmative decision to dismantle reasonable processes and procedures. In addition, Defendant Dinh, a director at the time that the 2013 Derivative Settlement required the establishment of these new procedures and General Counsel at the time that they were dismantled, must have known of the existence of these compliance systems and was directly responsible for their dismantling.

341. Moreover, although Plaintiffs do not concede Fox's current controls are adequate, its complete lack of pre-defamation controls is highlighted by the more

recent adoption of such controls. The problem is that the Board took those actions only *after* their failures had resulted in substantial liability for Fox's defamatory conduct. That includes hiring a CECO that reports to the Board, implementing and receiving reports on a formal Ethics and Compliance Program, reviewing retraction demands and receiving reports on employee training on and handling of First Amendment issues.

342. Additionally, the Director Defendants face a substantial likelihood of liability because it is reasonably inferable that they knew Fox was repeatedly endorsing and reporting false, inaccurate, defamatory, and/or libelous information regarding voter fraud in the 2020 Presidential Election—including relating to Dominion and Smartmatic's participation in that alleged fraud—but did not take action to stop Fox from publishing or disseminating that false information or require Fox to issue corrections or retractions. Indeed, Ryan and Dias admitted to each other and others, and then both separately discussed with the Murdochs, that Fox was actively disseminating false information regarding voter fraud in the 2020 Presidential Election, but then failed to even attempt to take Board action to protect the Company. The rest of the Director Defendants, for their part, did not even raise an issue with Fox's dissemination of false election fraud claims.

343. The Director Defendants' oversight failures and inaction in the face of circumstances that demanded their immediate action reflects a conscious and

deliberate disregard for their fiduciary duties, and thus constitutes bad faith—particularly given what Ryan acknowledged was his fiduciary duty regarding claims of voter fraud. As such, the Director Defendants face a substantial likelihood of liability, rendering demand upon them futile.

344. Moreover, the Murdochs, as Officer Defendants and Fox’s controlling stockholders, face a substantial likelihood of liability both for their oversight failures and for knowingly and intentionally violating the law and internal Company policies by allowing and/or directing Fox and its media outlets to repeatedly endorse and report false, inaccurate, and/or defamatory information regarding voter fraud in the 2020 Presidential Election, and Dominion and Smartmatic’s purported participation in that alleged fraud.

345. At a minimum, the Murdochs consciously disregarded the truth and allowed Fox to air wildly defamatory statements concerning the 2020 Presidential Election. And as Fox executive officers, the Murdochs’ fiduciary breaches in their capacity as officers are non-exculpated. Thus, they face a substantial likelihood that they breached (at the very least) their duty of care to Fox.

346. Additionally, Ryan and Dias face a substantial likelihood of liability because they knew that Fox was repeatedly endorsing and reporting false, inaccurate, and/or defamatory information regarding voter fraud in the 2020 Presidential Election, and Dominion and Smartmatic’s purported participation in

that alleged fraud, but did not insist that the Board take action to stop Fox from publishing or disseminating that false information or issue corrections or retractions. As stated above, Ryan and Dias admitted to each other and to others, and then both separately discussed with the Murdochs, that Fox was actively disseminating false information regarding voter fraud in the 2020 Presidential Election, but then failed to even attempt to take Board action to protect the Company. That failure to act is bad faith—particularly given what Ryan acknowledged was his fiduciary duty regarding claims of voter fraud—and thus Ryan and Dias face a substantial likelihood of liability in this Action rendering demand upon them futile.

B. Demand is Excused Even if Only the Murdochs Face a Substantial Likelihood of Liability or Received a Material Personal Benefit

347. Demand is futile as to the claims alleged herein because four additional members of the Demand Board lack independence from the Murdochs, who (i) face a substantial likelihood of liability and (ii) received a material benefit from the alleged misconduct.

1. The Claims Against the Murdochs Are Even Stronger Than the Claims Against the Rest of the Director Defendants

348. The Murdochs had powerful incentives to condone the defamation of Dominion and Smartmatic. As discussed above, after calling Arizona for Biden, Fox News received “heavy backlash” and began to lose viewers to its rapidly growing competitors such as Newsmax and OAN, which Fox feared could be

“[d]evastating to [its business].” The Murdochs viewed that as a threat to Fox News’s viewership, and as an existential threat to its dominant position and Murdoch’s influence over the conservative movement more generally.

