



IN THE COURT OF CHANCERY FOR THE STATE OF DELAWARE

JULIE R. GREENBERG, as Trustee of  
THE JULIE R. GREENBERG  
REVOCABLE TRUST U/A DATED  
05/07/2010 and CARYLIN RIAK,

Plaintiffs,

v.

K. RUPERT MURDOCH, LACHLAN  
K. MURDOCH, CHARLES G.  
("CHASE") CAREY, JACQUES A.  
NASSER, ANNE DIAS, ROLAND A.  
HERNANDEZ, and PAUL A. RYAN,

Defendants,

and

FOX CORPORATION,

Nominal Defendant.

C.A. No. 2023-0440-JTL

**PUBLIC INSPECTION VERSION  
FILED APRIL 25, 2023**

**VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT**

The Julie R. Greenberg Revocable Trust U/A dated 05/07/2010 and Carylin Riak ("Plaintiffs"), derivatively on behalf of Fox Corporation ("Fox Corp."), a Delaware Corporation (with its subsidiaries, "FOX"), make the allegations herein on personal knowledge as to facts concerning Plaintiffs and on information and belief as to all other allegations. This complaint is based in part on the investigation of Plaintiffs' counsel, which included, *inter alia*: a review of documents provided to Plaintiffs in response to their inspection demand pursuant to 8 *Del. C.* § 220; and a review of publicly-available information, including filings with the U.S. Securities

and Exchange Commission (“SEC”), news and media coverage, and judicial filings. The judicial filings include, without limitation, pleadings and exhibits thereto, dispositive motions and evidence adduced therein, and discovery in, the “Dominion Suits” and the “Smartmatic Suit,” as defined hereinafter. Plaintiffs allege as follows:

### **INTRODUCTION AND OVERVIEW OF ACTION**

1. Nature of Action. This suit challenges breaches of fiduciary duty by seven members of the Board of Directors of Fox Corp. who so served continuously between early 2019 and the present (the “Director Defendants”). This suit follows examination of books and records received pursuant to demands Plaintiffs’ counsel made under 8 *Del. C.* § 220.

2. Nominal Defendant. FOX operates through business units and subsidiaries, including Fox News Network LLC (“FNN”), which utilizes the trade name Fox News Media and includes Fox News Channel and Fox Business Network (collectively, “Fox News”). The largest U.S. news organization, FOX is a “conservative” media group with enormous influence over the Republican Party and American politics. Not limited to broadcast and cable television, FOX repeats its content across its many platforms, including: Internet direct-to-consumer streaming services; Facebook, Twitter and other social media; syndication to local TV stations; and radio. Fox News Media reaches two hundred million U.S. consumers each

month and about a half billion globally; Facebook and Twitter users also “share” and “retweet” FOX’s news content to myriad non-FOX media. FOX is also a major factor in U.S. sports broadcasting, as its Fox Sports Media unit owns and operates cable network channels FS1 and FS2, among other broadcast and cable TV properties.

3. Overview of Claims. From November 8, 2020, through January 26, 2021, the Director Defendants knowingly allowed FOX to broadcast, endorse, and repeat, across its many media platforms, outlandish lies accusing two voting technology companies of criminally conspiring to “steal” the 2020 Presidential Election from Donald J. Trump (“Trump”) and awarding it to Joseph R. Biden (“Biden”). The Director Defendants knew the accusations against two thriving companies, Dominion and Smartmatic, as defined *infra*, were false, and three of them, Defendants Rupert Murdoch, Lachlan Murdoch, and Paul Ryan, have so admitted under oath. Dominion and Smartmatic each claim to have suffered an impeded ability to renew existing contracts and gain new ones, and each sued FOX and others for defamation to recover billions of dollars in specified and quantified economic and special damages plus unquantified punitive damages. The specified damages claimed against FOX alone, about \$4.5 billion, are materially equal to FOX’s entire tangible net worth, and the settlement reportedly reached by FOX and

Dominion for \$787.5 million constitutes a large portion of FOX's tangible net worth. The exposure to the litigation claims of Dominion and Smartmatic, as well as the reputational harm and economic injury to Fox from, among other things, defending these lawsuits, could easily have been materially mitigated had FOX given an early, timely, full-throated, widely published retraction. But the Director Defendants knowingly failed to cause FOX to do so, sitting motionless and mute in the face of known duties to act and speak. Having breached their duties of loyalty and acted in bad faith, the Director Defendants must, among other things, (a) pay and indemnify FOX for all costs FOX incurs in all resulting defamation suits, including all judgments, damages, punitive damages, settlement amounts, FOX's defense costs including its attorneys' fees, the voting companies' costs and attorneys' fees if awarded, pre- and post-judgment interest, the increased costs of FOX's insurance, and other costs and monetary and reputational harm that FOX incurs resulting from the repeated false statements regarding Smartmatic and Dominion, and (b) cause FOX to adopt corporate governance measures to prevent needless recurrences of material liability for defamation.

4. FOX, News Corp. and the Murdochs. Two Director Defendants, K. Rupert Murdoch, founder and board chairman of Fox Corp. and Executive Chair of Fox News, and his son, Lachlan K. Murdoch, Chief Executive Officer ("CEO") of

Fox Corp., (sometimes, the “Murdochs”), control FOX and Fox News, and their editorial decisions, including day-to-day decision-making. The Murdochs are both listed atop the five “Named Executive Officers” of Fox Corp. in its annual proxy on SEC Form 14A.<sup>1</sup> The Murdochs also control News Corp., the publisher of *The Wall Street Journal* (“WSJ”), Dow Jones, *The New York Post*, *The (U.K.) Times*, and other news properties. Rupert Murdoch is founder and Executive Chairman of News Corp., and Lachlan Murdoch is its Director and its Co-Chairman since 2014. The Murdochs own and vote, directly or through family trusts, 42% of the voting shares of Fox Corp. and 39% of the voting shares of News Corp.

5. Three FOX Anchors. FOX’s on-air anchors included several known to be unreliable and erratic, some of whom are Lou Dobbs (“Dobbs”) and Maria Bartiromo (“Bartiromo”) of Fox News Channel and Fox Business Network, and Jeanine Pirro (“Pirro”) of Fox News Channel. They were all FOX agents and while infamously unreliable were famously influential. These three anchors reached tens of millions of consumers directly and a multiple of that through republication. Dobbs’s show, *Lou Dobbs Tonight*, achieved the highest viewership in business news for many years until February 2021. With the highest business-TV viewership

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<sup>1</sup> See Fox Corp., Definitive Proxy (Form DEF 14A) (Sept. 23, 2020) at 26; Fox Corp., Definitive Proxy (Form DEF 14A) (Sept. 17, 2021) at 26.

in her time slots, Bartiromo anchors *Sunday Morning Futures with Maria Bartiromo* on Fox News and the three-hour daily *Mornings with Maria* on Fox Business; she is the solo host of FOX shows for an unequaled 16 hours per week. At all relevant times, and until January 2022, Pirro hosted *Justice with Judge Jeanine*, which touted her stature as a former judge and former prosecutor. Since, January 2022, Pirro has co-hosted, with four others, the Fox News show *The Five*. Dobbs, Bartiromo, and Pirro, on their Fox News and Fox Business shows, provided the main platforms for spreading the falsehoods against Dominion and Smartmatic.

6. What Corporate Directors May Not Do. Directors of a corporation may not knowingly or through conscious disregard of their duties lead it into enterprise-threatening civil liability. Where the corporation owns and operates a global news-media enterprise, they may not lead it or knowingly permit it to spread lies falsely accusing third-party entities of fraudulent or criminal activity. Less yet may they do so when the defamed entities are thriving companies whose claimed damages in foreseeably ensuing libel suits may be measurable in hundreds of millions or billions of dollars. They may not utterly fail to install safeguards and board-level monitoring and oversight systems to avoid committing such actionable libels. Once such libels are published, they may not knowingly fail to mitigate enterprise-threatening damages by failing to cause their company to make and publish early, robust

retractions. They may not lead the corporation into material violations of positive law by committing criminal libel under state laws, intentionally spreading false statements that accuse third parties of criminal or hateful conduct. They may not ignore the infamous unreliability of their company's own anchors while they spread actionable libel *via* notoriously unreliable guests. Yet, to the detriment of FOX, the Director Defendants did all these things for months on end, with the world watching, in the most reported story on the planet. In so doing, they breached their duties of loyalty to FOX and failed to act in good faith.

7. Dominion and Smartmatic. Dominion and Smartmatic are two separate and unrelated voting technology companies. Dominion operates in the U.S. and abroad, and its voting machines were used in 28 states in the 2020 Presidential Election. Smartmatic operates mainly outside the U.S. and its technology was involved in the 2020 Presidential Election only in Los Angeles County, California, and nowhere else. Neither Dominion nor Smartmatic owns any part of the other. Neither utilized the other's software. Neither was ever banned in any state.

8. Prepping the "Big Lie". In advance of the 2020 election, then-President Trump famously stated repeatedly that he could not possibly lose the election unless it was rigged. The Director Defendants knew this in real time. They had advance warning because before the 2016 election, Trump made virtually the same claim.

9. 2020 Presidential Election Result. In the presidential election, held on Tuesday, November 3, 2020, Biden won and Trump lost. The result was close in eight “battleground” states, of which Biden won six – Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin – enough to win in the electoral college.

10. The Decision Desks. At various times between November 3 and 7, 2020, each of the four major networks’ independent decision desks “called” each of these six states for Biden. On election night (November 4, 2020, referenced herein as “Election Night”), the FOX decision desk called the Arizona race for Biden, the first to do so, drawing the ire of Trump, whose furious public reaction outraged his supporters who criticized FOX. As a result, Fox News’ ratings dropped temporarily as many Trump-supporting viewers switched to FOX’s much smaller rivals (Lachlan Murdoch later testified that he thought this was only a “temporary dip”). On November 7, 2020, between 11:24 AM ET, and 11:41 AM ET, all four major networks’ decision desks, including that of FOX, “called” the race for Biden.

11. Trump Promotes the “Big Lie”. After the 2020 election, and to this day, Trump has denied losing, stating falsely and without evidence that there was massive fraud, and that he would have won easily if it were not for such fraud.

12. Giuliani and Powell Promote False Accusations. Beginning November 8, 2020, through January 26, 2021, two lawyers purporting to represent Trump or



his campaign, Rudolph Giuliani (“Giuliani”) and Sidney Powell (“Powell”), and Mike Lindell, founder/CEO of My Pillow, Inc., a major FOX advertiser (“Lindell”), promoted a narrative of false accusations that Dominion and Smartmatic conspired to defraud the nation by using their technology to switch votes to Biden from Trump, overturning the 2020 Presidential Election that Trump “rightfully” won.

13. Content of the False Accusations. The Giuliani-Powell narrative, while varying in detail with each telling, included the following ten points, each of which is false:

**First**, that Smartmatic owns Dominion, and one is the other’s subsidiary;

**Second**, that Smartmatic software is used in Dominion voting machines;

**Third**, that Smartmatic’s voting technology was widely used to steal the 2020 Presidential Election from Trump and give it to Biden;

**Fourth**, that Dominion’s voting machines, with the help of the Smartmatic software they secretly contained, sent votes outside the United States to be counted;

**Fifth**, that through Smartmatic’s software, Dominion’s voting machines had a “back door” enabling others in foreign countries to log in and flip votes, or software “algorithms” to determine how many Trump votes they needed to switch to secure a Biden victory, and then switched millions of votes to that end;

*Sixth*, Smartmatic’s software made the fraud undiscoverable and impossible to audit;

*Seventh*, that Smartmatic (or in some retellings, Dominion) was and is owned by Venezuelan dictator Hugo Chávez and his henchmen and was founded for the purpose of rigging elections;

*Eighth*, that Smartmatic (or, in some retellings, Dominion) was banned in the U.S., specifically, in Texas;

*Ninth*, that Dominion paid kickbacks (bribes) to government officials in the states that utilized Dominion’s machines in the 2020 Presidential Election; and

*Tenth*, that China had invested \$400 million in Dominion.

This false narrative is herein sometimes called the “**Big Libel**” or the “**Ten Points.**”

14. The Ten Points are All False. These items correspond to items similarly numbered in the foregoing paragraph: *First*, neither Smartmatic nor Dominion ever owned the other; *Second*, Smartmatic never provided Dominion with voting technology or software; *Third*, Smartmatic had no involvement in the 2020 Presidential Election except in Los Angeles County, California, a county not located in a swing state; *Fourth*, no votes in the 2020 Presidential Election were sent overseas to be counted; *Fifth*, the “back-door” allegation is incoherent and false; *Sixth*, results were indeed audited in all contested states with paper-ballot backups,

for example in Georgia; Seventh, dead since 2013, neither Chávez nor his henchmen ever owned Smartmatic or Dominion, and neither was founded to fix elections; Eighth, neither Dominion nor Smartmatic was ever banned in the U.S. or in any state; Ninth, there is no evidence that Smartmatic or Dominion ever paid bribes or kickbacks; and Tenth, China never invested in Dominion, let alone \$400 million. FOX conceded the falsity of these Ten Points by not contesting them in FOX's briefs supporting motions to dismiss the suits brought against FOX by Dominion and Smartmatic; nor has FOX contested any of them in cross-motions for summary judgment submitted in March 2023 in the Dominion Suits. As several courts have held, this false narrative constitutes defamation *per se* for purposes of civil litigation as it falsely accuses Dominion and Smartmatic of serious crimes.

15. Giuliani and Powell Spread the “Big Lie” in the Courts. Starting in late 2020, Giuliani, Powell, and other Trump lawyers, in over 40 suits, promoted the narrative that Trump had actually won the 2020 Presidential election (sometimes, the “Big Lie”). They lost every suit. No court found that they presented material evidence of voter fraud, and both Giuliani and Powell were severely sanctioned. In June and July 2021, both New York and the District of Columbia suspended Giuliani's law license, effective immediately, for lying to the courts in other jurisdictions regarding the election. A U.S. District Court judge in Michigan

sanctioned Powell for bringing frivolous suits, including those based on false fraud charges against the voting machine companies, required her to pay defense fees, and referred her for disciplinary action including possible disbarment.

16. Unreliable Sources. The Director Defendants, Dobbs, Bartiromo, and Pirro, knew that Giuliani and Powell were erratic, unreliable, and often untruthful, as those two sources had spectacularly and publicly demonstrated. The Director Defendants, including the five non-executive Director Defendants who utterly failed in their duty to monitor, knew that Dobbs, Bartiromo, Pirro, Giuliani, and Powell were erratic, unreliable, and often untruthful.

17. The Bourne Identity; How Powell Invented the Libel. As pled in more detail *infra*, on November 7, 2020, Powell and Dobbs received an email from a stranger claiming that “the Wind tells” her she is “a ghost,” that Rupert Murdoch huddles almost daily with Roger Ailes (who died in 2017) as to how to make Trump look bad, and that in her “strangest dreams” she saw Dominion as the common element in all of Trump’s election fraud claims. The “ghost” email inspired Powell, and when Bartiromo interviewed Powell that night and hosted Powell the next night, Powell spread the false narrative blaming Dominion (and later Smartmatic). The email’s author was Marlene Bourne of Minnesota, who makes what she calls “cactus

art” using glitter, but has no credentials that would make her a credible source for voter fraud allegations.

18. Nov. 8, 2020: Initial False Accusations Made Against Dominion. With the “ghost” email as her sole support, Bartiromo introduced the false narrative to Fox’s viewers in an interview with Sidney Powell on her *Sunday Morning Futures* show:

Bartiromo: Sidney, we talked about the Dominion software. I know that there were voting irregularities. Tell me about that.

Powell: ... That is where the fraud took place, where they were flipping votes in the computer system or adding votes that did not exist ... That’s when they had to stop the vote count and go in and replace votes for Biden and take away Trump votes.

From that point on, through their inaction, the Director Defendants allowed Dobbs, Bartiromo, and Pirro to air Giuliani or Powell (and later Tucker Carlson to air Lindell), as guests on their shows, to present the same false accusations. Dobbs, Bartiromo, and Pirro repeated, republished, amplified, and endorsed it, while the Director Defendants willfully sat motionless. When asked at a deposition given in January 2023 in the Dominion Suit whether Dobbs, Bartiromo and Pirro endorsed the false election fraud claims on air, Rupert Murdoch replied, “Yes. They endorsed” and that Dobbs did so “oh, a lot.”

19. November 12, 2020: False Accusations Broaden to Include Smartmatic.

Dobbs similarly led Giuliani on a November 12, 2020 broadcast, adding Smartmatic to the conspiracy, stating that Dominion's machines are hackable, that Dominion is owned by Smartmatic, which was formed in 2003-04 to rig elections for Hugo Chávez, that Dominion machines contain Smartmatic software, that the votes are counted in Spain, and that both companies have a "terrible record." Each of these statements was false. Dobbs endorsed Giuliani's lies, and added, falsely, that the machines cannot be audited.

20. Director Defendants Sit Idle While the "Big Libel" Airs from November 8, 2020 to January 26, 2021. Dobbs, Bartiromo, and Pirro continued to host Powell and Giuliani, and Tucker Carlson hosted Lindell, as the three "guests" – two now-disbarred lawyers and a pillow salesman – repeated the false accusations against Dominion and Smartmatic, from November 8, 2020, through January 26, 2021 (the "Libel Period"). The Director Defendants failed to cause FOX to correct or retract the reporting they *knew was false*:

(a) WSJ, a paper owned by the Murdochs' News Corp., and run by Director Defendants Rupert Murdoch and Lachlan Murdoch, published articles and editorials debunking the Big Lie and the accusations against the voting machine companies. For example, WSJ's Editorial Board published an editorial on

November 17, 2020, titled *Rage Against the Voting Machine; Trump Blames the Result on Dominion's Systems; Where's the Evidence?* stating “there’s no good evidence of voting problems that would come close to” casting doubt on Biden’s lead in swing states. The Murdochs knew what was in their own newspaper. On November 16, 2020, 59 specialists in election security signed an open letter and posted it online stating, *inter alia*, that no credible evidence has been put forth that supports a conclusion that the 2020 election outcome in any state has been altered through technical compromise.<sup>2</sup> Even before that, as early as November 12, 2020, the U.S. Cybersecurity & Infrastructure Security Agency (“CISA”) proclaimed that there was no evidence of widespread voter fraud or irregularities.<sup>3</sup>

(b) Director Defendant (former Speaker of the House and current Chair of Fox Corp.’s Nominating and Corporate Governance Committee) Paul Ryan

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<sup>2</sup> See Tony Adams et al., *Scientists Say No Credible Evidence of Computer Fraud in the 2020 Election Outcome, But Policymakers Must Work with Experts to Improve Confidence*, MATT BLAZE’S TECHNICAL PAPERS (Nov. 16, 2020), <https://www.mattblaze.org/papers/election2020.pdf>, attached hereto as **Exhibit A** (“Open Letter”).

<sup>3</sup> See *Joint Statement From Elections Infrastructure Government Coordinating Council & The Election Infrastructure Sector Coordinating Executive Committees*, CYBERSECURITY & INFRASTRUCTURE SECURITY AGENCY (Nov. 12, 2020), <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election>, attached hereto as **Exhibit B** (“Joint Statement”).

publicly and emphatically stated on November 24, 2020, that there was no widespread voter fraud, that Trump's lawyers' "conspiracy theories" were "baseless" and evidence-free, and that Biden had legitimately won. In a sworn deposition in the Dominion Suit, Defendant Ryan testified that he had never believed the conspiracy theories and always believed that the 2020 Presidential Election was fair. On December 1, 2020, in a widely-reported interview with the Associated Press, then-U.S. Attorney General William Barr debunked the criminal accusations against Dominion and Smartmatic following investigations by the Department of Homeland Security ("DHS") and the Department of Justice ("DOJ"), stating that, "we have not seen fraud on a scale that could have effected a different outcome in the election."

(c) Every Director Defendant knew of this reporting in real time, daily, as this was likely the most intensely reported story in the world. Copious evidence in the form of deposition testimony and recently released text messages establish that Defendant Ryan knew, and discussed with Rupert Murdoch and Lachlan Murdoch as early as November 10-12, 2020, that the Big Lie and the Big Libel were false. Ryan testified that all unit heads of FOX and all members of the Board of Directors of Fox Corp. attended a Board meeting over those three days at which, according to Ryan's sworn testimony, the conspiracy theories aired on Fox



News must have been discussed. Ryan swore that he discussed his views with both the Murdochs that FOX should stop airing false conspiracy theories, but complaining to a founder does not discharge a director's fiduciary duty to take board action.

21. Anchors Republish on Social Media. During the Libel Period, the three FOX anchors – Dobbs, Bartiromo, and Pirro – repeated the false charges against Dominion and Smartmatic across FOX's many online platforms, including their Facebook and Twitter accounts that were at least partially controlled by FOX, other social media, and FOX's subscription services.

22. Dominion Provides Facts in "SETTING THE RECORD STRAIGHT" Emails. Between November 12 and November 26, 2020, Dominion sent a series of emails to over 90 influential people within FOX, including Dobbs, Bartiromo and Pirro, plus reporters, producers, and content managers of their shows, as well as FOX anchors including Sean Hannity, Tucker Carlson, and others. Titled "SETTING THE RECORD STRAIGHT" ("STRS"), each new STRS email included and updated facts in real time from the past editions and added new facts as new false information was spread. Dominion followed with "FACT SHEETS" sent to FOX leadership by email through much of December. Dominion also posted each STRS and "FACT SHEET" online so all the world could see them. These emails and Dominion posts linked to other sources as well, debunking all the charges against

Dominion, and by extension, against Smartmatic. As one example, the November 13, 2020 edition of STRS stated categorically that Dominion was not owned by Smartmatic. The “FACT SHEETS,” including one disseminated on November 30, 2020, stated that –

Dominion is not, and never has been owned by Smartmatic. Dominion is an entirely separate company—they do not collaborate in any way and have no affiliate relationships or financial ties. Dominion does not use Smartmatic software.

This undercuts the entire premise of the false narrative. Yet, on their shows, Dobbs, Bartiromo, and Pirro never cited Dominion’s statement that the two companies are unrelated, and the Director Defendants never caused them to do so.

23. Retractions Demanded. Dominion sent retraction demand letters to FOX on November 20, 2020<sup>4</sup> and December 22, 2020,<sup>5</sup> debunking every aspect of the Ten Points. Smartmatic sent a 20-page retraction demand to FOX on December 10, 2020,<sup>6</sup> also debunking the lies, citing sources, *and indicating that the alternative to retraction is litigation.* The Director Defendants knew of these public demands

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<sup>4</sup> Attached hereto as **Exhibit C.**

<sup>5</sup> Attached hereto as **Exhibit D.**

<sup>6</sup> Attached hereto as **Exhibit E.**

but never required FOX or its anchors to issue a real retraction, which – had one been given – would have materially mitigated damages in defamation.

24. The Refusal to Retract. Between December 18 and 20, 2020, Dobbs, Bartiromo, and Pirro, on each of their shows, broadcast a recorded segment in which an election specialist, Eddie Perez, answered questions from an unidentified off-camera voice, saying he has no evidence to support several aspects of the charges against the voting machine companies. Writing on December 20, 2020, New York Times (“NYT”) media expert Ben Smith perhaps put it best:

Over the weekend, they [Fox News] broadcast one of the strangest three-minute segments I’ve ever seen on television, with a disembodied and anonymous voice flatly asking a series of factual questions about Smartmatic of an expert on voting machines, Eddie Perez, who debunks a series of false claims. The segment, which appeared scripted to persuade a very literal-minded judge or jury that the network was being fair, aired over the weekend on the shows hosted by Lou Dobbs, Jeanine Pirro and Maria Bartiromo, where Mr. Giuliani and Ms. Powell had made their most outlandish claims.<sup>7</sup>

This was no retraction at all, and this made-for-litigation segment did nothing to mitigate damages. Neither Dobbs nor Bartiromo nor Pirro endorsed Mr. Perez’s

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<sup>7</sup> Ben Smith, *The ‘Red Slime’ Lawsuit that Could Sink Right-Wing Media*, N.Y. TIMES (Dec. 20, 2020, updated May 18, 2021), <https://www.nytimes.com/2020/12/20/business/media/smartmatic-lawsuit-fox-news-newsmax-oan.html?referringSource=articleShare/>.

statements. Pirro could not even bring herself to introduce the pre-recorded Perez segment, having a stand-in do so.

25. The Injuries. Both voting technology companies, Dominion and Smartmatic, are entirely dependent on renewals of existing government contracts and on being awarded new ones. The false charges made each of them toxic in many jurisdictions (even down to the county or municipal level) in the U.S. and abroad. Far too many people believed the false narrative, and even election officials who did not believe it preferred to avoid controversy by awarding contracts to other voting technology companies that had no such surrounding controversy.

26. Smartmatic Sues FOX. Smartmatic filed suit in the Supreme Court, State of New York, New York County, on February 4, 2021, naming as defendants: (a) Fox Corp. and Fox News Network LLC; (b) Dobbs, Bartiromo, and Pirro; and (c) Giuliani and Powell (the “Smartmatic Complaint” or “Smartmatic Suit”).<sup>8</sup> Besides defamation, the Smartmatic Complaint alleged disparagement, enumerated economic and actual damages of \$2.7 billion, and additionally claimed unenumerated punitive damages. As pled *infra*, the Smartmatic Complaint was upheld over Fox Corp.’s motion to dismiss, and a five-judge appellate panel affirmed

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<sup>8</sup> *Smartmatic USA Corp., et al. v. Fox Corp., et al.*, Index No. 151136/2021, C.A. No. 2022-01291 (N.Y. Supr. Ct. Feb. 4, 2021).

the trial court and unanimously rejected all of FOX's defenses, including those arising under New York State law.

27. Fox Cancels Dobbs the Next Day. On February 5, 2021, FOX cancelled Dobbs's show and took him off the air. The Director Defendants knew all along how outrageous the Giuliani-Powell accusations were, and FOX showed they could move fast. Had they moved half as fast months prior and issued the requested retraction, FOX's damage exposure to the two voting companies would have been significantly less than what is ultimately being claimed.

28. Dominion Sues FOX and Others. Dominion filed suit in Delaware Superior Court on March 26, 2021, alleging defamation and naming FNN (which includes Fox News and Fox Business) as the sole defendant (the "Dominion Suit" or "Dominion Complaint").<sup>9</sup> As Fox Corp. and the Murdochs tried to avoid parent responsibility for the subsidiary, on November 8, 2021, Dominion plugged that gap by filing a parallel complaint in the same court, alleging the same core of facts, and naming parent Fox Corp. and Fox Broadcasting.<sup>10</sup> These two complaints and suits ("Dominion Complaints" or "Dominion Suits") specify over \$1.7 billion in

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<sup>9</sup> *US Dominion, Inc., et al. v. Fox News Network, LLC*, C.A. No. N21C-03-257-EMD (Del. Super. Ct.).

<sup>10</sup> *US Dominion, Inc., et al. v. Fox Corp. et al.*, C.A. No. N21C-11-082-EMD (Del. Super. Ct.).

economic or actual damages and additionally seek unenumerated punitive damages. As pled *infra*, the Dominion Complaints were each upheld over FOX's motions to dismiss, were consolidated, and in early 2023 were the subject of cross-motions for summary judgment. On March 31, 2023, Delaware Superior Court: granted in part in crucial respects Dominion's motions for partial summary judgment; denied all of FOX's motions for summary judgment; and ordered remaining issues to go to trial beginning in April 2023. On the same nucleus of facts, Dominion filed separate suits in U.S. District Court for the District of Columbia against Giuliani, Powell, and Lindell. As pled, *infra*, that court has denied all three defendants' motions to dismiss. On April 18, 2023, on the first day of the Delaware trial, FOX and Dominion reached an eleventh-hour settlement reportedly worth \$787.5 million.

29. The Alleged Misconduct/Inaction Is Not Exculpated. FOX's charter provision under 8 *Del. C.* § 102(b)(7) does not exculpate the Director Defendants' misconduct because (a) the conduct challenged herein represents breach of the duty of loyalty and acts or omissions not in good faith, neither of which is exculpable, (b) Rupert Murdoch and Lachlan Murdoch harbored self-interest, and Defendant Paul Ryan did as well, (c) certain (indeed most or all) of the wrongful conduct and wrongful inaction alleged herein against the Murdochs implicates their duty as officers and executives, rather than just as directors, and to that extent they cannot

be exculpated *either* in a derivative suit *or* where, as here, the challenged conduct (2020-2021) preceded the charter amendment exculpating officers (2023), (d) the conduct includes leading FOX to commit criminal libel under several state penal laws, and criminal acts cannot be exculpated under 8 *Del. C.* § 102 (b)(7)(v), and (e) some of the relief demanded herein includes non-monetary relief, and to that extent exculpation is irrelevant.

30. The Murdochs' Boss. Even the Murdochs have a boss: it is the Fox Corp. Board of Directors (the "Board"). 8 *Del. C.* § 141(a) ("The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors ..."). As pled more specifically *infra*, Defendant Ryan, a key member of the Fox Corp. Board, swore that he ***never*** believed the conspiracy theories. At all relevant times, Ryan was and is Chair of the Board's Nominating and Corporate Governance Committee. Yet, when he spoke to the Murdochs and they refused or otherwise failed to do anything, Ryan, like the other non-executive directors, consciously disregarded his fiduciary duty to take board action or to put in place monitoring and oversight mechanisms. Indeed, all five then-serving directors not named Murdoch folded like a quintet of accordions.

31. Demand Excusal. As pled throughout this Complaint and in the Demand Excusal section *infra*, demand under Delaware Court of Chancery Rule

23.1 would have been futile because half or more of the eight directors currently serving (a) face a substantial likelihood of liability based on facts pled herein, (b) received or will receive a personal benefit from the misconduct alleged herein, *or* (c) lack independence from Director Defendants Rupert Murdoch or Lachlan Murdoch or Paul Ryan, each of whom received a material personal benefit from the misconduct or conscious inaction alleged herein; these three face a substantial likelihood of liability to an even greater extent than some of the other Director Defendants.

## **PARTIES**

32. Plaintiffs are Julie R. Greenberg as Trustee of The Julie R. Greenberg Revocable Trust U/A Dated 05/07/2010, a resident of the state of Maryland, and Carylin Riak, a resident of the state of Texas, each of whom owns shares in Fox Corp. Each of Plaintiffs has held her shares continuously since before November 8, 2020.

33. Nominal Defendant Fox Corp. is as follows:

(a) Fox Corp. is a Delaware corporation headquartered at 1211 Sixth Ave., New York, New York 10036. Fox Corp.'s shares began trading on March 19, 2019. As of the close of the fiscal year when the misdeeds occurred (June 30, 2021), FOX's tangible net worth (net worth minus intangible assets and goodwill) was



around \$4.5 billion. FOX in its present corporate identity began early in 2019, but the continuity of its present businesses under control of Rupert Murdoch goes back several decades. Between 2013<sup>11</sup> and 2019, its businesses were owned and operated by Twenty-First Century Fox, Inc. (“21CF”) and from around 1986 until 2013 by News Corp. In early 2019, 21CF placed Fox TV network, Fox News, Fox Business, and Fox U.S. Sports into a then-new entity, Fox Corp., which it spun off in a pro-rata stock distribution to 21CF’s stockholders (including the Murdochs). The Walt Disney Company (“Disney”) then acquired 21CF post-spinoff, giving Disney ownership of 21CF’s movie, cable entertainment, and some other properties. In the spinoff, Lachlan Murdoch became a major shareholder of Disney; and

(b) FOX’s reach and intensity are enormous. Fox News and Fox Business are available in 75-80 million U.S. households. For many years running, Fox News has had the largest viewership in cable news. Separately, FOX owns and operates, or is contractually affiliated with, 29 local TV stations that cover 18 major media markets, including 14 of the nation’s top 15;<sup>12</sup> Fox News and Fox Business content is often rebroadcast on these stations. FOX’s reach and impressions far

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<sup>11</sup> For decades leading up to 2013, the same businesses were under the umbrella of the Murdochs’ News Corp., which is not only the sister company of Fox Corp. but the predecessor company of 21CF and Fox Corp.

<sup>12</sup> Fox Corp., Annual Report (Form 10-K) (Aug. 10, 2021) at 3.

exceed its TV viewership: in the single month of February 2021, Fox News Digital achieved 1.6 billion multiplatform views, 3.4 billion multiplatform minutes, and over 89 million multiplatform unique visitors. In the same month, FOX's business Internet platform, FoxBusiness.com, achieved 138 million multiplatform views and 27 million multiplatform unique visitors.<sup>13</sup> FOX's content is often posted by FOX and its anchors on their FOX-controlled Facebook and Twitter accounts and then reposted, shared, retweeted, and repeated to countless users outside FOX's control.

34. Defendant Rupert Murdoch. Keith Rupert Murdoch ("Rupert Murdoch"), Executive Chairman of Fox Corp. and Executive Chair of Fox News, is listed first among the five "Named Executive Officers" of Fox Corp. every year since its founding in 2019. He is founder of News Corp., of 21CF, of Fox News, and of FOX. He has voting power over 42% of Fox Corp.'s voting shares. He is a director of Fox Corp. and has been continuously since its founding in March 2019. Rupert Murdoch, 91,<sup>14</sup> (a) was Executive Chairman of 21CF from 2015 until March 2019; (b) was CEO of 21CF or its predecessor company from 1979 to 2015; (c) was

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<sup>13</sup> Press Release, Fox News Media, *Fox News Digital Surpasses New York Times And Washington Post In Every Key Performance Metric* (Mar. 17, 2021), <https://press.foxnews.com/2021/03/fox-news-digital-surpasses-new-york-times-and-washington-post-in-every-key-performance-metric/>.

<sup>14</sup> Ages shown for FOX directors are as of Fox Corp.'s Definitive Proxy (Form DEF 14A) (Sept. 19, 2022) at 63.

Chairman of 21CF or its predecessor company from 1979 until March 2019; (d) is founder of News Corporation, is its controlling stockholder and, since 2015, serves as its Executive Chairman; and (e) controlled for decades SKY Group and SKY plc. He is the father of Defendant Lachlan Murdoch. As the two top executive officers of FOX, Rupert Murdoch and Lachlan Murdoch exert direct control over Fox News programming decisions including editorial control. Rupert Murdoch serves alongside Defendants Lachlan Murdoch and Paul Ryan on the Board of Trustees of the Ronald Reagan Presidential Foundation and Institute.

35. Defendant Lachlan Murdoch. Lachlan K. Murdoch (“Lachlan Murdoch”) is CEO and a director of Fox Corp. He is also a director of News Corp. and is and has been its Co-Chairman since 2014. Lachlan Murdoch, 51, served as Executive Chairman of FOX’s predecessor company, 21CF, from 2015 until March 2019, and a director of 21CF or its predecessor company, News Corp., from 1996 to 2019. Lachlan Murdoch is the son of Rupert Murdoch, and as the two top executive officers of Fox Corp., the Murdochs exert control over Fox News programming decisions, including editorial control. Fox News Media, which includes both Fox News and Fox Business, lists both Rupert Murdoch and Lachlan Murdoch as part of

its “Executive Leadership.”<sup>15</sup> Lachlan Murdoch serves alongside Defendants Rupert Murdoch and Paul Ryan on the Board of Trustees of the Ronald Reagan Presidential Foundation and Institute. At relevant times, Lachlan Murdoch personally or through his own family trust (LKM Family Trust) owned over 3,600,000 shares of Disney, worth during the Libel Period around a half billion dollars.

