

SMARTMATIC USA CORP.,
SMARTMATIC INTERNATIONAL
HOLDING B.V., and SGO
CORPORATION LIMITED,

Plaintiffs,

v.

NEWSMAX MEDIA, INC.,

Defendant.

COMPLAINT

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Plaintiffs Smartmatic USA Corp., Smartmatic International Holding B.V., and SGO Corporation Limited (collectively, “Smartmatic”), through their attorneys, bring this complaint against Defendant Newsmax Media, Inc. (“Newsmax”).

INTRODUCTION¹

1. It is not easy to climb the ladder and get to the top. It is even harder to climb if one is following the rules when others are not. Newsmax has long wanted to ascend the viewership ladder. It has now shown that it will cross legal and ethical lines to climb the ladder and push off the one at the top.

2. Since its inception, Newsmax has wanted to be the next Fox News, the most powerful and profitable news organization in the world. Fox News earned its position by securing billions of loyal viewers across the globe. Fox News has been on top for years among news organizations in the United States and abroad.

3. Since its launch, Newsmax has been chasing Fox News and fighting for its viewers. Like Fox News, Newsmax markets itself as a reliable source for fact-based news. The news organization that people should rely upon when they want facts, not spin. But Newsmax quickly learned that it could not compete, much less

¹ Smartmatic’s election technology and software has been used in voting jurisdictions that are predominately Conservative, Liberal, Republican, Democrat, and other. Smartmatic is apolitical. Smartmatic does not take issue with legal challenges being raised regarding the rules implemented by voting jurisdictions during the 2020 U.S. election and the adherence to those rules. Smartmatic’s lawsuit is focused on the fact that its election technology and software were not used to fix, rig, or steal the 2020 U.S. election.

surpass, Fox News by publishing fact-based news. That did not sell. So Newsmax decided to change its approach.

4. The 2020 U.S. election provided Newsmax an opportunity to put its new approach to the test. Newsmax knew Joe Biden and Kamala Harris won the 2020 election for President and Vice President of the United States. Newsmax knew the election was not fixed, rigged, or stolen. Newsmax knew voting machines had not switched votes from former President Trump to now President Biden. Those facts were being published by government officials, election specialists and everyone with firsthand experience with the 2020 U.S. election.

5. Newsmax could not capture more viewers after the 2020 U.S. election (or lure them from Fox News) by publishing these facts so it decided to participate in disseminating another story. Newsmax's story had three features: (a) tell its audience that it was the only source for fact-based news, (b) tell its audience that the 2020 U.S. election had been rigged and stolen from President Trump, and (c) tell its audience that anyone denying that the 2020 U.S. election had been rigged and stolen was not telling the truth.

6. In November and December 2020, Newsmax published dozens of reports indicating that Smartmatic participated in a criminal conspiracy to rig and steal the 2020 U.S. election and that its technology and software were used to switch votes from former President Trump to now President Biden. Smartmatic's

participation in the conspiracy was a fact according to Newsmax and its guests, as was the use of Smartmatic's technology and software to switch votes.

7. Newsmax's strategy worked. Newsmax's viewership skyrocketed. Newsmax's average viewership was 58,000 viewers a night before it started its disinformation campaign about the 2020 U.S. election. It grew 900% as a result of its campaign. Newsmax knew it had a story that was getting people to tune in to its shows so Newsmax ran the story night after night. It had finally found a formula that could close the gap with Fox News. But then, something unexpected happened.

8. On December 11, 2020, Smartmatic sent Newsmax a multi-page retraction demand letter. Smartmatic called Newsmax out for what it was doing—intentionally spreading disinformation. The retraction demand letter identified dozens of false and defamatory statements published by Newsmax and pointed out that there was no evidence to support the claims it was making about Smartmatic.

9. Newsmax did the only thing it could in response to Smartmatic's retraction demand letter. It admitted it had no evidence for what it had been publishing about Smartmatic for over one month. Newsmax had no evidence to support what its anchors had been saying. It had seen no evidence to support what its guests had been saying. Newsmax had spent a month endorsing a conspiracy theory involving Smartmatic and rigging the election. Newsmax knew it was a lie the whole time.

10. Newsmax's acknowledgement was too little, too late. Newsmax made the strategic decision to use disinformation about the 2020 U.S. election as a tool in its competition against Fox News. It was how Newsmax hoped to beat its rival. Smartmatic was an innocent victim of Newsmax's strategy. What Newsmax said about Smartmatic was fake but the damage it caused to Smartmatic is real.

PARTIES

11. Plaintiff Smartmatic USA Corp. is an election technology and software company. The company's principal place of business is located in Boca Raton, Florida. It is incorporated in Delaware. During the 2020 U.S. Presidential election, Smartmatic USA Corp. provided election technology and software for Los Angeles County. Its election technology and software were not used in any other county or state anywhere in the United States in the 2020 U.S. election. Even in Los Angeles, the company played no part in the counting or tabulation of votes.

12. Plaintiff Smartmatic International Holding B.V. owns Smartmatic USA Corp. (100% ownership). The company's principal place of business is located in Amsterdam, Netherlands. It is incorporated in the Netherlands. Smartmatic International Holding B.V. owns multiple companies operating under the Smartmatic brand in almost two dozen countries.² Smartmatic International Holding

² Smartmatic International Holding B.V. owns election technology and software companies in United States (Smartmatic USA Corp), Barbados, Australia, United Kingdom, Panama, Haiti, Belgium, Singapore, Netherlands, Mexico, Ecuador, Brazil, Estonia, Taiwan, and the Philippines,

B.V. did not play any role in the 2020 U.S. election outside of the technology and software provided by Smartmatic USA Corp. for Los Angeles County.

13. Plaintiff SGO Corporation Limited owns Smartmatic International Holding B.V. (100% ownership). The company's principal place of business is located in London, United Kingdom. It is incorporated in the United Kingdom. SGO Corporation Limited is the parent company of Smartmatic International Holdings B.V. SGO Corporation Limited did not play any role in the 2020 U.S. election outside of the technology and software provided by Smartmatic USA Corp. for Los Angeles County.

14. Smartmatic USA Corp., Smartmatic International Holding B.V., and SGO Corporation Limited are collectively referred to as "Smartmatic" in this complaint. Each of the companies owned by SGO Corporation Limited, directly or through Smartmatic International Holding B.V., was injured as a result of Newsmax's disinformation campaign that irreparably tarnished the Smartmatic brand (corporate and product) in the United States and throughout the world.

15. Defendant Newsmax Media, Inc. oversees the Newsmax news channel (Newsmax TV) that is distributed through most leading cable, satellite, and streaming television service providers; the news website Newsmax.com, through

as well as branches in Colombia, Argentina, Honduras, Pakistan, Italy, Jamaica, and El Salvador. Damage to the Smartmatic brand injured each of these subsidiaries and branches.

which it streams its news programming and publishes articles based on its programming; mobile apps for Apple and Android devices; and various social media accounts, including the @newsmax Twitter handle and on YouTube. The company was formed in and is organized under the laws of Delaware and has its principal place of business in West Palm Beach, Florida.³ Newsmax may be served with process via its registered agent Cogency Global, Inc., 850 Burton Road, Suite 201, Dover, Delaware 19904.