349. The Murdochs acted on their powerful incentives to condone the defamation of Dominion and Smartmatic. As described above, Murdoch and L. Murdoch, as Fox’s controlling stockholders and the most senior executives at Fox and Fox News, closely controlled Fox’s editorial decisions. The Murdochs were aware that the rumors regarding voter fraud in the 2020 Presidential Election—and Dominion and Smartmatic’s role in that alleged fraud—promoted by Trump and his affiliates were demonstrably and objectively false. And the Murdochs were aware that Dominion and Smartmatic were repeatedly demanding that Fox retract its defamatory comments and threatening litigation. Yet, the Murdochs sanctioned and directed the publication and dissemination of false and defamatory information through Fox’s media outlets. They did so to retain and reacquire Fox viewers and consumers and attempt to gain the approval and support of Trump and his supporters, whose flight from Fox risked the Murdochs’ coveted stronghold over conservative viewership. The Murdochs thus face a substantial likelihood of liability for failing to respond to a mountain of red flags.

2. The Murdochs Received a Material Personal Benefit

350. The Murdochs sanctioned and directed the publication and dissemination of false information for reputational and monetary gain. The Murdochs' actions were intended to protect their roles and influence as influential political forces. The personal political power exercised by the Murdochs in America is largely dependent on their influence over Fox's viewers. If Fox lost those viewers, the Murdochs would lose power.

351. Fox's viewership recovered after the Murdochs permitted Fox to air false information regarding Dominion and Smartmatic's role in the 2020 Presidential Election.

352. Thus, because the Murdochs stood to benefit, and did benefit, from the wrongdoing at issue in this Action, neither can objectively and independently weigh a demand to sue themselves or each other.

3. Carey, Nasser, Ryan, and Burck Lack Independence of the Murdochs

353. **Carey** cannot disinterestedly and independently consider a demand to investigate and prosecute the claims alleged herein because he is not independent from Murdoch.

354. Carey, who has worked for Murdoch for nearly four decades, owes his career, professional reputation, and fortune to Murdoch and his companies. Carey

has served in numerous director and executive roles at Murdoch entities over the years and, since 2010, Carey has been paid over **\$230 million** by Murdoch entities.

355. Carey considers Murdoch “a mentor [] and friend,” and when Carey moved from President and COO of 21CF to its Executive Vice Chairman in 2015, he thanked “[Murdoch] for the opportunity of a lifetime and for [his] never-ending support”³²⁴ Murdoch stated: “Carey [is] my close friend and trusted advisor . . . and someone I am privileged to call my partner for nearly 30 years.”³²⁵ Murdoch also has publicly stated, among other things: “Chase is my partner and if anything happened to me I’m sure he’ll [succeed me] immediately—if I went under a bus.”³²⁶

356. Fox has previously acknowledged Carey’s lack of independence, finding Carey was not an independent director in 2019 and 2020 and declining to appoint him to Board committees because of his lack of independence. In October 2022, when Fox formed a special committee to evaluate a potential merger between

³²⁴ *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/>.

³²⁵ *Id.*

³²⁶ *Murdoch Names Chase Carey as Successor*, DAILY BEAST (Aug. 10, 2011, 9:09 PM), <https://www.thedailybeast.com/cheats/2011/08/10/murdoch-names-chase-carey-as-successor?social=Linkedin&via=mobile>.

Fox and News Corp, only Carey, Murdoch and L. Murdoch were left off that committee, presumably because of their lack of independence.

357. **Nasser** cannot disinterestedly and independently consider a demand to investigate and prosecute the claims alleged herein because he is not independent from Murdoch.

358. Murdoch and Nasser—who both spent their childhoods in Melbourne, Australia and are two of its most famous sons—have been “close both commercially and personally” for decades.³²⁷ Indeed, Murdoch, who had a pre-existing social relationship with Nasser, selected Nasser to serve on the board of his company Sky plc in 2002, and has kept Nasser on the boards of his companies for 21 consecutive years. Nasser served on the boards of (i) Sky plc from 2002 to 2012 (where he developed a close relationship with J. Murdoch), (ii) 21CF from 2013 to 2019 and (iii) Fox from 2019 through the present.