36. Defendant Carey. Charles G. “Chase” Carey (“Carey”), serves as a member of the Fox Corp.’s Board’s Compensation Committee and has so served continuously since 2019. Carey, 68, has been a director of Fox Corp. since its inception in March 2019. Carey was listed in FOX’s Definitive Proxy, filed September 23, 2020, for the Annual Meeting held November 12, 2020, and in the previous year’s Definitive Proxy, filed September 23, 2019, *as a non-independent director*. Carey, 68, has spent three decades working for and with Rupert Murdoch, including as (a) 21CF’s Vice Chairman from 2016 to 2019; (b) 21CF’s Executive Vice Chairman from 2015 to 2016; (c) President and Chief Operating Officer (“COO”) of 21CF and of its predecessor, News Corp., from 2009 through 2015; (d) Deputy Chairman of 21CF or its predecessor from 2009 to 2015; (e) Co-COO of 21CF and of its predecessor, News Corp., from 1996 to 2002; and (f) a director of

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<sup>15</sup> *Media Relations*, FOX NEWS MEDIA, <https://press.foxnews.com/> (last visited Apr. 17, 2023).

21CF or its predecessor from 1996 to 2007 and from 2009 to 2019. Carey first joined News Corp., which then owned the FOX assets, in 1988, and helped launch Fox News and Fox Business. He thus worked with and under Rupert Murdoch at 21CF or its predecessor, News Corp., for over 30 years, including serving on their boards and then the Board of Fox Corp., and with Lachlan Murdoch at News Corp., 21CF and Fox Corp. for 26 years. He is Chairman of Formula One Group or “F1” since 2016, and was its CEO from 2017 to 2021.<sup>16</sup> Carey is historically Rupert Murdoch’s most trusted executive and director outside the Murdoch family; indeed, *in 2011, Murdoch stated publicly that “Chase is my partner and if anything happened to me I’m sure he’ll get it immediately -- if I went under a bus.”*<sup>17</sup> Carey is widely credited with making FOX and its predecessors the preeminent players in the broadcasting of sporting events. Carey is historically regarded as FOX’s premier dealmaker, having negotiated FOX’s contracts to broadcast National Football League (“NFL”) games and FOX’s deals with cable service providers. Carey also

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<sup>16</sup> The Murdochs, or at least Rupert Murdoch, hold a rationally economic incentive to see that Fox Sports has an opportunity to broadcast Formula One in future years. Formula One is now broadcast by Disney’s ESPN. It is also reasonably conceivable that Carey would want Fox Sports and Disney to compete for these rights in future years, bidding up the price to the benefit of Carey’s Formula One.

<sup>17</sup> Yinka Adegoke, *Rupert Murdoch Endorses Carey As Next In Line*, REUTERS (Aug. 10, 2011), <https://www.reuters.com/article/us-newscorp/rupert-murdoch-endorses-carey-as-next-in-line-idUSTRE77967X20110810>.

served in top management and board positions at SKY Deutschland and SKY plc; he served as Chairman of SKY Deutschland from 2010-2013 and a director of parent SKY plc from 2003-2009 and 2013-2018, at a time that the SKY Group was controlled (and 40% owned) by Rupert Murdoch. The SKY connection with Murdoch-Carey ended only in late 2018, when Comcast won a bidding war that included Disney and acquired all of the SKY Group. In mid-October 2022, when Rupert Murdoch proposed a merger of Fox Corp. and News Corp. (a proposal he withdrew January 27, 2023), each of the two corporations appointed a “Special Committee” of independent directors, a committee that remained intensely active for four months. The Fox Corp. Special Committee included Defendants Nasser (chair), Dias, Hernandez, and Ryan, and director William A. Burck, but not Carey, conceding in a most meaningful way that Carey is not an independent director, and certainly not independent of the Murdochs.

37. Defendant Dias. Anne Dias, formerly Anne Dias-Griffin (“Dias”), is a director of Fox Corp. and has been since its inception in March 2019. Dias, 51, is founder and CEO of Aragon, an investment firm specializing in global equities. She serves a member of the Fox Corp.’s Board’s Audit Committee, its Compensation Committee, and its Nominating and Corporate Governance Committee, and has so served continuously since 2019. In Dias’ Fox Corp. 2020 “Director and Officer

Questionnaire” form disclosing, *inter alia*, relationships with other directors, Dias stated that “I have been a financial supporter of Paul Ryan’s political activities.”<sup>18</sup> Both Dias and her former husband, multi-billionaire Kenneth C. Griffin (“Griffin”), with whom she shares custody of their three children, have jointly and individually donated to Paul Ryan and super-PACs supporting him for many years as well as to other political candidates, primarily Republicans. Between 2010 and 2012 alone, while married to Griffin, Dias individually gave \$19,800 to Ryan’s campaigns.<sup>19</sup> In 2016 alone, Dias gave \$25,000 to “Team Ryan,”<sup>20</sup> a PAC formed to support Ryan, and Griffin separately gave \$244,200 to the same Ryan PAC<sup>21</sup> although Dias and Griffin were divorced by then. In 2020 alone, Griffin is reported to have given ten

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<sup>18</sup> Greenberg-Riak\_220\_00001015 at 1018. References herein to “Greenberg-Riak\_220,” followed by a Bates number, refer to production of books and records made herein by Fox Corp. to Plaintiffs’ counsel.

<sup>19</sup> *Anne Dias Griffin*, LITTTLESIS, [https://littlesis.org/person/50093-Anne\\_Dias\\_Griffin?relationships=donation\\_recipients](https://littlesis.org/person/50093-Anne_Dias_Griffin?relationships=donation_recipients) (last visited Mar. 8, 2023).

<sup>20</sup> *Anne Dias Griffin Political Campaign Contributions 2016 Election Cycle*, CAMPAIGNMONEY.COM, <https://www.campaignmoney.com/political/contributions/anne-dias-griffin.asp?cycle=16> (last visited Mar. 8, 2023).

<sup>21</sup> *TEAM RYAN, Political Action Committee Campaign Contribution Details 2016 Election Cycle*, CAMPAIGNMONEY.COM, <https://www.campaignmoney.com/political/committees/ryan-nrcc-victory-committee.asp?cycle=16> (last visited Mar. 8, 2023).

million dollars (\$10,000,000) to the Congressional Leadership Fund, a super PAC that has been closely linked to and aligned with Ryan.<sup>22</sup> In 2022, per Forbes, Griffin's net worth was \$26.5 billion,<sup>23</sup> almost double what it was reported to have been two years earlier. Unlikely to be ignored as a political donor, Griffin is reported to have given a total of \$64,750,000 in political donations in 2020 alone,<sup>24</sup> and at least another \$70.5 million in the 2022 election cycle. Politico reported on February 3, 2022, that Griffin is "the single biggest spender in Republican politics."<sup>25</sup>

38. Defendant Hernandez. Roland A. Hernandez ("Hernandez") is a director of Fox Corp. and has been since its inception in March 2019. He is Chair

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<sup>22</sup> *Griffin, Kenneth C. & Anne Dias Donor Detail*, OPEN SECRETS, [https://www.opensecrets.org/outsidespending/donor\\_detail.php?cycle=2020&id=U0000003655&type=I&super=s&name=Griffin%2C+Kenneth+C.+%26+Anne+Dias](https://www.opensecrets.org/outsidespending/donor_detail.php?cycle=2020&id=U0000003655&type=I&super=s&name=Griffin%2C+Kenneth+C.+%26+Anne+Dias) (last visited Apr. 28, 2022).

<sup>23</sup> John Hyatt, *Ken Griffin's Fortune Jumps \$5 Billion In A Day After Investment From Sequoia Capital, Paradigm*, FORBES (Jan. 11, 2022), <https://www.forbes.com/sites/johnhyatt/2022/01/11/ken-griffins-fortune-jumps-5-billion-in-a-day-after-investment-from-sequoia-capital-paradigm/?sh=674f60c849cc>.

<sup>24</sup> *See Griffin, Kenneth C. & Anne Dias Donor Detail*, *supra* note 22.

<sup>25</sup> Shia Kapos & Brittany Gibson, *The Republican Megadonor Funding The Party's 2022 Hopes*, POLITICO (Feb. 3, 2022), <https://www.politico.com/news/2022/02/03/ken-griffin-donor-midterm-cash-00005052>.



of the Fox Corp. Board's Audit Committee, is a member of its Nominating and Corporate Governance Committee, and has so served continuously since 2019. He is described in its proxies as a "veteran media owner and executive." Now and for 20 years, Hernandez, 64, has been Founding Principal and CEO of Hernandez Media Ventures, a company dedicated to the acquisition and management of media assets. He serves on the boards of U.S. Bancorp, Take-Two Interactive Software, Inc., and Merlin Entertainments plc. Defendant Hernandez was previously CEO of Telemundo Group (1995-2000), one of the nation's largest Spanish-speaking broadcast and content networks, and its chairman (1998-2000). Hernandez served on several public company boards including that of Sony Corporation.

39. Defendant Nasser. Jacques "Jac" Nasser ("Nasser") is a director of Fox Corp. and has been since its inception in March 2019. Defendant Nasser is Fox Corp.'s Lead Independent Director, Chair of the Fox Corp. Board's Compensation Committee and a member of its Audit Committee. He has served in these roles continuously since 2019. Nasser, 74, is former CEO and President and a member of the board of directors of the Ford Motor Company (1999-2001) having served at Ford for over three decades. He served as a director of SKY plc from 2002 to 2012 when that TV broadcasting and media group was controlled by Rupert Murdoch. He also served with and under Rupert Murdoch's chairmanship as a member of the

board of directors of 21CF (2013-March 2019). Other public company boards on which he served include BHP Billiton Ltd. and BHP Billiton plc. (2006-2017) where he was chairman of each (2010-2017), as well as Koç Holding AS (2015-present).

40. Defendant Ryan. Paul D. Ryan (“Ryan”) is a director of Fox Corp. and has been since its inception in March 2019. Defendant Ryan serves as Chair of the Fox Corp. Board’s Nominating and Corporate Governance Committee and is a member of its Compensation Committee. He has conceivably the best resume for anyone at or anywhere near his age on the entire American political landscape. Ryan, 52, is former Republican Party nominee for Vice President of the United States (2012) and former Speaker of the U.S. House of Representatives (2015-2019). He served as Chairman of the House Budget Committee (2011-2015) and of the House Ways and Means Committee (2015). A career politician, he was first elected to the House of Representatives in 1998 as a 28-year-old. Recently, in an interview on August 26, 2021, Ryan indicated that he would not rule out running for office again, even as a candidate for President of the United States. Besides his Fox Corp. directorship, Ryan now is a partner in Solamere Private Equity Group, a private equity fund run by Senator Mitt Romney’s son Taggart, and is board chairman of startup (and Solamere affiliate) Executive Network Partnering Corporation. In Ryan’s Fox Corp. “Director and Officer Questionnaire” form disclosing, *inter alia*,

relationships with other directors, Ryan disclosed a personal friendship with Lachlan Murdoch.<sup>26</sup> Ryan serves alongside Rupert Murdoch and Lachlan Murdoch on the Board of Trustees of the Ronald Reagan Presidential Foundation and Institute.<sup>27</sup>

41. Director Defendants. Rupert Murdoch, Lachlan Murdoch, Carey, Dias, Hernandez, Nasser, and Ryan are the defendants herein and are collectively referred to in this Complaint as the “Director Defendants.” Rupert Murdoch and Lachlan Murdoch are sometimes collectively referred to herein as the “Officer Defendants.” Carey, Dias, Hernandez, Nasser, and Ryan are non-executive directors.

42. The Fox Corp. Board. At the time of the filing of this Complaint, the Board of Directors of Fox Corp. consists of eight directors, namely the seven Director Defendants and non-party William A. Burck, Esq., as next described.

#### **DESCRIPTION OF RELEVANT NON-PARTIES REFERRED TO IN THE COMPLAINT**

43. Non-party William A. Burck. William A. Burck, Esq. (“Burck”) was appointed to the Fox Corp. Board of Directors in June 2021 and has served

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<sup>26</sup> Greenberg-Riak\_220\_00001253 at 1256.

<sup>27</sup> *Board of Trustees of the Ronald Reagan Presidential Foundation & Institute*, RONALD REAGAN PRESIDENTIAL FOUNDATION & INSTITUTE, <https://www.reaganfoundation.org/about-us/board-of-trustees/> (last visited Apr. 17, 2023).

continuously since that time, including as a member of the Fox Corp. Board's Nominating and Corporate Governance Committee.

44. Burck is co-managing partner of the Washington, D.C. office of the law firm of Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel"), a firm that has regularly represented FOX in various matters. In fiscal year 2020 and the first several months of fiscal year 2021, FOX paid Burck's firm at least \$1.35 million in fees for two matters involving litigations and investigation, one concerning South American soccer and the other concerning an alleged victim of sexual harassment at FOX, anchor Andrea Tantaros, by Fox News founder and top executive, Roger Ailes.<sup>28</sup> Quinn Emanuel also represents and has represented the Estate of Rogers Ailes in high-profile litigation regarding alleged serial sexual abuse and harassment at FOX by Ailes targeting many FOX anchors, producers, bookers, reporters, other

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<sup>28</sup> Greenberg-Riak\_220\_00001707 at 1728. Roger Ailes (1940-2017) was famously a Republican strategist for successful presidential candidates Richard Nixon (1968), Ronald Reagan (1980), and George H. W. Bush (1988), and later founded and ran Fox News as its CEO (1996-2016) and as Chairman of Fox Television Stations Group (2005-2016). *See Employment Litigation & Counseling*, QUINN EMANUEL URQUHART & SULLIVAN, LLP, <https://www.quinnemanuel.com/practice-areas/employment-litigation-and-counseling/#representations> (last visited Apr. 18, 2023).

women employees, and other women with whom FOX does business, when Ailes was chairman and CEO of Fox News.<sup>29</sup>

45. However, perhaps more important to Burck than the business FOX generates for his law firm is the status Burck enjoys in Republican and conservative circles, which his ties to FOX and the Murdochs help to perpetuate. Burck has spent much of the past two decades building a reputation as one of the nation's most sought after lawyers for major Republican and conservative figures in extremely high-stakes matters. His high-profile work for conservative political clients dates back to his service in President George W. Bush's administration as Deputy White House Counsel and Special Counsel to the President (2005 to 2009), but his more recent clients have included right-wing media personality Steve Bannon,<sup>30</sup> Trump

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<sup>29</sup> Ailes's victims or accusers included the following: anchor Gretchen Carlson (not related to Tucker Carlson), whom FOX/Ailes paid \$20 million in settlement; anchor Megyn Kelly, whom FOX paid \$30 million remaining on her contract even though she walked away from the contract in part because of Ailes's harassment; Fox News booker Laurie Luhn; Fox News reporter Rudi Bakhtiar; Fox News producer Shelley Ross; RNC field advisor Kellie Boyle; and many others over many years. See Emily Crockett, *Here are the women who have publicly accused Roger Ailes of sexual harassment*, VOX (Aug. 15, 2016), <https://www.vox.com/2016/8/15/12416662/roger-ailes-fox-sexual-harassment-women-list>.

<sup>30</sup> Burck represented Bannon concerning (i) his testimony in the House Intelligence Committee's probe of alleged Russian interference in the 2016 election, (ii) his subpoena and testimony in the Special Counsel Russia Investigation regarding the 2016 election and alleged obstruction of justice therein (the "Mueller Probe"), and

administration counsel Don McGahn,<sup>31</sup> and Trump Chief of Staff Reince Priebus,<sup>32</sup> all potentially crucial witnesses in the Mueller Probe.<sup>33</sup> Other of Burck's recent high-profile clients from conservative U.S. politics include Elliott Broidy,<sup>34</sup> Mike

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(iii) his August 2020 indictment for allegedly defrauding donors as part of a fundraising campaign to raise private funds to build Trump's border wall. Burck withdrew from the representation in November 2020 after Bannon publicly called for the beheading of Dr. Anthony S. Fauci and Federal Bureau of Investigations ("FBI") Director Christopher A. Wray.

<sup>31</sup> Burck represented Donald F. McGahn II concerning (i) a subpoena issued to McGahn and his testimony in the Mueller Probe and (ii) a subpoena issued in 2019 to McGahn by the House Judiciary Committee concerning its investigation of Trump's alleged obstruction of justice and abuses of power.

<sup>32</sup> Reinhold R. ("Reince") Priebus was also former Republican National Committee chair.

<sup>33</sup> It is widely reported that Burck represented not just these three (3) but eleven (11) Trump associates and former associates in the Mueller Probe.

<sup>34</sup> Elliott B. Broidy was a former Finance Chairman of the Republican National Committee. He was a major contributor to the Trump Campaign and, separately, to the still-controversial Trump Inaugural Committee. Burck represented Broidy concerning his indictment and guilty plea (2020) for acting as an unregistered foreign agent and in Broidy's subsequent presidential pardon. Burck also represented Broidy concerning his possible role as a witness in an alleged bribery-pardon scheme.

Pompeo,<sup>35</sup> Maureen McDonnell,<sup>36</sup> and prominent Trump donor Robert Kraft.<sup>37</sup> Because of the outsized influence FOX and the Murdochs have in Republican politics and more generally in conservative political circles, Burck's position as a Director on the Fox Corp. Board substantially benefits his legal practice. But the Murdochs' influence, and the potential damage their disfavor could cause to Burck's

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<sup>35</sup> Michael R. Pompeo is former Secretary of State of the U.S. (2018-2021), former Director of the Central Intelligence Agency (2017-2018), and former member of the U.S. House of Representatives (2011-2017). Burck represented Pompeo (2019-2020) in matters concerning alleged withholding of military aid to Ukraine. Burck also represents or represented Pompeo concerning the State Department Inspector General's inquiry (2021) into allegedly missing gifts from foreign leaders and allegedly improper requests of State Department staffers to run personal errands for Pompeo's wife. Pompeo was widely reported to be interested running for president in 2024, but announced on April 14, 2023 that he would not seek the Republican presidential nomination.

<sup>36</sup> Burck represented McDonnell, the wife of the former Republican Governor of Virginia, who was indicted along with her husband, Robert F. McDonnell, shortly after he left office, on bribery-related charges of corruption. Both were convicted at trial in jury verdicts, but after the U.S. Supreme Court reversed their convictions and remanded, the DOJ dropped charges.

<sup>37</sup> Robert K. Kraft is the billionaire owner of the NFL's New England Patriots, Major League Soccer's New England Revolution, and Gillette Stadium, the home venue of both teams. He was a vocal and highly visible supporter of Trump, calling him "a very close friend of mine for over two decades." Burck represented Kraft (2019-2021) regarding Florida charges of Kraft soliciting prostitution. Burck succeeded in having the charges dropped based on illegally obtained evidence and later succeeded in keeping certain video evidence against Kraft from becoming public.

practice, also act as a strong incentive for Burck to remain aligned with the Murdochs' interests.

46. Burck's law practice has involved at least one other substantial matter with close ties to FOX's personnel and corporate interests. Starting in 2015, and continuing to the present, Burck has represented the global soccer organization FIFA<sup>38</sup> concerning the largest and most sprawling global sports corruption scandal in history.<sup>39</sup> Many individuals working for FIFA and two working for Fox Corp.'s predecessor company, 21CF when the Murdochs ran it (and 21CF's predecessor company, News Corp.), were indicted for corruption, including Hernan Lopez of 21CF, the former CEO of its subsidiary Fox International Channels.<sup>40</sup> Lopez had inside information that he paid FIFA officials millions of dollars per year, tens of millions in all, to receive. In turn, that information enabled 21CF to outbid Disney for the 2018 and 2022 rights to broadcast the planet's largest sporting event, the

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<sup>38</sup> "FIFA" is the acronym for *Federation Internationale de Football Association*, the world body governing international competition in soccer.

<sup>39</sup> *Practice Areas: Crisis Law & Strategy Group*, QUINN EMANUEL URQUHART & SULLIVAN, LLP, <https://www.quinnemanuel.com/practice-areas/crisis-law-strategy-group/> (last visited Apr. 18, 2023).

<sup>40</sup> Superseding indictment of 17 criminal defendants, including Hernan Lopez, is at <https://www.justice.gov/usao-edny/press-release/file/1266856/download>.



World Cup, and the soccer tournament *Copa Libertadores*.<sup>41</sup> These charges went to trial, and on March 9, 2023 a federal jury in Brooklyn convicted Lopez of wire fraud and money laundering; he faces up to 40 years in prison.<sup>42</sup> The superseding indictment indicates that the conspiracy Lopez joined occurred approximately but continuously between 2005 and 2015; Lopez joined the conspiracy in 2010. Thus, the vast, five-year bribery-corruption scheme that included Lopez occurred on Rupert Murdoch's and Carey's watch as top executives of 21CF and its predecessor, News Corp. (Carey was President and COO of both), and on Rupert Murdoch's, Carey's, and Lachlan Murdoch's watch as directors (and Nasser's, but only since 2013). Evidence adduced at Lopez's trial indicated that, as the *New York Times* put it, "Fox officials, including Chase Carey, then in line to take over the company, and Fox Corp. Chairman Rupert Murdoch himself, all expressed delight at having

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<sup>41</sup> The World Cup comprises almost 90% of FIFA's income, around \$5 billion in 2014. See *Fifa Providing Evidence to US, Swiss Prosecutors*, COURTHOUSE NEWS SERVICE (June 3, 2016), <https://www.courthousenews.com/fifa-providing-evidence-to-us-swiss-prosecutors/>.

<sup>42</sup> DOJ press release concerning the Lopez conviction is at <https://www.wsj.com/articles/former-fox-executive-found-guilty-in-fifa-bribery-scheme-e555897c>.

acquired the prize.”<sup>43</sup> In 2018, the World Cup was broadcast on 21CF’s (now FOX’s) FS1 (English) and Telemundo (Spanish). Even post-spinoff and post-Disney acquisition of 21CF, FOX’s FS1 broadcast English coverage of the 2022 World Cup in the U.S., while Telemundo broadcast Spanish language coverage. However, neither FOX nor any Director Defendant herein was ever accused in the FIFA scandals.

47. Burck is, and for over two decades has been, a close personal friend of FOX’s highest ranking legal officer, Viet D. Dinh, Esq. (“Dinh”), who oversees, and is responsible for the conduct of, FOX’s defense of the Dominion Suits and of the Smartmatic Suit. Dinh, Fox Corp.’s Chief Legal and Policy Officer, reports on the status of these defamation suits at each meeting of the Board of Directors of Fox Corp. and of the Audit Committee of the Board since the suits were filed. Dinh and Burck also worked together as co-counsel in at least one high-profile matter before Dinh joined FOX.<sup>44</sup> Dinh, in turn, is a very close personal friend of Lachlan

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<sup>43</sup> Ken Bensinger, *Witness Says Inside Information Helped Fox Win World Cup Rights*, N.Y. TIMES (Jan. 20, 2023), <https://www.nytimes.com/2023/01/20/sports/soccer/fox-world-cup-fifa-trial.html>.

<sup>44</sup> Benjamin Weiser, *Turkish Gold Trader Builds a Dream Team of Defense Lawyers*, N.Y. TIMES (Aug. 2, 2016) <https://www.nytimes.com/2016/08/03/nyregion/turkish-gold-trader-builds-a-dream-team-of-defense-lawyers.html>.

Murdoch, with each being the godfather of the other's son.<sup>45</sup> Lachlan Murdoch, Dinh, and Burck are all close personal friends. Bloomberg Law reports that Dinh, who is compensated like a CEO, has been called “the most powerful lawyer in America” by several media outlets.<sup>46</sup> As the highest ranking legal and policy officer in all of FOX, Dinh is the top-level executive officer most directly responsible for preventing unnecessary civil liability.

48. Dominion Group. U.S. Dominion, Inc., is a Delaware corporation with its principal place of business in Denver, Colorado (together with its subsidiaries, Dominion Voting Systems, Inc., a Delaware Corporation, and Dominion Voting Systems Corporation, an Ontario Corporation, collectively “Dominion”). Dominion is an election technology company founded by Canadian electrical engineer John Poulos, then 28, in 2002 in Toronto. Its mission was and is to enable accurate, transparent, auditable, and accessible elections with paper backup to verify results. Dominion supplies voting and scanning equipment and technology around the world, but mainly in the United States and Canada. Dominion was the second largest supplier of voting equipment and technology, including optical scanning devices, in

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<sup>45</sup> Greenberg-Riak\_220\_00001191 at 1194.

<sup>46</sup> Brian Baxter, *Fox Top Lawyer Gets Pay Boost After Taking Pandemic-Related Cut*, BLOOMBERG LAW (Sept. 21, 2021), <https://news.bloomberglaw.com/business-and-practice/fox-top-lawyer-gets-pay-boost-after-taking-pandemic-related-cut>.

the United States, and Dominion voting hardware and software were used nationwide in Canada. Between 2003 and 2020, Dominion was one of the fastest-growing technology companies in North America. Dominion contracts with states, counties, and municipalities to provide its voting systems, typically with long-term contracts with high renewal rates. From 2009, when Dominion obtained its first U.S. contract, Dominion grew to where, in the 2020 election, it provided election technology and services in a majority of U.S. states. In 2018, Dominion was acquired by its management team together with private equity firm Staple Street Capital, with Poulos remaining CEO.

49. Smartmatic Group. Smartmatic International Holding BV (“Smartmatic BV” and together with its affiliates, “Smartmatic”), is a Netherlands corporation with its principal place of business in Amsterdam, Netherlands.<sup>47</sup> Smartmatic owns voting technology companies that build and implement electronic voting systems under the SMARTMATIC® brand in 20 countries, including, *inter alia*, Australia, Belgium, Brazil, Canada, Ecuador, Estonia, Netherlands, Mexico, Panama, the Philippines, Taiwan, the United Kingdom, and the U.S., with branches in other countries, including Argentina, Columbia, Italy, and Pakistan. Antonio

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<sup>47</sup> Its U.S. affiliate, Smartmatic USA Corp., is 100% owned by Smartmatic BV and is incorporated in Delaware and headquartered in Boca Raton, Florida.

Mugica and Roger Piñate founded Smartmatic in Boca Raton, Florida in 2000, directing their technology to banking solutions, specifically ATMs. Following the Florida vote-counting debacle in 2000, they turned their technology to voting functions, to register, count, transmit, and audit votes. By 2020, Smartmatic had built a multi-billion-dollar enterprise, mainly outside the United States. Smartmatic's re-entry into the U.S. market, where it had not operated for a decade, was in the nation's largest county, Los Angeles County, with 10.04 million people. The vote in Los Angeles County in the 2020 Presidential Election exceeded 4,264,000. Performing successfully in Los Angeles County would have led to many more contracts for Smartmatic in the United States. Following the March 2020 presidential primary, a poll revealed that 57.5% of voters in Los Angeles County found Smartmatic's new technology made it much easier to vote and that most voters greatly trusted that their votes would be counted accurately.<sup>48</sup> Because of the false accusations alleged herein, and the Director Defendants' refusal to do anything to stop it or retract it, Smartmatic's expansion in the United States was not to be.

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<sup>48</sup> *Smartmatic USA Corp. v. Fox Corp.*, 2022 WL 685407, at \*8 (N.Y. Sup. Ct. Mar. 8, 2022).

## JURISDICTION

50. Subject matter jurisdiction appropriately lies in the Delaware Court of Chancery, as this suit is a matter and cause in equity and in that it seeks to determine the rights of continuing stockholders, members of the Board of Directors, including two officers, and others in the internal affairs of Fox Corp., a Delaware Corporation.

51. The Delaware Court of Chancery has *in personam* jurisdiction over each defendant herein, as each Director Defendant is a director of Fox Corp., a Delaware corporation, and as such each consented as a matter of law to the personal jurisdiction of this Court.

## FACTS

### **Trump Foreshadows the Big Lie: The Director Defendants Knew Trump Planned in Advance to Falsely Claim that the Election Was Rigged**

52. The Director Defendants should have, and did, view, *with skepticism*, any claim by or for Trump that the 2020 Presidential Election was “rigged.” After all, Trump told of his plan – an excuse in case he lost – in advance and signaled it by making the same preemptive claim ahead of the 2016 election.

53. On August 12, 2016, Trump told a Pennsylvania rally that the only way he could lose to Hillary Clinton is “if cheating goes on.” He then daily repeated the assertion. As NBC News reported on October 17, 2016, “Day after day – at rallies,

in interviews, and on Twitter – Trump and several top backers have hammered the message that a victory for Hillary Clinton would be illegitimate. Trump has frequently suggested that widespread voter fraud will swing the election.”<sup>49</sup>

54. Most famously, in the third and final presidential debate in the 2016 general election, held October 18, Trump refused to commit to accepting the election results. In the ensuing week, he stated at rally after rally as follows: “I will totally accept the results of this great and historic presidential election – *if I win*.”<sup>50</sup> Trump announced his playbook four years earlier, in 2016, when he stated over and over, in effect, “if I lose, the election was fraudulent.” This served as a crucial red flag that was known to the Defendants before 2020. The dishonest tactic was widely known, including by the Director Defendants; and yet they acted as though they were completely caught off guard for the Big Lie and the Big Libel in 2020.

55. On May 26, 2020, candidate-for-re-election Trump launched a sustained campaign to convince the U.S. electorate that voting-by-mail is inherently

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<sup>49</sup> Zachary Roth, *Donald Trump’s ‘Rigged Election’ Claims Raise Historical Alarms*, NBC NEWS (Oct. 17, 2016), <https://www.nbcnews.com/politics/2016-election/donald-trump-s-rigged-election-claims-raise-historical-alarms-n667831>.

<sup>50</sup> Patricia Zengerle & Emily Stephenson, *Trump Says He Will Accept Election Result – If He Wins*, REUTERS (Oct. 19, 2016), <https://www.reuters.com/article/us-usa-election/trump-says-he-will-accept-election-result-if-he-wins-idUSKCN12J0ZM>.

fraudulent. On that day, he tweeted “There is NO WAY (ZERO!) that Mail-In Ballots will be anything less than substantially fraudulent.” He further tweeted that day, “This will be a Rigged Election. No way!” When Twitter added a fact-check warning to the claim, Trump threatened to close them down.

56. The claim was a falsehood: there is no evidence that mail-in voting is prone to fraud. Several states used it extensively even before 2020, including Utah, Colorado, Hawaii, Washington (state), and Oregon, which hold elections almost entirely by mail, with no material reports of fraud. And pre-2020, a majority of states gave voters the option of voting by mail, with no material reports of fraud. Yet Trump’s stance discouraged his supporters from voting by mail.

**The “Red Mirage” and the “Blue Mirage” Were  
Entirely Predictable and Were Widely Predicted**

57. The widespread use of mail-in ballots among Democratic voters in the 2020 election was predicted to, and did in fact, result in Democratic candidates winning elections despite having initially trailed their Republican rivals in reported votes. Trump, Powell, and Giuliani, however, claimed the shift in the numbers reported on Election Night and in the days following was the result of fraud and manipulation. They then used that false thread to spin a web of lies that the voting machine companies had stopped the counting and had switched votes to claim these expected results were the product of foul play. The three FOX anchors provided the



podium and encouragement for those individuals to tout this false narrative to the nation's largest viewing audiences. The Director Defendants, for weeks on end, knowing the truth, did nothing to stop them, and ultimately did nothing to cause FOX to issue a retraction, thereby magnifying the Company's exposure to damages.

58. For example, in Pennsylvania, which reported mail-in ballots requested and separately those received by party affiliation in 2020, as of November 1, 2020, 1,596,194 declared Democrats had returned ballots (voted) by mail, but only 555,805 declared Republicans had done so, a 3:1 ratio and a difference of over a million votes. At the time, Pennsylvania prohibited officials from counting mail-in ballots before the polls closed on Election Night, November 3.

59. This was not a phenomenon specific to Pennsylvania. In North Carolina, which (like Pennsylvania) reported mail-in ballots requested and separately those received by party affiliation in 2020, as of November 2, 2020, 425,447 declared Democrats had returned ballots (voted) by mail, but only 191,190 declared Republicans had done so, a ratio of 2.25:1 and a difference of over 230,000 votes. Unlike Pennsylvania, the mail-in votes in North Carolina were counted and tabulated in advance of Election Day.

60. Similarly, in Florida, which (like Pennsylvania and North Carolina) reported mail-in ballots requested and separately those received by party affiliation

in 2020, as of November 3, 2020, 2,146,654 declared Democrats had returned ballots (voted) by mail, but only 1,472,846 declared Republicans had done so, a ratio of around 3:2 and a difference of over 673,000 votes. Unlike Pennsylvania, the mail-in votes in Florida were counted and tabulated in advance of Election Day. Thus, on Election Night, the mail-in votes (strongly Democratic) tended to be reported before the same-day, in-person vote (strongly Republican).

61. This led to what was logically and widely expected: an Election Night “Blue Mirage” in states that started counting mail-in ballots before Election Day, as those ballots, favoring Biden, tended to be counted and reported first; and a “Red Mirage” in states that did not begin counting or even opening mail-in ballots until Election Day or Election Night, as in-person, same-day votes, favoring Trump, tended to be counted first. The phenomenon was reported widely. The non-partisan global news organization, Reuters, in an article published on October 22, 2020, almost two weeks before the election, put it this way:

Imagine that the polls have closed in Florida, counties are beginning to report early vote counts, and it looks like former Vice President Joe Biden is way ahead. An hour later, Pennsylvania counties begin to report and it seems to be a slam dunk for U.S. President Donald Trump.

Don’t be fooled, voting experts and academics say. Early vote counts in the most competitive, battleground states can be particularly misleading this election because of the surge in mail-in or absentee ballots, and the different ways that they are processed.

The states that count mail-in votes before Election Day are likely to give Biden an early lead, since opinion polls and early voting data suggest those ballots favor the Democrat. Conversely, the states that do not tally mail-in votes until Nov. 3 [Election Day] will likely swing initially for Trump.

These so-called red or blue mirages will disappear as more ballots are counted, though experts say it may take days or even weeks to process the huge number of mail-in ballots, spurred by voters seeking to avoid crowded polling stations because of the COVID-19 pandemic.

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Here is what to expect in some of the most bitterly contested states that will determine the next U.S. president:

#### BLUE MIRAGE IN FLORIDA AND NORTH CAROLINA

Florida and North Carolina allow election officials to begin processing and counting mail-in ballots weeks before Election Day, and the results of those counts are expected to be released as soon as polls close on Nov. 3.

If both states follow that schedule, it is likely that Biden will appear to be ahead initially, ...

In both states, a majority of people who plan to vote in person on Election Day support Trump ...

A blue mirage is not expected to last long in either state. Experts say they expect Florida and North Carolina to finish counting most of their mail-in and in-person ballots before the end of the night.

#### RED MIRAGE IN THE RUST BELT

In Pennsylvania, Michigan and Wisconsin, mail-in ballots cannot be counted until Election Day. While Michigan did recently pass a law that allows many cities to start processing mail-in ballots, such as

opening ballot envelopes, the day before the election, they cannot begin to count votes.

Because mail-in ballots typically take longer to count than ballots cast in person, the initial results could skew Republican. Then, some experts say, expect a “blue shift” as election officials wade through the piles of mail-in ballots.

Pennsylvania’s vote counting could go on for days. ...<sup>51</sup>

62. The skewing of interim election results due to the disparate timing of mail-in ballot counting was clear, extensively reported, and the Director Defendants knew it. Fox News itself reported on November 1, 2020, that a Red Mirage was possible in states like Pennsylvania and Wisconsin:

Because a higher percentage of Pennsylvanians who requested mail-in ballots are Democrats, there is the potential for a “red mirage,” which describes a situation where Republican candidates, like President Trump, may appear to have an outsized amount of support as votes are reported on Election Day – followed by a shift toward Democratic candidates in the days that follow.<sup>52</sup>

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<sup>51</sup> Chris Kahn & Jason Lange, *Explainer: Red Mirage, Blue Mirage – Beware Of Early U.S. Election Wins*, REUTERS (Oct. 22, 2022), <https://www.reuters.com/article/us-usa-election-mirage-explainer/explainer-red-mirage-blue-mirage-beware-of-early-u-s-election-wins-idUSKBN2771CL>.