16. Before Election Day, Newsmax TV was available to over 70 million American households. (5/14/19 NextTV, *Newsmax Grabs Fox Distribution Executive* (Exhibit 145).) From the beginning of July 2020 to the week before Election Day, Newsmax averaged 58,000 viewers from 7 p.m. to 10 p.m. on weekdays. (11/18/20 AP News, *Trump-friendly Newsmax Seeks to cut into Fox's viewership* (Exhibit 146).) The week after the election, Newsmax's ratings jumped to almost ten times Newsmax's pre-election ratings. (*Id.*) In the same period, daytime viewership also increased nearly ten-fold. (*Id.*) In February 2021, Newsmax claimed that it had generated five million downloads of the mobile apps through which it had streamed its news coverage since the 2020 election, with Newsmax CEO Christopher Ruddy celebrating "that America is making the switch

³ As used in the Complaint, references to "Newsmax" includes its anchors, hosts, and producers working at the direction of Newsmax and within the scope of their employment with Newsmax.

to Newsmax TV for fair, unbiased journalism.” (2/25/21 Newsmax, *More Than 5 Million Newsmax App Downloads!* (Exhibit 147).)

JURISDICTION & VENUE

17. The Court has personal jurisdiction over Newsmax pursuant to 10 *Del. C.* § 3104. Newsmax is a corporation organized under the laws of the State of Delaware. By incorporating itself here, Newsmax has created current contacts with Delaware and has availed itself of the laws of this State, and its contacts are so extensive and continuing that it should be expected to appear here and defend a claim regardless of where the claim arose.

18. Venue is proper in this Court pursuant to 10 *Del. C.* § 541, *et seq.*

FACTUAL ALLEGATIONS

19. Smartmatic is a victim of Newsmax’s quest to usurp Fox News as a top news station. Newsmax is a news organization, and its journalists are legally and ethically bound to provide factually accurate information. Newsmax abused the trust placed in it by viewers and readers in the United States. Newsmax’s disinformation campaign was not only a betrayal of its legal and ethical obligations that caused irreparable damage to Smartmatic, but also an action that contributed to an erosion of trust in the U.S democratic process.

I. Smartmatic’s Role as an Election Technology Company

20. Antonio Mugica and Roger Piñate founded Smartmatic in 2000 in Boca Raton, Florida. At the start, Smartmatic focused mainly on the banking industry,

offering secure online protocols enabling hyper-secure interconnection between digital devices.

21. Smartmatic turned its focus to election technology and software following the 2000 U.S. election and the “hanging chad” controversy in Florida. Mr. Mugica and Mr. Piñate realized that flawed technology had given election automation a bad reputation. With that in mind, they began to develop advanced voting platforms to restore people’s faith in technology-driven elections. They wanted to take the same technology built for secure bank automation and use it to register, count, and transmit votes. They believed this could give people confidence that their ballots would be accurately counted.

22. Since 2003, Smartmatic’s election technology has processed more than 5 billion secure votes worldwide without a single security breach. Smartmatic has provided election services and implemented election technologies for election commissions in more than 25 countries on five continents.

23. With each election, Smartmatic’s mission is, and always has been, to increase integrity in the democratic process through enhanced citizen engagement and trust in election systems. Smartmatic harnesses the full power of technology to deliver reliable, accurate and auditable election results.

A. Smartmatic grew from a small start-up into a successful multi-billion-dollar enterprise.

24. Today, Smartmatic provides end-to-end election services to local, state, and national governments. Its portfolio of products has grown to include a comprehensive suite of technologies and services to make every phase of the election process more efficient and transparent.

25. Smartmatic's products now include electronic voting machines (voters vote electronically using a voting machine with a touch screen, and that machine counts the votes as they are made), electronic counting machines (voters vote with paper ballots which can be counted electronically), ballot marking devices (voters make their selection on touch screen machines that then print a paper ballot to be counted later by the government election authority), voter management (voter databases are built using biographic and/or biometric information to ensure that the voters are legally entitled to vote, and that there is one-voter/one-vote), poll worker support (technology facilitates poll station administration and enforcement of regulations), online voting (convenient and verifiable online voting platforms) and election management platforms (allows authorities to configure their systems, monitor operations, announce results and train staff).

26. Smartmatic's growth and product development is a story of industry-leading advancements and successes through relentless attention to reliability,

accuracy, and auditability. The following are just some of the company's achievements over the years:

27. In 2004, Smartmatic's technology was used in the first automated election in Venezuela. It was the first election in the world to have both an electronic record and a paper trail of every vote made, which could be cross-checked and audited, thus ensuring the accuracy of election totals.

28. From 2005 to 2007, Smartmatic's election technology and software were used in multiple U.S. states as well as Washington, D.C.

29. In 2007, Smartmatic's election technology and software were used in Curacao's election and results were reported in record time.

30. In 2008, Smartmatic won a complex bid to run the Philippines' first fully automated elections, which were conducted two years later.

31. In 2009, Mexico used Smartmatic's biometric technology to register citizens aged 5-17 so that citizens could get new identity cards. That same year, Smartmatic set the record for fastest biometric voter registration in the world by registering five million Bolivians in record time.

32. In 2010, Smartmatic helped deliver the largest fully outsourced automated election in history. Fifty million voters in the Philippines participated in the general election, and voters were able to see the results in less than a day. That same year, the United Nations Development Program selected Smartmatic to supply

biometric technology and associated services to upgrade Zambia's voter register. The number of Zambians registered to vote increased by 40%.

33. In 2011, Smartmatic won an 18-year contract to implement and operate an automated fare collection and fleet management system in Cartagena, Colombia.

34. In 2012, Smartmatic set up election services for Brazil and hired and trained technicians to work across Brazil's thousands of municipalities with more than 500,000 pieces of election equipment. Belgium awarded Smartmatic a contract to design and manufacture its election hardware and software for the next 15 years. That same year, Smartmatic deployed 20,000 machines for Belgium's automated election.

35. In 2013, Smartmatic's technology processed more than 50 million ballots in just 10 hours in the Philippines. Venezuela organized its Presidential elections in 34 days (record time) thanks to Smartmatic technology and services. All parties audited the voting platform 15 times, contributing to the public's trust in the election results. And, in that year, Haiti selected Smartmatic to modernize Haiti's national ID and civil registry system.

36. In 2014, Smartmatic's technology was used in Ecuador's sectional election and the official results were announced in less than 60 minutes. Belgium conducted the first European Union Parliamentary election using a voter-verified, e-voting solution with Smartmatic's technology. Bulgaria piloted an e-voting system

with a tailor-made Smartmatic solution. And, that same year, Smartmatic technology was used to expedite the presidential election results in Brazil in fifteen of the country's most remote states.

37. In 2015, Smartmatic's technology was used to improve public safety in the Philippines. In the province of Bataan, a Command Center powered by Smartmatic's technology was created to help authorities improve public safety and emergency management. That same year, the Election Commission of Zambia partnered with Smartmatic to continue updating its biometric electoral register. Smartmatic provided Zambia with 2,000 enrollment devices to register new voters and update existing information. Smartmatic also conducted its first election project in Argentina. The electronic voting solution delivered official results 45 minutes after the polls closed.