359. **Ryan** cannot disinterestedly and independently consider a demand to investigate and prosecute the claims alleged herein because he is not independent from the Murdochs.

³²⁷ Matthew Stevens, *BHP Chairman Jac Nasser Reflects on 30 Years in Management*, AUSTRALIAN FIN. REV. (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>.

360. Immediately before Ryan joined the Board, he was a Republican congressman for 20 years, and the Speaker of the U.S. House of Representatives from 2015 to 2019. Over his 20-year political career, Ryan frequently used Fox News—the U.S.’s preeminent conservative news organization with tremendous power over conservative and Republican voters—to campaign for reelection and promote his conservative causes and the Republican agenda, and Murdoch and his companies provided Ryan a virtually unrestricted platform. Indeed, Murdoch is a longtime supporter of Ryan, securing his selection by Mitt Romney as the Republican candidate for Vice President, and Murdoch has stated, *inter alia*, that he has “particular admiration” for Ryan. Ryan admitted he “ha[s] a friendship with Lachlan Murdoch” and serves with both Murdoch and L. Murdoch on the board of trustees of the Ronald Reagan Presidential Foundation and Institute.³²⁸

361. Ryan continues to repeatedly use Murdoch’s news outlets to promote his causes and financial endeavors. For example, Ryan appeared on Fox Business to promote his SPAC’s public listing of a new oil and gas company, Granite Ridge Resources.³²⁹ Fox News has also regularly hosted Ryan on its outlets to promote his

³²⁸ BUILDING_220_00001088.

³²⁹ Varney & Co. (Fox Business television broadcast Oct. 25, 2022), <https://www.youtube.com/watch?v=fX5O2ST84jA>.

new book: *American Renewal: A Conservative Plan to Strengthen the Social Contract and Save the Country's Finances*.³³⁰

362. Murdoch also permitted Ryan to publish an op-ed in the *WSJ* in November 2022 to promote his book and agenda,³³¹ and Ryan promoted his book on the *WSJ*'s Free Expression podcast in January 2023.³³²

363. Moreover, Ryan likely has future political aspirations and has consistently refused to rule out running again for elected office, taking a position in the Republican Party, or accepting a government appointment in a Republican administration. Ryan recently admitted after being asked about a “return [to] national politics”: “I’m 52 years old, down the road I could do something[.]”³³³ Indeed, not long after leaving office, Ryan moved his family to the Washington,

³³⁰ *Id.*; Kudlow (Fox Business television broadcast June 16, 2020), <https://www.youtube.com/watch?v=xAmPurV-mLo>; Kelly Laco, US must catch up to China’s digital currency capability in order to 'lead the world': Paul Ryan policy volume, Fox News (November 17, 2022, 6:00 AM), <https://www.foxnews.com/politics/us-catch-chinas-digital-currency-lead-world-paul-ryan-policy-volume>.

³³¹ Paul Ryan, *A Plan to Save America's Finances*, WALL ST. J. (Nov. 16, 2022, 6:25 PM), https://www.wsj.com/articles/a-plan-to-save-americas-finances-fiscal-monetary-policy-debt-deficits-social-contract-midterm-election-healthcare-11668638378?mod=opinion_major_pos4.

³³² *Paul Ryan on Populism and the Return to Conservatism*, WALL ST. J. OPINION FREE EXPRESSION (Jan. 18, 2023, 1:54 PM), <https://www.wsj.com/podcasts/opinion-free-expression/paul-ryan-on-populism-and-the-return-to-conservatism/6ff27333-3398-4ffb-a910-2d676a5a467e>.

³³³ *Id.*

D.C. area.³³⁴ And at least one organization—under the website paulryanforpresident.com—is actively raising money for a 2024 Ryan presidential run, which, if it does not materialize, will leave Ryan as a likely frontrunner Vice-Presidential candidate for the Republican nominee for president (a role he already filled for Mitt Romney in 2012).