<sup>52</sup> Brittany De Lea, *‘Red Mirage’ Possible In Pennsylvania As Officials Urge Voters To Be Patient*, FOX NEWS (Nov. 1, 2020), <https://www.foxnews.com/politics/pennsylvania-red-mirage-officials-voter-patience>; see also *‘Red Mirage’: Data Firm Predicts Trump Election Day Lead Will Fade*, FOX NEWS (Sept. 1, 2020), <https://video.foxnews.com/v/6186738890001#sp=show-clips>.

63. What FOX, Reuters, and many other news organizations predicted<sup>53</sup> – the Red Mirage and Blue Mirage – is exactly what occurred. Indeed, other news organizations, such as the *Guardian*, ***predicted*** that Trump would seize on the Red Mirage to falsely declare victory on Election Night.<sup>54</sup> This was clear, as the Director Defendants knew. It could hardly have escaped them. Indeed, as early as October 11, 2020, in an interview on Bartiromo’s show, *Sunday Morning Futures*, she and Trump anticipated and discussed this very same phenomenon, the Red Mirage, with Trump bemoaning that while “Republicans are going out to vote – they don’t want to do the [mail-in] ballot thing,” that mail-in ballots would be counted “two weeks after the vote comes in.” Thus, Bartiromo also later well knew that no one “stopped the count” (as Giuliani and Powell later alleged on her show) on Election Night.

**Election Night 2020 – FOX Calls Arizona Race for Biden,  
Trump Declares Victory and Claims Fraud**

64. On Election Night at 12:40 am EST, FOX, via its Decision Desk, became the first major news organization to call the race in Arizona for Biden. This

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<sup>53</sup> See, e.g., Marshall Cohen, *How To Spot A Red Or Blue ‘Mirage’ In Early Election Night Results*, CNN (Nov. 2, 2020), <https://www.cnn.com/2020/10/30/politics/red-blue-mirage-election-results/index.html>.

<sup>54</sup> Tom McCarthy, *‘Red Mirage’: The ‘Insidious’ Scenario If Trump Declares An Early Victory*, THE GUARDIAN (Oct. 31, 2020), <https://www.theguardian.com/us-news/2020/oct/31/red-mirage-trump-election-scenario-victory>.

was the first “call” by any network of any of the six swing states that Biden turned out to have won. Trump and his campaign were livid and directed their ire at FOX. Taken by surprise, FOX’s anchor put the head of the Decision Desk on the air to defend his decision, which he did. The FOX Decision Desk was, of course, ultimately proven correct.

65. On Election Night, a reportedly inebriated Giuliani advised Trump to go on camera and “just say you won.”<sup>55</sup>

66. Then, on Election Night at approximately 2:20 a.m. EST, Trump gave a speech in which he declared victory and challenged the validity of the election results. In the speech, Trump singled out the Fox Decision Desk chief for ridicule, stoking anger against FOX among his supporters:

... a very sad group of people is trying to disenfranchise [Trump voters] and we won’t stand for it. We will not stand for it. ... And we were getting ready for a big celebration. We were winning everything and all of a sudden it was just called off.

... It’s also clear that we have won Georgia. We’re up by 2.5% or 117,000 votes with only 7% left. They’re never going to catch us. They can’t catch us. ... We also, if you look and you see Arizona, we have a lot of life in that. And somebody declared that it was a victory for... and maybe it will be. ... And that could be overturned.

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<sup>55</sup> See Martin Pengelly, *Drunken Giuliani Urged Trump to ‘Just Say We Won’ on Election Night*, *Book Says*, THE GUARDIAN (July 13, 2021) (<https://www.theguardian.com/books/2021/jul/13/rudy-giuliani-trump-book>).

... The gentleman that called it, I watched tonight. He said, "Well, we think it's fairly unlikely that he could catch." Well, fairly unlikely? ... But most importantly, we're winning Pennsylvania by a tremendous amount of votes.

We're up 600...Think of this. Think of this. This of this. We're up 690,000 votes in Pennsylvania, 690,000. These aren't even close. This is not like "Oh, it's close..." With 64% of the vote in, it's going to be almost impossible to catch. ... We're winning Michigan, but I'll tell you, I looked at the numbers. I said, "Wow." I looked, I said "Wow, that's a lot." By almost 300,000 votes and 65% of the vote is in and we're winning Wisconsin. ...

... So we won by 107,000 votes with 81% of the vote. That's Michigan. ... We had such a big night. You just take a look at all of these states that we've won tonight, and then you take a look at the kind of margins that we've won it by, and all of a sudden, it's not like we're up 12 votes and we have 60% left. We won states. And all of a sudden I said, "What happened to the election? It's off." And we have all these announcers saying what happened? And then they said "Oh."

... [D]id I predict this? ... Did I say this? I've been saying this from the day I heard they were going to send out tens of millions of ballots. ... [Lists states Trump winning, Florida, Texas, Ohio, North Carolina] ... And all of a sudden everything just stopped.

This is a fraud on the American public. This is an embarrassment to our country. We were getting ready to win this election. Frankly, we did win this election. We did win this election. So our goal now is to ensure the integrity for the good of this nation. ... We want the law to be used in a proper manner. So we'll be going to the U.S. Supreme Court. We want all voting to stop. We don't want them to find any ballots at four o'clock in the morning and add them to the list. Okay?

It's a very sad moment. To me this is a very sad moment and we will win this. And as far as I am concerned, we already have won it.<sup>56</sup>

67. Thus, on Election Night, 2020, Trump activated his long-planned Plan B: claim fraud in case he lost.

**The Director Defendants Knew of the Unreliability of  
Dobbs, Bartiromo, and Pirro**

**Dobbs**

68. Dobbs's erratic nature and susceptibility to conspiracy theories were well known in the news business, including to the Director Defendants. These were red flags to the Director Defendants, who should have monitored Dobbs carefully, especially when he hosted guests (like Giuliani or Powell) that were also known to be erratic, unreliable, and proponents of baseless conspiracy theories.<sup>57</sup>

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<sup>56</sup> *President Donald Trump addresses supporters in Washington D.C.*, WGN9 (Nov. 4, 2020), [https://www.rev.com/transcript-editor/shared/bL-HrOoD7L3slxn7XoACJ3kBXSGqY0cGRHEA6BRUDWWz--5OoFnTuxD0qNVvwhRXXu8JH7gXfiYCIhGWxkG\\_e8VwcDo?loadFrom=Paste&deeplink&ts=7.35](https://www.rev.com/transcript-editor/shared/bL-HrOoD7L3slxn7XoACJ3kBXSGqY0cGRHEA6BRUDWWz--5OoFnTuxD0qNVvwhRXXu8JH7gXfiYCIhGWxkG_e8VwcDo?loadFrom=Paste&deeplink&ts=7.35) (last visited Apr. 14, 2023).

<sup>57</sup> In September 2020, Rupert Murdoch believed Dobbs to be an “extremist.” *See* Dominion’s Combined Opposition to Fox News Network, LLC’s and Fox Corporation’s Rule 56 Motions for Summary Judgment (Dominion Suit) (Feb. 27, 2023) (“*Dom. Reply*”) at 146.



69. Beginning a dozen years ago, as a newscaster at CNN, Dobbs famously and repeatedly espoused “birtherism,”<sup>58</sup> the evidence-free and discredited assertion that then-President Obama’s Hawaiian birth certificate was faked and that he was born in Kenya. This was a volatile, racist-tinged theory because a foreign birth would have made the first Black president ineligible for the office of the presidency.

70. Dobbs was released from his contract at CNN in 2009, reportedly because of his increased anti-immigration and xenophobic focus and on-air obsession with birtherism.<sup>59</sup> He joined FOX in 2010 and stayed until 2021. The Director Defendants were aware of his history, as it was most likely those views that made him appealing to FOX in the first place.

71. In 2018, Dobbs referred to billionaire philanthropist George Soros as an “evil SOB” and “insidious.” Attacking Soros as some shadowy “other” has long been associated with anti-Semitic views.<sup>60</sup> Dobbs frequently had as a guest Chris

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<sup>58</sup> See David Folkenflik, *Dobbs’ Focus On Obama Birth Draws Fire To CNN*, NPR (Jul. 31, 2009), <https://www.npr.org/2009/07/31/111409944/dobbs-focus-on-obama-birth-draws-fire-to-cnn>.

<sup>59</sup> Gina Keating & Steve Gorman, *Lou Dobbs Leaving CNN, Does Not Reveal Plans*, REUTERS (Nov. 11 2009), <https://www.reuters.com/article/centertainment-us-cnn-dobbs-idCATRE5AB02120091112>.

<sup>60</sup> Seth Cohen, *The Troubling Truth About The Obsession With Georg Soros*, FORBES (Sept. 12, 2020), <https://www.forbes.com/sites/sethcohen/2020/09/12/the-troubling-truth-about-the-obsession-with-george-soros/?sh=44b52e434e2e> (“So, if it isn’t

Farrell of Judicial Watch, who repeatedly spouted anti-Semitic tropes on Dobbs's show, calling the State Department "Soros-occupied territory."<sup>61</sup> FOX issued a public reprimand, indicating that Farrell would no longer be welcome as a guest on Fox Business.<sup>62</sup>

72. After at least nine pipe bombs had been sent to high-profile Democrats (including, former President Obama, then House Minority Leader Nancy Pelosi, and Soros, as well as to CNN), Dobbs repeatedly tweeted that the violent act was "fake news" and "fake bombs," and suggested that it was a false flag operation in which the recipients had sent the bombs to themselves.<sup>63</sup>

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facts that are driving the animosity toward Soros, what is it? Anti-Semitism, plain and simple.").

<sup>61</sup> This phrase is a not-so-subtle deviation from the "Zionist Occupied Government" slanderous trope long used by white nationalists.

<sup>62</sup> Oliver Darcy, *Fox Condemns Rhetoric Used By Lou Dobbs Guest As Channel's Star Host Faces Growing Criticism*, CNN (Oct. 28, 2018), <https://edition.cnn.com/2018/10/28/media/lou-dobbs-fox-news-guest/index.html>.

<sup>63</sup> Oliver Darcy, *Fox Business Network Host Lou Dobbs Peddles Conspiracy Theory About Suspicious Packages*, CNN (Oct. 25, 2018), <https://www.cnn.com/2018/10/25/media/lou-dobbs-fake-bombs/index.html>.

73. On air at FOX, in December 2018, Dobbs advocated for starting a war with China, comparing their trade actions to the Japanese bombing of Pearl Harbor in 1941.<sup>64</sup>

74. Dobbs had become a vocal supporter of Trump before 2020, and Trump, in turn, praised Dobbs for his backing:

(a) In April 2019, on the air on Fox Business, Dobbs espoused the view that Trump was “sent by God”;<sup>65</sup>

(b) On December 20, 2019, Dobbs, on air, predicted “century after century of veneration” for Trump;<sup>66</sup> and

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<sup>64</sup> Ewan Palmer, *Lou Dobbs Says U.S. Should Go To War With China Over Hacking: “This Is No Different Than Pearl Harbor,”* NEWSWEEK (Dec. 21, 2018), <https://www.newsweek.com/lou-dobbs-us-war-china-hacking-pearl-harbor-fox-business-1267777>.

<sup>65</sup> Lee Moran, *Lou Dobbs Suggests Donald Trump Was Sent by God During Mueller Report Rant*, HUFFPOST (Apr. 19, 2019), [https://www.huffpost.com/entry/fox-business-lou-dobbs-mueller-report-donald-trump\\_n\\_5cb97c5fe4b032e7ceb6fac8](https://www.huffpost.com/entry/fox-business-lou-dobbs-mueller-report-donald-trump_n_5cb97c5fe4b032e7ceb6fac8).

<sup>66</sup> Media Matters Staff, *Lou Dobs: It Will Be Century After Century of Veneration For This President*, MEDIA MATTERS FOR AM. (Dec. 20, 2019), <https://www.mediamatters.org/lou-dobbs/lou-dobbs-it-will-be-century-after-century-veneration-president>.

(c) Trump publicly praised Dobbs for calling him “the greatest president in the history of our country,” adding “including George Washington and Abraham Lincoln.”<sup>67</sup>

75. As soon as Dobbs began airing, endorsing, repeating, and agreeing with libelous attacks on the voting machine companies, as he did on November 12, 2020, the Director Defendants, including the Officer Defendants, had a duty to act, to prevent recurrences, and to require robust retractions from Dobbs and FOX. They knowingly failed to do so.<sup>68</sup>

### **Bartiromo**

76. Following two decades of fame as a financial broadcast journalist at CNBC (1993-2013), Bartiromo joined FOX in 2013, where she joined her former mentor at CNN (1988-1993), Lou Dobbs. She learned from, and imitated, Dobbs’s ratings success.

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<sup>67</sup> Media Matters Staff, *Donald Trump Brags About Lou Dobbs Declaring Him “Greatest President In The History Of Our Country,”* MEDIA MATTERS FOR AM. (Nov. 4, 2019), <https://www.mediamatters.org/lou-dobbs/donald-trump-brags-about-lou-dobbs-declaring-him-greatest-president-history-our-country>.

<sup>68</sup> Dobbs’s unreliability was well known within Fox. Fox News President Jay Wallace stated, “The North Koreans do a more nuanced show” than Lou Dobbs, and rejected a proposed acquisition of Parler, stating “we can barely contain Dobbs – think of all the crazy we’d be responsible for.” See Dominion’s Brief in Support of Its Motion for Summary Judgment on Liability of Fox News Network, LLC and Fox News Corporation (Dominion Suit) (Feb. 16, 2023) (“*Dom. MSJ*”) at 13.

77. Once Trump became president, Bartiromo changed markedly, and her mission became to advocate for Trump, his conspiracy theories, and his falsehoods.<sup>69</sup>

78. Following the Charlottesville “Unite the Right” rally in 2017, at which protestors carried lit tiki-torches and chanted Nazi slogans such as “Jews will not replace us,” Trump stated at a news conference that “there are very fine people on both sides.” Bartiromo was the one of the very few, if not the only, well-known broadcast anchors who defended his statement,<sup>70</sup> tweeting that “T[oday] @POTUS @realDonaldTrump fights back w[ith] excellent press conf[erence] & facts.”<sup>71</sup>

79. Bipartisan sources fiercely criticized Bartiromo for her interview with Trump on her Fox Business show, *Sunday Morning Futures*, on July 1, 2018. She “repeatedly agreed with [Trump’s] controversial, false, or misleading statements.”<sup>72</sup> For example, when Trump stated that the Mueller Probe had found nothing,

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<sup>69</sup> See Sarah Ellison, *What Happened to Maria Bartiromo?*, WASH. POST (Dec. 23, 2020), [https://www.washingtonpost.com/lifestyle/media/maria-bartiromo-fox-news-trump/2020/12/22/35520a90-3fb1-11eb-8db8-395dedaaa036\\_story.html](https://www.washingtonpost.com/lifestyle/media/maria-bartiromo-fox-news-trump/2020/12/22/35520a90-3fb1-11eb-8db8-395dedaaa036_story.html).

<sup>70</sup> Josh Delk, *Fox Host Defends Trump Comments*, THE HILL (Aug. 15, 2017), <https://thehill.com/blogs/ballot-box/346718-fox-news-host-defends-trump-comments>.

<sup>71</sup> Ellison, *supra* note 69.

<sup>72</sup> Eliza Relman, *Fox News’ Maria Bartiromo Is Slammed For Her Friendly Interview With Trump*, BUS. INSIDER (Jul. 2, 2018), <https://www.businessinsider.com/fox-news-maria-bartiromo-slammed-for-her-interview-with-trump-2018-7>.

Bartiromo stated “I know[.]”<sup>73</sup> This was at a time when the Mueller Probe had already obtained 20 indictments, including two Russian companies, and including: Trump 2016 Campaign Manager Paul Manafort, whose trial resulting in multiple convictions began later that month; Trump 2016 Deputy Campaign Manager Rick Gates, who had already pleaded guilty to conspiracy against the United States in giving false statements; and former Trump National Security Advisor Michael Flynn, who had pleaded guilty in December 2017 to lying about his Russia contacts.

80. Bartiromo’s fawning interviews of Trump continued and were widely noted and criticized. On April 29, 2019, conservative journalist Philip Bump reported the following in the Washington Post:

Bartiromo’s most recent interview with Trump aired Monday [April 25] on Fox Business Network. Even by the standards of Fox interviews, Bartiromo’s exchange with Trump was remarkably friendly.

“That’s right, yes,” she said when Trump claimed that his family separation policy helped keep migrants from coming to the border.

“Yes,” she said when he described the asylum process. “Yes,” she said when he said he would build 400 miles of “great” wall.

“That’s exactly right,” she said when Trump said migrants would come through “weak spots” in the border.

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<sup>73</sup> *Id.*

“Well, that’s exactly right,” she said when he said the United States was taking as few skilled immigrants as possible.

“Wow,” she said when Trump said that the legislators responsible for existing immigration laws either “had no common sense or they hated our country.”

“Yes” and “that’s right,” she said when the president claimed that people coming to seek asylum were “rough gang members” ...

“Yes, absolutely,” she said when Trump asked whether she thought this was the best economy in American history. ...<sup>74</sup>

81. Once Bartiromo began airing, endorsing, repeating, and agreeing with libelous attacks on the voting machine companies, as she did on November 8, 2020, the Director Defendants, including the Officer Defendants, had a duty to act, to prevent recurrences, and to require robust retractions from Bartiromo and FOX. They knowingly failed to do so.

### **Pirro**

82. Pirro’s volatility was well-known long before the 2020 election. The following were red flags to the Director Defendants, who should have ensured that

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<sup>74</sup> Philip Bump, *Fox Business’s Interview With Trump Was So Friendly That He Wouldn’t Stop Talking*, WASH. POST (Apr. 29, 2019), <https://www.washingtonpost.com/politics/2019/04/29/fox-businesss-interview-with-trump-was-so-friendly-that-he-wouldnt-stop-talking/>.

there were policies and procedures in place to monitor Pirro carefully, especially when hosting guests (like Giuliani or Powell) known to be erratic and unreliable.

83. In 2005, Pirro demanded of former NYC Police Commissioner Bernard Kerik that he place illegal listening devices on her husband's boat to try to catch him in trysts. She had hired Kerik's security firm to investigate Al Pirro. This demand came to light in September 2006, as a result of a 2005 series of law-enforcement wiretaps of Kerik investigating his other crimes. When Kerik expressed reluctance, she screamed and swore at him, suggesting that if he were caught planting the listening devices, he should lie and say that she wanted to redecorate her husband's boat as a romantic present for their anniversary.<sup>75</sup> The incident was infamous, as it was revealed during her candidacy for NYS Attorney General, just six weeks before the election. The Murdochs' New York Post reported it in characteristically sensational detail.<sup>76</sup>

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<sup>75</sup> Russ Buettner and William Rashbaum, *Kerik Is Again a Figure in an Official Investigation*, N.Y. TIMES (Sept. 28, 2006), <https://www.nytimes.com/2006/09/28/nyregion/28kerik.html>.

<sup>76</sup> Kenneth Lovett, *Pirro's Fury at Cheating Al – Feds Probe Her Plea for Kerik to Wiretap Husband*, N.Y. POST (Sept. 28, 2006), <https://nypost.com/2006/09/28/pirros-fury-at-cheating-al-feds-probe-her-plea-for-kerik-to-wiretap-husband/>.



84. In March 2019, Fox News issued a statement in which it “strongly condemn[ed]” Pirro for making on-air Islamophobic comments against a congresswoman, suggesting that faith in the Islamic religion is incompatible with loyalty to the Constitution of the United States.<sup>77</sup> It is reasonably conceivable that the Murdochs and the other Director Defendants knew this; indeed, considering the Murdochs’ hands-on approach to the news and Pirro’s status as a Fox News star, it is almost inconceivable that they did not know it.

85. As Pirro later admitted, FOX suspended her for that incident, taking her off the air for two weeks.<sup>78</sup> The Murdochs and other Director Defendants surely knew this as well.

86. This was not the first time FOX denounced Pirro publicly. In November 2018, just before the midterm elections, after Pirro and another Fox News personality appeared onstage at a campaign rally with then-President Trump, Fox

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<sup>77</sup> William Cummings, *Fox News Condemns Host Jeanine Pirro’s Comments About Rep. Omar’s Hijab*, USA TODAY (Mar. 10, 2019), <https://www.usatoday.com/story/news/politics/onpolitics/2019/03/10/ilhan-omars-hijab-concerns-fox-news-host-jeanine-pirro/3124918002/>.

<sup>78</sup> Justin Baragona, *Jeanine Pirro Bashes Fox News Brass, Admits She Was Suspended*, THE DAILY BEAST (Sept. 3, 2019), <https://www.thedailybeast.com/jeanine-pirro-bashes-fox-news-brass-admits-she-was-suspended>.

News issued a statement saying the network “does not condone any talent participating in campaign events.”<sup>79</sup>

87. In March 2020, when Pirro appeared on her show *Justice with Judge Jeanine* 15 minutes late after a stand-in covered for her, she appeared disheveled, slurred her words, and spoke in rambling, incomplete sentences as she came on the air.<sup>80</sup> Citing technical difficulties, FOX denied she was drinking alcohol.<sup>81</sup>

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<sup>79</sup> Joe Concha, *Fox News: We do ‘not condone’ hosts Hannity, Pirro participating in Trump campaign events*, THE HILL (Nov. 6, 2018), <https://thehill.com/homenews/media/415213-fox-news-we-do-not-condone-hosts-hannity-pirro-participating-in-trump-campaign>.

<sup>80</sup> Hannah Yasharoff, *Fox News says technical difficulties were responsible for Jeanine Pirro show that raised eyebrows*, USA TODAY (Mar. 29, 2020), <https://www.usatoday.com/story/entertainment/tv/2020/03/29/fox-news-cites-technical-difficulties-jeanine-pirro-remote-show/2935677001/>; Thom Geier, *Was a Disheveled Judge Jeanine Pirro Tipsy After Fox News Show Delayed for ‘Technical Difficulties’?* YAHOO! (Mar. 29, 2020), <https://www.yahoo.com/now/judge-jeanine-pirro-appears-disheveled-051906879.html>.

<sup>81</sup> *Id.*

88. In 2019, Pirro accused Robert S. Mueller III of treason,<sup>82</sup> and she called for revenge, specifically, for those who accused Trump of Russian collusion to get “behind-the-bars-justice.”<sup>83</sup>

89. Rupert Murdoch testified in a deposition in the Dominion Suit that Pirro endorsed, on air, the Giuliani-Powell lie of fraud in the 2020 Presidential Election.

90. As soon as Pirro began airing, endorsing, repeating, and agreeing with libelous attacks, as she did on November 14, 2020, on the voting machine companies, the Director Defendants, including the Officer Defendants, had a duty to act, to take board action to put a stop to ongoing false accusations and to prevent recurrences, to put monitoring devices in place to enable the Board or a committee thereof to conduct appropriate oversight, and to require robust retractions from Pirro and FOX. They refused to take any of these actions.

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<sup>82</sup> Michael M. Grynbaum, *The Rise and Fall and Rise of Jeanine Pirro of Fox News*, N.Y. TIMES (Apr. 9, 2019), <https://www.nytimes.com/2019/04/09/business/media/jeanine-pirro-fox-news-trump.html>.

<sup>83</sup> Bruce Haring, *‘Justice With Judge Jeanine’ Returns to Fox, Calls for Mueller Probe Revenge*, DEADLINE (Mar. 31, 2019), <https://deadline.com/2019/03/justice-with-judge-jeanine-returns-to-fox-calls-for-mueller-probe-revenge-1202585841/>.

**The Director Defendants Knew of the  
Unreliability of Giuliani and Powell**

***As Found by an Internal Fox Report,  
Giuliani Was Famously Unreliable and Susceptible to Disinformation***

91. Giuliani's two decades of unreliability and spectacularly poor judgment were well known. He reportedly often appeared intoxicated in public, sometimes on camera. His close associates were reportedly of dubious character, and too many were felons. He embraced publicity indiscriminately. The accusations of crimes or fraud he hurled at others were often made without regard to their truth or accuracy. The Director Defendants knew it. Some examples of his unreliability follow.

92. On Giuliani's recommendation, in December 2004, President Bush nominated Bernard Kerik, former New York City Police Commissioner (2000-2001), as Director of Homeland Security. Giuliani made his recommendation at a time when (i) Kerik had already committed multiple felonies and misdemeanors for which he would later be convicted; and (ii) Giuliani had already been briefed that Kerik had a close relationship with an organized crime group, a relationship that was the source of some of Kerik's crimes.<sup>84</sup> Fortunately for the nation and for President Bush, Kerik withdrew his own nomination one week after it was submitted. Kerik

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<sup>84</sup> Michael Powell, *Loyal to Kerik, Giuliani Missed Warnings Signs*, N.Y. TIMES (Nov. 3, 2007), <https://www.nytimes.com/2007/11/03/us/politics/03kerik.html>.

was convicted in New York State in June 2006 for two unclassified misdemeanors relating to ethics violations and corruption while in public office and fined \$250,000. In 2007, he was indicted by a federal grand jury of multiple felonies, and in 2009, he pleaded guilty to eight felony counts of tax fraud, corruption, and lying to federal officials. Sentenced to 48 months in federal prison, Kerik served 41 months.<sup>85</sup> The resulting reputational damage to Giuliani was widely reported and is well known. In early 2020, Trump pardoned Kerik.

93. Regarding Kerik, Giuliani's failed judgment contributed to his freefall in the battle for the 2008 GOP nomination for President of the United States. After Giuliani spent a year atop the polls as the frontrunner for that nomination, his campaign spent \$50 million (then a great sum to spend on a presidential campaign) and won but a single delegate, constituting a record: \$50 million for one delegate.<sup>86</sup>

94. In December 2019, the U.S. House of Representatives issued two articles of impeachment against Trump, for abuse of power and obstruction of Congress, largely arising from Giuliani's work in and concerning Ukraine.

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<sup>85</sup> *Bernard Kerik*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Bernard\\_Kerik](https://en.wikipedia.org/wiki/Bernard_Kerik) (last visited May 2, 2022).

<sup>86</sup> Dan Morain, *Giuliani's \$50-million delegate*, L.A. TIMES (Feb. 1, 2008), <https://www.pressreader.com/usa/los-angeles-times/20080201/281814279548986>.

95. In 2018, Giuliani began working with two new associates, both Soviet-born Americans, Lev Parnas (“Parnas”) and Igor Fruman (“Fruman”).<sup>87</sup> While Giuliani claimed they were his clients, Parnas and Fruman were working as part of Giuliani’s team. In a “straw donor scheme,” their efforts were funded by campaign contributions that Parnas and Fruman unlawfully obtained from foreign sources.<sup>88</sup>

96. Giuliani, Parnas, and Fruman conspired to pressure Ukraine to open an investigation into false charges against Biden and his son, Hunter Biden. Giuliani not only tried to pressure the Ukraine government to open an investigation of the Bidens, or at least to say they did, but also convinced Trump to make the same demand of Ukraine’s President Zelensky. The impeachment that reportedly resulted largely from Giuliani’s, Parnas’s, and Fruman’s efforts, charged that Trump threatened to withhold military aid to Ukraine that Congress had already authorized if Zelensky did not at least **announce** that Hunter Biden was under investigation.<sup>89</sup>

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<sup>87</sup> V. Gienger & R. Goodman, *Timeline: Trump, Giuliani, Biden, and Ukrainegate*, JUST SECURITY (Sept. 24, 2019, updated Jan. 31, 2020), <https://www.justsecurity.org/66271/timeline-trump-giuliani-bidens-and-ukrainegate/>.

<sup>88</sup> *See id.*; see also Caroline Kelly, *New York Times: Parnas’ lawyer says Giuliani told associate to offer Ukraine aid in exchange for Biden investigation*, CNN (Nov. 10, 2019), <https://www.cnn.com/2019/11/10/politics/trump-ukraine-lev-parnas-igor-fruman-rudy-giuliani/index.html>.

<sup>89</sup> *Id.*

97. In June 2019, at Giuliani’s direction, Parnas and Fruman offered Dmitri Firtash (“Firtash”), a pro-Russian fugitive Ukrainian oligarch then living in Vienna, who was fighting extradition to the U.S. on bribery and racketeering charges, help with the U.S. Department of Justice in exchange for dirt on the Bidens.<sup>90</sup> It was widely reported, reasonably believed, and averred by U.S. prosecutors, that Firtash was a source of funding for Giuliani’s Ukraine disinformation campaign.<sup>91</sup> Thus, Giuliani at least appeared to be influence-trading off Trump’s supervisory authority over the U.S. Department of Justice to intervene in Firtash’s case.<sup>92</sup>

98. On October 9, 2019, Parnas and Fruman, bearing one-way tickets to Frankfurt or Vienna, were arrested at Dulles International Airport by federal agents after having been indicted on charges concerning illegal campaign donations,

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<sup>90</sup> J. Becker et al., *Why Giuliani Singled Out 2 Ukrainian Oligarchs to Help Look for Dirt*, N.Y. TIMES (Nov. 25, 2019), <https://www.nytimes.com/2019/11/25/us/giuliani-ukraine-oligarchs.html>.

<sup>91</sup> See, e.g., B. Pierson & K. Freifeld, *Giuliani associate paid \$1 million by indicted Ukrainian oligarch’s lawyer: prosecutor*, REUTERS (Dec. 17, 2019), <https://www.reuters.com/article/us-usa-trump-giuliani-parnas-oligarch/giuliani-associate-paid-1-million-by-indicted-ukrainian-oligarchs-lawyer-prosecutor-idUSKBN1YL26B>; Christian Berthelsen, *Giuliani Ally Got \$1 Million From Ukraine Oligarch’s Lawyer*, BLOOMBERG (Dec. 17, 2019), <https://www.bloomberg.com/news/articles/2019-12-17/firtash-lawyer-was-source-of-1-million-to-parnas-giuliani-ally>.

<sup>92</sup> *Id.*

soliciting foreign campaign donations, fraud, and hiding their true source of funds.<sup>93</sup> Fruman pleaded guilty in September 2021 without promise of cooperation;<sup>94</sup> on January 21, 2022, he was sentenced to a prison term of a year and one day in addition to the two years of home detention he already served. Parnas was convicted of multiple felonies at a two-week jury trial in October 2021<sup>95</sup> and faced a prison term of up to 45 years.<sup>96</sup> He was sentenced in 2022 to 20 months in prison.

99. Thus, Giuliani's close friends and associates in the past two decades included at least three convicted felons and one indicted felon-fugitive – respectively Kerik, Parnas, Fruman, and Firtash – a fact that must have been known by the

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<sup>93</sup> M. Mazzetti, et Al., *2 Giuliani Associates Arrested With One-Way Tickets at U.S. Airport*, N.Y. TIMES (Oct. 10, 2019, updated Oct. 13, 2021), <https://www.nytimes.com/2019/10/10/us/politics/lev-parnas-igor-fruman-arrested-giuliani.html>.

<sup>94</sup> Associated Press, *Igor Fruman, Former Giuliani associate, pleads guilty to campaign finance charges*, NBC NEWS (Sept. 10, 2021), <https://www.nbcnews.com/politics/2020-election/igor-fruman-former-giuliani-associate-pleads-guilty-campaign-finance-charges-n1278929>.

<sup>95</sup> Press Release, DOJ, *Lev Parnas Sentenced To 20 Months In Prison For Campaign Finance, Wire Fraud, And False Statements Offenses* (June 29, 2022), <https://www.justice.gov/usao-sdny/pr/lev-parnas-sentenced-20-months-prison-campaign-finance-wire-fraud-and-false-statements>.

<sup>96</sup> Shayna Jacobs, *Giuliani associate Lev Parnas convicted in campaign finance fraud case*, WASH. POST (Oct. 22, 2021), [https://www.washingtonpost.com/national-security/lev-parnas-verdict/2021/10/22/1c6e2bbc-327c-11ec-93e2-dba2c2c11851\\_story.html](https://www.washingtonpost.com/national-security/lev-parnas-verdict/2021/10/22/1c6e2bbc-327c-11ec-93e2-dba2c2c11851_story.html).



Director Defendants, certainly including the Officer Defendants. Objectively, this did not add to Giuliani's reliability.

100. In 2019, Fox News's research arm called the "Brain Room," internally distributed at FOX a 162-page report warning that Giuliani was an unreliable source, easily duped, who ***"has a high susceptibility to disinformation"*** (the "Brain Room Report"). The Brain Room is revered at Fox News and often cited by its anchors.

101. The Brain Room Report, titled "Ukraine, Disinformation, and the Trump Administration," was signed by FOX senior political affairs specialist Bryan Murphy. The Brain Room Report was distributed to FOX anchors, including Dobbs, Bartiromo, and Pirro. It is reasonably conceivable that it was known to the Director Defendants, at the very least before the Giuliani-Powell false narrative began. At minimum, the Director Defendants knew of Giuliani's unreliability that underpinned the Brain Room Report. After a copy of the Brain Room Report with the legend "Updated December 9, 2019" was leaked to a media outlet in February 2020, Fox News issued a statement but did not deny its authenticity.<sup>97</sup>

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<sup>97</sup> W. Sommer et al., *Fox News Internal Document Bashes Pro-Trump Fox Regulars for Spreading 'Disinformation'*, THE DAILY BEAST (Feb. 6, 2020), <https://www.thedailybeast.com/fox-news-internal-document-bashes-john-solomon-joe-digenova-and-rudy-giuliani-for-spreading-disinformation?ref=author>; Igor Derysh, *Internal Fox News briefing book warned that Rudy Giuliani was "spreading disinformation"*: report, SALON (Feb. 7, 2020),

102. The Brain Room Report also challenged the reliability of (a) The Hill’s John Solomon, a frequent guest on Fox who fed disinformation to Giuliani, and (b) lawyers Joseph diGenova and Victoria Toensing, a husband-and-wife-team that frequently appeared on Fox News regarding the Ukraine stories without disclosing that they were representing the felony-indicted oligarch, Firtash, the likely source of funds for Giuliani and his felonious associates, Parnas and Fruman.<sup>98</sup>

103. Even after Trump’s first impeachment, Giuliani kept pressing the Biden/Hunter Biden allegations. As Vox.com put it on November 8, 2020, Giuliani’s “publicity-drawing quest to find dirt on President-elect Joe Biden turned up nothing,” yet the Director Defendants put no constraints on FOX’s anchors as they allowed Giuliani to falsely accuse, again and again, Dominion and Smartmatic of fraudulently stealing the election from Trump and awarding it to Biden. In his sworn deposition given in January 2023 in the Dominion Suit, Rupert Murdoch testified that he could have told Suzanne Scott, the CEO of Fox News (“Scott”), to stop airing Giuliani and Powell, but he did not. As to Giuliani, he said, “I could

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<https://www.salon.com/2020/02/07/internal-fox-news-briefing-book-warned-that-rudy-giuliani-was-spreading-disinformation-report/>.

<sup>98</sup> Erik Wemple, *Opinion: In its own document, Fox News rips Fox News host Sean Hannity*, WASH. POST (Feb. 7, 2020), <https://www.washingtonpost.com/opinions/2020/02/07/its-own-document-fox-news-rips-fox-news-host-sean-hannity/>.

have. But I didn't.”<sup>99</sup> Exhibits in the Dominion Suit show that Rupert Murdoch told the New York Post's ex-Editor-in-Chief Colin “Col” Allan in early November 2020, “Just saw a bit of Rudy ranting. A terrible influence on Donald.” Allan responded that Giuliani was “unhinged,” saying “I think booze has got him.”<sup>100</sup>

104. Former Republican Congressman and MSNBC anchor Joe Scarborough stated on national television in 2018 that Trump did not initially appoint Giuliani because “[e]verybody around Donald Trump said [Giuliani] was drinking too much.”<sup>101</sup> Investigative reporter and author Michael Wolff reported that on Election Night, Trump aides tried to usher Giuliani out of the White House because “he was so drunk ... aides were concerned he'd accidentally smash valuable White House china.”<sup>102</sup> According to Wolff, Giuliani was “weaving this way and

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<sup>99</sup> *Dom. Reply* at 30, citing to Ex. 600 (Murdoch Tr.) at 317:2-6. At the same deposition, he said the same of Powell, *id.* at 8-13, 30, 145.