38. In 2016, Smartmatic deployed 30,500 biometric devices to authenticate voters in Uganda. Smartmatic's online voting system was used in Utah's Republican caucus. It was the world's first election using blockchain technology. For the third time, Smartmatic supplied technology and services to the Philippines. Over 80% of the results were transmitted by election night. Brazil used Smartmatic's technology during its municipal election and again streamlined the process by using Smartmatic data and voice communications technology in the 15 most remote states. And, that

same year, authorities in Oman used Smartmatic vote counting machines in each polling station.

39. In 2017, Sierra Leone used Smartmatic's technology to modernize its national civil registry by equipping 2,600 registration sites. Argentina used Smartmatic's biometric technology to facilitate voter authentication. Smartmatic also helped the Lombardy region in Italy conduct the country's first fully automated election. Armenia used Smartmatic's biometric devices to manage voters in polling centers in the country's Parliamentary Elections. And, in that same year, Estonia set a new record for online voting participation at 31% during the local elections held in October using Smartmatic's election technology, which was developed with Smartmatic's local partner (Cybernetica).

40. In 2018, the Philippines continued to modernize its elections with Smartmatic by acquiring more than 97,000 vote-counting machines. In May, voters in the northernmost province of Norway used the online voting solution developed by the Smartmatic-Cybernetica Centre of Excellence for Internet Voting during a referendum and 85.5% of the population used online voting. And, that same year, Belgium used Smartmatic's voting machines with assistive technology for voters with visual disabilities.

41. In 2019, Estonia once again set a new participation record for online voting using Smartmatic's technology. Over 44% of all votes during its

Parliamentary Elections were cast through online voting. Smartmatic's election technology was used in Estonia, Belgium, and Bulgaria during the elections to the European Parliament. Belgium deployed over 23,000 e-voting machines at 4,200 polling stations and Bulgaria deployed 3,000 e-voting machines. The Philippines used Smartmatic technology to conduct its fourth national automated election and a manual audit showed 99.9953% accuracy.

B. Smartmatic's success was built on its reputation for secure, reliable, and auditable election technology and software.

42. The secret to Smartmatic's success has been showing its commitment to its mission statement: to provide secure, reliable, and auditable election technology and software. Counties, states and countries that choose to use Smartmatic's election technology and software understand that they are using a technology that has processed over five billion votes without any security breaches and with an auditable paper trail demonstrating that the elections were not rigged, hacked, or stolen.

43. One of Smartmatic's best marketing tools are case studies. Case studies are opportunities for Smartmatic to demonstrate to a potential client how Smartmatic's election technology and software have been used by other counties, states, and countries to improve the voter experience and provide secure, reliable, and auditable results. These case studies demonstrate, time and time again, that

Smartmatic's election technology and software can ensure quick and accurate voting results.

44. Another one of Smartmatic's key marketing tools are references. Most opportunities for new clients include providing referrals who can talk about their experience with Smartmatic's election technology and software. Smartmatic's past successes, which the referrals discuss, are critical to new clients. New clients want to know that Smartmatic's election technology and software are secure, reliable, and auditable. That is what they learn from Smartmatic's referrals.

45. Finally, Smartmatic is also fortunate to have been recognized as one of the best election technology and software companies in the world. For example, in 2005, the Carter Center and the European Union identified Smartmatic's election technology as one of the most secure, reliable, and auditable election technologies in the world. In 2012, former President Jimmy Carter called Smartmatic's solution "the best voting system in the world." These accolades and recognitions by some of the world's foremost election authorities are yet another key to Smartmatic's success. Its reputation as one of the "best voting systems in the world" is important for expanding existing relationships and developing new relationships with counties, states and countries looking to improve their election technology.

C. Smartmatic had a relatively small, non-controversial role in the 2020 U.S. election.

46. The 2020 U.S. election was a turning point for Smartmatic. In June 2018, Los Angeles County selected Smartmatic to help election authorities manufacture and implement a new election system for the County. This was a significant opportunity for Smartmatic to once again demonstrate the security, reliability, and auditability of its election technology—this time on an even bigger stage. Success in Los Angeles County positioned Smartmatic to market its election technology and software to other counties and states in the United States and to voting jurisdictions around the world who were inclined to follow Los Angeles County’s lead.

1. Los Angeles County introduced a new Voting Solutions for All People initiative for the 2020 U.S. election.

47. Los Angeles County is the nation’s most populous voting jurisdiction with more than 5.4 million registered voters. Los Angeles County is one of the most complex election jurisdictions because of its geographic size, logistics, high bar for certification requirements, multiple language support requirements, and legally-mandated accessibility features for voters with disabilities.

48. Since 2009, the Los Angeles County’s Registrar-Recorder/County Clerk (the “Department”) had been working to improve the voting experience through its Voting Solutions for All People (“VSAP”) initiative. Given the size, complexity, and demographics of Los Angeles County, one of the Department’s top

priorities was to remove barriers and obstacles that made it difficult for voters to participate in the electoral process.

49. The VSAP initiative sought to ensure that voters in Los Angeles County had greater opportunities to participate by providing expanded options for voting in a manner that is convenient, accessible, and secure. The Department described key aspects of the VSAP initiative as follows:

- a. Redesigned Vote-by-Mail (“VBM”) Ballot: The new VBM ballot was introduced to County voters in the November 2018 General Election. The new full-face VBM ballot features larger font sizes and clearer instructions making it easy to read, complete and return. In addition, postage is prepaid, so there is no longer a need to attach a stamp. Voters who prefer to drop off their ballot in-person can do so at any VBM drop-off location or vote center throughout the County.
- b. Redesigned Ballot Marking Device (“BMD”): The BMD replaces the County’s legacy InkaVote system. The BMD allows every voter to customize their experience with both visual and audio access in thirteen languages and offers accessibility features that provide voters with disabilities equality and independence in casting ballots. For auditability and security,

the BMDs produce human-readable paper ballots that exceed national voting system security standards.

- c. New Electronic Pollbook (“e-Pollbook”): The e-Pollbook replaces the printed roster that was previously used at voting centers for voters to check-in. The e-Pollbook is connected through a secure private network to the State of California database of eligible voters. This allows voters to check in and cast their ballot at any vote center in the County. The e-Pollbook is updated in real-time and will indicate if a voter has already cast a ballot ensuring voting integrity. In addition, the e-Pollbook enables eligible voters to register to vote at any vote center or update their registration.
- d. New Interactive Sample Ballot (“ISB”): The ISB is a new convenient option to expedite the in-person voting experience. The ISB allows the voter to mark their sample ballot digitally through a web-based application accessible through the Department’s website. Upon completing selections, a Quick Response Code is generated producing a Poll Pass that the voter can print or save onto a mobile device, and which the voter can then take to any vote center to be scanned on the BMD. The

voter's selections will be imported onto the BMD allowing the voter to once again review their selections and make any further changes prior to casting their ballot.

- e. Redesigned Modern Tally System: The Tally System is an innovative solution for paper ballot scanning and tabulation that is specifically designed to support Los Angeles County's need to process millions of ballots. It utilizes high-speed scanners to capture high-definition images of ballots and a message brokering architecture to process large volumes of digital images quickly and accurately. From paper ballot to digital image to final cast vote record, the Tally System captures data about how each ballot is read and processed, allowing for the tracking and auditing of individual ballots to verify the integrity and accuracy of election results.
- f. Redesigned Vote Centers: Vote centers were located throughout the entire County. They each underwent comprehensive surveys and assessments to ensure they met Americans with Disabilities Act accessibility requirements and other qualifying criteria such as on-site parking availability, convenient access to public transit, and hours of operation.