364. If Ryan intends to pursue his political ambitions further in the future, he may be reluctant to jeopardize the Murdochs' support and platform which bolstered him throughout his political career to date. And, if Ryan were to act against the Murdochs' interests by bringing a lawsuit against Murdoch and L. Murdoch, Ryan would risk losing his Fox directorship and his friendship with L. Murdoch. He would also risk alienating not only his most powerful patron, but millions of conservatives and Republicans that support his causes, buy his books, invest in his businesses, and could potentially vote for him in any upcoming election.

365. **Burck**, who has been a Board member since June 2021, cannot disinterestedly and independently consider a demand to investigate and prosecute the claims alleged herein because he is not independent of Murdoch or Dinh, who is a Defendant in this Action and faces a substantial likelihood of liability.

³³⁴ Natasha Korecki & Jake Sherman, *Paul Ryan Moving His Family to Washington from Wisconsin*, POLITICO (Aug. 20, 2019, 5:01 AM), <https://www.politico.com/story/2019/08/20/paul-ryan-returns-to-washington-1468994>.

366. Burck admitted in his D&O questionnaire when asked for information “relevant to assessing [his] independence”: “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,”³³⁵ which is an ultra-exclusive Washington, DC-area country club whose small number of members are among the political elite (e.g., the club includes as members Supreme Court Chief Justice John Roberts and Justice Brett Kavanaugh). Membership reportedly requires 25 letters of recommendation, as it is an “insider’s club where you need lots of friends among the members, before you can even be considered to become one of them.”³³⁶ Additionally, Burck and Dinh appear to have lived near each other in Chevy Chase, Maryland for years, have jointly represented clients when Dinh worked in private practice,³³⁷ and are both members of the Washington, DC chapter of the Federalist Society.

367. Moreover, Burck is one of the U.S.’s preeminent lawyers for prominent Republicans and conservatives (including associates of Trump), and counts as his

³³⁵ SIMPSON_220_00001539.

³³⁶ Chevy Chase Club Membership Cost, COUNTRY CLUB PRICES, <https://countryclubprices.com/chevy-chase-club-membership-cost/>.

³³⁷ Benjamin Weisler, *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>.

current or former clients, among others, former President George W. Bush, Mike Pompeo, Don McGahn, Reince Priebus, Steve Bannon, Bob McDonnell, Roger Ailes, Elliott Broidy and Robert Kraft. Indeed, Burck represented eleven of President Trump's associates in connection with Robert Mueller's special counsel investigation into Russian interference in the 2016 U.S. elections.

368. Additionally, Burck's firm Quinn Emanuel Urquhart & Sullivan, where he serves as a managing partner, counts Fox as a client and "represent[ed] [] the Company in two investigation/litigation matters": (i) an investigation into bribes by Fox executives to FIFA to secure broadcast rights for soccer in South America and (ii) a litigation involving the Estate of Roger Ailes.³³⁸ In connection with those matters, Fox has paid Quinn Emmanuel [REDACTED] in legal fees.³³⁹

369. If Burck were to act against Murdoch's interests by initiating a lawsuit against Murdoch and his son, Burck could not only lose his Fox directorship and any future Fox business, but also jeopardize his practice by alienating prominent conservatives that support (and are supported by) Fox and represent a substantial portion of Burck's clients.

³³⁸ SIMPSON_220_00001539.

³³⁹ BUILDING_220_00001560.

COUNT I
**BREACH OF FIDUCIARY DUTY AGAINST
THE MURDOCHS IN THEIR CAPACITY AS CONTROLLING
STOCKHOLDERS**

370. Plaintiffs incorporate by reference and restate each and every allegation set forth above, as if fully set forth herein.

371. The Murdochs are Fox's controlling stockholders, and, as such, owed the highest obligation of care and loyalty to the Company and its stockholders. The Murdochs breached their fiduciary duties as Fox's controlling stockholders by knowingly, intentionally, and recklessly, for their own personal benefit and to the detriment of Fox, allowing and/or directing Fox's media outlets to repeatedly endorse and report false, inaccurate, and/or defamatory information regarding voter fraud in the 2020 Presidential Election, including Dominion and Smartmatic's purported participation in that alleged fraud, because they feared losing Fox viewers, and their leadership position in, and influence over, the conservative movement and Fox's formerly loyal viewership base. The Murdochs failed to intervene to protect Fox even when specifically informed about Dominion's and Smartmatic's warnings that the failure to stop and retract Fox's false reporting about their respective roles in the Election would lead to potentially disastrous liability for defamation. At a minimum, the Murdochs consciously disregarded their fiduciary duties to prevent Fox from airing defamatory statements that resulted in enormous liability to Fox.