<sup>100</sup> *Dom. Reply* at 16.

<sup>101</sup> Morgan Gstalter, *Scarborough: Trump didn't initially bring in Giuliani because 'he was drinking too much'*, THE HILL (May 5, 2018), <https://thehill.com/homenews/media/386647-scarborough-trump-didnt-initially-have-giuliani-on-his-team-because-he-was>.

<sup>102</sup> Joshua Zitser, *Rudy Giuliani was so 'incredibly drunk' on election night that Trump aides worried he'd smash valuable White House china, Michael Wolff says*, BUS. INSIDER (Jul. 17, 2021), <https://www.businessinsider.com/rudy-giuliani-so-drunk-almost-smashed-white-house-china-wolff-2021-7>.

that way,” struggling to maintain his balance while trying to convince Trump he had won. Trump’s inner circle reportedly thought Giuliani was “always buzzed.”<sup>103</sup>

105. On October 28, 2020, the Murdochs’ newspaper, *The Sun*, reported that former Trump lawyer and fixer Michael Cohen stated on MSNBC that Giuliani is always drunk. This is how *The Sun* reported it:

“Rudy is drunk all the time, which is a big problem and that’s what makes him susceptible because his faculties are gone,” Cohen told MSNBC’s *The Beat*. “He behaves crazy.”

“I’ve seen him drink to the point like he’s a high school drunk,” he continued.<sup>104</sup>

It was an open secret, indeed not a secret at all.<sup>105</sup>

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<sup>103</sup> *Id.*

<sup>104</sup> Fionnuala O’Leary, ‘*PRESIDENCY AT STAKE*’ Giuliani warns ‘dangerous people’ are involved in Hunter Biden scandal – as Michael Cohen slams ‘always drunk’ ex mayor, *THE SUN* (Oct. 18, 2020), <https://www.the-sun.com/news/1651934/rudy-dangerous-people-hunter-biden-scandal-michael-cohen/>.

<sup>105</sup> Later, *The Sun* reported that Trump insider Patrick Byrne, CEO of Overstock.com, stated that Giuliani was “regularly s\*\*\*-faced” when coordinating efforts to overturn the 2020 election results. See Olivia Burke, *ON THE ROCKS Rudy Giuliani ‘drank 3 triple scotches before sweating off his hair dye in press conference,’ ex-Overstock CEO claims*, *THE SUN* (Feb. 9, 2021), <https://www.the-sun.com/news/2303099/rudy-giuliani-scotches-sweating-hair-dye-overstock-ceo/>.

106. Three further highly publicized incidents *before* the Big Libel made clear to the entire world, including to the Director Defendants, that Giuliani was extremely unreliable and erratic.

107. Giuliani appeared in scene in the Sacha Baron Cohen comedy film called *BORAT Subsequent Moviefilm* (sometimes, “*Borat 2*”) without knowing it during filming.

108. In early summer 2020, a fake TV network contacted Giuliani to schedule an on-camera interview with him to take place in a New York hotel room to discuss Trump’s handling of the COVID-19 pandemic. Not knowing he was being set up to appear in a film, let alone a comedy directed by and starring ribald satirist Sacha Baron Cohen, Giuliani booked the interview. The interviewer, 24-year-old actress Maria Bakalova, had been cast to play the Borat character’s 15-year-old daughter, Tutar. Giuliani went to the hotel room to be interviewed on approximately July 7, 2020.<sup>106</sup>

109. Following the interview, Bakalova invited Giuliani to her adjacent hotel room for a drink. While Sacha Baron Cohen, as Borat, hid in the closet, Giuliani

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<sup>106</sup> Associated Press, *Giuliani shown in hotel bedroom scene in new ‘Borat’ film*, AP NEWS (Oct. 21, 2020), <https://apnews.com/article/rudy-giuliani-sacha-baron-cohen-borat-ce44d19cf3888a4747ff79dc94e03c98>.

and Bakalova were captured on numerous hidden cameras acting flirtatious with each other. After removing each other's microphones, the then-76-year-old Giuliani asked Bakalova for her phone number and address. Giuliani lay on the bed with his hands down his pants (he later said he was tucking in his shirt). Just then, Sacha Cohen (as Borat) burst into the room wearing an outlandish pink-and-red outfit and shouted "[S]he 15! She too old for you!" The Borat and Tutar characters promptly ran away, in the film, on camera. Giuliani, who was slow to catch on to the ruse, later called the police to complain about the man in the pink-and-red outfit.<sup>107</sup> The police found no crime.<sup>108</sup>

110. The scene was widely publicized even before *Borat 2*'s October 2020 release. Amazon Prime streamed it and stated that in its opening weekend alone, the film had been seen by tens of millions globally.<sup>109</sup> It became the second-most

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<sup>107</sup> Justin Kirkland, *Sacha Baron Cohen Says He Was 'Quite Concerned' For His Co-Star During the Rudy Giuliani Scene in Borat*, ESQUIRE (Apr. 20, 2021), <https://www.esquire.com/entertainment/tv/a33260571/rudy-guliani-nypd-on-sacha-baron-cohen-police-bikini/>.

<sup>108</sup> Catherine Shoard, *Rudy Giuliani faces questions after compromising scene in new Borat film*, THE GUARDIAN (Oct. 21, 2020), <https://www.theguardian.com/film/2020/oct/21/rudy-giuliani-faces-questions-after-compromising-scene-in-new-borat-film>.

<sup>109</sup> Todd Spangler, *'Borat 2' Drew 'Tens of Millions' of Viewers Over Opening Weekend, Amazon Says*, VARIETY (Oct. 27, 2020),

streamed movie of 2020,<sup>110</sup> and the Giuliani sequence has been restreamed to hundreds of millions.

111. Giuliani's public denials of impropriety fueled the film's popularity. In response to those denials, Sacha Cohen responded that people should view the scene and decide for themselves.

112. Why did those running FOX continue to allow the network to air Giuliani unmonitored? An opinion piece published in The Hill on November 3, 2020, aptly said of Giuliani's judgment:

Then, as if that were not enough to destroy what was left of Giuliani's credibility, along comes Sacha Baron Cohen – who pranked Giuliani to appear in the hilarious final scene of his latest Borat film (Watch it on Amazon!). The issue's not: Was Rudy really just tucking in his shirt or fondling his genitals? The real issue is: Why did he agree to an interview with a phony TV network? Why agree to do the interview in a hotel room? And, after the interview, why agree to have a drink with the young woman "reporter" in her adjacent bedroom? ...

After he's careened from one embarrassment to another, the big question is: Why does anybody still believe anything Rudy Giuliani says or does? ...<sup>111</sup>

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<https://variety.com/2020/digital/news/borat-2-viewership-numbers-amazon-opening-weekend-mulan-1234816491/>.

<sup>110</sup> Joe Price, *'Borat' Sequel has Become America's Second Most-Streamed Movie of the Year*, COMPLEX (Nov. 4, 2020), <https://www.complex.com/pop-culture/2020/11/borat-sequel-us-second-most-streamed-movie>.

<sup>111</sup> Bill Press, *Press: And the loser is ... Rudy Giuliani*, THE HILL (Nov. 3, 2020), <https://thehill.com/opinion/campaign/524133-press-and-the-loser-is-rudy-giuliani>.

113. It is inconceivable that the Director Defendants did not know about Giuliana’s unflattering appearance in *Borat 2*; the first Borat film was distributed by the Murdochs’ 20<sup>th</sup> Century Fox, and in 2007 Rupert Murdoch had publicly pushed for a sequel.<sup>112</sup> On November 10, 2020, the Murdochs’ (News Corp.’s) venerable The Times [of London] published a story entitled “The undoing of Rudy Giuliani”<sup>113</sup> that included a montage of photos from the movie showing actress Bakalova with Giuliani, who was lying on a bed and fumbling with his clothing.

114. By November 2020, the Director Defendants possessed overwhelming evidence of Giuliani’s unreliability, yet they failed to ensure that their company was protected against it before Giuliani engaged in false, spectacular, and actionable libels, over and over again, on the Fox News Channel and the Fox Business Network, exposing FOX to material and increasing liability.

115. On Saturday, November 7, 2020, Trump tweeted that his legal team, headed by Giuliani, would hold a “Lawyers Press Conference” at 11:00 a.m. at the Four Seasons, Philadelphia, the purpose being a discussion of how the legal team planned to mount legal challenges to the election. The Four Seasons Philadelphia

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<sup>112</sup> Lorenza Munoz, *Two versions on ‘Borat’ sequel*, L.A. TIMES (Feb. 9, 2007), <https://www.latimes.com/archives/la-xpm-2007-feb-09-fi-borat9-story.html>.

<sup>113</sup> Will Pavia, *The undoing of Rudy Giuliani*, LONDON TIMES (Nov. 11, 2020), <https://www.thetimes.co.uk/article/the-undoing-of-rudy-giuliani-mpqbch3fk>.



seemed a logical location for such a news conference as the famous hotel by that name is within five blocks of the Pennsylvania Convention Center, where votes were being counted and where competing demonstrations were taking place, and its ultra-luxury surroundings made for a backdrop consistent with Trump's preferred ambiance and with previous Trump-related media events.

116. Someone erred, either in the booking or the communicating. Although reporters rushed to the downtown hotel, the news conference was actually at a small business, Four Seasons Total Landscaping, which is located in an industrial strip in Philadelphia's Near Northeast's Holmesburg neighborhood.<sup>114</sup> Trump tweeted at 11:30 a.m. stating that a "[b]ig press conference" was taking place that day at Four Seasons Total Landscaping, not the Four Seasons Philadelphia.

117. Like a specter from Giuliani's past, the recently-pardoned Kerik appeared and was photographed shoulder-to-shoulder with him at the press conference.<sup>115</sup> Giuliani presented several "witnesses" who each spoke in turn,

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<sup>114</sup> Miles Bryan, *From Obscure To Sold Out: The Story Of Four Seasons Total Landscaping In Just 4 Days*, NPR (Nov. 11, 2020), <https://www.npr.org/2020/11/11/933635970/from-obscure-to-sold-out-the-story-of-four-seasons-total-landscaping-in-just-4-d>.

<sup>115</sup> John Annese, *Disgraced NYPD commissioner Bernie Kerik attends Rudy Giuliani's widely mocked 'Four Seasons' election press conference*, N.Y. DAILY NEWS (Nov. 9, 2020), <https://www.nydailynews.com/new-york/nyc-crime/ny-kerik-four-seasons-20201109-acrjpmfwkrhzzaoonnimhak4a-story.html>.

stating that they were Republican poll watchers forced to stand too far away from where the votes were being counted. The first such witness was reported to be a registered sex offender just two days later.<sup>116</sup>

118. Just as the ill-fated Four Seasons press conference began, major network news outlets called Pennsylvania, and the election, for Biden. When reporters shouted the news, Giuliani did a mocking dance, palms and face turned toward heaven, signaling his view that the network calls were meaningless.<sup>117</sup>

119. The Four Seasons Total Landscaping news conference was widely derided and quickly became infamous, not only for its unusual location (a site next to a sex shop, a crematorium, and a jail) and Giuliani's bizarre behavior, but for the absence of any real evidence offered to substantiate Giuliani's election fraud claims.

120. On November 19, 2021, Giuliani led another now-infamous, 90-minute press conference at the Republican National Committee's ("RNC") headquarters in Washington, D.C., at which first he, then Powell, then another Trump lawyer named

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<sup>116</sup> Matt Friedman, *Man featured at Giuliani press conference is a convicted sex offender*, POLITICO (Nov. 9, 2020), <https://www.politico.com/states/new-jersey/story/2020/11/09/man-featured-at-giuliani-press-conference-is-a-sex-offender-1335241>.

<sup>117</sup> Melissa Klein, *Rudy Giuliani incredulous at news that election called for Biden*, N.Y. POST (Nov. 7, 2020), <https://nypost.com/2020/11/07/rudy-giuliani-incredulous-at-news-that-election-called-for-biden/>.

Jenna Ellis, then Giuliani again, repeated the most bizarre aspects of their election fraud claims and the Ten Points. Giuliani was visibly sweating profusely, and dark liquid, resembling overwarm shoe polish, ran down both sides of his face.

121. During the press conference, he and Powell made a series of unfounded claims of election fraud: they blamed two Venezuelan Dictators - one of whom had been dead for seven years; they blamed Cuba; they blamed a web server in Germany; they blamed voting machines, China, Antifa, George Soros, and the Clinton Foundation. To illustrate one of his points, Giuliani analogized to a trial scene in the 1992 film *My Cousin Vinny*, going so far as to offer a voice impression of the eponymous lawyer character.<sup>118</sup> Dozens of news reports about the November 19 press conference concluded that Giuliani had made a fool of himself. The reports were later joined by audio of Trump campaign officials caught on a hot mic laughing uproariously at Giuliani's conduct during the press conference, one of whom can be heard saying: "[Did] you see f\*\*\*\*\*g Rudy's hair dye dripping down his face?"<sup>119</sup>

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<sup>118</sup> Sonam Sheth, *Rudy Giuliani's hair dye trickled down his face at a wild news conference where he quoted 'My Cousin Vinny' to support his claims about the election*, BUS. INSIDER (Nov. 19, 2020), <https://www.businessinsider.com/rudy-giuliani-hair-dye-trump-campaign-press-conference-photos-video-2020-11>.

<sup>119</sup> B. Niemietz, *Giuliani's dark comedy continues as fluids drip down his face, becomes the talk of latest press spectacle*, N.Y. DAILY NEWS (Nov. 19, 2020), <https://www.nydailynews.com/news/politics/us-elections-government/ny-election-2020-rudy-giuliani-hair-dye-20201119-46qekzxkc5hrppmb7xojvyth6q-story.html>.

122. In his “totter[ing]” exit, Giuliani was “guided by the elbow by Bernard Kerik” who attended the event.<sup>120</sup> Video and images of Giuliani’s bizarre press conference appearance, with the dark liquid framing the sides of his face, were shown and reshowed on news shows and Internet streams. No news consumer could have failed to see them, let alone the Director Defendants.<sup>121</sup> The Fox News Channel was the only major U.S. news network to carry the “hair dye news conference” live in its entirety.<sup>122</sup> Other, cable news channels like CNN and MSNBC declined to carry it live, yet all ran innumerable replays and excerpts.

123. The Director Defendants, including the Officer Defendants, had to have known of the “hair dye news conference” in real time. Indeed, Lachlan Murdoch

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<sup>120</sup> D. Zak and J. Dawsey, *Rudy Giuliani’s post-election meltdown starts to become literal*, WASH. POST (Nov. 19, 2020), [https://www.washingtonpost.com/lifestyle/style/rudy-giuliani-press-conference-trump-election/2020/11/19/9192f928-2a9d-11eb-92b7-6ef17b3fe3b4\\_story.html](https://www.washingtonpost.com/lifestyle/style/rudy-giuliani-press-conference-trump-election/2020/11/19/9192f928-2a9d-11eb-92b7-6ef17b3fe3b4_story.html).

<sup>121</sup> After watching Powell and Giuliani on TV at the Nov. 19 RNC news conference, Rupert Murdoch told Scott, “Terrible stuff damaging everybody, I fear,” and the Fox News CEO responded, “yes Sean [Hannity] and even Pirro agrees.” *Dom. MSJ* at 13.

<sup>122</sup> Paul Farhi and Elahe Izadi, Rudy Giuliani floated ‘dangerous’ and incendiary false claims of election conspiracy – and Fox News broadcast it live, WASH. POST (Nov. 19, 2020), [https://www.washingtonpost.com/lifestyle/media/rudy-giuliani-floated-dangerous-and-incendiary-false-claims-of-election-conspiracy--and-fox-news-broadcast-it-live/2020/11/19/0313eab6-2a9f-11eb-8fa2-06e7cbb145c0\\_story.html](https://www.washingtonpost.com/lifestyle/media/rudy-giuliani-floated-dangerous-and-incendiary-false-claims-of-election-conspiracy--and-fox-news-broadcast-it-live/2020/11/19/0313eab6-2a9f-11eb-8fa2-06e7cbb145c0_story.html).

had foreseen all this. As early as November 7, 2020, his New York Post ran an editorial headlined “President Trump, Your Legacy Is Secure, Stop the ‘Stolen Election Rhetoric.’” Lachlan Murdoch approved the November 7, 2020 *NYP* editorial in advance and it stated, in part:

But the President’s aides have shown no evidence that the election was “stolen.” ... It undermines faith in democracy, and faith in the nation, to push baseless conspiracy theories. ***Get Rudy Giuliani off TV ...***<sup>123</sup>

124. The Director Defendants, including the Officer Defendants, all knew of the red flags regarding the dangers that Giuliani posed because of his unreliability, especially when espousing the Big Libel, but sat motionless in the face of a duty to act and silent in the face of a duty to speak. The non-executive directors’ failure to put any effective monitoring or oversight system in place, either before or during the Libel Period, led to the enormous exposure FOX now faces.

***Powell Was Famously Unreliable and  
Openly Espoused the QAnon Conspiracy Theory***

125. Before November 2020, Powell was well-known to espouse baseless conspiracy theories and accuse others of great wrongdoing.

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<sup>123</sup> Post Editorial Board, *President Trump, your legacy is secure—stop the ‘stolen election’ rhetoric*, N.Y. POST (Nov. 7, 2020) (emphasis added). <https://nypost.com/2020/11/07/president-trump-your-legacy-is-secure-stop-the-stolen-election-rhetoric/>.

126. For example, she was an early and ardent supporter of QAnon, a conspiracy theory that Democrats and Hollywood stars are Satan-worshipping, cannibalistic pedophiles and blood-drinking fiends who secretly control world events and want to take down Trump, who alone can stop them. Business Insider put it this way:

Powell has likewise long shared QAnon slogans on social media, making her one of the first high-profile Trump supporters to back the movement.

Even before representing [Michael] Flynn, she had expressed support for QAnon, which groundlessly alleges that a Satanic cabal of child-abusing Democrats and Hollywood stars secretly manipulates world events. The conspiracy theory is embraced by a large swath of Trump supporters and even some GOP lawmakers.<sup>124</sup>

127. After then-confessed felon<sup>125</sup> Michael T. Flynn fired his legal team and replaced them with Powell, in September 2019 she baselessly accused Department of Justice prosecutors of concealing exculpatory evidence.<sup>126</sup> She baselessly accused

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<sup>124</sup> Tom Porter, *An attorney leading Trump's attempt to subvert the election results is a longtime QAnon supporter*, BUS. INSIDER (Nov. 20, 2020), <https://www.businessinsider.com/trump-election-lawyer-sidney-powell-is-longtime-qanon-supporter-2020-11#>.

<sup>125</sup> Flynn had previously pled guilty to lying to the Mueller Probe investigators and other federal officials about his contacts with Russian government.

<sup>126</sup> J. Gibson & A. Pappas, *Flynn lawyer accuses prosecutors of 'egregious conduct,' hiding exculpatory evidence*, FOX NEWS (Sept. 10, 2019),

the FBI of “atrocities”<sup>127</sup> and the Mueller Probe investigators of “malevolent conduct.”<sup>128</sup> Throughout the Libel Period, she frequently appeared on Fox News.

128. By mid-January 2020, almost ten months before the Libel Period, Powell – already famous for taking over the Flynn defense – had her QAnon connection exposed nationally. For example, the non-partisan political and policy news outlet Politico put it this way:

Powell ... had shared content from social media accounts associated with QAnon, the wide-ranging conspiracy movement holding in part that Trump is doing battle with demonic, pedophile-loving Democrats and members of the deep state. ...<sup>129</sup>

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<https://www.foxnews.com/politics/michael-flynn-lawyer-accuses-prosecution-of-egregious-conduct-suppression-of-exculpatory-evidence>.

<sup>127</sup> J. Peters & A. Feuer, *What We Know About Sidney Powell, the Lawyer Behind Wild Voting Conspiracy Theories*, N.Y. TIMES (Dec. 8, 2020), <https://www.nytimes.com/article/who-is-sidney-powell.html>.

<sup>128</sup> Spencer Hsu, *Michael Flynn asks judge to find Mueller prosecutors in contempt for ‘malevolent conduct’*, WASH. POST (Aug. 30, 2019), [https://www.washingtonpost.com/local/legal-issues/michael-flynn-case-security-clearance-dispute-with-prosecutors-could-delay-sentencing/2019/08/30/4f02ec34-caa0-11e9-be05-f76ac4ec618c\\_story.html](https://www.washingtonpost.com/local/legal-issues/michael-flynn-case-security-clearance-dispute-with-prosecutors-could-delay-sentencing/2019/08/30/4f02ec34-caa0-11e9-be05-f76ac4ec618c_story.html).

<sup>129</sup> Keith Kloof, *The #MAGA Lawyer Behind Michael Flynn’s Scorched-Earth Legal Strategy*, POLITICO (Jan. 17, 2020), <https://www.politico.com/news/magazine/2020/01/17/maga-lawyer-behind-michael-flynn-legal-strategy-098712>.

Powell and Flynn had already become “celebrities to QAnon loyalists ...”<sup>130</sup> As early as November 2019, disinformation researcher Alex Kaplan noted and posted that Powell gave a friendly interview on a popular QAnon YouTube show, where she praised the QAnon host’s support of Flynn as “huge & extremely helpful.”<sup>131</sup>

129. The Director Defendants knew of Powell’s prominent advocacy for fringe conspiracy theories and her reckless and evidence-free accusations, even before she began using Fox News to baselessly charge Dominion and Smartmatic of crimes and fraud.

130. It is thus unsurprising that the Big Libel began with Powell. A theretofore unknown correspondent – a total stranger to Powell and FOX with no credentials (later identified as Ms. Bourne) – wrote her an email on November 7, copying Dobbs, alleging that Dominion was the one common thread in all the reports of election fraud in the 2020 Presidential Election. Bartiromo passed the email on

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<sup>130</sup> Drew Harwell, *To boost voter-fraud claims, Trump advocate Sidney Powell turns to unusual source: The longtime operator of QAnon’s Internet home*, WASH. POST (Dec. 1, 2020), <https://www.washingtonpost.com/technology/2020/12/01/powell-cites-qanon-watkins/>.

<sup>131</sup> Alex Kaplan (@AlKapDC), TWITTER (Nov. 20, 2019, 9:35 am), [https://twitter.com/AlKapDC/status/1197161473308540930?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1197161473308540930%7Ctwgr%5E%7Ctwcon%5Es1\\_&ref\\_url=https%3A%2F%2Fwww.businessinsider.com%2Ftrump-election-lawyer-sidney-powell-is-longtime-qanon-supporter-2020-11](https://twitter.com/AlKapDC/status/1197161473308540930?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1197161473308540930%7Ctwgr%5E%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.businessinsider.com%2Ftrump-election-lawyer-sidney-powell-is-longtime-qanon-supporter-2020-11).



to her producer at FOX. The email's author described herself as "whackadoodle," and alleged: (a) that Rupert Murdoch and Roger Ailes [who had died over three years earlier] "secretly huddle most days to determine how best to portray Mr. Trump as badly as possible"; and (b) that Justice Antonin Scalia had been murdered while being hunted for sport [he died in his sleep of natural causes]. The "source" author went on, "How do I know these things? I've had the strangest dreams since I was a little girl. ... I was internally decapitated, and yet I live. The Wind tells me I'm a ghost, but I don't believe it." The same Bourne email stated that she was capable of "time travel in a semi-conscious state." Powell apparently credited the "whackadoodle" email, shared it with Bartiromo, who interviewed Powell off-camera on November 7, and put Powell on the air the next day, November 8, 2020, to begin broadcasting the conspiracy theory. *In her deposition in the Dominion Suit, Bartiromo could not point to any other source for Powell's yarn that started the lies against the voting machine companies, but Bartiromo put her on the air anyway.* If only the Board of Directors had done its duty and put in place and monitored a simple policy regarding facially unreliable sources, the liability in defamation would have been prevented. Even Tucker Carlson texted the next night:

“This software shit is absurd ... half our viewers have seen the Maria clip.”<sup>132</sup>

Neither Bartiromo nor Dobbs ever reported on the “whackadoodle” email, the source of Powell’s claims.<sup>133</sup>

131. On December 27, 2020, the Murdochs’ New York Post ran a lead editorial behind a full-page-front-page headline that stated in giant type “STOP THE INSANITY” and in the sub-headline, “You Lost the Election ...” The lead editorial contained the following sentence: “Sidney Powell is a crazy person.”<sup>134</sup> The Murdochs knew contemporaneously of this sensational headline and editorial in their own newspaper. The Murdochs’ stated view of Powell’s mental stability was a view they conceivably held several weeks or months before the editorial ran and was a view held by other Director Defendants.

132. The Director Defendants, including the Officer Defendants, all knew of the red flags regarding the dangers that Powell posed because of her unreliability,

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<sup>132</sup> See *Dom. MSJ* at 24-25; see also Will Sommer, *Meet the Ghost Woman that Fox Relied on for Voter Fraud Claims*, DAILY BEAST (March 11, 2023), <https://www.thedailybeast.com/meet-the-ghost-minnesota-artist-fox-relied-on-for-voter-fraud-claims>.

<sup>133</sup> *Dom. MSJ* at 25.

<sup>134</sup> Post Editorial Board, *The Post says: Give it up, Mr. President – for your sake and the nation’s*, N.Y. POST (Dec. 27, 2020), <https://nypost.com/2020/12/27/give-it-up-mr-president-for-your-sake-and-the-nations/>.

especially when espousing the Big Libel, but they sat motionless in the face of a duty to act, never taking board action. As with Giuliani, Dobbs, Bartiromo, and Pirro, the non-executive directors' utter failure to put any effective monitoring or oversight system in place, either before or during the Libel Period, led to the enormous exposure FOX now faces.

**The Big Libel Unfolds on FOX  
Between November 8 and 12, 2020**

133. The 2020 Presidential Election was free from any material fraud or irregularities, and there is no evidence to the contrary. The Trump Administration so acknowledged. As early as November 4, 2020, Trump appointee Christopher Krebs ("Krebs"), Director of the CISA, issued a statement saying, "[W]e have no evidence any foreign adversary was capable of preventing Americans from voting or changing vote tallies."<sup>135</sup> In the days following, Krebs expanded on this statement that there was no evidence of widespread voter fraud or irregularities.

134. On November 8, 2020, the morning after Giuliani's Four Seasons Total Landscaping press conference, Powell began using Fox News to spread the

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<sup>135</sup> *Statement from CISA Director Krebs Following Final Day of Voting*, CYBERSECURITY & INFRASTRUCTURE SECURITY AGENCY, (Nov. 4, 2020, updated Nov. 2, 2021), <https://www.cisa.gov/news/2020/11/04/statement-cisa-director-krebs-following-final-day-voting>.

accusations against the voting machine companies, starting with Dominion.

Bartiromo facilitated and led her as the Powell-Giuliani false narrative on Fox News began to evolve:

Powell: Yes. There has been a massive and coordinated effort to steal this election from We the People<sup>136</sup> of the United States of America, to delegitimize and destroy votes for Donald Trump, to manufacture votes for Joe Biden. ... they ... used an algorithm to calculate the votes they would need to flip ...

Bartiromo: Sidney, I want to ask you about these algorithms and the Dominion software.

...

Bartiromo: Sidney, we talked about the Dominion software. I know that there were voting irregularities. Tell me about that.

Powell: ... That is where the fraud took place, where they were flipping votes in the computer system or adding votes that did not exist. We need an audit of all of the computer systems that played any role in this fraud whatsoever. ... They had the algorithms ... That's when they had to stop the vote count and go in and replace votes for Biden and take away Trump votes.

Bartiromo: I've never seen voting machines stop in the middle of an election, stop down and assess the situation.<sup>137</sup>

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<sup>136</sup> "We the People" appears to be (among other things) a QAnon meme. See Luke Mogelson, *Among the Insurrectionists*, NEW YORKER (Jan. 15, 2020), <https://www.newyorker.com/magazine/2021/01/25/among-the-insurrectionists>.

<sup>137</sup> *Sunday Morning Futures With Maria Bartiromo*, FOX BUS. (Nov. 8, 2020), [https://archive.org/details/FBC\\_20201108\\_230000\\_Sunday\\_Morning\\_Futures\\_Wit\\_h\\_Maria\\_Bartiromo](https://archive.org/details/FBC_20201108_230000_Sunday_Morning_Futures_Wit_h_Maria_Bartiromo).

135. Between November 8 and 12, 2020, Powell and Giuliani repeated their accusations against Dominion as guests on FOX.

136. For example, on November 10, 2020, Powell appeared as a guest on Laura Ingraham's show on Fox News and repeated aspects of the false accusations. Powell accused Dominion of switching votes, said there were Chinese software and parts in the Dominion machines, and stated falsely that Senator Diane Feinstein, House Speaker Nancy Pelosi, and George Soros held an interest in Dominion.<sup>138</sup> Ingraham interrupted, and stated that the Associated Press had fact checked her "family connection claims" (regarding Feinstein, Pelosi, and Soros) and found them false. They indeed were false.<sup>139</sup> Ingraham's on-air fact check should have been another red flag to the Director Defendants, including the Officer Defendants.

137. If a Fox anchor (and ardent Trump supporter) like Laura Ingraham could debunk aspects of the Big Libel so quickly (two days) after it was first propounded, the Director Defendants as conscious observers could have intervened as well.

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<sup>138</sup> Jason Gopaul, *Sidney Powell - The Ingraham Angle - 11/10/20*, YOUTUBE (Nov. 11, 2020), <https://www.youtube.com/watch?v=hHpKZwCLSes>.

<sup>139</sup> As pled above, Dominion is owned by its management and Staple Street Capital.

138. On November 10, 2020, the NYT reported that over the past two days it had called officials in every state to probe whether they had found voter fraud or irregularities. Those in 49 states (all but Texas) responded and spoke with the NYT reporters. None reported any evidence of fraud. Texas did not respond but reported no widespread or material irregularities or fraud.<sup>140</sup>

139. On November 13, 2020, the FOX Brain Room looked into claims of voter fraud by Dominion and found them false, widely reporting internally at FOX:

There's no evidence of widespread fraud in the 2020 election, or of major problems with Dominion's systems. Election officials from both political parties have stated publicly that the election went well, and international observers confirmed there were no serious irregularities.<sup>141</sup>

Nor did it take respected fact-check organizations long to debunk the Big Libel. By November 13, PolitiFact, the non-partisan, Pulitzer Prize-winning, fact-check arm of the Poynter Institute, had reviewed the accusations against Dominion and rated

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<sup>140</sup> Nick Corasaniti et al., *The Times Called Officials in Every State: No Evidence of Voter Fraud*, N.Y. TIMES (Nov. 10, 2020, updated Nov. 6, 2021), <https://www.nytimes.com/2020/11/10/us/politics/voting-fraud.html>.

<sup>141</sup> Amanda Terkel et al., *Here's what Fox News was trying to hide in its Dominion lawsuit redactions*, NBC NEWS (Mar. 29, 2023), <https://www.nbcnews.com/politics/elections/dominion-releases-previously-redacted-slides-fox-news-lawsuit-rcna77257>.

them “PANTS ON FIRE,”<sup>142</sup> meaning totally false. Among other things, the PolitiFact findings posted on its website included the following:

(a) The headline stating “No evidence Dominion Voting Systems caused widespread tabulation errors that flipped votes for Biden;”

(b) “There is no credible evidence that the voting system affected any vote tallies”; and

(c) “Dominion Voting Systems was only used in a few counties that experienced minor problems that were quickly resolved, and were either the result of human error or temporary malfunctions.”

140. If the NYT and PolitiFact could have probed these accusations so quickly, so could the Director Defendants. They chose not to.

141. Indeed, the CISA went further as early as November 12, 2020, four days after Powell first accused Dominion on Bartiromo’s show. In the Joint Statement, the Election Infrastructure Government Coordinating Council Executive Committee, which included top officials of (a) the CISA, (b) the U.S. Election Commission, (c) the National Association of Secretaries of State (“NASS”), (d) the National Association of State Election Directors (“NASED”), (e) the Vice Chair of

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<sup>142</sup> Derived from the children’s cry of “liar, liar, pants on fire.”

a competitor of both Dominion and Smartmatic, and (f) several named others, stated as follows:

The November 3rd election was the most secure in American history. Right now, across the country, election officials are reviewing and double checking the entire election process prior to finalizing the result.

When states have close elections, many will recount ballots. All of the states with close results in the 2020 presidential race have paper records of each vote, allowing the ability to go back and count each ballot if necessary. This is an added benefit for security and resilience. This process allows for the identification and correction of any mistakes or errors. **There is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised.**

Other security measures like pre-election testing, state certification of voting equipment, and the ... [EAC's] certification of voting equipment help to build additional confidence in the voting systems used in 2020.

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[Emphasis in original].<sup>143</sup> It bears repeating that “All of the states with close results in the 2020 presidential race have paper records of each vote, allowing the ability to go back and count each ballot if necessary.”<sup>144</sup> This highly public report of the Election Infrastructure Government Coordinating Council Executive Committee should have been a red flag to the Director Defendants, including the Officer

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<sup>143</sup> See **Exhibit B**.

<sup>144</sup> *Id.*



Defendants, that any repetition of the Giuliani-Powell narrative was unreliable, false, libelous, and potentially extremely costly to FOX.

142. On November 12, 2020, Dominion issued the first of its “SETTING THE RECORD STRAIGHT” Internet posts and emails to 90 FOX anchors, producers, and representatives.

143. On November 12, 2020, Trump tweeted accusations against Dominion made earlier on FOX, thus reaching his 88.7 million followers. The Trump tweet stated:

REPORT: DOMINION DELETED 2.7 MILLION TRUMP VOTES NATIONWIDE. DATA ANALYSIS FINDS 221,000 PENNSYLVANIA VOTES SWITCHED FROM PRESIDENT TRUMP TO BIDEN. 941,000 TRUMP VOTES DELETED. STATES USING DOMINION VOTING SYSTEMS SWITCHED 435,000 VOTES FROM TRUMP TO BIDEN.<sup>145</sup> [Capitalization in original.]

**During This Initial Period,  
What Did the Director Defendants Know and When Did They Know It?**

144. When it came to the news and to broadcasts on Fox Business and Fox News, the two Murdochs were hands on. Fox News CEO Scott testified in a sworn deposition given on November 1, 2022, in the Dominion Suit that Lachlan and

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<sup>145</sup> A. Swenson & A. Seitz, *AP FACT CHECK: Trump tweets a tall tale of ‘deleted’ votes*, AP NEWS (Nov. 12, 2020), <https://apnews.com/article/fact-check-trump-tweets-tall-tale-votes-13c104367924b8192b4fcec334f7806>.

Rupert Murdoch both “call [her] ‘about once a day,’” that “Rupert ‘will generally ask [her] what’s going on in the news,” that “Rupert loves the news,” and that, besides, one or both of the Murdochs “will attend” the daily Fox News afternoon meeting held at 3:00 p.m.<sup>146</sup> In the same deposition, Scott swore that Rupert Murdoch asked her about how FOX should react to fallen ratings.<sup>147</sup> In a sworn deposition given on December 5, 2022, Lachlan Murdoch replied “yes” to whether he is a “news junkie.” Ratings drove Rupert Murdoch’s constant interest in FNN programming: on November 8, 2020, he texted Scott that FOX was “getting creamed by CNN.”<sup>148</sup>

145. In a sworn deposition given on January 31, 2023 in the Dominion Suit, Defendant Ryan – referring to Trump’s conspiracy theories regarding the 2020 Presidential Election – testified that “I didn’t believe any of this stuff to begin with.”<sup>149</sup> Ryan went on, “And as you know, I thought these conspiracy theories were baseless,”<sup>150</sup> and “I certainly didn’t believe them.”<sup>151</sup> Ryan testified that throughout

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<sup>146</sup> *Dom. Reply* at 11, citing to Ex. 143 (Scott Tr.) at 165:23-167:17.