- g. New Mobile Vote Center Program: The Department also implemented a new Mobile Vote Center Program to further expand voting opportunities to the public. The program supplemented existing vote centers that might have been highly congested and provided voting services to communities that might have been geographically isolated or not appropriately served by a standard vote center. Mobile voting units were deployed on a scheduled basis across the County to provide enhanced voting services and raise voter awareness during the voting period.

50. The VSAP initiative included the first government-designed and owned voting system. The new system allowed voters to vote at any of the County's 978 centralized vote centers, a change made possible "by advanced technology like electronic poll books and ballot marking devices."

2. Los Angeles County selected Smartmatic to contribute election technology and software to the Voting Solutions for All People initiative.

51. Smartmatic was honored to be selected by the Department to assist with the VSAP initiative. In June 2018, Smartmatic entered into a contract to manufacture (hardware and software) and implement new custom-designed BMDs in collaboration with Los Angeles County as part of its VSAP initiative.

52. Smartmatic's role in the initiative was limited but important to the company as it provided an opportunity to demonstrate its technology and software in an important jurisdiction in the United States. By the end of 2019, Smartmatic had developed the BMDs and was manufacturing 31,100 units for Los Angeles County. Smartmatic also performed systems integration of the BMDs.

53. In total, Smartmatic provided the following technology and services to Los Angeles County under the VSAP initiative: (1) engineered and manufactured the BMD hardware, (2) programmed and installed the BMD software, (3) led the California certification process, (4) created the backend software to manage the devices, (5) provided systems integration services, (6) built the VSAP operations center, (7) handled logistics and setup/breakdown of the vote centers, (8) oversaw real-time data management for deployment, and (9) supplied Help Desk services on Election Day.

3. Smartmatic's involvement with Los Angeles County was a success.

54. Smartmatic's election technology and software were used in the March 3, 2020 California presidential primary in Los Angeles County. It was an undisputed success. Loyola Marymount University conducted an exit poll following the primary and concluded that most voters trusted the election and felt the technology made the voting easier. (3/11/20 Loyola Marymount University, *2020 LA Votes Presidential Primary Exit Poll* (Exhibit 115).) The key findings included:

This year, LA County implemented new voting technology. Compared to voting in previous elections, technology made voting in this primary:

- Much easier: 57.5%
- A bit easier: 17.6%
- The same: 13.2%
- A bit more difficult: 7.4%
- Much more difficult: 4.3%

How much do you trust that your vote will be counted as intended?

- Greatly trust: 51.7%
- Somewhat trust: 35.0%
- Somewhat distrust: 9.3%
- Greatly distrust: 4.0%

55. The California primary election was the first test for Los Angeles County’s VSAP initiative, with more than 860,000 voters casting in-person ballots. Respondents overwhelmingly agreed that they had positive voting experiences, with more than 85% choosing “excellent” or “good” when asked about their overall experience.

56. The VSAP initiative was also well-received in the November general election. By the numbers:

- 791 Vote centers open on Election Day
- 31,000 BMDs manufactured by Smartmatic

- 19,445 BMDs deployed for the election
- 800+ Election workers hired and trained by Smartmatic
- 6,129,494 Citizens eligible to vote
- 5,785,377 Citizens registered to vote
- 73.8% Turnout of registered voters
- 4,270,129 Votes cast in the 2020 general election
- 834,150 Votes cast in-person in the 2020 general election

57. The November general election in Los Angeles County from a technology perspective was flawless. A County official described the system as a “success.” There were no serious problems during the election in Los Angeles County, and voters experienced reduced lines and reduced delays. No questions were raised about security, reliability, or auditability of the results in Los Angeles County. Expectations were high, and Smartmatic exceeded those expectations.

58. Smartmatic was thrilled with its success in the Los Angeles County election. Counties and states in the United States and countries across the world pay attention to Los Angeles County when it comes to election technology and software. Smartmatic’s contract with Los Angeles County was the largest in the United States. Smartmatic’s successful participation in the VSAP initiative was seen as a once-in-a-lifetime opportunity for the company. It provided the company the ability to highlight its role in the largest voting jurisdiction in the United States, and highlight

its success in facilitating secure, reliable, and auditable election results. This was the big success Smartmatic had been building towards for 20 years.

D. Smartmatic quietly celebrated its success in Los Angeles without knowing what was coming from Newsmax.

59. What should have been a time of celebration for Smartmatic soon turned into an unexpected nightmare. There was no controversy in Los Angeles County. In the 2020 U.S. election, the Democratic candidates for President and Vice President won over 71% of the vote. In the 2016 U.S. election, the Democratic candidates for President and Vice President won over 72% of the vote. There was no material change in the voting pattern in Los Angeles County. Nor were there any allegations or suggestions that the vote in Los Angeles County had been rigged, hacked, or stolen.

60. Smartmatic did not play any role in the general election outside of Los Angeles County. Smartmatic's election technology, software, equipment, and services were not used in any other county or state for the 2020 U.S. election. Smartmatic's software was not used in any other county or state. Smartmatic did not license or contract with any third party, including other election technology companies, for the use of Smartmatic's technology, software, machines or services in any other county or state for the 2020 U.S. election.

61. Given that Smartmatic had no role in the general election outside of Los Angeles County, Smartmatic had no reason to be concerned about being embroiled

in a discussion about election outcomes in some of the states where the vote tally was closer than it was in California. For example, Nevada, Arizona, Georgia, Pennsylvania, Michigan, and Wisconsin were states where the vote tally between the Democratic and Republican nominees for President and Vice President were much closer than the margin in California. But Smartmatic had no role whatsoever in the elections that took place in those states.

- a. Nevada used election technology supplied by Dominion Voting Systems (“Dominion”) and Election Systems & Software (“ES&S”). (Nevada Secretary of State, *Voting System Testing and Security List* (Exhibit 80).)
- b. Arizona used election technology supplied by multiple companies, including Dominion and ES&S. (Arizona Secretary of State, *2020 Election Cycle/Voting Equipment* (Exhibit 75).)
- c. Georgia used election technology supplied by Dominion. (8/9/19 Georgia Secretary of State, Dominion Voting Systems Certification (Exhibit 60).)
- d. Pennsylvania certified multiple election technology companies for the 2020 election, including Dominion, ES&S, Unisyn Voting Systems, ClearBallot Group, and Hart InterCivic.

(Pennsylvania Department of State, *Electronic Voting Systems Certified after January 1, 2018* (Exhibit 70).)

- e. Michigan used election technology supplied by Dominion, ES&S, and Hart InterCivic. (Michigan Voter Information Center, *Voting Systems Map* (Exhibit 66).)
- f. Wisconsin approved multiple election technology companies for the 2020 election, including Dominion, ES&S, Sequoia Voting Systems, Premier Election Solutions, Populex, Vote-PAD, and ClearBallot Group. (Wisconsin Election Commission, *Voting Equipment List by Municipality February 2020* (Exhibit 77).)

62. Moreover, Smartmatic had no reason to get itself involved in any discussion about the election outcome outside of Los Angeles County. Apart from commenting on its role in the election in Los Angeles County, Smartmatic made no public comments about the 2020 U.S. election prior to the disinformation campaign. Smartmatic made no comments about the security, reliability, or auditability of the election technology and software used outside of Los Angeles County. Smartmatic made no public comments about election technology and software used in the 2020 U.S. election being hacked or compromised. Smartmatic made no public comments about the 2020 U.S. election being fixed, rigged, or stolen. Smartmatic had done a

great job in Los Angeles County. It had no interests, and made no public comments, outside of its limited role.