372. As a direct and proximate result of the Murdochs' breach of fiduciary duties to Fox, Fox has sustained, and will continue to sustain, significant damages, both financially and to its corporate profile and goodwill. Those damages include the \$787.5 million Fox paid Dominion to settle Dominion's claims against Fox in the Dominion Action and exposure to billions of dollars of damages for claims in the Smartmatic Action, as well as, among other things, potential loss of valuable FCC broadcasting licenses, damages awards from other claims against Fox, substantial penalties, fines, and expenses (including litigation expenses), and increased regulatory scrutiny.

373. Plaintiffs and Fox have no adequate remedy at law.

COUNT II

BREACH OF FIDUCIARY DUTY AGAINST THE DIRECTOR DEFENDANTS

374. Plaintiffs incorporate by reference and restate each and every allegation set forth above, as if fully set forth herein.

375. The Director Defendants, as Board members, were and are fiduciaries of the Company. As such, the Director Defendants owed and continue to owe Fox and its stockholders the highest duties of loyalty, due care, and good faith.

376. Fox is a prominent news and media organization, and compliance with defamation law, including by acting within the bounds of First Amendment

protection, is essential and mission critical to its business because publishing information with knowledge of its falsity or with reckless disregard for its truth or falsity can harm other people or entities and cause Fox to incur enormous liability and/or reputational harm. Moreover, maintenance of Fox's valuable broadcasting licenses requires compliance with applicable FCC regulations.

377. Consistent with its fiduciary duties, the Board was required to implement and monitor policies and systems of corporate controls and reporting mechanisms to ensure that Fox did not knowingly publish or disseminate potentially false, inaccurate, and/or defamatory information and that prompt corrective and/or mitigating measures were taken to limit resulting injuries to Fox and its stockholders, including regulatory problems and exposure to massive defamation liability.

378. The Director Defendants knowingly and in bad faith failed to implement and monitor any Board-level system of oversight to ensure it prevented and/or mitigated corporate trauma that results from knowingly disseminating false, inaccurate, and/or defamatory information through Fox's media outlets both before and after mounting red flags. Beyond merely failing to adopt controls, the Director Defendants made the conscious choice to dismantle the controls and protections established in connection with the 2013 Derivative Settlement. The Director Defendants thereby actively disabled themselves from making decisions on a fully informed basis and exposed the company to harm.

379. The Director Defendants consciously breached their fiduciary duties and violated their corporate responsibilities by failing to implement and monitor compliance policies and systems that would require, among other things: (i) Board authority to oversee compliance with the publication or dissemination of truthful, accurate, and non-defamatory information by Fox's media outlets, (ii) a Board-level committee with oversight responsibilities for truthful reporting and editorial controls, (iii) Board oversight of the training of employees regarding defamation law and First Amendment issues, (iv) a direct reporting line between Fox's Chief Ethics and Compliance Officer and the Board, (v) a schedule for the Board to consider on a regular basis whether any key compliance risks existed regarding the publication and dissemination of information, (vi) Board oversight over retractions or corrections of inaccurate or false information published or disseminated by Fox or its properties, and (vii) Board oversight over retraction letters, including response procedures and/or investigations.

380. By failing to make a good faith effort to timely implement an oversight system and by consciously disregarding their duty to learn of and investigate red flags, the Director Defendants individually and collectively failed to exercise their duties of due care and loyalty to Fox and its stockholders. The Director Defendants' severe lack of attentiveness to a core mission-critical aspect of Fox's business constitutes a bad faith breach of the Director Defendants' duties of loyalty and care.

381. In addition and/or in the alternative, the Director Defendants consciously disregarded their duties to prevent Fox from airing defamatory statements that resulted in enormous liability to Fox in order to further the Murdochs' personal agenda ahead of the interests of Fox and its public stockholders. It is reasonably inferable that the Director Defendants knew Fox was repeatedly endorsing and reporting false, inaccurate, defamatory and/or libelous information regarding voter fraud in the 2020 Presidential Election—including relating to Dominion and Smartmatic's participation in that alleged fraud—but did not take action to stop Fox from publishing or disseminating that false information or require Fox to issue corrections or retractions.