<sup>147</sup> *Dom. Reply* at 11-12.

<sup>148</sup> *Dom. MSJ*, Ex. 611.

<sup>149</sup> *Dom. MSJ*, citing to Ex. 620 (Ryan Tr.) at 154:7-22.

<sup>150</sup> *Id.* at 263:7-9.

<sup>151</sup> *Id.* at 263:21.

the November 2020-January 2021 period, he made “plenty of suggestions,” answering “yes” to the question whether these “suggestions” were “to move on from Donald Trump and stop spouting election lies.”<sup>152</sup> Yet, throughout the deposition, Ryan denied that he had any duty to do anything further, and indeed testified that he did nothing further. Accordingly:

(a) Before the Libel Period, Ryan’s indolence (as well as that of Carey, Diaz, Hernandez, and Nasser) constituted “a sustained or systematic failure of the board to exercise oversight ... an utter failure to attempt to assure a reasonable information and reporting system exists.”<sup>153</sup> Once the Libel Period began, it amounted to something far worse than failure of oversight, as the legal catastrophe played out in real time; it could have been stopped or materially mitigated at any time through board action that none of the Director Defendants ever moved the Board to take;

(b) Under Fox Corp.’s By-Laws,<sup>154</sup> at Article II, Section 4, at all times relevant, Defendant Nasser, as Lead Independent Director of Fox Corp., had

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<sup>152</sup> *Id.* at 410:16-411-9.

<sup>153</sup> *Stone v. Ritter*, 911 A.2d 362, 364 (Del. 2006), citing and quoting *In re Caremark Int’l Inc. Deriv. Litig.*, 698 A.2d 965 (Del. Ch. 1996).

<sup>154</sup> Fox Corp., Current Report (Form 8-K) (Mar. 14, 2019) at Ex. 3-2.

the unilateral power and right to call a special meeting of the Board. He could have done so at any time on 12 hours' notice, or even less, and asked the Board to put a stop to the false accusations. He chose spectatorship and indolence over rattling his good friends, the Murdochs, thus failing to act in good faith;

(c) Under the same By-Law, Defendant Ryan, with any one other director (for example, Dias or Hernandez of the Nominating and Corporate Governance Committee or indeed any two non-executive directors), had the power and right to call a Special Meeting of the Board on 12-hours' notice or even less. They could have quickly extinguished the fire raging in FOX's house, but instead chose impartiality as between the fire brigade and the fire.<sup>155</sup> They thus failed to act in good faith; and

(d) At any such meeting, the false accusations could have been ordered to be ceased, or a retraction ordered to be given, which would have materially mitigated the exposure to damages.

146. Defendant Ryan further gave sworn testimony in the Dominion Suit that the Fox Corp. Board held a three-day meeting from November 10 through November 12, 2020; that all Fox Corp. Board members were in attendance; and all

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<sup>155</sup> "I decline utterly to be impartial as between the fire brigade and the fire." Winston Churchill, Speech in the House of Commons (July 7, 1926).

Fox Business unit leaders were in attendance and when asked whether the group discussed the baseless conspiracy theories on Fox News, he responded, “This is November 11, so it would surprise me if we were not talking about the news [coverage] today,” and “it is not implausible at all.” Nevertheless, despite Defendant Ryan’s testimony that the Board, at the November 2020 meeting, discussed issues related to Mr. Trump’s and his allies’ ongoing, unprecedented, attempt to undo the election, the meeting minutes contain no record of such discussion. Thus, every one of the five non-executive directors then serving knew of Powell’s lies airing on FOX shows, but faithlessly took no board action, not then and not ever.

147. Defendant Ryan’s political financial supporter spanning two decades, Defendant Dias, sent him a message on November 12, the last day of the three-day Board meeting, stating, “exactly as you described it: Trump needs a scapegoat and it’s now Fox.” Dias served with Ryan on the Nominating and Corporate Governance Committee, and like Ryan, did nothing to stop the procession of lies about Dominion and Smartmatic. Later, she told both the Murdochs that “considering how important Fox News has been as a megaphone for Donald Trump ... 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.”<sup>156</sup> The Murdochs never “[took] a stance” and Dias, like Ryan, never either took Board action nor moved the Board to take action – nor caused the Board to put monitoring or oversight systems in place that would have prevented or mitigated the exposure that FOX now faces in the defamation suits.

**The Director Defendants Sit Idle as the Big Libel  
Expands on FOX to Include Smartmatic**

148. As pled *supra*, on November 12, 2020, Giuliani and Powell expanded their ever-evolving false narrative to include Smartmatic as an alleged fraudulent participant and criminal co-conspirator in flipping the election. Giuliani appeared on *Lou Dobbs Tonight*, and Dobbs led him, first asking him for an “update on Dominion” before Giuliani even mentioned Dominion or voting machines:

Dobbs: Let’s talk about, just for a moment, an update on Dominion and how important do you believe the concerns that are being expressed of a number of states of the ability of these machines not to be hacked?

Giuliani: ... Their machines can be hacked, but it’s far worse than that. Dominion is a company that’s owned by another company Smartmatic ... Smartmatic is a company that was formed way back in 2004, 2003, 2004. You’re gonna be astonished when I tell you how it was formed. It was formed really by three Venezuelans, who were very close to [] dictator Chávez of Venezuela. And it was formed in order to fix elections. That’s the, that’s the company that owns Dominion. Dominion is a Canadian company, but all of its software is Smartmatic

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<sup>156</sup> *Dom. Reply* at 34. Dias told Ryan this on Jan. 11, 2021, within the Libel Period.

software. So the votes actually go to Barcelona, Spain. So we are using a foreign company owned by Venezuelans who are close to, were close to Chávez, are now close to Maduro, have a history, they were founded as a company to fix elections. They have a terrible record and they are extremely hackable.

Dobbs's leading questions then added more lies:

Dobbs: And, by the way, the states, as you well know now, they have no ability to audit meaningfully the votes that are cast because the servers are somewhere else and are considered proprietary and they won't touch them. It won't permit them being touched.

Giuliani: ... I'm way beyond the margin that I need in Pennsylvania or Michigan to overturn the vote there. ... this was a stolen election ... The same pattern exists in Nevada, Arizona, Georgia, [and] Wisconsin.

Dobbs: This looks to me like it's the end of what has been a four-and-a-half ... year-long effort to overthrow the President ... It looks like it's exactly that, that there is a, these are all parts of a piece here.

Dobbs: And Rudy, we're glad you're on the case and, and pursuing what is the truth and straightening out what is a very complicated and difficult story. ... it has the feeling of a cover up in certain places, you know, putting the servers in foreign countries, private companies, we don't have transparency with those servers. This is, this is an election nightmare, as well as a battle.<sup>157</sup>

149. Giuliani's November 12 appearance with Dobbs checked most of the boxes of the false Ten Points, that: Smartmatic owns Dominion (it doesn't);

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<sup>157</sup> *Lou Dobbs Tonight*, FOX BUS. (Nov. 12, 2020), [https://archive.org/details/FBC\\_20201113\\_030000\\_Lou\\_Dobbs\\_Tonight](https://archive.org/details/FBC_20201113_030000_Lou_Dobbs_Tonight) (emphasis added).

Dominion's machines contain Smartmatic software (they don't); Smartmatic's technology was used to throw the election (it wasn't); the software sent votes outside the U.S. to be counted (it didn't);<sup>158</sup> votes were switched from Trump to Biden (they weren't); the software made the count impossible to audit (it didn't; there was paper ballot backups, and audits indeed took place); Smartmatic or Dominion was founded or is owned by Venezuelan dictators, one long dead and one alive, to fix elections (it wasn't); Smartmatic was or is banned in the U.S. (it wasn't and isn't); and Dominion wrongfully influenced the award of the voting technology contract in Georgia (it didn't). Dobbs repeated and amplified Giuliani's false narrative.<sup>159</sup>

150. On November 13, 2020 and again on November 14, 2020, Dominion sent updated editions of "SETTING THE RECORD STRAIGHT" to over 90 FOX anchors, reporters, producers, and others FOX leaders, and posted the same on the Internet, with the facts from the November 12 edition, plus information debunking the claims that Smartmatic owned Dominion (it didn't) or *vice versa* (also untrue) or

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<sup>158</sup> In this retelling, Giuliani said the votes were sent to Barcelona, Spain to be counted. In other Giuliani/Powell retellings, they went to Germany, to Italy, and elsewhere. Giuliani and Powell's failure to keep their story straight was itself a red flag.

<sup>159</sup> *Rudy Giuliani cites potential issues with voting machine maker Dominion*, FOX BUS. (Nov. 12, 2020), <https://video.foxbusiness.com/v/6209487966001#sp=show-clips>.



that Dominion machines contained Smartmatic software (they didn't). Caring nothing for the facts, Giuliani, Powell, Dobbs, Bartiromo, and Pirro continued to tell and to embellish the false narrative. The Director Defendants knew of these denials in STRS but sat mute and did nothing.

151. On November 13, 2020, Powell appeared on *Lou Dobbs Tonight*, and Dobbs egged her on. She stated:

Powell: Well, I can hardly wait to put forth all the evidence we have collected on Dominion, starting with the fact it was created to produce altered voting results in Venezuela for Hugo Chávez and then shipped internationally to manipulate votes for purchase in other countries, including this one.

Repeating the accusations, Powell said she would “release the Kraken.”<sup>160</sup> On his Facebook page that night, Dobbs republished these lies.<sup>161</sup>

152. On November 14, 2020, on Pirro's *Justice with Judge Jeanine*, Pirro first gave her “opening statement” accusing Dominion of switching votes. Later in

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<sup>160</sup> Christo Aivalis, *Sidney Powell will “RELEASE THE KRAKEN” in Insane Lou Dobbs Interview*, YOUTUBE (Nov. 13, 2020), <https://www.youtube.com/watch?v=suPlacwtUHk>. “Release the Kraken” is an internet meme suggesting that a devastating attack is imminent. See Kerry Lotzof, *Sea monsters and their inspiration: serpents, mermaids, the kraken and more*, NATIONAL HISTORY MUSEUM, <https://www.nhm.ac.uk/discover/sea-monsters-inspiration-serpents-mermaids-the-kraken.html> (last visited Apr. 17, 2023).

<sup>161</sup> Lou Dobbs, *Release the Kraken*, FACEBOOK (Nov. 13, 2020), <https://www.facebook.com/115777632950/posts/release-the-kraken-sidney-powell-vows-to-expose-the-silicon-valley-and-left-wing/10157766391847951/>.

the show, Powell appeared as a guest, and with Pirro egging her on, Powell repeated the same conspiracy theory, updated to include Smartmatic, stating that votes were switched and that Dominion software was capable of switching votes.<sup>162</sup> Powell stated falsely that she had irrefutable mathematical evidence of votes being switched and, also falsely, that she had eyewitnesses. She also stated, falsely, as follows:

Powell: I am working on the massive aspect of system wide election fraud ... We're talking about the alteration and changes in millions of votes, some being dumped that were for President Trump, some being flipped that were for President Trump. Computers being overwritten to ignore signatures. All kinds of different means of manipulating the Dominion and Smartmatic software, that of course, we would not expect Dominion and Smartmatic to admit. ... [W]e are collecting evidence through a fire hose as hundreds of American patriots across the country are stepping forward ...<sup>163</sup>

Pirro endorsed Powell's evidence-free charges, calling them "one huge criminal conspiracy," and calling for the Department of Justice (then under William Barr) to investigate. Pirro or FOX posted a video of the show, thus republishing the false accusations yet again.<sup>164</sup>

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<sup>162</sup> *Justice With Judge Jeanine*, FOX NEWS (Nov. 14, 2020), [https://archive.org/details/FOXNEWSW\\_20201115\\_020000\\_Justice\\_With\\_Judge\\_Jeanine](https://archive.org/details/FOXNEWSW_20201115_020000_Justice_With_Judge_Jeanine).

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

153. Not missing a beat, Giuliani went on *Sunday Morning Futures with Maria Bartiromo* on the next day, November 15, 2020, and claimed:

Mr. Giuliani: ... As [Trump has] gotten more evidence of the rigging that went on, he's really outraged. ... it's way beyond what people think, including a very, very dangerous foreign company that did the votes in twenty-seven states. A company that's not American, a company that foreign, a company that has close, close ties with Venezuela and therefore China. And uses Venezuelan's – a company's software that's been used to steal elections in other countries. I mean, I don't think people have any idea of the dimension of the national security problem that Dominion creates ... And the software that they use is done by a company called Smartmatic. It's a company that was founded by Chávez. And by Chávez's two – two allies, who still own it – own it. It's been used to cheat in elections in South America. It was, it was banned by the United States several [years], about a decade ago. It's come back now as a subcontractor to other companies who sorta hides in the weeds. But Dominion sends everything to Smartmatic. Can you believe it? Our votes are sent overseas. Sent to someplace else, some other country ... And this company had, and this company has tried and true methods for fixing elections by calling a halt to the voting when you're running too far behind. They've done that in prior elections.

Thus did Giuliani once again restate almost all aspects of the Ten Points: China, Venezuela, Chávez, Smartmatic software in Dominion machines, both companies dangerous, Smartmatic founded to rig elections, stopping the voting when you're far behind, votes sent overseas, Smartmatic banned in the United States. All of these allegations were false, yet Bartiromo not only failed to challenge them, but she introduced her audience to further false statements enhancing the narrative, stating:

Bartiromo: Look, I want to show you this graphic of swing states that were using Dominion, and this software, the Smartmatic software *[false]*. ... Dominion voting machines were used in Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin. And I have a graphic showing the states where they stopped counting *[false]* ... One source says that the key point to understand is that the Smartmatic system has a backdoor *[false]* that allows it to be ... that allows the votes to be mirrored and monitored *[false]*, allowing an intervening party *[there was none]* a real time understanding of how many votes will be needed to gain an electoral advantage *[false]*. Are you saying that the states that used the software did that? *[brackets and italicized text added]*.

Giuliani liked Bartiromo's "back door" idea and took the cue:

Mr. Giuliani: I know I can prove that they did it in Michigan. I can prove it with witnesses. ... They did it in big cities where they have corrupt machines that will protect them. Meaning, in Pennsylvania, Philadelphia, in Pittsburgh, in Detroit ... They did it absolutely in Phoenix, Arizona. They did it absolutely in Milwaukee, Wisconsin. ...

While Giuliani was stating these falsehoods, the video showed the backdoor statement as having been attributable to a "Senior U.S. Intelligence Official," unnamed and conceivably made up.<sup>165</sup>

154. Bartiromo was not done that morning. Powell appeared next on the same show. Excerpts follow, with Powell adding accusations of bribery:

Bartiromo (at show's introduction): ... Breaking news ... Coming up, President Trump's legal team with new evidence this morning of backdoors on voting machines, ballot tampering and election

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<sup>165</sup> *Sunday Morning Futures With Maria Bartiromo*, FOX NEWS (Nov. 15, 2020), [https://archive.org/details/FOXNEWSW\\_20201115\\_150000\\_Sunday\\_Morning\\_Futures\\_With\\_Maria\\_Bartiromo](https://archive.org/details/FOXNEWSW_20201115_150000_Sunday_Morning_Futures_With_Maria_Bartiromo).

interference, Rudy Giuliani with new affidavits and lawsuits charging fraud. Why the swing states delayed or stopped counting ballots on Election Night plus Sidney Powell on the Venezuela connection for those taking on Dominion voting machines ...

Bartiromo: Attorney Sidney Powell is leading the charge against Dominion and she says she has enough evidence of fraud to launch a massive criminal investigation ... We just heard about the software made by Smartmatic from Rudy.

Powell: ... we're fixing to overturn the results of the election in multiple states and President Trump won by not just hundreds of thousands of votes but by millions of votes that were shifted by this software that was designed expressly for that purpose ... It was exported internationally for profit by the people that are behind Smartmatic and Dominion. They did this on purpose. It was calculated. They've done it before. ... We have so much evidence we feel like it is coming in through a fire hose. ...

Bartiromo: Wow, so Sidney, you feel you'll be able to prove this? ...

Powell ... I never say anything I can't prove. Secondly, the evidence is coming in so fast I can't even process it all. Millions of Americans have written, I would say by now definitely hundreds of thousands ... In fact, every state that bought Dominion, for sure, should have a criminal investigation ... we've even got evidence from kickbacks. ...

Bartiromo: Sidney, before we went on break, we talked about, you said that there may have been kickbacks to some people who accepted the Dominion software. Tell me what you mean.

Powell: Well, I mean, we're collecting evidence now from various whistleblowers that are aware of substantial sums of money given to family members of state officials who bought this software. We're

taking about \$100 million packages for new voting machines suddenly in multiple states ...<sup>166</sup>

Powell later (thus far, unsuccessfully) defended libel suits brought against her individually by arguing that no reasonable person hearing her accusations would have believed she was stating facts, but millions did, devastating the reputations of the two voting machine companies. Also, Bartiromo, who had been receiving each edition of Dominion's "SETTING THE RECORD STRAIGHT," knew by now that the Dominion machines did not contain Smartmatic software, that Smartmatic software was not used in the election except in Los Angeles County, and that there was no evidence of a "backdoor." Yet, like Dobbs and Pirro, she continued to not only provide a forum for the false claims, but she endorsed and republished them as well, posting them on Facebook and on her Twitter account. All the while, the Director Defendants, who knew this was going on, sat mute and motionless as FOX's exposure in damages skyrocketed.

155. The next day, November 16, 2020, Dobbs hosted Powell by phone on FOX's *Lou Dobbs Tonight*. His introductory comments made clear what he wanted to hear, and Powell complied as he knew she would:

Dobbs: This is a president, this is a nation that has just been wronged mightily. Only an idiot would try to claim that there were no

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<sup>166</sup> *Id.*

irregularities, that there were no anomalies, that there were insufficient evidence and documents suggesting fraud and inexplicable mathematic ratios that tell us quickly there is something terrible afoot here.

Dobbs: ... Sidney, good to have you with us. Dominion Voting Systems seems to be figuring larger and larger in the interest of your legal team, and what is the latest?

Powell: Oh, definitely, Lou. I've gotten some stunning evidence from a firsthand witness, a high-ranking military officer who was present when Smartmatic was designed in a way that – and I'm going to read you some of these statements ... from the affidavit. Designed in a way that the system could change the vote of each voter without being detected. He wanted the software to function in such a manner that if the voter were to place their thumbprint or fingerprint on a scanner, then the thumbprint would be tied to a record of the voter's name and identity as having voted but that voter would not be tracked to the changed vote. He made it clear that the system would have to be set up but not leave any evidence of the changed vote for a specific voter, and that there would be no evidence to show and nothing to contradict that the name or the fingerprint or thumbprint was going with a changed vote. Smartmatic agreed to create such a system and produce the software and hardware that accomplished the result for President Chávez. After the Smartmatic electoral management system was put in place, he closely observed several elections where the votes were manipulated using the Smartmatic software. One such election was December 2006 when Chávez was running against Rosales. Chávez won with a landslide over Rosales ... In 2013 he witnessed another Venezuelan national election where the Smartmatic management system was used to ... manipulate and change the results for Chávez.<sup>167</sup>

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Dobbs endorsed Powell's statement and posted the interview on social media.

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<sup>167</sup> Dobbs did not need the Brain Room to fact check this, disprove it, and see that Powell was just making this up. The Venezuelan National Election took place on

156. On November 16, 17, 19, and 20, 2020 Dominion sent new editions of its SETTING THE RECORD STRAIGHT emails to over 90 FOX anchors (including Dobbs, Pirro, Bartiromo, and Hannity), producers, reporters, and other leaders, bringing the total to date to seven editions and seven emails. Each STRS edition was posted online, each giving all the facts of the past releases, plus new information debunking the false accusations against Dominion, and by extension, Smartmatic. Given the centrality of the issue to Fox’s broadcasting, it is reasonably conceivable that the Director Defendants saw one or more of these editions refuting the Big Libel.

157. Also on November 16, 2020, 59 specialists in election security signed an open letter and posted it online, that included the following:

We are aware of alarming assertions being made that the 2020 election was “rigged” by exploiting technical vulnerabilities. However, in every case of which we are aware, these claims either have been unsubstantiated or are technically incoherent. To our collective knowledge, no credible evidence has been put forth that supports a conclusion that the 2020 election outcome in any state has been altered through technical compromise.<sup>168</sup>

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April 14, 2013, following the death of Hugo Chávez on March 5, 2013; Chávez was not on the ballot. Powell’s crazed narrative was fabricated.

<sup>168</sup> See **Exhibit A**.



The Open Letter was widely noticed, with conservative think tank the Cato Institute publishing an article calling its authors “59 of the country’s most prominent election security experts” and calling the Giuliani-Powell narrative “crackpot,” “easily debunked,” “wildly implausible,” “increasingly byzantine,” and “particularly poisonous.”<sup>169</sup> Rupert Murdoch is a supporter and former member of the board of directors of the Cato Institute<sup>170</sup> and conceivably knew of the Cato Institute article and the underlying letter of the 59 election security experts.

158. On November 17, 2020, Giuliani was Bartiromo’s guest again on *Mornings with Maria*. This time the two told FOX’s audience that Smartmatic deprived people of their rights and threatened to keep Republicans from ever winning the White House again.<sup>171</sup> Although even less coherent than usual, Giuliani largely repeated his litany of accusations against Dominion and Smartmatic, just as he and Powell had done two days earlier on Bartiromo’s *Sunday Morning Futures*

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<sup>169</sup> Julian Sanchez, *Voting Machine Conspiracy Theories Harm U.S. Cybersecurity*, CATO INSTITUTE (Nov. 20, 2020), <https://www.cato.org/blog/voting-machine-conspiracy-theories-harm-us-cybersecurity>.

<sup>170</sup> *Forty Years of Advancing Liberty*, CATO INSTITUTE (Spring 2017), <https://www.cato.org/sites/cato.org/files/2019-10/Spring2017.pdf>.

<sup>171</sup> *Mornings With Maria Bartiromo*, FOX BUS. (Nov. 17, 2020), [https://archive.org/details/FBC\\_20201117\\_110000\\_Mornings\\_With\\_Maria\\_Bartiromo](https://archive.org/details/FBC_20201117_110000_Mornings_With_Maria_Bartiromo).

show and on *Lou Dobbs Tonight*. Giuliani added, baselessly, that in Pennsylvania 700,000 ballots “were counted in secret,” and that Republican poll watchers in Pennsylvania were “kept in corrals locked out” and were “roughed up a little bit.”<sup>172</sup> Giuliani said he would present evidence of this in a court in Pennsylvania that very day. Giuliani also averred that he had the same case to bring in two other states and said the pattern was the same in 10 Democratic cities. All of this was false – Giuliani knew it, Bartiromo knew it, and the Director Defendants knew it.

**The Election Fraud Lawsuits Brought By Giuliani and Powell  
Are Dismissed for Lack of Any Basis in Fact**

159. Giuliani indeed presented his case in the United States District Court for the Middle District of Pennsylvania that very day, November 17, 2020. After listening patiently for hours and asking questions, Judge Matthew Brann, U.S.D.J., a Republican, told Giuliani he had no case. Judge Brann stated and asked:

You’re alleging that the two individual plaintiffs were denied the right to vote. But at bottom, you’re asking this court to invalidate more than 6.8 million votes, thereby disenfranchising every single voter in the Commonwealth. Could you tell me how this result could possibly be justified?

At one point, Giuliani said, astonishingly, that he was not alleging fraud, and Judge Brann suggested he was. Judge Brann indicated that the case should have been taken

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<sup>172</sup> *Id.*

to state, not federal, court.<sup>173</sup> Unbeknownst to both Giuliani and Judge Brann, at the precise hour that Giuliani was arguing the matter, the Pennsylvania Supreme Court issued an opinion putting to rest one of Giuliani's main litigation claims, holding that ballot processing observers had no right to stand any particular distance from election workers, and holding that it is up to counties to decide.<sup>174</sup>

160. These court results were devastating and were widely reported. They were known to Dobbs, Bartiromo, and Pirro. And, they were known to the Director Defendants, who sat mute and did nothing as FOX's exposure mounted.

161. That night, November 17, 2020 Trump fired his Administration's most senior cybersecurity official, Trump appointee and CISA Director Krebs, via Twitter. The "cause" of the firing was Krebs's statement that the election was the most secure in history.<sup>175</sup>

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<sup>173</sup> Katelyn Polantz & Jessica Schneider, *Rudy Giuliani's day in a Pennsylvania courtroom representing Donald Trump*, CNN (Nov. 17, 2020), <https://www.cnn.com/2020/11/17/politics/trump-giuliani-election-lawsuit/index.html>.

<sup>174</sup> Katelyn Polantz, *Pennsylvania Supreme Court rules Trump campaign observers had no right to stand within a specific distance during Philadelphia ballot processing*, CNN (Nov. 17, 2020), <https://www.cnn.com/2020/11/17/politics/pennsylvania-supreme-court-ballot-observation/index.html>.

<sup>175</sup> Annie Karni, *Presidential Transition: Trump Fires Official Who Disputed Baseless Claims of Election Fraud*, N.Y. TIMES (Nov. 17, 2020, updated Nov. 18,

162. Giuliani’s losses in court did not deter Dobbs, who had Giuliani back on *Lou Dobbs Tonight* on November 18, 2020. Far from merely airing Giuliani’s views, Dobbs stated the matter as fact, as follows: “The American people are getting a little tired of being treated like slow-witted children. It’s nonsensical, it’s an insult, and indeed this whole fraud is an insult against this country. I want to share with the audience one of the affidavits that has been given to us by an unidentified whistleblower. And it pertains to Dominion. A whistleblower who also saw what happened in Venezuela. ...” What proceeded was a replay of the Giuliani-Powell false narrative: votes sent outside the U.S. to be counted (this time to Germany *and* Spain); votes switched; Dominion and Smartmatic banned in Texas; the lie about the digital back door; and the false connection of Dominion to Venezuelan dictators. Giuliani added new evidence-free statements, including that Dominion is a far-left organization that supports Antifa (a lie), and that Smartmatic’s chairman is very close to Mr. Soros (also reportedly a lie). Dobbs had seen no evidence of any of these things, but rather than correct Giuliani, Dobbs endorsed his statements, stating as fact, not opinion, as follows: “It’s outrageous, and it’s all the more outrageous because Dominion and Smartmatic were denied use in the State of Texas, which

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2020), <https://www.nytimes.com/live/2020/11/17/us/joe-biden-trump#trump-fires-christopher-krebs-official-who-disputed-his-election-fraud-claims>.

called them out for what they are. They have a clear record.”<sup>176</sup> Dobbs or Fox News promptly posted this to Dobbs’s Twitter account, his Facebook page, and his Instagram account, rebroadcasted it on Fox Business Channel and posted it to fox.com and foxbusiness.com.

163. The next day, November 19, 2020, was Giuliani’s infamous RNC news conference, that also included Powell, as pled *supra*. Undeterred, that evening Dobbs had Powell as a guest on *Lou Dobbs Tonight*. She reprised and embellished her ever-evolving version of the Ten Points, amplifying the unfounded assertions with each retelling.<sup>177</sup> In his introduction, summarizing the news conference, Dobbs referred to “Dominion voting machines and Smartmatic software,” and stated: “a whistleblower’s stunning affidavit ... says ... Smartmatic technology was used to rig elections in Venezuela,” and “algorithms in the Smartmatic software were used to change results in the presidential election.”<sup>178</sup> The discussion that followed then averred as fact:

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<sup>176</sup> *Lou Dobbs Tonight*, FOX BUS. (Nov. 18, 2020), [https://archive.org/details/FBC\\_20201119\\_000000\\_Lou\\_Dobbs\\_Tonight](https://archive.org/details/FBC_20201119_000000_Lou_Dobbs_Tonight).

<sup>177</sup> *Lou Dobbs Tonight*, FOX BUS. (Nov. 19, 2020), [https://archive.org/details/FBC\\_20201119\\_220000\\_Lou\\_Dobbs\\_Tonight/](https://archive.org/details/FBC_20201119_220000_Lou_Dobbs_Tonight/).

<sup>178</sup> *Id.*

Dobbs: ... Sidney Powell, among our guests here tonight. She will be providing more details on how Dominion voting machines and Smartmatic software were used to help Joe Biden.

Dobbs: Let's turn to Smartmatic and Dominion. Are they or are they not linked?

Powell: Oh, they're definitely linked. I would call them inextricably intertwined. They have the same history from their inception. I'm sure they're trying to distance themselves from each other, but the fact is that the Dominion machines run the Smartmatic software or parts of the key code of it, and that is what allows them to manipulate the votes in any way the operators choose to manipulate them; ... they also violated state laws ...

Dobbs: And then it's a presumption then that they had the records on those servers of all of the votes that were processed by Dominion or Smartmatic?

Powell: Yes. ... It could have run an automatic algorithm ... and then the machines had to stop or the counting had to stop in multiple places because President Trump's lead was so great at that point they had to stop the counting and come in and backfill the votes they needed to change the result.

Powell: There's thousands of people in federal prisons on far less evidence of criminal conduct than we have already against the Smartmatic and Dominion Systems companies.

Dobbs: We have just watched, to everyone in this audience tonight, our election is run by companies, the ownership of which we don't know.<sup>179</sup>

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<sup>179</sup> *Id.*

Dobbs or Fox News promptly posted this to Dobbs's Twitter account, his Facebook page, and his Instagram account, and republished it on Fox Business Channel, fox.com, and foxbusiness.com.

164. *Tucker Carlson Tonight*, one of the two highest-rated shows on all cable TV, reported the same evening, November 19, on the press conference at the RNC. While sympathetic to the false claims that mail-in voting is insecure, Tucker Carlson had another take: *it is high time, he said, for Powell to show us her evidence*. Here, quoted, is some of what he said in his monologue opening the show:

Carlson: ... Rudy Giuliani and a number of President Trump's other lawyers held a press conference [today] on the topic of voter fraud. If you didn't actually see it, you've probably heard about it by now.

Carlson was correct: the Director Defendants had surely seen it or heard about it.

Carlson: For more than a week, Powell has been all over conservative media with the following story: This election was stolen by a collection of international leftists who manipulated vote tabulating software in order to flip millions of votes from Donald Trump to Joe Biden. The other day on television, Powell said of Trump that when the fraud is finally uncovered, ... rigged software stole about seven million votes in this election. ...

*... What Powell was describing would amount to the single greatest crime in American history. ...*

... So we invited Sidney Powell on the show. We would have given her the whole hour. We would have given her the entire week, actually, and listened quietly the whole time at rapt attention.

*But she never sent us any evidence, despite a lot of polite requests. When we kept pressing, she got angry and told us to stop contacting her. When we checked with others around the Trump campaign, people in positions of authority, they also told us Powell had never given them any evidence to prove anything she claimed at the press conference.*

Powell did say that electronic voting is dangerous, and she's right, but she never demonstrated that a single actual vote was moved illegitimately by software from one candidate to another. Not one.<sup>180</sup>

[Emphasis added]. The Director Defendants (including the Officer Defendants) knew that but they neither stopped FOX from hosting Powell nor caused FOX to retract her statements on the shows hosted by Dobbs, Bartiromo, and Pirro.

165. On November 20, 2020 Dominion mailed and emailed a detailed retraction demand letter to FOX, addressed to Fox News' General Counsel, refuting and disproving every aspect of the false Giuliani-Powell narrative.<sup>181</sup> At the same time, Dominion sent FOX all prior versions of SETTING THE RECORD STRAIGHT. It is reasonably conceivable that the Director Defendants (certainly including the Officer Defendants) knew of this retraction demand. Had they taken steps at that point to cause FOX to issue a retraction as widespread as the libel, the

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<sup>180</sup> Tucker Carlson, *Tucker Carlson: Time for Sidney Powell to show us her evidence*, FOX NEWS (Nov. 19, 2020), <https://www.foxnews.com/opinion/tucker-carlson-rudy-giuliani-sidney-powell-election-fraud>.

<sup>181</sup> See **Exhibit C**.



exposure in damages to both Dominion and Smartmatic would be a fraction of what it is today. Instead, the Director Defendants chose to sit mute and do nothing.

166. Pirro continued to promote the false narrative on *Justice with Judge Jeanine* on November 21, 2020. Citing the President’s lawyers, she engaged in an evidence-free rant in which she targeted Dominion, said it was started in Venezuela with the assistance of Smartmatic and with Cuban money, and that the company’s systems are equipped with a backdoor capable of flipping votes.

167. Dobbs repeated the false claims of voter fraud as a guest on another Fox News show, *Watters’ World*, on November 21, 2020.<sup>182</sup>

168. On November 22, 2020, former Governor of New Jersey Chris Christie, a long-time supporter of Trump, tried vainly to prescribe a dose of reality. Appearing on the ABC Network Sunday broadcast *This Week*, he called the Trump legal team “a national embarrassment” and warned them as follows: “if you’ve got evidence of fraud, present it. ... if you’re unwilling to come forward and present the evidence, it must mean the evidence doesn’t exist.”

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<sup>182</sup> *Watters’ World*, FOX NEWS (Nov. 21, 2020), [https://archive.org/details/FOXNEWSW\\_20201122\\_010000\\_Watters\\_World](https://archive.org/details/FOXNEWSW_20201122_010000_Watters_World).

169. Also on November 22, on *Sunday Mornings with Maria Bartiromo*, Trump’s lawyer in his first impeachment, Professor Alan Dershowitz, stated that he too had not seen any evidence supporting the vote-switching accusations.

170. Further on November 22, 2020, the Trump Campaign sought – temporarily as it turned out – to distance itself from Powell as her conspiracy theories became more and more outlandish. It issued a news release stating: “Sidney Powell is practicing law on her own. She is not a member of the Trump legal team. She is also not a lawyer for the president in his personal capacity.”<sup>183</sup> This was one more indicator to the entire news-consuming world that the Powell accusations were baseless.

171. At a well-publicized virtual global conference on November 24, 2020, Defendant Ryan called for the claims of voter fraud to cease and for Trump to accept the results of the election. Ryan stated as follows:

... these legal challenges to the outcome and the attacks on our voting system really need to stop, in my opinion ...

The outcome will not be changed, and it will only serve to undermine our faith in our system of government, our faith in our democracy ...

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<sup>183</sup> Maggie Haberman & Alan Feuer, *Trump Team Disavows Lawyer Who Peddled Conspiracy Theories on Voting*, N.Y. TIMES (Nov. 22, 2020), <https://www.nytimes.com/2020/11/22/us/politics/sidney-powell-trump.html>. Note that Lachlan Murdoch, Scott, and Dinh had successfully lobbied the White House to disavow Powell, *see Dom. Reply* at 7.

... [Trump's legal team is] doing damage to our country, to our democratic institutions and norms ...

... But I think it's really important that we're clear about this, which is *the mere fact that the president's lawyers throw these sort of baseless conspiracy theories out at press conferences but offer no evidence of these in court tells you that there is not the kind of widespread voter fraud or systemic voter fraud that would be required to overturn the outcome of this election.* ...<sup>184</sup> [emphasis added].

Ryan was correct in these statements, but neither he nor any of his fellow Director Defendants, including those on the Nominating and Corporate Governance Committee, which Ryan chaired, did anything at the Board level to stop these unfounded criminal accusations against Dominion or Smartmatic or to cause FOX to issue a timely and robust retraction. His admitted knowledge of the falsity of the Big Libel underscores Ryan's lack of good faith in his failure to do anything to put a stop to it.