II. Newsmax’s Disinformation Campaign Against Smartmatic

A. The 2020 U.S. election was secure, reliable, and accurate.

63. Joe Biden and Kamala Harris won the 2020 U.S. election for President and Vice President. The Democratic candidates secured 306 electoral votes. The Republican candidates secured 232 electoral votes. On the popular vote, the Democratic candidates received 81 million votes compared to 74 million for the Republican candidates. Among other states, the Democratic candidates won each of the states discussed above—Nevada, Arizona, Georgia, Pennsylvania, Michigan, and Wisconsin. The victories for the Democratic candidates in those states were verified and re-verified by each of their respective Secretaries of State.⁴

64. The security, reliability, and accuracy of the 2020 U.S. election were repeatedly confirmed. Governors and Secretaries of State from across the country verified the security, reliability, and accuracy of their election results. For example:

- a. Nevada: Secretary of State Barbara Cegavske reported: “All voting machines undergo extensive pre-election and post-election examination to ensure they function as expected. The

⁴ Outside of the election for President and Vice President, Republican candidates won elections in Nevada, Arizona, Georgia, Pennsylvania, Michigan, and Wisconsin. Those victories were verified by the respective Secretaries of State.

NV Gaming Control Board tests and certifies our systems. The post-election audits and recounts conducted in Nevada confirmed that the machines accurately tabulated the votes cast.” (*Facts v. Myths: Nevada 2020 Post-General Election* (Exhibit 82).)

- b. Arizona: Governor Doug Ducey stated: “We have some of the strongest election laws in the country, laws that prioritize accountability and clearly lay out procedures for conducting, canvassing, and even contesting the results of an election.” (Tweet, @DougDucey, December 1, 2020 (Exhibit 76).)
- c. Georgia: Secretary of State Brad Raffensperger reported: “Georgia’s historic first statewide audit reaffirmed that the state’s new secure paper ballot voting system accurately counted and reported results.” (11/19/20 Georgia Secretary of State, *Historic First Statewide Audit of Paper Ballots Upholds Result of Presidential Race* (Exhibit 62).)
- d. Pennsylvania: Governor Tom Wolf reported: “Allegations of fraud and illegal activity have been repeatedly debunked. Pennsylvania had a free, fair, and secure election.” (Tweet, @GovernorTomWolf, November 12, 2020 (Exhibit 73).)

- e. Michigan: Secretary of State Joselyn Benson reported: “We have not seen any evidence of fraud or foul play in the actual administration of the election . . . What we have seen is that it was smooth, transparent, secure and accurate.” (11/10/20 New York Times, *The Times Called Officials in Every State: No Evidence of Voter Fraud* (Exhibit 123).)
- f. Wisconsin: Elections Commission Administrator Meagan Wolfe reported: “At this time, no evidence has been provided that supports allegations of systemic or widespread election issues.” (11/19/20 Wisconsin Star News, *No evidence has been provided that supports allegations of systemic or widespread election issues* (Exhibit 159).)

65. On November 12, 2020, members of the Election Infrastructure Government Coordinating Council (“GCC”) Executive Committee and members of the Election Infrastructure Sector Coordinating Council (“SCC”) published a joint statement regarding the security, reliability, and accuracy of the election results. (11/12/20 Cybersecurity & Infrastructure Security Agency, *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committee* (Exhibit 127).). The members included:

- Cybersecurity and Infrastructure Security Agency (“CISA”) Assistant Director Bob Kolasky
- U.S. Election Assistance Commission Chair Benjamin Hovland
- National Association of Secretaries of State (“NASS”) President Maggie Toulouse Oliver
- National Association of State Election Directors (“NASED”) President Lori Augino
- Escambia County (Florida) Supervisor of Elections David Stafford
- Brian Hancock (Chair of SCC, Unisyn Voting Solutions)
- Sam Derheimer (Vice Chair of SCC, Hart InterCivic)
- Chris Wlaschin (Election Systems & Software)
- Ericka Hass (Electronic Registration Information Center)
- Maria Bianchi (Democracy Works)

66. The joint statement stated: “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.”

67. It continued: “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**

than any voting system deleted or lost votes, changed votes, or was in any way compromised.” (emphasis in original)

68. And it stated: “Other security measures like pre-election testing, state certification of voting equipment, and the U.S. Election Assistance Commission (EAC) certification of voting equipment help to build additional confidence in the voting systems used in 2020.”

69. On June 23, 2021, the Republican-led Michigan Senate Oversight Committee, chaired by Trump ally Senator Ed McBroom, released a 55-page report, which stated that “the Committee found no evidence of widespread or systematic fraud in Michigan’s prosecution of the 2020 election” and expressed total confidence that the state’s 2020 election outcome—that Biden defeated Trump by about 155,000 votes, or 2.8%—“represent[s] the true results of the ballots cast by the people of Michigan.” (6/23/21 Michigan Senate Oversight Committee, Report on the November 2020 Election in Michigan (Exhibit 152).)

70. On June 24, 2021, the Supreme Court of the State of New York, Appellate Division, First Judicial Department, suspended Rudolph Giuliani from the practice of law after it determined that he had “made knowing *false and misleading factual statements* to support his claim that the presidential election was stolen from his client [Donald Trump],” based on “uncontroverted evidence” that he made such “demonstrably false and misleading statements to courts, lawmakers and the public

at large in his capacity as lawyer for former President Donald J. Trump and the Trump campaign in connection with Trump's failed effort at reelection in 2020." (6/24/21 Order, *Matter of Giuliani*, 197 A.D.3d 1 (1st Dep't 2021) (Exhibit 153).)

71. On June 27, 2021, reporting revealed that Attorney General William Barr had "received two briefings from cybersecurity experts at the Department of Homeland Security and the FBI" about the allegations of rigged voting machines, after which he and his team at the Department of Justice "realized from the beginning it was just bullshit." Barr further disclosed that "even if the machines somehow changed the count, it would show up when they were recounted by hand," and that Dominion's machines were just "counting machine[s], and they save everything that was counted. So you just reconcile the two. There had been no discrepancy reported anywhere, and I'm still not aware of any discrepancy." (6/27/21 *The Atlantic*, *Inside William Barr's Breakup With Trump* (Exhibit 154).)

72. On August 3, 2021, a federal judge in Colorado disciplined two lawyers who filed a frivolous lawsuit based on lies against Dominion following the election, concluding that the case was frivolous and brought in bad faith. In his 68-page opinion, Judge N. Reid Neureiter concluded: "Albeit disorganized and fantastical, the Complaint's allegations are extraordinarily serious and, if accepted as true by large numbers of people, are the stuff of which violent insurrections are made."

(8/3/21 Order, *O'Rourke et al. v. Dominion Voting Systems, Inc. et al.*, No. 20-cv-3747 (D. Colo.) (Exhibit 155).)