382. As a direct and proximate result of the Director Defendants' bad faith failure to carry out their fiduciary duties, Fox has sustained, and will continue to sustain, significant damages, both financially and to its corporate profile and goodwill. Those damages include the \$787.5 million Fox paid to settle the Dominion Action and exposure to billions of dollars of damages for claims against Fox in the Smartmatic Action, as well as, among other things, potential loss of valuable FCC broadcasting licenses, damages awards from other claims against Fox, substantial penalties, fines, and expenses, and increased regulatory scrutiny.

383. Plaintiffs and Fox have no adequate remedy at law.

COUNT III

BREACH OF FIDUCIARY DUTY AGAINST THE OFFICER DEFENDANTS

384. Plaintiffs incorporate by reference and restate each and every allegation set forth above, as if fully set forth herein.

385. The Officer Defendants—*i.e.*, Dinh, Shah, Scott, Wallace, and the Murdochs (in their capacity as Fox executive officers)—were and are fiduciaries of the Company. As such, the Officer Defendants owed and continue to owe the Company and its stockholders the highest duties of due care, good faith, and loyalty.

386. Fox is a prominent news and media organization and compliance with defamation law, including by acting within the bounds of First Amendment protection, is essential and mission critical because publishing information with knowledge of its falsity or with reckless disregard for its truth or falsity can harm other people or entities and cause Fox to incur enormous liability and/or reputational harm. Moreover, maintenance of Fox's valuable broadcasting licenses requires compliance with applicable FCC regulations.

387. Consistent with their fiduciary duties, the Officer Defendants were required to implement and monitor a system of corporate controls and reporting mechanisms to ensure that Fox did not publish or disseminate potentially untruthful, inaccurate, and/or defamatory information and that prompt and/or mitigating

measures were taken to limit resulting injuries to the Company and its stockholders. The Officer Defendants breached their fiduciary duties by consciously and/or knowingly failing to do so.

388. The Officer Defendants also breached their fiduciary duties by knowingly violating the law and internal Company policies by allowing and/or directing Fox's media outlets to repeatedly endorse and report false, inaccurate, and/or defamatory information regarding voter fraud in the 2020 Presidential Election, and Dominion and Smartmatic's participation in that alleged fraud.

389. As a direct and proximate result of the Officer Defendants' failure to carry out their fiduciary duties, Fox has sustained, and will continue to sustain, significant damages, both financially and to its corporate profile and goodwill. Those damages include the \$787.5 million Fox paid to settle the Dominion Action and exposure to billions of dollars of damages for claims in the Smartmatic Action, as well as, among other things, potential loss of valuable FCC broadcasting licenses, damages awards from other claims against Fox, substantial penalties, fines, and expenses, and increased regulatory scrutiny.

390. Plaintiffs and Fox have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment as follows:

A. Declaring that this Action is a proper derivative action maintainable under law and that demand on the Demand Board is excused as futile;

B. Declaring that the Murdochs, as the Company's controlling stockholders, breached their fiduciary duties to Fox;

C. Declaring that Director Defendants breached their fiduciary duties to Fox;

D. Declaring that Officer Defendants breached their fiduciary duties to Fox;

E. Awarding against all Defendants and in favor of Fox the full damages sustained by the Company as a result of Defendants' fiduciary breaches;

F. Granting appropriate equitable relief, including, but not limited to, directing Fox to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with the Company's governance obligations and all applicable laws and to protect Fox and its stockholders from a recurrence of the damaging events described herein;

G. Awarding Plaintiffs the cost and disbursements of the Action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses;

H. Awarding pre- and post-judgment interest; and

I. Granting such other and further relief as the Court deems just and proper.

Dated: September 12, 2023

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CERTIFICATE OF SERVICE

Andrew E. Blumberg hereby certifies that on September 15, 2023, a copy of the foregoing *Public Version of the Verified Stockholder Derivative Complaint* was filed and served electronically upon the following counsel of record:

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