172. On *Lou Dobbs Tonight* on November 24, 2020 Dobbs, joined again by Powell, derided Defendant Ryan's statements. All of Ryan's fellow directors of Fox

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<sup>184</sup> Anna Palmer et al., *POLITICO Playbook PM: NEW: What Paul Ryan is saying about Biden and Trump*, POLITICO (Nov. 24, 2020), <https://www.politico.com/newsletters/playbook-pm/2020/11/24/new-what-paul-ryan-is-saying-about-biden-and-trump-490985>.

Corp. knew of Ryan's statements and of Dobbs's on-air criticisms of them. Here is some of what Dobbs and Powell said on November 24:

Dobbs: We'll be joined by attorney Sidney Powell on the latest in her fight to expose electoral fraud amongst the voting companies involved in this year's election.

Dobbs: Joining us tonight by phone is Sidney Powell ... former federal prosecutor herself and a great American. Sidney, great to have you.

Powell: ... But there's no doubt that the software was created and used in Venezuela to control the elections and make sure that Hugo Chávez was always reelected ... but they were manipulated by the software used in the Dominion machines ... and we are just continuing to be inundated by evidence of all the frauds here in every manner and means of fraud you could possibly think of. ...

Powell: ... Because of all the corruption in the country. We need to find a way to follow the money back as far even as when this was approved by the special government committee called CFIUS, CFIUS, which are the heads of the respective agencies at the time who approved Dominion coming into the country and running our elections ... Somebody needs to do a massive money-following investigation to find out who paid what to whom.<sup>185</sup>

This Dobbs-Powell session of November 24, 2020, was re-posted, tweeted, and repeated on Dobbs's Facebook, Twitter, and Instagram accounts.

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<sup>185</sup> *Lou Dobbs Tonight*, FOX BUS. (Nov. 24, 2020), [https://archive.org/details/FBC\\_20201124\\_220000\\_Lou\\_Dobbs\\_Tonight/start/1200/end/1260](https://archive.org/details/FBC_20201124_220000_Lou_Dobbs_Tonight/start/1200/end/1260).

173. Between November 25 and December 1, 2020, Powell filed four lawsuits claiming election fraud and blaming Smartmatic and Dominion: *Pearson v. Kemp*, No. 1:20-cv-04809 (N.D. Ga., filed on Nov. 25, 2020); *King v. Whitmer*, No. 2:20-cv-13134 (E.D. Mich., filed on Nov. 25, 2020); *Feehan v. Wis. Elections Comm’n*, No. 2:20-cv-1771 (E.D. Wis., filed on Dec. 1, 2020); and *Bowyer v. Ducey*, No. 2:20-cv-02321 (D. Ariz., filed on Dec. 2, 2020). The outcomes were swift and decisive:

(a) All four lawsuits resulted in speedy dismissals by December 9, 2020. *Pearson*, 20-cv-4809 (Dkt. No. 74, Dec. 7, 2020); *King*, 505 F. Supp. 3d 720 (E.D. Mich. Dec. 7, 2020); *Feehan*, 506 F. Supp. 3d 596 (E.D. Wis. Dec. 9, 2020); *Bowyer*, 506 F. Supp. 3d 699 (D. Ariz. Dec. 9, 2020);

(b) Three of these dismissals were by written opinion ruling that the lawsuits were a sham, evidence-free, and/or not brought in good faith:

(c) In *King*, the court found that the “evidence” presented was no evidence at all: “The closest Plaintiffs get to alleging that election machines and software changed votes for President Trump to Vice President Biden in Wayne County is an amalgamation of theories, conjecture, and speculation that such alterations were *possible*. ... With nothing but speculation and conjecture ...” (505 F. Supp. 3d at 738 (emphasis in original)), and “this lawsuit seems to be less about

achieving the relief Plaintiffs seek—as much of that relief is beyond the power of this Court—and more about the impact of their allegations on People’s faith in the democratic process and their trust in our government.” (Id. at 739);

(d) The *Bowyer* Court held: “[T]he Complaint’s allegations are sorely wanting of relevant or reliable evidence” (506 F. Supp. 3d at 706); and “[a]llegations that find favor in the public sphere of gossip and innuendo cannot be a substitute for earnest pleadings and procedure in federal court. They most certainly cannot be the basis for upending Arizona’s 2020 General Election.” (Id. at 724); and

(e) The *Feehan* court thus emphatically rejected Powell’s argument: “Federal judges do not appoint the president in this country. One wonders why the plaintiffs came to federal court and asked a federal judge to do so.” (506 F. Supp. 3d at 600).

**Despite Knowing Its Falsity, Defendants Fail to Cause Fox to Retract and Correct the Big Libel, but Instead Allow the False Narrative to Continue**

174. On the November 26, 2020 Thanksgiving episode of *Lou Dobbs Tonight*, recorded the previous night, Dobbs criticized government and industry groups that called the 2020 election the most secure in history. With Pennsylvania in the spotlight, Dobbs stated, falsely, that the voting machines used in that state

were “designed to be manipulated.”<sup>186</sup> Giuliani, appearing on the program by telephone, stated, falsely, that “we had an expert witness show that at the very beginning of the count, they infused 332,000 votes for Biden into the crafty Dominion machines which, you know, are worthless. They were shocked that their votes were sent overseas to be tabulated in Germany by a company that has connections to Venezuela. ...”<sup>187</sup> Giuliani stated that most of the switched votes were stolen in Pittsburgh and Philadelphia.

175. On November 26, 2020, Dominion sent another email in the STRS series to over 90 FOX representatives, including producers, reporters, hosts, and content managers, repeating all of the previously communicated facts but adding several regarding Pennsylvania. *The email pointed out that Dominion served only 14 of Pennsylvania’s 67 counties, that Trump exceeded his percentage of votes from 2016 in over 11 of those 14 counties, that Trump won 12 of those 14 counties, and that Dominion does not operate and had nothing to do with the election in Philadelphia County or Allegheny County (which includes Pittsburgh). Thus, besides being entirely false, Giuliani’s statements about Dominion and*

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<sup>186</sup> *Lou Dobbs Tonight*, FOX BUS. (Nov. 26, 2020), [https://archive.org/details/FBC\\_20201126\\_100000\\_Lou\\_Dobbs\\_Tonight/start/1440/end/1500](https://archive.org/details/FBC_20201126_100000_Lou_Dobbs_Tonight/start/1440/end/1500).

<sup>187</sup> *Id.*

*Smartmatic were irrelevant to the election in Pennsylvania.* None of this deterred Dobbs and the others at Fox News who were still trying to sell the Big Libel.

176. The following further establishes that the offending broadcasts described herein and their falsity were widely known within FOX and had to have been known by the two Murdochs, Ryan, the news-savvy Dias, Murdoch insider Carey, lifetime news executive Hernandez, and Nasser, all of whom knew that they had a duty to put a stop to the falsehoods:

(a) Viet D. Dinh, Esq., the Chief Law and Policy Officer of Fox Corp., testified as follows in a sworn deposition in the Dominion Suit:

Q. If any of the people in the chain of command who had the power to exercise control over Lou Dobbs' show knew that what Sidney Powell was alleging was false, didn't they have an obligation to prevent her from coming on the show to tell those lies?

A. Yes.

Q. But when the executives at Fox News know that the hosts of shows are broadcasting allegations that the executives know or believe to be false, in that situation, the executives have an obligation to act, right?

A. If they are in the chain of command and if they – if they come to that knowledge, yes.

Q. And by "act," that means put a stop to it, right?

Q. They have an obligation under those circumstances, the executives do, to put a stop to those broadcasts, right, sir?



A. Yes, to prevent and correct known falsehoods.<sup>188</sup>

If only the Fox Corp. Board, plainly atop the FOX chain of command, had so acted;

(b) Jay Wallace, President of Fox News and, with Scott, one of its top two executives, testified under oath in the Dominion Suit that FOX has an obligation not to broadcast false claims to its audience;<sup>189</sup> and

(c) Dominion's emails to FOX correcting the record, including SETTING THE RECORD STRAIGHT, totaling over 3,600 emails, were "widely circulated within Fox." So much so that Fox News Network's Senior Vice President for Weekend News and Program David Clark testified at a sworn deposition that he had Dominion's emails which included STRS "tattooed on my body."<sup>190</sup> Each and every member of the Board of Directors as it then existed knew of Dominion's denials and retraction demands.

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<sup>188</sup> *Dom. Reply* at 7, citing to Ex. 601 (Dinh Tr.) at 287:12-19, 316:5-25. It is reasonably conceivable that Dinh shared this view at the Fox Corp. Board of Directors and related meetings on November 10-12, 2020. Dinh is one of the five "Named Executive Officers" of Fox Corp., *see* Fox Corp., Proxy Statement (Form DEF 14A) (Sept. 23, 2020) at 26; and Fox Corp., Proxy Statement (Form DEF 14A) (Sept. 17, 2021) at 26.

<sup>189</sup> *Dom. Reply* at 1.

<sup>190</sup> *Id.* at 51.

177. Copious evidence in the Dominion Suit proves that while the Murdochs knew the Ten Points were false, they had a financial motive for allowing the Fox anchors to air the lies about the voting machine companies, including the following:

(a) As early as November 6, Rupert Murdoch told Scott, referring to Biden’s lead in several swing states, “very hard to claim foul everywhere” separately warning against Trump becoming a “sore loser.”<sup>191</sup> While the Murdochs were initially disgusted with Giuliani, Powell and their narrative, which they knew to be false, they joined the panic inside FOX when, because of Trump’s ire, tiny Newsmax and OANN<sup>192</sup> began taking cable news share points away from Fox News;

(b) A Fox News reporter, Jaqui Heinrich, fact-checked Trump’s claims of election fraud, and in her tweet of November 12, stated accurately that there is “no evidence that any voting system deleted or changed votes, lost votes, or was in any way compromised.” Outraged that Heinrich was doing her job, Tucker Carlson tweeted at Hannity, “Please get her fired. Seriously .... what the fuck? I’m actually shocked ... It needs to stop immediately, like tonight. It’s measurably

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<sup>191</sup> *Dom. MSJ* at 20.

<sup>192</sup> In “conservative” cable news, Fox News’ competitors are the far smaller Newsmax and One America News Network (“OANN”).

hurting the company. The stock price is down. Not a joke.” Heinrich was forced to take down her tweet the next morning;<sup>193</sup>

(c) Raj Shah, Senior Vice President of Fox Corp., while knowing all along that Powell was, as he put it, “clearly full of it,” reported opinion surveys showing decline in Fox News’s popularity and presented “Brand Protection” reports on a current basis, some showing changes from the previous periods. Beginning about November 10, Shah and others began reporting on the loss of brand share over the past three days;<sup>194</sup>

(d) Adding to the panic, Hannity told Carlson and Laura Ingraham on November 12, “In one week and one debate they destroyed a brand that took 25 years to build and the damage is incalculable,” and he told them, “Serious \$\$ and serious distribution could be a real problem.” Fox News Sr. Vice President Irena Briganti thus captured the pivot on November 12: “Glad the panic button was hit two days ago.” The same day, Ingraham’s producer, Tommy Firth, texted another executive on Ingraham’s team, Ron Mitchell, “[T]his Dominion shit is going to give

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<sup>193</sup> *Id.* at 31-32.

<sup>194</sup> *Id.* at 27-29.

me a fucking aneurism—as many times as I told Laura it’s bs, she sees shit posters and [T]rump tweeting about it”;<sup>195</sup>

(e) At his sworn deposition in the Dominion Suit, Rupert Murdoch owned up to why he let the false narrative go on: that he did not wish to irritate Trump because “*He had a very large following, and they were probably mostly viewers of Fox, so it would have been stupid;*”<sup>196</sup>

(f) Lachlan Murdoch knew of the pivot to permitting the Giuliani-Powell false narrative to proceed on Fox News programs, and swore that brand share “keep[s] me awake” at night;<sup>197</sup>

(g) Upset by more on-air fact checking by Fox News anchor Eric Shaun debunking the election fraud claims, Fox News CEO Suzanne Scott emailed Fox News Executive Vice President Meade Cooper on December 2, 2020, saying “[T]his has to stop now ... This is bad for business ... The audience is furious ... Bad for business ...”;<sup>198</sup>

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<sup>195</sup> *Id.* at 30.

<sup>196</sup> *Dom. Reply* at 28, citing to Ex. 600 (Murdoch Tr.) at 245:20-25.

<sup>197</sup> *Dom. Reply* at 25.

<sup>198</sup> Terkel, *supra* note 141.

(h) Fox Corp.'s annual proxies establish that the Murdochs have a direct financial interest in short-term as well as long-term financial results of Fox Corp. The five Named Executive Officers of Fox Corp., throughout its history and to this day, included the Murdochs (as well as Dinh). During the fiscal year ended June 2021, *when all the conduct challenged herein occurred and which subsumes the Libel Period*, Rupert Murdoch and Lachlan Murdoch each could have been awarded 200% of their base annual salaries based on quantitative factors alone, based mainly on achievement of annual EBITDA goals.<sup>199</sup> Each could have received \$9,000,000 in non-equity compensation over and above their base salaries for that year alone.<sup>200</sup> Moreover, for a three-year performance period that included Fiscal Year 2021, Rupert Murdoch and Lachlan Murdoch had the opportunity to receive, in long-term incentive award opportunities, stock options worth 140% and 367%, respectively, of their base salaries. Those are material motives. Indeed, the Murdochs actually did receive for Fiscal Year 2021 as follows: (a) for each of the two, \$10,500,000 in non-equity incentive plan compensation; (b) for Lachlan

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<sup>199</sup> See Fox Corp., Definitive Proxy (Form DEF 14A) (Sept. 17, 2021) at 30-39. “EBITDA” is an acronym for earnings before interest, taxes, depreciation and amortization. Each dollar of Fox Corp.’s pretax earnings gained by retaking market share affects EBITDA, the main measure of the Murdochs’ incentive cash compensation, by exactly a dollar.

<sup>200</sup> *Id.*

Murdoch, \$10,708,246 in equity-based incentive compensation (stock awards and option awards); *and* (c) for Rupert Murdoch, \$6,814,327 in such equity-based incentive compensation.<sup>201</sup> To provide more context, none of this includes the Murdochs' compensation at News Corp.; and

(i) As a member of the Compensation Committee that played *the* major role in creating, monitoring, and applying this incentive compensation structure,<sup>202</sup> Defendant Ryan was acutely aware of this. While Ryan told both Murdochs that they should not be spreading conspiracy theories, he understood their financial motive to permit the lies to roll on the FOX programs during the Libel Period. Ryan testified that “if ratings go down, revenues go down,” and that “Fox was trying to navigate this dynamic between a core group of Trump loyalists who were ignoring the truth and the truth itself,” and that FOX executives who allowed the narrative to continue “did what they did to protect FNN which contributes a very outsized portion of profits of Fox Corporation.”<sup>203</sup> Thus, the pivot toward protecting the Murdochs' profits at all costs began around November 12.

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<sup>201</sup> *Id.* at 42.

<sup>202</sup> *See* Fox Corp., Definitive Proxy (Form DEF 14A) (Sept. 23, 2020) at 26-38.

<sup>203</sup> *Dom. Reply* at 8, 25, 36, citing to Ex. 620 (Ryan Tr.) at 54:18-55:4, 157:23-158:4, 336:15-20.

178. The Dobbs-Bartiromo-Pirro embrace of the Giuliani-Powell narrative paid off, as Trump showed in a meaningful way that Fox News was now off his “naughty” list and back on his “nice” list. He granted his first interview since the election, to be aired on November 29, 2020 on *Sunday Morning Futures with Maria Bartiromo*. In a 45-minute diatribe, Trump reprised most of the false narrative and singled out Dominion with even more exaggerated falsehood. Bartiromo again endorsed Trump’s lies, including those against Dominion, calling the company “disgusting” and “corrupt.” The show was the highest rated of the day in all of cable news. Bartiromo or FOX sent it out again over Bartiromo’s Twitter account, tagging Trump’s account and ensuring that it went out again to all of Trump’s 88 million Twitter followers, many of whom predictably retweeted it.

179. As shown *supra*, there was a dual motive to the Director Defendants’ inaction and failure to stop the defamation of Smartmatic and Dominion – ratings and money, and those two circles intersected.<sup>204</sup> Rupert Murdoch and Lachlan

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<sup>204</sup> Associated Press, *Two Fox News executives depart in wake of Arizona election night call*, THE GUARDIAN (Jan. 19, 2021), <https://www.theguardian.com/media/2021/jan/19/two-fox-news-executives-involved-in-election-night-arizona-call-are-out>; Aaron Rugar, *Fox News’s post-Trump slump, explained*, VOX (Jan. 27, 2021), <https://www.vox.com/2021/1/27/22250976/fox-news-ratings-drop-explained-post-trump>.

Murdoch wished to regain their ratings strength against their much weaker rivals, Newsmax and OANN, on the cable-news right wing, and that in turn affected their incentive compensation, conceivably by tens of millions of dollars.

180. On December 1, 2020, Attorney General William Barr, in an interview with the Associated Press, stated that U.S. Attorneys and the FBI had followed up specific claims of voter fraud they have received, but “to date, we have not seen fraud on a scale that could have effected a different outcome in the election.”<sup>205</sup> Barr also stated that “[t]here’s been one assertion that would be systemic fraud and that would be the claim that machines were programmed essentially to skew the election results. And the DHS and DOJ have looked into that, and so far, we haven’t seen anything to substantiate that.”<sup>206</sup> This was seismic; it was more than “reasonably conceivable” that the Director Defendants (certainly including the Officer Defendants and the politically-attuned Ryan) knew of Barr’s statements debunking the Big Lie and the Big Libel.

181. These statements by Attorney General Barr were particularly important and well-covered by the media because (a) Barr was Trump’s most stalwart and

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<sup>205</sup> Michael Balsamo, *Disputing Trump, Barr says no widespread election fraud*, AP NEWS (Dec. 1, 2020, updated June 28, 2022), <https://apnews.com/article/barr-no-widespread-election-fraud-b1f1488796c9a98c4b1a9061a6c7f49d>.

<sup>206</sup> *Id.*



powerful defender in the cabinet and (b) of all the senior officers in the cabinet or the federal government's executive branch, Barr was in the best position to know if there was any evidence supporting the charges against the voting machine companies.

182. Barr later told ABC reporter Jonathan Karl, “[I]t was put-up or shut-up time. If there was evidence of fraud, I had no motive to suppress it. But my suspicion all the way along was that there was nothing there. It was all bullshit.”<sup>207</sup> He also told Karl: “We realized from the beginning it was just bullshit,” Barr stated, noting that “even if the machines changed the count, it would show up when they were recounted by hand. ... There had been no discrepancy reported anywhere, and I’m still not aware of any discrepancy.”<sup>208</sup>

183. Within two days, by December 3, 2020 Trump told administration officials that he did not rule out firing Barr,<sup>209</sup> who was theretofore his close ally and

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<sup>207</sup> Jonathan D. Karl, *Inside William Barr's Breakup With Trump*, THE ATLANTIC (June 27, 2021), <https://www.theatlantic.com/politics/archive/2021/06/william-barrs-trump-administration-attorney-general/619298/>.

<sup>208</sup> *Id.*

<sup>209</sup> Kristen Welker et al., *Trump hasn't ruled out firing Attorney General Barr, sources say*, NBC NEWS (Dec. 2, 2020, updated Dec. 3, 2020), <https://www.nbcnews.com/politics/donald-trump/trump-hasn-t-ruled-out-firing-attorney-general-barr-sources-n1249796>.

supporter. After hearing that Trump would fire him by tweet, Barr gave notice on December 15, 2020 that he was resigning that week. The Director Defendants knew that none less than the Attorney General of the United States was debunking the FOX-promoted (and libelous) criminal accusations against Dominion and Smartmatic.

184. Throughout this time period, Giuliani and Powell, enabled by the FOX anchors Dobbs, Bartiromo, and Pirro, continued publicly to push the criminal accusations of fraud and election tampering against Dominion and Smartmatic.

185. On December 10, 2020, Smartmatic, through its outside litigation counsel Erik Connelly, Esq., sent a 20-page retraction demand letter to FOX, by email and FedEx, addressed to Lily Fu Claffee, Esq., then General Counsel of Fox News Network.<sup>210</sup> It is reasonably conceivable that this retraction demand was shared with the Fox Corp. Board, including the Director Defendants. The letter identified the many false and libelous statements made against Smartmatic (and, by extension, Dominion), showed why they were false, and demanded *“a full and complete retraction of all false and defamatory statements ... [which] must be done with the same intensity and level of coverage that you used to defame the*

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<sup>210</sup> **Exhibit E.**

*company in the first place.*”<sup>211</sup> [Emphasis added]. The Smartmatic retraction letter made clear that the company was contemplating litigation, yet another obvious red flag. No retraction was forthcoming from FOX. Instead, the Director Defendants’ conscious inaction allowed Dobbs to double-down on the defamation and intensify its inflammatory nature, which could only have increased FOX’s exposure to defamation damages.

186. On December 10, 2020, FOX and Dobbs tweeted a promo for *Lou Dobbs Tonight* from the Dobbs Twitter account, stating that “[t]he 2020 election is a cyber Pearl Harbor; [t]he leftwing establishment have aligned their forces to overthrow the United States government #MAGA #AmericaFirst #Dobbs.”<sup>212</sup> In the same tweet, FOX and Dobbs embedded a two-page typewritten document, with no letterhead or signature or other attribution (the “Embedded Document”), thus making the Embedded Document Dobbs’s own, plainly attributable to Dobbs and FOX. The Embedded Document was the most inflammatory accusation to date against the two voting machine companies. It purported to prove that Dominion

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<sup>211</sup> See Smartmatic retraction letter dated December 10, 2020, available at <https://www.documentcloud.org/documents/20423795-legal-notice-and-retraction-demand-from-smartmatic-usa-corp-to-fox-news>. See **Exhibit E**.

<sup>212</sup> Lou Dobbs (@LouDobbs), TWITTER (Dec. 10, 2020, 4:56 pm), <https://twitter.com/LouDobbs/status/1337154346795012098>.

placed a controller into the machines that manipulated the vote through the Internet, and that Dominion colluded with China and the Democratic Party to control the outcome of the election and to commit voter fraud. The Embedded Document accused Smartmatic’s CEO and founder, Antonio Mujica of having “executed an electoral 9-11 against the United States.”<sup>213</sup> It also stated that it had uncovered a \$400 million Chinese investment into Dominion. All of this was false, yet it was stated as fact and accused the two voting machine companies of terrible crimes with incendiary language:

People need to get familiar with four names:

...

Jorge Rodriguez – He is the Communications Minister of Venezuela ... he has been the political leader of the election-stealing project, the CEO of it.

...

Khalil Majid Mazoub [sic] – He is a Venezuelan of Lebanese origin, who is the right hand and business front man of Jorge Rodriguez. He has been the effective “COO” of the election project, under Chavez and Maduro. Khalil is a liaison with Hezbollah.<sup>214</sup>

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<sup>213</sup> *Id.*

<sup>214</sup> Majid Khalil, a Venezuelan businessman, sued Fox Corp., FNN, and Dobbs for defamation, pleading that he is not a political figure, is not a front man for Rodriguez, is not in liaison with Hezbollah, did not help rig the U.S. 2020 Presidential Election, and that neither FOX nor Dobbs reached out to him to confirm the false story they were about to publish on Fox News and Twitter. After his suit survived motions to dismiss, *see Khalil v. Fox Corp.*, -- F.Supp.3d --, 2022 WL 4467622 (S.D.N.Y. Sept. 26, 2022) (the “Khalil Suit”), on April 8, 2023, on the eve of trial in the Dominion Suit, Khalil reached a settlement with FOX on undisclosed terms; *see* Maureen Farrell, *Fox News Settles Defamation Case with Venezuelan Businessman*, N.Y.

...

Antonio Mujica – CEO of Smartmatic. He is the face of the company now.<sup>215</sup>

We now have contracts, program details, incriminating information and history.

We have a warning to the mainstream media: you have purposely sided with the forces that are trying to overthrow the US system. These four people and their collaborators executed an electoral 9-11 against the United States, with the cooperation and collusion of the media and the Democrat [sic] Party and China. It is a cyber Pearl Harbor.

We have identities, roles, and background of Dominion. Smartmatic people. This will turn into a massive RICO filing. It is Smartmatic, Dominion Voting Systems, Sequoia, SGO. If you come forward now to cooperate with law enforcement, you will be better off.

Cuba and Venezuela aligned with George Soros, the Chinese Communist Party, the Democrat [sic] party, and the American media against the American media against the will of the people of the US.

We have evidence linking all these companies together in legal documents, ownership structures, and sales of the companies. We already uncovered a Chinese investment of \$400,000,000 into Dominion, just 4 weeks before the election.

We now have corporate documents, the names of shareholders and amounts of stock they own, their schedules and calendars, their messages to and from one another.

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Times (Apr. 10, 2023), <https://www.nytimes.com/2023/04/09/business/fox-news-venezuela-dominion.html>.

<sup>215</sup> The other person whom Dobbs named is one he said is a Venezuelan technical expert who (Dobbs falsely stated) came up with “the idea” to rig voting machines. *Id.*

We have technical presentations that prove there is an embedded controller in every Dominion machine, that allows an election supervisor to move votes from one candidate to another. You’ve seen the video out of Georgia that’s been on Twitter the last two days, with a woman demonstrating that capability.

We have the architecture and systems, that show how the machines can be controlled from external sources, via the internet, in violation of voting standards. Federal law, state laws, and contracts.<sup>216</sup>

. . .

187. Within two hours after publishing the Embedded Document on Twitter, Dobbs was on the air again with Powell as his guest, amplifying the falsehoods from his tweet. Dobbs asked Powell how Dominion rigged the election, stating and assuming as fact that Dominion had done so. Powell repeated the same accusations, including repeating the inflammatory “cyber Pearl Harbor” accusation and phrase. Dobbs ended the Powell segment by stating falsely, as fact, that “we have tremendous evidence already” to support the accusations against Dominion and inviting Powell to put forward on his show “whatever evidence you have.” Powell promised to do so the same night, but of course, never produced any such evidence because none ever existed. The show and its Powell segment were rerun on Fox Business Channel the next morning. It was also repeated and republished on Dobbs’s Facebook, Twitter, and Instagram pages, and linked to Twitter accounts that

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<sup>216</sup> *Id.*

included Trump’s Twitter followers, ensuring that it reached tens of millions of news consumers and hundreds of millions of impressions. The Embedded Document remains on Dobbs’s Twitter account to this day.<sup>217</sup>

188. On December 15, 2020, on *Mornings with Maria*, Bartiromo stated falsely and misleadingly that “a shocking new forensic audit of Dominion voting machines used in one Michigan county [found] a 68% error rate, it claims systems were used to, quote, to create systemic fraud and influence election results.”<sup>218</sup>

189. On December 22, 2020, Dominion sent FOX another retraction demand letter,<sup>219</sup> *never having received any response to Dominion’s November 20 retraction demand.*<sup>220</sup>

190. As pled *supra*, between December 18 and 20, 2020, Dobbs, Bartiromo, and Pirro broadcast a pre-recorded segment in which Eddie Perez, a director of the non-profit Open Source Election Technology Institute, answered questions from an

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<sup>217</sup> Lou Dobbs (@LouDobbs), TWITTER (Dec. 10, 2020, 4:56 pm), <https://twitter.com/LouDobbs/status/1337154346795012098>.

<sup>218</sup> Maria Bartiromo, *Mornings With Maria Bartiromo*, FOX BUS. (Dec. 15, 2020), <https://www.foxbusiness.com/> [[https://archive.org/details/FBC\\_20201215\\_110000\\_Mornings\\_With\\_Maria\\_Bartiromo](https://archive.org/details/FBC_20201215_110000_Mornings_With_Maria_Bartiromo)].

<sup>219</sup> **Exhibit D.**

<sup>220</sup> **Exhibit C.**

erie, unidentified off-camera voice, saying he has no evidence to support several aspects of the charges against the two voting machine companies.<sup>221</sup> Neither Dobbs nor Bartiromo nor Pirro *nor FOX* endorsed Mr. Perez's statements, not then and not to this day. Moreover, the questions directed to Mr. Perez largely limited to Smartmatic, with Dominion coming up incidentally:

Unidentified Person: Have you seen any evidence that Smartmatic's software was used to flip votes anywhere in the U.S. in this election?

Eddie Perez: I have not seen any evidence that Smartmatic software was used to delete, change, alter anything related to vote tabulation.

Unidentified Person: Smartmatic says its software was never used outside of L.A. County in 2020. Do you know whether or not that's true?

Eddie Perez: That is my understanding. Smartmatic functioned as the contract manufacturer for the Los Angeles County voting system and that was a customized system that was effectively built to the county's order. I am not aware of them having any other direct customers [or] relationships to this election's officials in the United States.

Unidentified Person: What about Smartmatic and Dominion, do you know if they're related, whether one owns the other, whether Dominion uses Smartmatic software?

Eddie Perez: Both Dominion and Smartmatic have individually and respectively put out very clear statements from their corporate headquarters, each of them indicating they are independent companies; they are not related to each other; it is my understanding that neither

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<sup>221</sup> *Eddie Perez on Smartmatic*, FOX BUS. (Dec. 19, 2020), <https://video.foxbusiness.com/v/6217257237001#sp=show-clips>.



one of them has an ownership stake in the other or anything like that. They are, again, for all intents and purposes two completely separate companies.

Unidentified Person: Have you seen any evidence of a connection between George Soros and Smartmatic?

Eddie Perez: I'm not aware of any direct connection between George Soros and Smartmatic. It is my understanding that an executive at Smartmatic has some sort of relationship with one of Soros's foundations. That's the extent of my knowledge.

Unidentified Person: Have you seen any evidence of Smartmatic sending U.S. votes to be tabulated in foreign countries?

Eddie Perez: No. I'm not aware of any evidence that Smartmatic is sending U.S. votes to be tabulated in foreign countries . . . . As others have pointed out, irrespective of which voting technology vendor we're talking about, in the United States, the ballots that are cast in the United States are tabulated in the United States.

Unidentified Person: Are you aware of any instances in which Smartmatic's technology was banned in the U.S. due to security weaknesses or wrongdoing?

Eddie Perez: I am not. I'm not aware of any instances where Smartmatic's technology was banned in the U.S. Again, it is my understanding that, outside of one customer in Los Angeles County, Smartmatic has no presence in the voting technology marketplace in the United States.<sup>222</sup>

191. The Perez segment was a far cry from what Smartmatic's retraction-demand letter demanded, "a full and complete retraction of all false and defamatory

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<sup>222</sup> *Id.*

statements ... [which] must be done with the same intensity and level of coverage that you used to defame the company in the first place.”<sup>223</sup> There was nothing close to the same intensity or level of coverage. And most tellingly, anchors Dobbs, Bartiromo, and Pirro never issued retractions.

192. Prior to taping the FOX segment, Mr. Perez had not been advised of either the content or purpose of his appearance. Shortly after the segment ran, he told NPR that “In any of the conversations that I had with Fox’s people or the booking agent or the producer, at no time did anybody give me any indication that Smartmatic would be a topic of conversation at all, much less being the exclusive topic of conversation.”<sup>224</sup> Perez told NPR that Fox had asked him to discuss broadly the vote’s integrity. He added: “Frankly, I was very surprised. When the final question that they needed was done and they simply said thank you, that was my first indication – oh, it’s – we’re not even going in that direction ...”<sup>225</sup>

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<sup>223</sup> See **Exhibit E**.

<sup>224</sup> David Folkenflik, *Some Right-Wing Media Air Segments To Rebut Their Own Claims Of Voter Fraud*, NPR (Dec. 23, 2020), <https://www.npr.org/2020/12/23/949751583/some-right-wing-media-air-segments-to-rebut-their-own-claims-of-voter-fraud>.

<sup>225</sup> *Id.*

193. On January 4, 2021, on *Lou Dobbs Tonight*, Dobbs effectively repeated the Big Libel while admitting that he had seen no evidence. He stated, “[W]e’re eight weeks from the election and we still don’t have verifiable tangible support ***for the crimes that everybody knows were committed***. That is, defrauding other citizens who voted with fraudulent votes ... we have had a devil of a time finding actual proof.” Dobbs concluded by saying “the fact of the matter is that this president is looking at the prospect of having this election stolen from him.”<sup>226</sup> To any of the tens of millions of viewers who had seen and remembered the false charges against the two voting machine companies, this amounted to Dobbs reasserting the Big Libel notwithstanding the spectral Eddie Perez segment. Dobbs thus ***conceded*** his “actual malice” by admitting he never had evidence for his accusations or for the Giuliani-Powell accusations that he, Dobbs, endorsed.

194. Not even the January 6, 2021 attack on the Capitol could halt the false Giuliani-Powell narrative. On January 26, 2021, a day after being banned from Twitter for spreading false conspiracy theories about the election, Lindell was welcomed as a guest on *Tucker Carlson Tonight*, a show on which Lindell’s My

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<sup>226</sup> Lou Dobbs Tonight, FOX BUS. (Jan. 4, 2021), [https://www.foxbusiness.com/\[https://archive.org/details/FBC\\_20210104\\_220000\\_Lou\\_Dobbs\\_Tonight\]](https://www.foxbusiness.com/[https://archive.org/details/FBC_20210104_220000_Lou_Dobbs_Tonight]); Matt Wilstein (@mattwilstein), TWITTER (Jan. 4, 2021, 7:00 pm) <https://twitter.com/mattwilstein/status/1346245027932979200>.

Pillow was the largest advertiser. Carlson knew what Lindell would say and provided a platform and a fawning introduction. Lindell stated falsely that Dominion “hired hit groups and bots and trolls and went after all my vendors and box stores to cancel me out.”<sup>227</sup> Carlson did not ask for evidence of this false charge. Nor did Carlson ask for evidence before or after Lindell stated on the same show, “I’ve been all in trying to find the machine fraud and we found it, we have the evidence. ... No, I have the evidence and I dare people to put it on! ... I dare Dominion to sue me because it would get out faster. They don’t want to talk about it. They don’t want that!” “No they don’t,” Carlson answered in submissive agreement.<sup>228</sup> Lindell got his wish: Dominion did sue him, thus far successfully.

195. In his sworn deposition in the Dominion Suit, Rupert Murdoch admitted that it was “wrong” for Carlson to host Lindell on January 26, 2021 without Carlson contesting the allegations. Rupert Murdoch again confessed the motive: he admitted in the same deposition that Lindell “pays us a lot of money” for advertising,

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<sup>227</sup> Justin Baragona, *MyPillow Guy Peddles Crazy Twitter Conspiracies in Tucker Carlson Interview*, THE DAILY BEAST (Jan. 26, 2021), <https://www.thedailybeast.com/mypillow-guy-peddles-crazy-twitter-conspiracies-in-tucker-interview>.

<sup>228</sup> *Id.*

agreeing under oath that “it’s not red or blue, it’s green.”<sup>229</sup> Carlson has admitted that he knew before the January 26 broadcast what Lindell was going to say because he “makes that same claim every single day of the year . . . [in] any interview he does” but put him on the show anyway.<sup>230</sup>

196. Thus, the Big Libel, as broadcast, repeated, and republished on FOX and its many platforms, spanned three months.

**FOX Failed to Maintain Formal Policies or Procedures that Could Have Prevented or Curtailed Its Dissemination of the Big Libel**

197. There were and are just three standing committees of the Fox Corp. Board: the Audit Committee; the Compensation Committee; and the Nominating and Corporate Governance Committee (“NCGC”). Each had and has a written charter approved by the Board.<sup>231</sup> NCGC bore responsibility to see to it that all

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<sup>229</sup> *Dom. Reply* at 36-37, citing to Ex. 600 (Murdoch Tr.) at 298:3-14, 299:14-16; 345:4-8.