73. On August 25, 2021, the Eastern District of Michigan sanctioned Sidney Powell for filing a frivolous lawsuit against the Governor of Michigan, Gretchen Whitmer, related to the results of the 2020 U.S. election. The court found that Powell and the other “attorneys who filed the instant lawsuit abused the well-established rules applicable to the litigation process by proffering claims not backed by law; proffering claims not backed by evidence (but instead, speculation, conjecture, and unwarranted suspicion); proffering factual allegations and claims without engaging in the required prefiling inquiry; and dragging out these proceedings even after they acknowledged that it was too late to attain the relief sought.” (8/25/21 Opinion and Order, *King v. Whitmer*, No. 2-20-cv-13134 (E.D. Mich.) (Exhibit 158).)

74. The 2020 U.S. election for President and Vice President was not rigged. It was not compromised. It was not stolen.

B. Newsmax seized upon the 2020 U.S. election and its aftermath.

75. Newsmax did not have much traction amongst viewers prior to the 2020 U.S. election. From the beginning of July 2020 to the week before Election Day, Newsmax averaged 58,000 viewers from 7 to 10 p.m. on weekdays. (11/18/20 APNews, *Trump-friendly Newsmax Seeks to cut into Fox's viewership* (Exhibit

146).) Newsmax was nowhere close to competing with, much less beating, Fox News for viewership and influence.

76. Then came the 2020 U.S. election. The 2020 U.S. election was a big deal for Newsmax. The week after the election, Newsmax's ratings jumped almost ten times Newsmax's pre-election ratings. (*Id.*) In the same period, daytime viewership also increased nearly ten-fold. (*Id.*) Daily active users of Newsmax's mobile app also soared following the election, increasing by almost a multiple of 14 from October 20, 2020 to November 24, 2020. (12/21/20 USA Today, *Could Fox News lose its grip on far-right conservative viewers to Newsmax, OAN?* (Exhibit 148).) By February 2021, Newsmax was able to boast that it had secured 32 times more downloads of the mobile apps through which it streams its programming since the weeks prior to the election. (2/25/21 Newsmax, *More Than 5 Million Newsmax App Downloads!* (Exhibit 147).) This rise was due to Newsmax's post-election coverage.

77. In the weeks after the election, Newsmax's viewership began to climb dramatically. "As the campaign season crested into election night and beyond, and Trump refused to concede, more than 1 million people tuned into Greg Kelly's Newsmax show. That's ten times the audience the host drew earlier in the year." (11/30/20 NPR, *Newsmax Rises on Wave of Resentment Toward Media – Especially Fox News* (Exhibit 149).) "Other Newsmax hosts [saw] similarly steep ascents."

(*Id.*) In the first full week after the election, Newsmax increased its viewership over four times from the week before. (12/21/20 USA Today, *Could Fox News lose its grip on far-right conservative viewers to Newsmax, OAN?* (Exhibit 148).) By November 10, after showing viewers that President Trump had tweeted Newsmax clips to his followers, a Newsmax anchor declared, “The president seems to be changing his tune on which network to go to.” (11/10/20 Washington Post, *Newsmax hopes conservative anger at Fox News and a few Trump tweets can boost the much smaller network* (Exhibit 150).)

78. The ratings reflected this new business reality. In the three days following the election, “Newsmax TV led Fox Business and CNBC in all key parts. Newsmax is also seeing a terrific surge across its media properties, starting with its cable and satellite news channel.” (11/10/20 Newsmax, *Newsmax Again Beats Fox Business, CNBC in Ratings* (Exhibit 151).) In that same article, titled “Newsmax Again Beats Fox Business, CNBC in Ratings,” Newsmax likewise reported that “Fox News viewers appear to be deserting the network in droves as they tune into Newsmax TV.” (*Id.*) Newsmax’s post-election strategy resulted in more viewers, and more money, for the news outlet.

C. Newsmax sets its sights on a preconceived narrative, defaming Smartmatic and disparaging its election technology and software.

79. Newsmax’s election coverage morphed it from an under the radar news organization to being on “every single TV at the White House.” Newsmax

accomplished this feat by publishing a false story about Smartmatic that President Trump and millions of people who supported him were happy to hear.

80. Shortly after the election, Rudolph Giuliani and Sidney Powell decided they would spread a story, mainly through Fox News, that the 2020 U.S. election had been rigged in favor of Joe Biden and Kamala Harris and stolen from Donald Trump and Michael Pence. They also decided that the story would involve manipulation of election technology in select States—ultimately, Nevada, Arizona, Georgia, Pennsylvania, Michigan, and Wisconsin.

81. The problem with their story, however, was they needed to identify a villain. Mr. Giuliani and Ms. Powell settled on two villains: Smartmatic and Dominion. They had no evidence that Smartmatic or Dominion had done anything wrong. Indeed, in the case of Smartmatic, they had no evidence that Smartmatic's election technology and software were even used in any of the states that had close outcomes in the 2020 U.S. election. But casting Smartmatic and Dominion as the villains made for a good story.

82. And their story took off. Mr. Giuliani and Ms. Powell began to appear on Fox News regularly around November 12, 2020. Fox News and its anchors gave them a platform to spread disinformation, added their endorsement, and provided their own disinformation. Pushing and disseminating disinformation about Smartmatic was good business for Fox News.

83. Newsmax saw the success Fox was having by publishing disinformation about Smartmatic. So Newsmax had a choice to make: it could either tell the truth and reject these demonstrably false claims, or it could join Fox News in spreading and publishing disinformation. Newsmax chose the latter.

D. Newsmax engaged in a widespread disinformation campaign against Smartmatic.

1. Newsmax started its disinformation campaign in November 2020.

84. On November 14, Steve Bannon, President Trump's former chief strategist, appeared on Newsmax on his filmed podcast, *War Room*. (*War Room*, November 14, 2020 (Exhibit 1); Screenshots, *War Room*, November 14, 2020 (Exhibit 2).) His guest was Brian Kennedy. Kennedy was identified by Newsmax as the Chairman of Committee on the Present Danger. Kennedy (wrongly) identified Smartmatic as making machines used in the election that scanned ballots and then identified Smartmatic's CEO as "a Venezuelan national, and a leftist and somebody who . . . built these machines using Chinese components that themselves could be hacked into." He attacked the security of Smartmatic's election technology and software and declared "industrial level ballot manipulation." (*Id.*) Kennedy stated, "This is election fraud, not voter fraud." (*Id.*)

85. On November 16, 2020, six different Newsmax programs broadcasted false and defamatory statements about Smartmatic. Disinformation about Smartmatic spread almost continuously throughout the day on November 16 on

Newsmax, with programming at 7 a.m.⁵, 8 a.m., 10 a.m., 12 p.m., 4 p.m., and 8 p.m. containing calculated falsehoods about Smartmatic. Newsmax defamed Smartmatic on the following programs on November 16, from morning until night: *Wake Up America*, *The Chris Salcedo Show*, *National Report*, *John Bachman Now*, *The Howie Carr Show*, and *Greg Kelly Reports*.

86. Newsmax used Fox News's interviews of Rudolph Giuliani and Sidney Powell on *Sunday Morning Futures with Maria Bartiromo* as a launching pad. For example, on the November 16 episode of *The Chris Salcedo Show*, host Chris Salcedo republished portions of Maria Bartiromo's interviews. (*The Chris Salcedo Show*, November 16, 2020 (Exhibit 3); Screenshots, *The Chris Salcedo Show*, November 16, 2020 (Exhibit 4).) For example:



Ms. Bartiromo: [T]he Smartmatic system has a back door . . . that allows the votes to be mirrored and monitored, allowing an intervening party a real-time understanding of how many votes will be needed to gain an electoral advantage. Are you saying the states that used that software did that?