<sup>230</sup> See John Knefel, *Fox News’ lawyer throws Mike Lindell under the bus in the recent Dominion Defamation lawsuit*, MEDIA MATTERS (Mar. 23, 2023), <https://www.mediamatters.org/foxdominion-lawsuit/fox-news-lawyer-throws-mike-lindell-under-bus-recent-dominion-defamation>.

<sup>231</sup> The charter in effect for each of the three Board standing committees in effect continuously between June 2020 and June 2021 (easily encompassing the Libel Period) and are attached hereto as **Exhibit F**. See *Governance*, FOX CORP., <https://www.foxcorporation.com/corporate-governance/board-committees/> [[https://web.archive.org/web/20210501000000\\*/https://www.foxcorporation.com/corporate-governance/board-committees/](https://web.archive.org/web/20210501000000*/https://www.foxcorporation.com/corporate-governance/board-committees/)].

matters that should be assigned to one of the standing committees is so assigned and to make recommendations to the Board in this sphere. Yet, none of the three committees was assigned monitoring responsibility to implement a system of controls to prevent needless and material liability in defamation or disparagement, and even if they had such a system, the Director Defendants manifestly failed in their oversight responsibilities to see that it was implemented. The risk of liability for damages in defamation and other publication torts is a material ongoing risk to a news and business media company like FOX. This is especially true because what an anchor agent says or does or publishes, by imputation, the corporate principal says or does or publishes.

198. The Director Defendants knew that liability in defamation is a material risk to FOX. The Murdochs and Carey could not have forgotten their corporate trauma in 1997, when their WSJ (then published by Dow Jones, also controlled by the Murdochs) suffered the then-largest jury libel award in American history: \$222.7 million.<sup>232</sup> None of the Director Defendants could have forgotten the much

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<sup>232</sup> Howard Kurtz, *Record \$222.7 Million Awarded In Libel Case*, WASH. POST (Mar. 21, 1997), <https://www.washingtonpost.com/archive/politics/1997/03/21/record-2227-million-awarded-in-libel-case/cbae6d00-be42-43b1-8720-69747973ce6e/>. The sum was later reduced to \$27 million to eliminate punitive damages, but that could not have reduced the initial shock and the warning it provided.

more recent and highly-publicized payment by Disney of at least \$177 million to settle the “pink slime” defamation case against its ABC broadcasting subsidiary.<sup>233</sup> Least of all could Lachlan Murdoch have forgotten the “pink slime” libel debacle, as he was a major Disney shareholder through his family trust.

199. The Director Defendants knowingly failed to put in place safeguards to prevent material liability for damages in defamation or even defamation *per se*, even after the Giuliani-Powell narrative against the voting machine companies began to air on FOX shows to the knowledge of every Director Defendant. Not only did the non-executive Director Defendants allow the Murdochs to play with fire, but they refused to reach for the hose when the house – FOX – caught fire.

200. The Director Defendants knowingly failed to put in place written policies, standard practices, and procedures to monitor FOX’s own anchors and hosts that were known to be erratic, or unreliable, or to favor foolish or baseless conspiracy theories. With his history of championing birtherism, Dobbs was known to be such an anchor and host. For all the reasons pled *supra*, Pirro was known to be erratic and unreliable, and Bartiromo was known to have become so.

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<sup>233</sup> Jonathan Berr, *Disney “pink slime” lawsuit settled for whopping \$177 million*, CBS NEWS (Aug. 10, 2017), <https://www.cbsnews.com/news/disney-pink-slime-lawsuit-settled-for-177-million-abc-news/>.

201. The Director Defendants knowingly failed to put in place written policies, standard practices, and procedures to monitor, or limit, or not to air at all, guests that were known to be unreliable, untruthful and/or to favor foolish and potentially libelous conspiracy theories. Giuliani and Powell were, and were known to be, two such guests, and Lindell was a third. This failure persisted throughout the Libel Period.

202. The Director Defendants knowingly failed to put in place or maintain written policies, standard practices, and procedures to monitor, limit, or ban guests that already had spread, or were in the midst of spreading, easily disprovable libel (especially accusations of felonies and fraud) against third parties, as Giuliani and Powell had done and were in the process of repeating.

203. The Director Defendants knowingly failed to put in place or maintain written policies, standard practices, and procedures to consider demands for retractions from third parties who credibly claimed to have been libeled by FOX anchors and guests.

204. The Director Defendants knowingly failed to put in place or maintain written policies, standard practices, and procedures that required monitoring or pre-clearance by FOX's lawyers of content that FOX knew would accuse or would continue to accuse third parties of crimes or fraud.



205. The Director Defendants knowingly failed to put in place or maintain written policies, standard practices, and procedures that should have required monitoring or pre-clearance by the NCGC, or Audit Committee, or another committee of the Board, of content that FOX knew would accuse or would continue to accuse third parties of crimes or fraud.

206. Any of the forgoing written policies, standard practices, or procedures, if properly or timely enforced, would have either avoided entirely, or reduced materially, FOX's exposure to libel damages.

207. Despite the mission-critical importance to FOX of avoiding material defamation liability, and of truthfulness of any otherwise-libelous accusations made on its platforms, these matters were not assigned to any committee of the Fox Corp. Board. They could have been assigned to the Audit Committee, or to the NCGC, or to any other committee of the Board, but they were not. The Board (all Director Defendants) failed to act in good faith by failing to assign such responsibility to one of its committees, even after the Big Libel and the Libel Period notoriously began to the knowledge of every Director Defendant.

208. Indeed, it was and is the responsibility of the Nominating and Corporate Governance Committee "to regularly review ... and make recommendations to the

board concerning the function ... and structure of the Board and its committees.”<sup>234</sup>

And it is the responsibility of the Nominating and Corporate Governance Committee to “To advise and make recommendations to the Board on corporate governance matters, to the extent that these matters are not the responsibility of other committees of the Board.”<sup>235</sup> So Defendant Ryan’s committee had three choices – (1) do it, (2) recommend that the Board assign it, or (3) breach their fiduciary duty; they chose the third. *No committee was assigned this responsibility.*

209. Ryan, as chair of the Nominating and Corporate Governance Committee, bears heightened responsibility for his failure to recommend assignment, either to his own committee or to another committee of the Board, for responsibility to monitor unreliable anchors, guests, and content in such a way as to avoid material liability in defamation. This failure to act in good faith is especially egregious because, as pled *supra*, Ryan admitted that he knew what was going on, having sworn that he knew from the beginning that the conspiracy theories were false and that there was no material fraud in the 2020 Presidential Election.

210. As members of the NCGC, the politically-attuned Dias and the lifelong news executive Hernandez, shared responsibility for failure to assign to their own

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<sup>234</sup> See *Governance*, *supra* note 231.

<sup>235</sup> *Id.*

committee or to another committee of the Board the responsibility for monitoring unreliable anchors, guests, and content in such a way as to avoid material liability in defamation. (This is doubly egregious in the case of Hernandez, who also chairs the Audit Committee.) Thus, to extend an analogy made above, not only did Ryan allow the Murdochs to play with fire and refuse to reach for the hose when the house – FOX – caught fire, but he refused to hand the hose to anyone else, i.e., any committee of the Board.

**The Director Defendants Consciously Ignored  
Numerous and Obvious Red Flags**

211. The Director Defendants willfully or recklessly ignored numerous red flags, and indeed blaring warning sirens.

212. FOX's own Brain Room's report on Giuliani – that he was not a reliable source and was easy prey for those pedaling disinformation – was a red flag that the Director Defendants including the Officer Defendants ignored.

213. Giuliani's multiple criminal associates, including felons Kerik, Firtash, Parnas, and Fruman, and then the high-profile reappearance of Kerik in the Trump campaign, were red flags that the Director Defendants ignored.

214. The well-publicized demonstrations of Giuliani's unreliability, through his (a) *Borat 2* appearance, (b) Four Seasons Total Landscaping news conference,

and (c) the notorious news conference at the RNC, were red flags that the Director Defendants ignored.

215. Powell's public support and amplification of baseless bizarre conspiracy theories, including QAnon, was a red flag that the Director Defendants ignored.

216. Powell's public accusations that the FBI had committed "atrocities" and that Mueller is a traitor, were red flags that the Director Defendants ignored. So were Powell's frequent accusations of prosecutorial misconduct, going back to having accused the Enron prosecutors. These reckless accusations alerted the world that Powell specialized in publicly pushing conspiracy theories and falsely accusing others of terrible crimes. This was a red flag that she might as a guest of FOX falsely accuse someone on the air.

217. Dobbs's support for disproven and deranged conspiracy theories was a blaring warning siren that the Director Defendants ignored. These Dobbs-promoted conspiracy theories including "birtherism," the evidence-free, racist-tinged, and discredited belief that then-President Obama's Hawaiian birth certificate was faked and that he was born in Kenya.

218. Dobbs’s bizarre on-air accusation in October 2018, that Nancy Pelosi, Barack Obama, other Democrats, CNN, and Mr. Soros had sent pipe bombs to themselves, a libel *per se*, was a red flag that Director Defendants ignored.

219. Bartiromo’s public praise for Trump’s statements that the tiki-torch-bearing neo-Nazis at the Charlottesville “Unite the Right” rally were “very fine people” was a red flag that Director Defendants ignored.

220. Bartiromo’s widely noticed and criticized ready agreement with Trump’s most controversial, false, or misleading statements in the “interviews” she conducted of him on July 1, 2018, April 28, 2019, and October 11, 2020 (and, later, on November 29, 2020) were red flags that Director Defendants ignored, to the profound detriment of FOX.

221. Bartiromo’s acceptance of Powell’s initial proof, the email from the “source” woman, Ms. Bourne, who claimed to get messages from the “Wind” and claimed to have been “internally decapitated,” and then putting Powell on the air to spout the Big Libel, was a red flag that the Director Defendants ignored. It is reasonably conceivable that the Director Defendants, and at least the Murdochs, knew of this bizarre email, yet they let the broadcasts quoted *supra* proceed.

222. Pirro’s history of widely-reported erratic behavior was a red flag that the Director Defendants ignored.

223. Pirro's widely publicized decision to hire Kerik to spy on her husband, and her berating Kerik for not following her order to illegally plant listening devices, should have alerted the Director Defendants of her unreliability.

224. Pirro's defiance of FOX's own rules when she appeared at a Trump campaign rally in 2018, drawing a public rebuke from FOX, should have alerted the Director Defendants of her unreliability.

225. Pirro's on-air anti-Islamic statements in March 2019 that resulted in Fox News suspending her show for two weeks, was an obvious red flag that the Director Defendants ignored.

226. Pirro's 15-minutes tardy, disheveled, and incoherent appearance on her show in March 2020 was another red flag that the Director Defendants ignored.

227. The widely publicized November 16, 2020 Open Letter from 59 of the nation's most prominent election security experts debunking the false narrative and stating that there is no evidence that the election was compromised in any state, alerted each-and-every Director Defendant that the Giuliani-Powell accusations were false. The Open Letter was published early enough to have permitted the Director Defendants to sharply limit defamation damages, or conceivably to avoid the defamation suits entirely, by issuing a robust retraction. The *Smartmatic* trial court opinion upholding the Smartmatic Complaint over a motion to dismiss,

described more thoroughly *infra*, found that this Open Letter<sup>236</sup> alone could be sufficient to support a claim of “actual malice” against FOX.<sup>237</sup> Each court defeat suffered by Powell, Giuliani, or other Trump lawyers when challenging the election, was another red flag alerting the Director Defendants that the Giuliani-Powell narrative accusing Dominion and Smartmatic was false and libelous.

228. Had the Director Defendants acted, as they were bound to do, to put a stop to this calumnious nonsense, they would have averted or materially reduced the enterprise-threatening exposure to damages in defamation that now endangers FOX.

229. Daily debunking of the Giuliani-Powell false narrative was another series of red flags, including (as pled above): Trump appointee Christopher Krebs; Dominion’s “SETTING THE RECORD STRAIGHT” emails updated almost every day; CISA’s statements; William Barr’s statement; the Election Infrastructure Government Coordinating Council Executive Committee; NASS; NASED; the election officials in 49 states that spoke with the NYT on November 9 and 10; the WSJ’s editorial of November 17 in the Murdochs’ own newspaper; the two Dominion retraction demand letters; the Cato Institute piece citing the Open Letter

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<sup>236</sup> See **Exhibit A**.

<sup>237</sup> *Smartmatic*, 2022 WL 685407, at \*21 (“This, alone, was enough to put any reputable news organization on notice that the claims against SUSA could be dubious.”).

from the 59 election experts and calling the Giuliani-Powell narrative “crackpot,” “easily debunked,” “wildly implausible,” “increasingly byzantine,” and “particularly poisonous”; Director Ryan contemporaneously telling the world that there was no material fraud in the 2020 Presidential Election and that it was not stolen; Matt Blaze’s blog; Eddie Perez’s views as broadcast on Fox News; the Smartmatic retraction demand letter; and even Tucker Carlson demanding that Ms. Powell produce evidence before Lindell pulled him back into the fold of the false election narrative. Each one of these should have served as a strong indicator to the Director Defendants that the election fraud narrative was all a lie, and very likely actionable libel with enormous potential damages to FOX. Yet the Director Defendants sat mute and motionless, doing nothing, letting the injuries mount materially with each passing day.

230. By consciously failing to react to these material red flags, the Director Defendants failed to act in good faith and breached their duty of loyalty to FOX. This included the Officer Defendants who were in a position to act immediately to put a stop to the wrongdoing. This also included the non-executive directors who refused to take board action or move the board to do so. The Director Defendants also committed an intentional breach of the duty of care, amounting to bad faith.



### **Court Decisions to Date in the Resulting Defamation Suits**

231. All of the FOX publications of the Big Libel cited or quoted above, made on the Fox News Channel, the Fox Business Channel, and published or republished by Fox on Internet direct streaming, or on Facebook or Twitter or Instagram, were published in every state.

232. FOX moved to dismiss the Smartmatic Complaint and the Dominion Complaint. Both motions to dismiss were fully briefed and argued. In both cases, FOX made legal arguments in briefs and at argument but did not contest that the accusations against Dominion and Smartmatic were factually false. Moreover, after FOX and Dominion filed cross-motions for summary judgment in the Dominion Suit, FOX did not contest that the accusations against Dominion were factually false. Thus, there was not a non-frivolous argument that the accusations were true; Director Defendants knew all along that they were false.

233. Boiled to their essence, FOX's legal arguments supporting dismissal were the following four, all based on application or misapplication of Constitutional doctrines: **first**, **the neutral reportage doctrine**, meaning that a media defendant had the right neutrally to report a defamatory view of another (here, Trump and his lawyers), no matter how untrue; **second**, **the fair reporting privilege**, meaning that a media defendant had the right to report the status of an official proceeding (here, the

lawsuits brought by lawyers representing the Trump Campaign); ***third***, the opinion defense, meaning that a defendant’s statement of pure opinion as opposed to fact is not actionable; and ***fourth***, whether plaintiff adequately pled “actual malice,” meaning whether a media defendant made the defamatory statement either with knowledge of its falsity or in reckless disregard of whether it was false or not.

234. The Superior Court of Delaware upheld the Dominion Complaint in its entirety over FOX’s motion to dismiss.<sup>238</sup> The Superior Court had previously held that: (i) New York State’s substantive law of torts applies; and (ii) Delaware’s procedural law, rather than the New York’s anti-SLAPP statute, establishes the pleading standard on a motion to dismiss.

235. In *U.S. Dominion I*, Judge Eric Davis roundly rejected all four of Fox News’s defenses, holding as follows: ***first***, New York does not recognize the neutral reportage doctrine as a defense to defamation, but even if it did, the reportage here was not neutral, with the FOX anchors clearly endorsing the alleged libelous statements despite numerous warnings from government and expert sources, as well as from Dominion itself, that they were untrue;<sup>239</sup> ***second***, the fair reporting privilege

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<sup>238</sup> *US Dominion, Inc. v. Fox News Network, LLC*, 2021 WL 5984265 (Del. Super. Ct. Dec. 16, 2021) (“*U.S. Dominion I*”).

<sup>239</sup> *Id.* at \*22-24.

does not apply because the FOX reporting as pled was not fair or true and because the reporting did not involve an official proceeding;<sup>240</sup> **third**, the opinion defense fails because, as pled, FOX was reporting fact (that Dominion aided election fraud), and even if opinion, opinion mixed with or based on false facts, as pled here, are actionable;<sup>241</sup> and **fourth**, as to “actual malice,” the Dominion Complaint fairly pleads that FOX acted at least with reckless disregard for whether the defamatory statements were true or not.<sup>242</sup>

236. Fox News sought to take an interlocutory appeal from U.S. Dominion I. Judge Eric Davis refused to certify, and the Supreme Court of Delaware agreed that “interlocutory review is not warranted in this case.”<sup>243</sup>

237. FOX made out no better when it forced Dominion to file a separate suit against Fox Corp. Judge Davis made the same holdings as in *U.S. Dominion I*,<sup>244</sup> as pled and cited *supra*. He consolidated the Dominion Suits in December 2022, and

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<sup>240</sup> *Id.*, at \*25-26.

<sup>241</sup> *Id.* at \*26-28.

<sup>242</sup> *Id.* at \*28.

<sup>243</sup> *Fox News Network, LLC v. US Dominion, Inc.*, 270 A.3d 273 (Table), 2022 WL 274235 (Del. Jan. 31, 2022). The interlocutory appeal was so meritless that it took the Delaware Supreme Court all of 11 days from submission to decision.

<sup>244</sup> *US Dominion, Inc. v. Fox Corp.*, 2022 WL 2229781 (Del. Super. Ct., June 21, 2022).

after the parties made, submitted evidence on, briefed and argued, cross motions for summary judgment, Judge Davis made the following rulings in an opinion released on March 31, 2023 (the “MSJ Opinion”):<sup>245</sup>

(a) The statements aired on Fox News concerning Dominion, including those quoted *supra*, all were “by or about Dominion,” were all false, were all published by FNN, and were all defamatory *per se*, granting partial summary judgment for Dominion on each of these issues;<sup>246</sup>

(b) Neither FNN nor Fox Corp. may avail themselves of certain defenses, including the neutral reportage privilege (held not to exist), the fair reporting privilege (held not to apply as FNN was not reporting on an official proceeding and reporting was not fair or neutral), or the opinion defense, granting partial summary judgment for Dominion on each of these issues. As to the opinion defense, the court reviewed every statement individually, and found that every one of them constituted a (falsely) averred fact or an opinion based on fact;<sup>247</sup>

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<sup>245</sup> *US Dominion, Inc. v. Fox News Network, LLC*, 2023 WL 2730567 (Del. Super. Ct. Mar. 31, 2023).

<sup>246</sup> *Id.* at \*33-34.

<sup>247</sup> *Id.* at \*36-42, \*44-74.

(c) All of FNN and Fox Corp.’s motions for summary judgment or partial summary judgment were denied;<sup>248</sup> and

(d) Triable issues of fact existed as to whether the statements about Dominion (i) were made with “actual malice,” (ii) were made by or with the participation of the parent Fox Corp., and (iii) damages, and those issues will go to the jury after trial.<sup>249</sup> As Dominion stipulated to the “actual malice” standard, no judicial determination was needed or made as to whether Dominion was a public figure or a limited purpose public figure, a concept explained in the paragraphs immediately following regarding the Smartmatic Suit, and footnotes thereto.

238. The individual defendants’ (Powell, Giuliani, and Lindell’s) motion to dismiss Dominion’s suit in the U.S. District Court for the District of Columbia, had earlier met the same fate. While not consolidated, the motions to dismiss all three were considered *and were denied* in a single reasoned opinion.<sup>250</sup> Judge Carl J. Nichols, USDJ: rejected Powell’s arguments that Dominion failed to allege actual

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<sup>248</sup> *Id.* at \*42.

<sup>249</sup> *Id.*

<sup>250</sup> *US Dominion, Inc. v. Powell*, 554 F. Supp. 3d 42 (D.D.C., 2021) (“*Dominion v. Powell*”).

malice;<sup>251</sup> rejected Powell’s arguments that she was stating opinion and not fact;<sup>252</sup> rejected Powell’s arguments that she was merely reporting on what was being argued in official proceedings, her election challenge cases;<sup>253</sup> and rejected Giuliani’s arguments that a corporation was entitled only to damages for lost profits, which (Giuliani said) were not adequately pled.<sup>254</sup> Judge Nichols held that since Dominion had adequately pled defamation *per se*, more specific pleading of economic damages is unnecessary.<sup>255</sup>

239. On March 8, 2022, the New York Supreme Court, New York County, per Justice David B. Cohen, denied Fox’s motion to dismiss the Smartmatic Complaint.<sup>256</sup> At the heart of the Court’s ruling was its finding that Fox acted with a reckless indifference to the truth because there is a “substantial basis for plaintiffs’ claim that Fox News actually had information undermining any claim that the election was rigged and willfully disregarded the same.”<sup>257</sup> Justice Cohen held:

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<sup>251</sup> *Id.* at 49, 59-62.

<sup>252</sup> *Id.* at 58.

<sup>253</sup> *Id.* at 58-59.

<sup>254</sup> *Id.* at 73-75.

<sup>255</sup> *Id.*

<sup>256</sup> *Smartmatic*, 2022 WL 685407.

<sup>257</sup> *Id.* at \*21.

. . . [O]ne who “repeats [a] defamatory statement is responsible for the resulting damages.” . . . Since Fox News allowed allegedly defamatory statements about SUSA [Smartmatic] to be repeated on its network, a jury may therefore find that it acted with intent or reckless disregard of the truth.<sup>258</sup>

Specifically, Justice Cohen found that the November 16, 2020 Open Letter, pled *supra*, from the 59 election security specialists “saying that there was no credible evidence of fraud in the November election [and] that there was no evidence that the election had been rigged . . . alone, was enough to put any reputable news organization on notice that the claims against [Smartmatic] could be dubious.”<sup>259</sup> The New York Supreme Court identified numerous additional red flags that would have alerted a reasonable observer to the likely falsity of the Giuliani-Powell narrative, each evidencing FOX’s indifference to the truth or falsity of what it was broadcasting. In short, the court found that each of the following evinced a “purposeful avoidance of the truth.”<sup>260</sup>

(a) “For instance, before defendants started their misinformation campaign, they could have checked publicly available information to ascertain which company’s software and technology was used in each county in the country. . . . Such checking would have revealed that

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<sup>258</sup> *Id.* at \*22 (quoting *Geraci v. Probst*, 15 N.Y. 3d 336, 342 (Ct. App. N.Y. 2010)); see also *Solstein v. Mirra*, 488 F. Supp. 3d 86, 99 (S.D.N.Y. 2020)).

<sup>259</sup> *Smartmatic*, 2022 WL 685407, at \*21 (emphasis added).

<sup>260</sup> *Id.* at \*20 (citing *Harte-Hanks Comms. v. Connaughton*, 491 U.S. 657, 692 (1989)).

[Smartmatic's] technology was not used in Georgia, Pennsylvania or Michigan in the 2020 election, contrary to what Giuliani said on Dobbs' program on November 12, 2020. . . . It also would have revealed that [Smartmatic's] technology and software were not used by Dominion in the 2020 election.”<sup>261</sup>

(b) “Additionally, plaintiffs claimed that defendants knew, or should have known, based on lawsuits filed by Powell in Georgia, Michigan, Wisconsin, and Arizona, which sought to overturn the vote and were dismissed, that neither she nor Giuliani could substantiate any of their claims regarding SUSA [Smartmatic]. . . . Indeed, although Powell claimed ‘widespread ballot fraud’ in each of the election lawsuits she commenced, she did not allege in any of those actions that SUSA participated in the alleged fraud.”<sup>262</sup>

(c) “[T]he fact that neither [Giuliani nor Powell] provided any evidence of their claims;”<sup>263</sup>

(d) “Fox News attempts to distance itself from the allegedly defamatory statements made by Powell and Giuliani by claiming that it repeatedly asked those defendants for proof substantiating their accusations about plaintiffs and they failed to produce any. However, this fact can also support plaintiffs’ claim that Fox News had reason to suspect that what it was broadcasting was false, and nevertheless continued to allow Powell and Giuliani to appear on its network, specifically on shows hosted by Dobbs, Bartiromo, and Pirro, to promote completely unfounded claims that plaintiffs’ software enabled President Biden to steal the election;”<sup>264</sup> and

(e) “Even assuming that Fox News did not intentionally allow this false narrative to be broadcasted, there is a substantial basis for

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<sup>261</sup> *Id.* at \*8.

<sup>262</sup> *Id.*

<sup>263</sup> *Id.* at \*13.

<sup>264</sup> *Id.* at 20.



plaintiffs' claim that, *at a minimum, Fox News turned a blind eye to a litany of outrageous claims about plaintiffs, unprecedented in the history of American elections, so inherently improbable that it evinced a reckless disregard for the truth.*"<sup>265</sup> [emphasis added].

Surely, each of the Director Defendants knew that the Giuliani-Powell narrative was, as the New York Supreme Court put it, "inherently improbable." Indeed, the fact that the narrative was "inherently probable" was an enormous red flag, as obvious to the Director Defendants in real time as it later was held to be by Justice Cohen.

240. Justice Cohen also held that, as the alleged libel included accusations of serious crimes, and tend to injure plaintiffs in their business or trade, Smartmatic had adequately pled defamation *per se*.<sup>266</sup>

241. Justice Cohen also held that Smartmatic's claims have a "substantial basis in law," thus overcoming FOX's defense based on the New York "Anti-SLAPP Statute." *See* N.Y. Civ. Rights Law §§ 70-(a) and 76-(a).<sup>267</sup>

242. Justice Cohen similarly denied motions to dismiss pressed by Dobbs and Bartiromo but granted Pirro's motion to dismiss, finding Pirro's libelous broadcasts were primarily aimed at Dominion, not Smartmatic. The Court denied

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<sup>265</sup> *Id.*

<sup>266</sup> *Id.* at \*22.

<sup>267</sup> *Id.* at \*17-21.

Giuliani’s motion to dismiss the defamation claims brought by Smartmatic USA but granted his motion as to product disparagement claims. It granted Powell’s motion to dismiss based only on lack of *in personam* jurisdiction in New York State over Powell, whom Smartmatic is now suing in Washington D.C. instead.

243. A five-justice panel of the Appellate Division, New York State Supreme Court, unanimously affirmed Justice Cohen’s decision as against Fox News, Dobbs, and Bartiromo, adopting his reasoning (a) that the Smartmatic Complaint satisfied the New York anti-SLAPP statute, (b) that it amply alleged “actual malice,” (c) that since the complaint adequately alleged defamation *per se*, there was no need to plead special damages, and (d) that the neutral reportage defense does not apply. Besides, the Appellate Division reinstated the claims Justice Cohen had dismissed against Pirro and Giuliani, including reinstatement of the disparagement claim. It reversed and granted the motion to dismiss against Fox Corp., without prejudice to the right to amend and replead, on the ground that the Smartmatic Complaint had not yet alleged that any of the parent’s employees had participated in the libel.<sup>268</sup> On March 6, 2023, Smartmatic filed an amended complaint, alleging, *passim*, the participation of the Murdochs and other parent

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<sup>268</sup> *Smartmatic USA Corp. v. Fox Corp.*, 213 A.D. 3d 512 at \*1-2 (N.Y. App. Div., 2023).

company agents.<sup>269</sup> The amendments add many allegations based on evidence adduced by Dominion in the cross-motions for summary judgment in the Dominion Suits.

244. More devastating for Fox, the Appellate Division concluded its opinion with the following ruling:

We decline to find that plaintiffs should be deemed limited purpose public figures required to allege facts that, if true, would “clearly and convincingly” show defamation with actual malice.<sup>270</sup>

Thus, as the defamation lawsuits now stand, Smartmatic need only prove negligence and untruth, not “actual malice” – even though both Justice Cohen and the Appellate Division both held that Smartmatic had amply pled “actual malice.” Atop the “chain

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<sup>269</sup> *Smartmatic Suit*, Dkt. No. 1199.

<sup>270</sup> *Id.* at 2 (citing *Gottwald v. Sebert*, 193 A.3d 573, 578-79 (N.Y. App. Div. 2021)). This ruling has significant consequences. The landmark case of *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), the U.S. Supreme Court held that a public official or candidate suing for defamation must prove that the defendant acted with “actual malice,” meaning that he knew the challenged statement was false or recklessly disregarded whether it was true or false. *Curtis Pub. Co. v. Butts*, 388 U.S. 130 (1967) extended the “actual malice” element to suits against public figures, not just public officials. The high court refused to extend *Curtis* in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), holding that in defamation suits against private individuals, there was no “actual malice” requirement, but that negligence was enough to pass constitutional muster. *Gertz* found that a defendant can be a limited purpose public figure if he “thrust[s] himself into the vortex of [a] public issue” and thereby becomes a public figure for a limited range of issues.” 418 U.S. 323 at 352.

of command,” through faithless inaction, the Director Defendants brought this legal woe on FOX.

245. These undesirable results for Fox were obvious and foreseeable, particularly to sophisticated directors, which all the Director Defendants were and are. They therefore should have been avoided, which the Director Defendants had the power and fiduciary duty to do. The Officer Defendants particularly had the power as well as the duty to shut down the false narrative all-the-more quickly, but they failed and refused to do so. The non-executive Director Defendants knowingly failed to do so, in bad faith, in intentional and material breach of their duty of care, and in breach of their fiduciary duty of loyalty.

246. On April 18, 2023, FOX and Dominion reached a last-minute settlement for \$787 million just prior to the start of their highly anticipated trial. Shortly thereafter, FOX released a statement “acknowledge[ing] the court’s rulings finding certain claims about Dominion to be false.”<sup>271</sup> Dominion’s counsel said that “[l]ies have consequences.”<sup>272</sup>

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<sup>271</sup> Katie Robertson et al., *Live Updates: Fox News Settles Defamation Suit for \$787.5 Million, Dominion Says*, N.Y. TIMES (Apr. 18, 2023), <https://www.nytimes.com/live/2023/04/18/business/fox-news-dominion-trial-settlement>.

<sup>272</sup> Erin Mulvaney & Joe Flint, *Fox to Pay \$787 Million to Settle Dominion’s Defamation Lawsuit*, WALL ST. J. (Apr. 18, 2023),

**THE DIRECTOR DEFENDANTS LED FOX TO  
VIOLATE POSITIVE LAW BY COMMITTING  
CRIMINAL DEFAMATION IN SEVERAL STATES**

247. The Giuliani-Powell Narrative Accused Smartmatic and Dominion of Criminal Conduct and Reprehensible Conduct. The defamations against Dominion and Smartmatic, *published as they were in every state*, besides constituting accusations of reprehensible conduct, also constituted accusations of fraud and many other state and federal crimes, including election interference and bribery. As one of numerous examples, under federal law, at 52 U.S.C. § 20511, it is a felony to deprive citizens of a state of a free and fair election by false tabulation of ballots, as follows:

A person ... who in any election for Federal office—

\* \* \*

(2) knowingly and willfully deprives, defrauds, or attempts to deprive or defraud the residents of a State of a fair and impartially conducted election process, by –

\* \* \*

(B) the procurement, casting, or tabulation of ballots that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held, shall be fined in accordance with title 18 ... or imprisoned not more than 5 years, or both.

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<https://www.wsj.com/articles/fox-news-dominion-defamation-trial-set-to-begin-d5c7293a>.

Thus, the Giuliani-Powell narrative, and its adoption and many repetitions by FOX cited *supra*, accused Dominion and Smartmatic of felonies, one for each state in which Dominion operated (and in which Smartmatic was falsely accused of operating by providing Dominion the software), under 52 U.S.C. § 20511.

248. Giuliani-Powell Narrative Accused Smartmatic and Dominion of Numerous Other Crimes. The Big Libel accused the two voting machine companies of conduct that constitutes felonies in virtually every state. For example, in Pennsylvania, interference with elections, including “register[ing] fraudulent votes upon any voting machine,” or conspiring to do the same, or “in any manner to prevent a free and fair primary or election” is guilty of a felony. PA ST 25 P.S. § 3527. As another example, in Georgia, it is a felony carrying a maximum prison term of 10 years to “knowingly register[] fraudulent votes upon any voting machine” or to “willfully tamper[] with any ... voting machine ... or tabulating machine.” Ga. Code Ann., § 21-2-566. As a third example, in Wisconsin, it is a Class I felony of election fraud to “tamper with automatic tabulating equipment or any record of votes cast or computer program which is to be used in connection with such equipment to count or recount votes at any election so as to prevent or attempt to prevent an accurate count of the votes from being obtained.” W.S.A. § 12.13(3)(z). As a fourth example, in Michigan, it is a felony to “fraudulently or forcibly add to or diminish

the ... totals on the voting machine.” M.C.L.A. § 168.932(b). In every one of these four states, and indeed in every state, Giuliani or Powell or both had accused the voting machine companies of election fraud in the broadcasts described above.

249. The Director Defendants Led FOX to Breach the Criminal Laws of Michigan. By their knowing failure to act, as pled *supra*, the Director Defendants led FOX to commit the crime in Michigan of “falsely accusing another of crime or particular conduct.” The applicable statute, at M.C.L.A. 750.370, states as follows:

FALSELY AND MALICIOUSLY ACCUSING ANOTHER OF A CRIME, ETC.—Any person who shall falsely and maliciously, by word, writing, sign, or otherwise accuse, attribute, or impute to another the commission of any crime, felony or misdemeanor, or any infamous or degrading act, ... shall be guilty of a misdemeanor.

Moreover, once the false Giuliani-Powell narrative began, by knowingly failing to put a stop to it, the Director Defendants caused FOX to commit breach the criminal laws of Michigan, again and again.

250. The Director Defendants Led FOX to Breach the Criminal Laws of Alabama. By their knowing failure to act, as pled *supra*, the Director Defendants conceivably led FOX to commit the crime in Alabama of criminal defamation. The applicable current statute, Ala. Code 1975 § 13A-11-163, as amended, Aug.1, 2016, states as follows:

Any person who, with knowledge that a statement is false or with reckless disregard of whether the statement is false or not,<sup>273</sup> publishes or otherwise disseminates any accusation against a private citizen, not currently holding or running for public office, which falsely and maliciously imports the commission by such person of a felony or any other indictable offense involving moral turpitude shall be guilty of a Class B misdemeanor.

For purposes of the statute, “a private citizen” who may have been criminally defamed is not limited to residents of Alabama and conceivably includes senior executives of Smartmatic or Dominion. Moreover, once the false Giuliani-Powell narrative began, by knowingly failing to put a stop to it, the Director Defendants caused FOX to breach the criminal laws of Alabama again and again.

251. The Director Defendants Led FOX to Breach the Criminal Laws of Wisconsin. By their knowing failure to act, as pled *supra*, the Director Defendants led FOX to commit the crime in Wisconsin of criminal defamation. The Wisconsin criminal defamation statute provides in pertinent part:

942.01. Defamation.

(1) Whoever with intent to defame communicates any defamatory matter to a 3rd person without the consent of the person defamed is guilty of a Class A misdemeanor.

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<sup>273</sup> The statute was amended to include the element of “actual malice” (i.e., “with knowledge that a statement is false or with reckless disregard of whether the statement is false or not”) after the predecessor version of the statute was held unconstitutional for lack of such an element. *Ivey v. State*, 821 So.2d 937 (Ala. 2001).



(2) Defamatory matter is anything which exposes the other to hatred, contempt, ridicule, degradation or disgrace in society or injury in the other's business or occupation.

(3) This section does not apply if the defamatory matter was true ... or if the communication was otherwise privileged.

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W.S.A., § 942.01. Moreover, once the false Giuliani-Powell narrative began, by knowingly failing to put a stop to it, the Director Defendants caused FOX to breach the criminal laws of Wisconsin again and again.

252. Similar Criminal Libel Laws Remain on the Books in Several Other States. Similar laws exist or at relevant times existed in Nevada (N.R.S. § 200.510(1)-(2)), Idaho (I.C. § 18-4802), Mississippi (Miss. Code Ann., § 97-3-55) and Louisiana (LSA-R.S. 14-47, *repealed* by Acts 2021, No. 60, § 1).

253. These criminal libels against the voting companies were committed with “actual malice,” as all of the Director Defendants, especially the Officer Defendants, knew the defamations against Dominion and Smartmatic were false and acted in reckless disregard of whether they were true or false. Indeed, both the Murdochs have admitted that they knew the statements were false. As pled above, based on the Smartmatic Complaint, the New York Appellate Division has ruled that Smartmatic was not a “limited purpose public figure,” and thus does not need to prove “actual malice.” Thus, it is reasonably conceivable that a U.S. Constitutional

defense to the state criminal libel statutes of Wisconsin, Nevada, Idaho, Mississippi, and Louisiana may not be available to FOX since, as to Smartmatic, as things now stand in the New York litigation, they are not a public figure or a limited purpose public figure. The same U.S. Constitutional defense is not available in Alabama, where actual malice is an element of the crime enumerated in the statute itself. Moreover, if Smartmatic is not a “limited purpose public figure,” it is reasonably conceivable that Dominion is not either.

254. As a matter of law, it is a breach of the duty of loyalty for a director or officer of a Delaware Corporation to lead his/her company to violate positive law. Each of the Director Defendants did that with respect to the above state criminal libel laws.<sup>274</sup> Thus, every Director Defendant breached his duty of loyalty and failed

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<sup>274</sup> “It is never good faith, however, to knowingly cause a Delaware corporation to violate positive law.” *In re Duke Energy Corp. Deriv. Litig.*, 2016 WL 4543788, at \*15-17 (Del. Ch. Aug. 31, 2016) (citing *In re Walt Disney Co. Deriv. Litig.*, 906 A.2d 27, 66-67 (Del. 2006)) (upholding a derivative complaint solely on the basis of the board’s violation of a far more obscure state statute making it a low-level misdemeanor in North Carolina to fail to update an application to a regulatory commission to include new material information); *see also Desimone v. Barrows*, 924 A.2d 908, 934 (Del. Ch. 2007) (“... [I]t is utterly inconsistent with one’s duty of fidelity to the corporation to consciously cause the corporation to act unlawfully.”). *Desimone* cites and analyzes *Stone v. Ritter*, 924 A.2d 908 (Del. 2006), the seminal case finding that failure to act in good faith can occur through failure to take board action, particularly where such failure results in breach of positive law.

to act in good faith. Indeed, conscious breach of the duty of care, if material, amounts to a failure to act in good faith.<sup>275</sup> Every Director Defendant also failed to act in good faith. Besides complaining to one another, their indolence was persistent.

255. Even if it is found that one or more of the cited state penal laws do not apply (and they do apply), these laws express a common policy: a person cannot, in good faith, falsely accuse another of a felony or other reprehensible conduct knowing the accusation is false or with reckless disregard of whether or not it is false. Thus, as a corollary, *corporate fiduciaries consciously permitting their companies to falsely accuse others of felonies – and to do so to vast audiences – are not acting in good faith*. Thus, the Director Defendants did not act in good faith as a matter of Delaware law.

### **Damages**

256. Plaintiffs claim damages for and on behalf of Fox Corp., including:

(a) The costs to date and the costs yet to be incurred of defending the Dominion Suits and the Smartmatic Suit, including, without limitation, FOX's attorneys' fees and the attorneys' fees of the plaintiffs if awarded, plus the costs and

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<sup>275</sup> See *Desimone*, 924 A.2d at 935.

attorneys' fees of participating, formally or informally, in *US Dominion, Inc. v. Powell, et al.*, 554 F. Supp. 3d 42 (D.D.C., Aug. 11, 2021) ("*Dominion v. Powell*");

(b) Any resulting money judgments entered against FOX, including, without limitation, economic damages, special damages, actual damages, and punitive damages;

(c) Any resulting settlements made by FOX, irrespective of whether such settlements are entered as judgments, including the \$787.5 million settlement reached between FOX and Dominion on April 18, 2023;

(d) Pre-judgment and post-judgment interest;

(e) As to any other related defamation suit brought on the same core facts as the Dominion Suits, the Smartmatic Suit, *Dominion v. Powell*, or the Khalil Suit (with those four plus any others, the "Defamation Suits"), the same costs, attorneys' fees, judgments, settlements, and pre- and post-judgment interest, as those corresponding to Items (a) through (d) of this Paragraph;

(f) Any incremental public relations costs, compliance costs, accounting costs, or other professional fees and costs, related to the Defamation Suits or the defamations underlying those suits;

(g) Any increase in premiums or future premiums for insurance covering the Defamation Suits and other defamation or disparagement suits;

(h) Indemnification or advancement of costs for the Director Defendants or any other FOX officer, director, employee, anchor, agent, or professional consultant, concerning the Defamation Suits, irrespective of whether or not such indemnification or advancement by FOX is or was lawful or proper or appropriate;

(i) All other costs to FOX arising from the facts alleged herein or from the Defamation Suits;

(j) Any damage that the alleged wrongdoing might have done to impair FOX's reputation as a reliable news source and its goodwill; and

(k) Any other costs or damages that may be awarded by this Court.

**Exculpation Does Not Apply Here**

257. The charter provision of Fox Corp. or any of its subsidiaries under 8 *Del. C.* § 102(b)(7) does not exculpate the Director Defendants herein, for the following reasons:

(a) The wrongdoing alleged herein constitutes a breach of the duty of loyalty, which is never exculpated under 8 *Del. C.* § 102(b)(7)(i);

(b) The wrongdoing alleged herein constitutes actions or failure to act "not in good faith," which is never exculpated under 8 *Del. C.* § 102(b)(7)(ii);

(c) As to Rupert Murdoch and Lachlan Murdoch, the wrongdoing constitutes, in major part, breaches of the duty of loyalty and good faith in their capacity as executive officers, not just as directors. Under the January 2023 amendments to 8 *Del. C.* § 102(b)(7) which permit limited exculpation of officers, exculpation cannot be extended to officers in derivative actions and cannot be extended to officers where, as here, the challenged conduct occurred (2020-2021) before the Articles of Incorporation were amended to address officer exculpation (2023). Thus, even if the conduct alleged is deemed to be limited to only breaches of the duty of care (and it certainly is not so limited), Rupert Murdoch and Lachlan Murdoch remain liable as the two most senior executive officers of Fox Corp., and cannot be exculpated as officers under 8 *Del. C.* § 102(b)(7);

(d) As the largest beneficial stockholders of FOX with the largest economic stake, the Murdochs derived an improper personal benefit from the Giuliani-Powell false narrative, in that it enabled FOX to reverse the temporary loss of market share to Newsmax and OANN. This in turn resulted in greater cash-based and equity-based incentive compensation for Rupert Murdoch and Lachlan Murdoch. A transaction from which a director derives “an improper personal benefit” is never exculpable under 8 *Del. C.* § 102(b)(7)(iv);

(e) Defendant Ryan's admitted knowledge of the falsity of the Big Libel underscores his lack of good faith in his failure to do anything to put a stop to it; and

(f) Fiduciaries leading their corporation to commit material acts in knowing violation of positive law is never exculpable under 8 *Del. C.* § 102(b)(7)(ii). The defamations pled above, published in every state, constitute criminal libel and criminal defamation in Michigan, Alabama, Wisconsin, and/or other states.

### **DEMAND FUTILITY**

#### **Demand Futility as to All Director Defendants**

258. Plaintiffs did not make a demand of the Fox Corporation Board of Directors under Delaware Court of Chancery Rule 23.1.

259. Of the eight directors currently serving as members of the Board of Directors of Fox News, demand would have been futile and is excused as a matter of law if at least four (a) face a substantial risk of liability herein based on facts pled herein, (b) received or will receive a personal benefit from the misconduct alleged herein, or (c) lack independence from any director who (i) received or will receive a personal benefit from the misconduct alleged herein or (ii) faces a substantial likelihood of liability on any of the claims that are subject to the demand.

260. Each Director Defendant (seven of the eight directors now serving, all except Burck) faces a substantial risk of liability based on the facts pled herein. Each Director Defendant willfully allowed the false narrative to continue, day after day, for nearly three months on end, while FOX's exposure to enterprise-crippling damages mounted materially each day. Any one of the Director Defendants could have, at any time between November 8, 2020 and February 4, 2021, when Smartmatic filed suit, or even until March 26, 2021, when Dominion filed suit, put a stop to it by requiring FOX to cease repeating the Big Libel and issue a robust retraction; each could at least have instigated Board action to put a stop to it and issue such a retraction. By consciously failing to act in the face of a known duty to act, and by consciously sitting mute in the face of a known duty to speak, every Director Defendant failed to act in good faith, breaching his or her duty of loyalty.

261. As the Big Lie and false narrative pushed by Giuliani and Powell were the likely most reported story on the planet, every Director Defendant knew in real time, or at least within a day, of each of the red flags pled above but turned a blind eye. All Director Defendants thus face a substantial risk of liability based on the facts pled herein.

262. As pled above, each Director Defendant, particularly non-executive Defendants Carey, Dias, Hernandez, Nasser, and Ryan, failed to put any monitoring



system in place that could have (a) prevented material liability in defamation, (b) monitored anchors known to be erratic, unreliable, and untruthful, (c) monitored or limited the appearances of guests known to be erratic, unreliable and untruthful, (d) put a stop to a campaign of false accusation already in progress, or (e) required robust retractions to mitigate enterprise-threatening liability. They even failed to assign such monitoring to any committee of the Board. All Director Defendants thus face a substantial risk of liability based on the facts pled herein.

263. Each of the Director Defendants led FOX to violate positive law through breach of criminal libel statutes in any of several states. A fiduciary breaches his or her duty of loyalty and fails to act in good faith when he/she, through knowing action or inaction, leads his/her corporation to breach positive law or commit crimes.

264. Each of the Director Defendants failed to act in good faith by knowingly permitting FOX to falsely accuse others of felonies.

265. Every Director Defendant is responsible for the utter failure to put in place policies, standard practices, and procedures intended to control or reduce the obvious risk of material liability for defamation damages. Likely no such policies, standard practices, and procedures exist. However, even if they do exist, they were manifestly not monitored or enforced. This constituted a conscious disregard by

each Director Defendant of his or her fiduciary duties. This is especially true of Defendant Ryan, who chaired the Nominating and Corporate Governance Committee, its committee members Defendants Dias and Hernandez, and the Board's lead outside director, Defendant Nasser.

266. Thus, every one of the Director Defendants faces a substantial likelihood of liability on the claims that would have been subject to a demand.

267. Moreover, in the case of certain of the Director Defendants, there are aggravating factors that either (a) heighten that already-substantial risk of liability based on facts pled herein or (b) evince lack of independence from one or more other Director Defendants who face a substantial risk of liability. These aggravating factors are pled throughout this Complaint and *infra* in the next subsections of this Complaint.

#### **Demand Futility as to William A. Burck**

268. Burck cannot impartially rule on a demand.

269. As pled *supra*, Burck is, or very recently was, attorney for George W. Bush, Mike Pompeo, Don McGahn, Reince Priebus, Steve Bannon, Robert Kraft, Elliott Broidy, Bob McDonnell's wife, and FIFA, in many different high profile and highly sensitive matters. He also represented eight additional Trump associates in

the Mueller Probe, a total of 11. Additionally, his firm represents or represented the Estate of (FOX's own) Roger Ailes as well as, recently, FOX itself.

270. Moreover, Burck's law firm, Quinn Emanuel, earned substantial fees from FOX, and even if FOX was not paying the fees, from matters in which FOX was and conceivably still is closely involved, such as the Estate of Roger Ailes, and FIFA. Where the Murdochs are concerned, these two matters hit close to home.

271. Burck's firm's website,<sup>276</sup> and his page thereon,<sup>277</sup> aptly refer to him as "Counsel to the Situation," comparing him to Edward Bennett Williams, Esq. (1920-1988), who used "Counsel to the Situation" as a self-description and famously boasted that he could represent everyone in Washington, D.C. at the same time.<sup>278</sup> It is conceivable in the FIFA "Situation" or the Roger Ailes serial harassment "Situation" or both, Burck has information embarrassing to Rupert Murdoch or to former 21CF top management executive and director Carey (Deputy Chairman,

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<sup>276</sup> QUINN EMANUEL URQUHART & SULLIVAN, LLP, <https://www.quinnemanuel.com/> (last visited Apr. 18, 2023).

<sup>277</sup> *Attorneys: William A. Burck*, QUINN EMANUEL URQUHART & SULLIVAN, LLP, <https://www.quinnemanuel.com/attorneys/burck-william/> (last visited Apr. 18, 2023).

<sup>278</sup> Michael D. Shear & Michael S. Schmidt, *A Coveted Lawyers' Juggling Act May Be Good, and Bad, for Trump*, N.Y. TIMES (Sept. 2, 2018), <https://www.nytimes.com/2018/09/02/us/politics/william-burck.html>.

President and COO of 21CF and of News Corp. at times relevant to the Lopez conviction) or to director Lachlan Murdoch.<sup>279</sup> As Burck is justly famous for keeping matters *out of the media*<sup>280</sup> (sometimes worth many times more than what public relations firms are paid for getting matters *into the media*), he cannot be asked to objectively, against his own self-description, vote to sue the Murdochs or Carey in response to a Rule 23.1 demand.

272. It is reasonably conceivable that in either of these matters, FIFA or the Estate of Roger Ailes, Burck or his firm has received privileged information (e.g., from FIFA in the “FIFA Situation”). It is also reasonably conceivable that in either “Situation,” Burck or his firm has received non-privileged but otherwise-protected confidential information (e.g., from a victim or witness in the “Ailes Situation”) concerning Rupert Murdoch or concerning then-News Corp. or then-21CF top executives (e.g., then-President-and-COO Carey, one of whose specialties was

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<sup>279</sup> For example, how could Hernan Lopez’s wires of tens of millions of dollars escape closer scrutiny? As another example, how could it escape the Murdochs’ knowledge or President and COO Carey’s knowledge that Roger Ailes was sexually harassing dozens of FOX women over dozens of years?

<sup>280</sup> See *Practice Areas: Crisis Law & Strategy Group*, QUINN EMANUEL URQUHART & SULLIVAN, LLP, <https://www.quinnemanuel.com/practice-areas/crisis-law-strategy-group/> (last visited Apr. 18, 2023) (describing, among other things, that firm’s description of Burck’s deft handling of the Robert Kraft matter).

landing large TV contracts for FOX to broadcast sports, as he did with the NFL) or concerning other Board members (e.g., Lachlan Murdoch) or concerning FOX itself.

273. As pled above in detail, Burck is at the very top of the bar when it comes to representing Republicans or conservatives in sensitive and high-profile matters. It is materially less likely that he can stay there if the Murdochs or their interests (including FOX and News Corp.) come to view him with disfavor, as is likely if he voted to sue them or to sue Defendant Ryan or Defendant Carey. Put differently, the future shape of Burck's law practice is largely dependent on the Murdochs because of their control of FOX and News Corp. Thus, Burck cannot impartially, and with complete objectivity, weigh a Rule 23.1 demand to sue Rupert Murdoch or Lachlan Murdoch or Ryan or Carey. It would be futile to ask him to do so.

**Demand Futility as to Rupert Murdoch and Lachlan Murdoch**

274. Both Rupert and Lachlan Murdoch are executive officers, indeed the two highest ranking officers, of Fox Corp., and are, besides, listed at the top among corporate management of Fox News Media. Rupert Murdoch is Executive Chairman of Fox Corp. Lachlan Murdoch is CEO of Fox Corp. The two controlled programming decisions and editorial content of Fox News Media including Fox News and Fox Business. Besides, Rupert Murdoch, whose family trust is the

dominant blockholder, controls Fox Corp. The two Murdochs also control News Corp. and its powerful newspapers.

275. Indeed, attorneys defending FOX in the Dominion Suits were apparently less than candid with respect to Rupert Murdoch’s direct involvement in the day-to-day decision-making at Fox News as its Executive Chair. In a stunning reversal, on April 9, 2023, attorneys for FOX in the Dominion Suits disclosed Rupert Murdoch’s position as the Executive Chair for Fox News, after maintaining since the inception of the cases that Rupert Murdoch had no official or functional role at Fox News.<sup>281</sup> Judge Eric Davis, who “was clearly disturbed by the disclosure,” on hearing this reversal, stated at a pretrial conference to FOX attorneys: “My problem is that it has been represented to me more than once that [Rupert Murdoch] is not an officer,” and, “*You have a credibility problem.*”<sup>282</sup> In response, Judge Davis announced he would impose sanctions on FOX and likely appoint a special master to investigate whether attorneys for FOX had deliberately withheld evidence regarding this issue and other evidentiary matters.<sup>283</sup> On April 14, 2023, counsel for

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<sup>281</sup> Randall Chase, *Fox attorneys in libel case reveal dual roles for Murdoch*, AP NEWS (Apr. 12, 2023), <https://apnews.com/article/fox-news-dominion-voting-lawsuit-defamation-election-03503aea01ba0036e7268744fa263687>.

<sup>282</sup> *Id.*

<sup>283</sup> Katie Robertson & Jeremy W. Peters, *Judge Imposes Sanction on Fox for Withholding Evidence in Defamation Case*, N.Y. TIMES (Apr. 12, 2023),

FOX sent a letter to Judge Davis offering a “detailed explanation and ... apology” for concealing Rupert Murdoch’s officer role.<sup>284</sup> On April 18, 2023—the morning the trial was to commence—Judge Davis entered an order appointing a Special Master to investigate, while the trial was ongoing, “whether Fox News Network LLC and Fox Corporation complied with their discovery obligations ... ”<sup>285</sup> By settling the case when it did, FOX ensured that this investigation would not occur. These attempts to withhold evidence and falsely distance Rupert Murdoch from the executive decision-making at Fox News indicate culpable knowledge that Rupert Murdoch was directly involved in the libelous accusations against Dominion and Smartmatic pled herein, *passim*. As top management of FOX, and the most senior executive officers of Fox Corp., Rupert and Lachlan Murdoch controlled and had power over the everyday affairs of FOX at all relevant times. Both admitted in their recent depositions that they exercised that power.

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<https://www.nytimes.com/2023/04/12/business/media/fox-dominion-trial-sanctioned.html>.

<sup>284</sup> Letter to Mr. Rohrbacher, *US Dominion Inc. v. Fox News Network, LLC*, C.A. No. N21C-03-257 EMD (Apr. 17, 2023) (Judge Davis’s response to FOX’s letter).

<sup>285</sup> Order of Reference to Special Master, *US Dominion Inc. v. Fox News Network, LLC*, C.A. No. N21C-03-257 EMD (Del. Super. Apr. 18, 2023).

276. As top management of FOX, the Officer Defendants were in the best position to put a stop to the false and libelous accusations against Dominion and Smartmatic. They could have done so at any time and at a moment's notice. They could have required a robust retraction at any time and at a moment's notice. They refused to do any of these things.

277. As top management of FOX, Rupert Murdoch and Lachlan Murdoch were in the best position to know, and they did indeed know, of the spectacular unreliability of Giuliani and Powell, and of Lindell, as well as of Dobbs, Bartiromo, and Pirro, as pled in detail above.

278. Moreover, as the Dominion Complaint and the Smartmatic Complaint (both upheld over motions to dismiss) pled, the Officer Defendants had an economic and personal motive. After Trump became critical of Fox News on and after Election Night, his followers started fleeing FOX. The Murdochs wanted those viewers back. Thus, they were motivated by receiving (and did receive) a personal benefit from the wrongful conduct alleged herein against them, reflected in incentive compensation awards, the price of their Fox Corp. stock, dividends, or pride in high ratings, or otherwise. Running the false narrative helped FOX, including Fox News and Fox Business, get back into the good graces of Trump and his avid followers, which was



very important to Rupert Murdoch and Lachlan Murdoch. The ratings went back up as the Murdochs permitted the airing of lies against Dominion and Smartmatic.

279. As officers, the two Murdochs could have acted most quickly to put a stop to the accusations, or to issue robust retractions, or both. In intentional breaches of their duty of care, and in bad faith, they refused to do so, again and again, as FOX's exposure in damages mounted.

280. As non-exculpable defendants, Rupert and Lachlan Murdoch face a substantial risk of liability based on facts pled herein. As each stood to benefit from the wrongdoing, neither is in a position to weigh a demand to bring suit on these facts against each other, or against other Director Defendants.

**Demand Futility as to Defendant Charles G. ("Chase") Carey**

281. Based on the facts pled, *supra*, Carey has a bond with Rupert Murdoch that is conceivably as strong as a familial connection.

282. Rupert Murdoch was Carey's mentor, boss, partner, and colleague for over three decades, not just at News Corp., 21CF and FOX but also at the SKY Group. Rupert Murdoch's recognition of Carey's talents was responsible for Carey's meteoric business rise and great wealth. Carey was loyal to Rupert Murdoch all these decades, and Rupert Murdoch requited that loyalty. Both men know that.

283. Rupert Murdoch even told the world as recently as 2011 that Carey was his successor when Rupert Murdoch stated publicly that “Chase is my partner and if anything happened to me I’m sure he’ll get it immediately – if I went under a bus.”

284. Fox Corp.’s Definitive Proxy, filed September 23, 2020, for the Annual Meeting held November 12, 2020, and its Definitive Proxy, filed September 23, 2019, for the Annual Meeting held November 14, 2019, *both* listed Carey *as a non-independent director*. Later reclassification as “independent” based on the NASDAQ listing rules would be silly and irrelevant as applied here to the issue of demand futility. It is noted that even FOX listed Carey as non-independent during the time of all the wrongdoing alleged herein.

285. On October 14, 2022, when Rupert Murdoch proposed a merger between Fox Corp. and News Corp., each of the two boards of directors appointed a special committee of independent directors to review and negotiate terms. The Fox Corp. Special Committee included Nasser (chair), Burck, Dias, Hernandez, and Ryan, but not Carey, a real-world sign that the Board did not consider Carey “independent.” Moreover, the Board’s reasons for leaving him off the Special Committee were never disclosed.

286. If asked to vote on suing the Murdochs, Carey has subjective reasons to vote “no.” He cannot be asked to block those out. They include the inevitable

media coverage of such a suit. That coverage could cause both him and the Murdochs embarrassment at having failed to prevent (a) the bribery and corruption scheme involving FIFA that occurred on their watch that resulted in FOX winning the broadcasting rights to the World Cup and in Hernan Lopez's conviction after trial or (b) the Roger Ailes serial sexual misconduct and sexual harassment of dozens of FOX anchors and other women employees over dozens of years.

287. Moreover, Carey's deep and intense understanding of FOX and its businesses and the media business gave him a heightened understanding of the great risks of defamation liability that he and other non-executive Director Defendants did nothing to prevent. Thus, Carey cannot impartially, and with complete objectivity, weigh a Rule 23.1 demand to sue Rupert Murdoch or Lachlan Murdoch or the other Director Defendants. It would be futile to ask him to do so.

**Demand Futility as to Defendant Paul D. Ryan**

288. As pled above, Defendant Ryan has the best resume of anyone at or near his young age (52) on or near the American political landscape.

289. Ryan has a heightened likelihood of liability in the matters pled herein, because he publicly and contemporaneously stated that the accusations that the election was stolen were false. Ryan believed this from the very beginning (November 8), told this to the Murdochs, and so declared publicly as early as

November 24, 2020. (Ryan’s public disavowal of the Big Lie could have but did not mention the voting machine companies.) Even as of the latter date, stopping republication of the libel, or issuing a retraction, would have materially reduced FOX’s exposure to damages or conceivably avoided the defamation suits altogether. Since Ryan manifestly knew that the accusations were false, he should have made the effort to cause the Board of Fox Corp. to either stop the libel or to retract it. Yet, he took no Board action, either to stop the libel or to retract it or to put appropriate policies in place either before or during the Libel Period. Ryan and any other director could have called a special meeting of the Board to end the false accusations, but instead, Ryan chose sloth.

290. Moreover, while Ryan may not have *present* plans to re-enter electoral politics, in an interview as recently as August 2021, Ryan explicitly refused to rule out running for office again even as a candidate for President of the United States.<sup>286</sup> Beyond peradventure, this can never be far from his mind.

291. Many, many traditional Republican conservatives have voiced the hope that Ryan will run for high office, and indeed at least one organization is actively

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<sup>286</sup> Kent Wainscott, *Paul Ryan says former President Donald Trump lost the 2020 election*, WISN 12 NEWS (Aug. 30, 2021), <https://www.wisn.com/article/paul-ryan-says-former-president-donald-trump-lost-the-2020-election/37436025>.

raising money to that end under the website *paulryanforpresident.com*.<sup>287</sup> Ryan is aware of this, has not put a stop to it, and has remained a fundraising juggernaut for the Republican Party.

292. Conceivably, an electoral run, and even a presidential run, is one of Ryan’s great future options and life alternatives. That option is materially less likely to succeed if Ryan votes (on a Rule 23.1 demand) to bring suit against Rupert Murdoch or Ryan’s friend Lachlan Murdoch, incurring wrath with not just FOX but also News Corp. Similarly, a cabinet appointment, like Secretary of the Treasury, under a future Republican president, is easily and reasonably conceivable, but that option too is much less likely if Ryan earns disfavor of the Murdochs, which he is likely to do if he votes to sue them. Put differently, it is reasonably conceivable that Ryan’s political future is dependent on the Murdochs because of their control of FOX and News Corp. A vote to sue one of the Murdochs could—nay, would—incur the wrath of both Murdochs, and of Fox News and its audience. It would be impossible for Ryan not to think about that when asked to cast such a vote.

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<sup>287</sup> Mark Stevens, *Former Speaker Paul Ryan bashes Trumpism, may be setting up presidential run*, CBS 58 (May 27, 2021), <https://www.cbs58.com/news/former-speaker-paul-ryan-bashes-trumpism-may-be-setting-up-presidential-run>; see Paul Ryan For President, <https://www.paulryanforpresident.com/> (last visited April 18, 2023) (raising money under the slogans “*Tell Paul to Run*” and “*It’s Time for a Real Conservative to Return to the White House.*”).

293. Thus, Ryan cannot impartially, and with complete objectivity, weigh a Rule 23.1 demand to sue Rupert Murdoch or Lachlan Murdoch. It would be unfair and futile to ask him to do so.

294. Furthermore, Ryan has a heightened likelihood of liability in the matters pled herein, because he chaired the Nominating and Corporate Governance Committee. Corporate governance committees are generally charged with ensuring the corporation has adequate policies, standard practices, and procedures in place to monitor management or prevent or to limit corporate risk, *or to at least assign responsibility for such monitoring or recommend to the Board that it do so*. And in this case, the charter of his own Nominating and Corporate Governance Committee said so. As Ryan well knew, a material risk in a company like FOX is exposure to defamation liability. Yet, the NCGC, which he chaired, never assigned the responsibility to itself or to one of the other two standing committees, either before or during (or even after) the Libel Period.

295. Ryan's service with both Rupert Murdoch and Lachlan Murdoch on the board of trustees of the Ronald Reagan Presidential Foundation and Institute makes it even less likely that Ryan could vote objectively on a demand to bring suit.

296. Moreover, Ryan cannot objectively vote on a demand to bring suit against Dias, who, as pled above, has been a financial supporter of Ryan's campaigns

and political causes for a dozen years and might be again. It would be futile to ask him to do so. Nor can Ryan be expected to ignore the prodigious past and potential political giving of Dias, either alone or jointly with her former husband, the multi-billionaire Griffin, who has become one of the largest political donors on Earth, giving over \$60 million in one non-Presidential political cycle (2022).

**Demand Futility as to Defendant Jacques Nasser**

297. As pled above, Nasser and Rupert Murdoch have served together on the boards of three Murdoch-controlled companies for a total of 20 years.

298. Nasser and Lachlan Murdoch have served together on the boards of at least two Murdoch-controlled companies for a total of nine years, with their board terms coinciding at Fox Corp. (2019 to present) and 21CF (2013-2019).

299. Thus, Nasser cannot impartially, and with complete objectivity, weigh a Rule 23.1 demand to sue Rupert Murdoch or Lachlan Murdoch. It would be futile to ask him to do so.

300. With his great understanding of the media industry, and of Fox News, Nasser had and has a greater comprehension of the risks of defamation liability than one not having had that exposure.

301. As the lead independent director of Fox Corp., Nasser had a heightened responsibility to see to it that FOX limited its risk, especially enterprise-threatening

risk of defamation damages that Fox Corp. now faces, as well as a heightened responsibility to put in place a monitoring system to prevent such liability. And, once the Libel Period began, Nasser, as lead independent director, was in the best position to convene the Board immediately to instigate board action to put a stop to (or materially mitigate) the unfolding catastrophe to FOX, the object of his trust. Nasser utterly failed to do any of these things, heightening his already substantial risk of liability based on facts pled herein.

**Demand Futility as to Defendant Anne Dias**

302. With so many years of history as a major donor to Defendant Ryan's campaigns and political causes, and as a long-time financial supporter of Ryan's political activities, Dias cannot impartially, and with complete objectivity, weigh a Rule 23.1 demand to sue Ryan. It would be futile to ask her to do so.

303. Dias's messages like those pled above establish that she, like Ryan, knew all along that claims of material election fraud in the 2020 Presidential Election were false, and thus that the accusations against Dominion and Smartmatic were false. Yet, like all her fellow Director Defendants, she did nothing to take board action to prevent the potentially enterprise-threatening liability that FOX now faces. Moreover, like Hernandez (see paragraphs immediately following), she had a double



obligation to do so, as she was a member of both the Audit Committee and the NCGC.

**Demand Futility as to Defendant Roland A. Hernandez**

304. Hernandez was in a unique position to know of and cause the Board to put a stop to FOX airing the false Giuliani-Powell accusations against Dominion and Smartmatic. Hernandez was not only a career-long veteran of the news media business, having been CEO of Telemundo for five years and having spent over two decades in media-related acquisitions and management, but he was also chair of the Fox Corp. Board's Audit Committee and a member of its Nominating and Corporate Governance Committee.

305. The Audit Committee's charter did not include oversight of liability in defamation or publication torts but did include "oversight of ... risks that have a significant impact on the Company's financial statements." If there ever were such a risk to Fox Corp., the exposure to the Defamation Suits was one, and that became obvious once the Giuliani-Powell narrative began and doubly so once the STRS emails from Dominion and the retraction letters from both voting machine companies were received.<sup>288</sup> Hernandez could have brought the matter of stopping

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<sup>288</sup> See **Exhibits C, D, and E.**

the libel to the Audit Committee which he chaired, or to the NCGC of which he was one of three members, or to the full Board, needing only one other Director Defendant to call a Board meeting on 12-hours' notice. He did or attempted none of these things, sitting silent and motionless in the face of a duty to speak and act.

306. Accordingly, Hernandez's failure to act in good faith heightens his already high likelihood and substantial risk of liability based on the facts pled herein.

## **CLAIMS FOR RELIEF**

### **COUNT ONE**

#### **Breach of Fiduciary Duty against All Director Defendants**

307. Plaintiffs repeat and re-allege all allegations of the preceding paragraphs.

308. As directors of a Delaware corporation, every Director Defendant owed duties of loyalty and care to Fox Corp.

309. Each Director Defendant breached his or her duty of loyalty to Fox Corp. and acted in bad faith.

310. Each Director Defendant intentionally breached his or her duty of care to Fox Corp., amounting to a breach of the duty of loyalty as well as failure to act in good faith.

311. Each Director Defendant repeated those breaches, day after day, failing to put a halt to enormous and mounting corporate exposure to liability that Fox Corp., directly or through its subsidiaries, may suffer.

312. Each Director Defendant is jointly and severally liable for the injuries and damages that Fox Corp., including its subsidiaries, suffered or will suffer as a result of such breaches of fiduciary duty.

## **COUNT TWO**

### **Breach of Fiduciary Duty against the Two Officer Defendants**

313. Plaintiffs repeat and re-allege all allegations of the preceding paragraphs.

314. As officers of Fox Corp., indeed the two highest-ranking executive officers, Rupert Murdoch and Lachlan Murdoch were in the best position to most quickly put a stop to the conduct that led to an enormous exposure to Fox Corp. in defamation liability, or to make on behalf of FOX a robust retraction, or both.

315. Both Rupert Murdoch and Lachlan Murdoch failed to do either, in breach of their duties of loyalty as officers. In bad faith, both failed to act in the face of a known duty to act, and both sat mute in the face of a known duty to speak.

316. As officers of Fox Corp., indeed the two highest ranking executive officers, Rupert Murdoch and Lachlan Murdoch acted or failed to act with gross negligence, breaching their duty of care to Fox Corp.

317. Each of Rupert Murdoch and Lachlan Murdoch is jointly and severally liable for the injuries and damages that Fox Corp., including its subsidiaries, suffered or will suffer as a result of such breaches of fiduciary duty.

### **COUNT THREE**

#### **Equitable Relief**

318. Plaintiffs repeat and re-allege all allegations of the preceding paragraphs.

319. FOX, including Fox Corp. and its media subsidiaries, must improve its corporate governance so as to prevent a repetition of avoidable material liability in defamation, disparagement, and other publication torts.

320. Plaintiffs request mandatory injunctive relief requiring the Director Defendants to cause FOX to adopt preventive measures including policies and procedures designed to prevent avoidable material liability in defamation, disparagement, and other publication torts.

321. Plaintiffs request that this Court require the Director Defendants to cause FOX to adopt an adequate monitoring system to prevent avoidable material liability in defamation, disparagement, and other publication torts. Any such system must include specific assignment of responsibility for such monitoring to a named committee of the Board of Directors.

322. Plaintiffs request that this Court require an audit of FOX's practices regarding prevention of material liability in defamation, disparagement, and other publication torts by a corporate governance expert appointed by this Court. The

audit should result in a written report to this Court with recommendations, indicating which recommendations have been accepted by the Board and management and which ones have not.

323. Such policies and procedures should include legal and inside counsel review of any material accusation aired, or about to be aired, against any third party.

324. Such policies and procedures should include a standard and frequent review of repeated guests on Fox News and Fox Business shows and their reliability, with reports red flagging unreliability sent to and reviewed by inside counsel and line management.

325. Such policies should include training of anchors and the producers and content managers of their shows, as well as extensive retraining of anchors, producers, and content managers of shows that have a record of airing unreliable guests or their accusations against third parties.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs demand judgment, as follows:

- A. Finding the Director Defendants liable for breaching their fiduciary duties to Fox Corp.;
- B. Finding the Officer Defendants, Rupert Murdoch and Lachlan Murdoch liable, in their capacity as officers, for breaching their fiduciary duties to Fox Corp.;
- C. Awarding damages or other monetary relief to Fox Corp., as claimed above, including but not limited to indemnifying FOX for all costs FOX incurs in the resulting defamation suits (including but not limited to the Dominion Suits and the Smartmatic Suit), including all judgments, damages, punitive damages, settlement amounts, including the \$787.5 million settlement reached by FOX and Dominion on April 18, 2023, FOX's defense costs including its attorneys' fees, the voting companies' costs and attorneys' fees if awarded, pre- and post-judgment interest, the increased costs of FOX's insurance, and other costs that FOX incurs as a result of the defamation suits;
- D. Granting the equitable relief demanded in COUNT THREE, above;
- E. Awarding Plaintiffs the costs and disbursements of this action, including attorneys', accountants', and experts' fees; and
- F. Awarding such other and further relief as is just and equitable.

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Dated: April 20, 2023

/s/ Samuel L. Closic

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**CERTIFICATE OF SERVICE**

I, Samuel L. Closic, do hereby certify on this 25th day of April, 2023, that I caused a copy of the foregoing *Public Version of the Verified Stockholder Derivative Complaint* to be served via File&ServeXpress upon the following counsel of record:

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/s/ Samuel L. Closic  
Samuel L. Closic (No. 5468)