⁵ All times referenced are Eastern Standard Time.

Mr. Giuliani: Well, I know I can prove that they did it in Michigan.

Ms. Bartiromo: And I want to get your take on what you report, what you and I spoke about just a few minutes ago and that is [a] gentleman named Peter Neffenger. Tell me how he fits into all of this.

Sidney Powell: Yes, well he's listed as its former Admiral Peter Neffenger, retired Admiral Peter Neffenger. He is president and on the board of directors of Smartmatic. And there just so happens he's on Mr. Biden's presidential transition team that's going to be non-existent . . . because 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. We have sworn witness testimony of why the software was designed. It was designed to rig elections. He was fully briefed on it. And, he saw it happen in other countries. It was exported internationally for profit by the people that are behind Smartmatic. . . . Dominion, [t]hey did this on purpose. It was calculated they've done it before. We have evidence from 2016 in California. We have so much evidence, I feel like it's coming in through a fire hose.

Sidney Powell: But this is a massive election fraud. And I'm very concerned it involved not only Dominion and its Smartmatic software, but that the software essentially was used by other election machines also. It's the software that was the problem. Even their own manual explains how votes can be wiped away. . . . [I]t's like drag and drop, Trump votes to a separate folder and then delete that folder. It's absolutely brazen how people bought this system and why they bought this system. In fact, every state that bought Dominion, for sure should have a criminal investigation or at least a serious investigation of the [] officers in the states who bought the software. We've even got evidence of some kickbacks essentially.

(The Chris Salcedo Show, November 16, 2020 (Exhibit 3).)

87. These statements laid the groundwork for a number of key false and defamatory statements and implications that Newsmax would repeat about Smartmatic throughout the disinformation campaign: Smartmatic was widely used by Dominion and other voting machines in the 2020 U.S. election; Smartmatic rigged the 2020 U.S. election; Smartmatic’s technology and software are capable of being hacked or compromised; and Smartmatic’s technology and software were designed for the purpose of rigging elections and have done so before.

88. At the time of Mr. Salcedo’s show, Newsmax had no evidence that the 2020 U.S. election had been rigged or stolen.⁶ Nor had Newsmax identified any reliable source for any of the claims that it published about Smartmatic. But Newsmax was not interested in publishing factually accurate information. Newsmax wanted to create the impression it was publishing factually accurate information, but actually published disinformation.

89. Throughout his show, Mr. Salcedo endorsed the statements made by Maria Bartiromo, Rudolph Giuliani, and Sidney Powell. Mr. Salcedo began the segment by crediting *Sunday Morning Futures with Maria Bartiromo* as “the only Sunday show worth watching.” Even further, Mr. Salcedo contributed additional

⁶ As noted earlier, references to “Newsmax” includes the anchors, hosts, and producers of the shows used to publish disinformation about Smartmatic. By way of example, when the Complaint indicates “Newsmax” had no evidence to support an assertion, that means the anchors, hosts, and producers involved with publishing the assertion had no evidence to support the assertion.

falsehoods to the narrative by telling people Smartmatic was denied use in Texas and used to help dictatorships around the world rig elections.

Mr. Salcedo: They've got a back door software built in. By the way folks, this is probably one of the reasons why Texas said no to the softwares [sic] is because it was so easily compromised.

Mr. Salcedo: [T]o all the dictatorships around the globe who are interested in these sham elections. You know, maybe they're big over in Iran, where they always rigged their elections . . . all the votes are tabulated right there with using the Smartmatic Dominion software. . . . [T]hey issue voting software with a directive and here's how you change the results.

(*The Chris Salcedo Show*, November 16, 2020 (Exhibit 3).)

90. These statements are demonstrably false. Mr. Salcedo had no evidence to support these assertions, but he wanted to add new aspects to the false narrative: (1) Texas has disallowed Smartmatic software because it has a backdoor that allows it to be compromised; and (2) Smartmatic is used to conduct sham elections.

91. Other Newsmax programs on November 16 continued to republish the allegations from Ms. Powell and Mr. Giuliani, and began bringing on new guests to add to the disinformation campaign. On *John Bachman Now*, host John Bachman interviewed guest Liz Harrington, former spokesperson for the Republican National Committee. (*John Bachman Now*, November 16, 2020 (Exhibit 5); Screenshots, *John Bachman Now*, November 16, 2020 (Exhibit 6).)



92. Mr. Bachman prodded Ms. Harrington to discuss the false and defamatory accusations about Smartmatic, despite having seen no evidence to support the accusations.

John Bachman: Well you heard the concerns about Dominion; there's also some voting software called Smart Tech that has caught the attention of a lot of Trump supporters and for good reason. . . . Smartmatic is what I meant to say there. Joining us now to talk more about these questions is national spokeswoman for the RNC, Liz Harrington. . . . There are a lot of people that believe that the 2020 election was stolen, that the process was rigged, that it was hacked. What's your take?

(John Bachman Now, November 16, 2020 (Exhibit 5).)

93. Ms. Harrington took the opportunity and airtime to fully endorse Ms. Powell's calculated falsehoods. Ms. Harrington also made viewers believe there were "numbers" and evidence that supported Ms. Powell's claims when, in fact, there was no evidence that the 2020 U.S. election had been rigged or stolen.

Liz Harrington: Well[,] look at the numbers, and at a certain point the numbers don't lie. If you have a candidate who didn't campaign, they put a lid on him. . . this, this entire year practically, he couldn't draw any crowds. President Trump, on the other hand,

was drawing 58,000 in Butler, Pennsylvania, just a few days before the election. And look at the exit polls. He cracked and crushed all records when it comes to African Americans, Hispanic Americans, Asian Americans. Every demographic, President Trump put up historic numbers, crushed everything he did in 2016, but also crushed every record for an incumbent president. And this is why it's so important to look at the data, to have sunlight on these softwares [sic] as ***Sidney Powell is absolutely correct that this company was actually designed to steal elections for socialist dictator Hugo Chávez in Venezuela. That's what Smartmatic was designed to do.***

(*John Bachman Now*, November 16, 2020 (Exhibit 5).)

94. At the time of Mr. Bachman's show, Newsmax had not seen any evidence to support the statements it published regarding Smartmatic. Nor did the individuals who appeared on the shows provide Newsmax any evidence to support their statements. Given the absence of evidence, Newsmax had obvious reasons to doubt the credibility of the people it quoted and the statements it published.

95. Later in the day on November 16, *The Howie Carr Show* brought on L. Lin Wood to discuss the calculated falsehoods against Smartmatic. (*The Howie Carr Show*, November 16, 2020 (Exhibit 7); Screenshots, *The Howie Carr Show*, November 16, 2020 (Exhibit 8).)



96. L. Lin Wood, who is an attorney, described his involvement as helping President Trump in an “unofficial capacity” while working with Rudolph Giuliani and Sidney Powell. Mr. Carr made his intentions for having Mr. Wood on the show clear: he wanted “positive reinforcement” of the calculated falsehoods from Mr. Giuliani and Ms. Powell.

Mr. Carr: I wanted to have L. Lin Wood on again today to see if he could give us some more, more **positive reinforcement** as this, as this nailbiting, exercise recounts and court challenges continue. . . . Do you think Sidney Powell and Rudy Giuliani have the smoking gun . . . that’s going to get this, these results turned around?

(*The Howie Carr Show*, November 16, 2020 (Exhibit 7).)

97. Given this green light by Newsmax, Mr. Wood continued to spread disinformation about Smartmatic. He began by telling viewers that Mr. Giuliani and Ms. Powell have “smoking gun” evidence and a “solid legal case.”

Mr. Wood: Again, to be accurate, I’ll say ***I’m confident they have the smoking guns***, so I’m saying it in the plural. I’ve seen sworn affidavits, I’ve seen sworn video statements. I think Sidney and Rudy have done a magnificent job in a short period of time of piecing together a ***solid legal case*** on what was intended to be a complicated scheme of fraud as it relates to the voting machines.

(*The Howie Carr Show*, November 16, 2020 (Exhibit 7).)

98. From there, Mr. Wood not only accused Smartmatic of manipulating and hacking the 2020 U.S. election, but of defrauding people as well. Mr. Wood didn’t stop at the 2020 U.S. election, though. He told viewers that Smartmatic has rigged elections before, specifically referencing elections in Argentina and Chile.

Mr. Wood painted Smartmatic as an evil foreign company whose *modus operandi* is rigging elections. And Newsmax gave him the airtime to do exactly that.

Mr. Wood: But when you boil it down, it simply amounts to the fact that the United States of America was relying on voting machines that were subject to manipulation. . . . Because when you open the door to these types of computers, you open the door for people to manipulate, to hack, and to defraud people. And that's exactly what was done here. There's no doubt in my mind about it. ***It started in Venezuela. It connects into Cuba. It connects into Frankfurt, Germany, where servers were stored, in Barcelona, and it tracks back ultimately to a company known as SGO Smartmatic.*** They developed the software, that software went into a number of voting machines, almost exclusively used in the Dominion machine. The information was then processed through Scytl, that's where the manipulations occurred in the software that was reported out to a company called Clarity . . . ***This is a scheme developed initially in Venezuela. And the scheme amounts to being able to go and buy an election in any given country. They did it in Argentina. They've done it in Chile. Now they've sold it to someone with the interest in manipulating the presidency of the United States.***

(*The Howie Carr Show*, November 16, 2020 (Exhibit 7).)

99. At the time of Mr. Carr's show, Newsmax had not seen any evidence to support the statements it published regarding Smartmatic. Nor did the individuals who appeared on the shows provide Newsmax any evidence to support their statements. Given the absence of evidence, Newsmax had obvious reasons to doubt the credibility of the people it quoted and the statements it published.

100. On *Greg Kelly Reports* on November 16, host Greg Kelly brought on yet another voice to further spread this disinformation campaign, Victoria Toensing. (*Greg Kelly Reports*, November 16, 2020 (First Video) (Exhibit 9); Screenshots, *Greg Kelly Reports*, November 16, 2020 (First Video) (Exhibit 10); *Greg Kelly Reports*, November 16, 2020 (Second Video) (Exhibit 11); Screenshots, *Greg Kelly Reports*, November 16, 2020 (Second Video) (Exhibit 12).)



101. Ms. Toensing is an attorney whom Rudolph Giuliani appointed to President Trump’s legal team in the aftermath of the 2020 U.S. election. Ms. Toensing continued to spread the disinformation campaign against Smartmatic on *Greg Kelly Reports*. While a graphic on screen showed the tagline “Democracy or ‘Dominion,’” Mr. Kelly proceeded to endorse Sidney Powell and Maria Bartiromo before speaking with Ms. Toensing.

Mr. Kelly: And the evidence is slowly emerging. Yes, I would have liked to have seen it yesterday. But the President has some *very, very smart lawyers. One of my favorites, Sidney Powell. . .*

. She's a former federal prosecutor. . . . She spoke to Maria Bartiromo over the weekend.

Ms. Powell (in Fox News clip): 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. We have sworn witness testimony of why the software was designed. It was designed to rig elections. He was fully briefed on it. And he saw it happen in other countries. It was exported internationally for profit by the people who are behind Smartmatic and Dominion. They did this on purpose. It was calculated. They've done it before, we have evidence from 2016 in California. We have so much evidence I feel like it's coming in through a fire-hose.

(*Greg Kelly Reports*, November 16, 2020 (First Video) (Exhibit 9).)

102. Mr. Kelly didn't just republish Ms. Powell's statements from Fox News. He told viewers that Ms. Powell should be believed over others who have flagged the contradictory information and lack of evidence for Ms. Powell's claims. He followed that by republishing another clip from Fox News.

Mr. Kelly: *I believe her and I don't believe the critics, the naysayers.* Why? Because, quite frankly, *they don't deserve credibility anymore.* Everything they've said about this President has been wrong. And I give a lot of credit to Maria Bartiromo asking questions to find out the answers.

Ms. Powell (in Fox News clip): It's really an insidious, corrupt system. And I can't tell you how livid I am with our government for not paying attention to complaints even brought by Democrats, Carolyn Maloney, Elizabeth Warren, Amy Klobuchar, over the last several years and written letters with expert reports and some documentation of how corrupt this software is. And nobody in our government has paid any attention to it.

(*Greg Kelly Reports*, November 16, 2020 (First Video) (Exhibit 9).)

103. Then Mr. Kelly turned to his conversation with Ms. Toensing, where he encouraged her to make additional calculated falsehoods against Smartmatic.

Mr. Kelly: Victoria Toensing joins us right now, founding partner of diGenova & Toensing, former senior U.S. Department of Justice official. And Victoria, we are glad you're on the case. Welcome back to Newsmax . . . there are people that are getting a little bit impatient about, ok, where is the evidence? Now, I think they're being kind of phony about it because they just want to pick apart the evidence. They're never going to give you any credence, so, tell us a little about the evidence, if you can, especially regarding the Dominion company.

Ms. Toensing: Well, I'm not a geek, so I don't talk about the technicalities of Dominion, but I do know that they were formed in, in Venezuela and . . . for the purpose of fixing elections for Venezuelan politicians.

Mr. Kelly: Hey Victoria . . . I've got to get this in real quick. Peter Neffenger, his name has emerged, he worked for the . . . Semantec Systems, I believe, and he has a role in the Biden transition team. Anything you can tell us about how are Smartmatic rather Smartmatic—how big a deal is this?

Ms. Toensing: Well he, that's his subsidiary of Dominion. I know all of that structure stuff about him. Dominion is really just a shell company, and he was on the board of their subsidiary, which created the software that does the damage that Sidney [sic] talks about. . . . and now he's getting his reward. He's going to be on the transition team. . . . wonder where he goes from there.

(*Greg Kelly Reports*, November 16, 2020 (Second Video) (Exhibit 11).)

104. At the end of his interview of Ms. Toensing, Mr. Kelly wished her luck: “Good luck Victoria, to you and your team.” Newsmax threw its support behind

those guests willing to join its disinformation campaign because Newsmax sought out people who would give voice to the disinformation.

105. At the time of Mr. Kelly's show on November 16, Newsmax had not seen any evidence to support the statements it published regarding Smartmatic. Nor did the individuals who appeared on the shows provide Newsmax any evidence to support their statements. Given the absence of evidence, Newsmax had obvious reasons to doubt the credibility of the people it quoted and the statements it published.

106. Other Newsmax programs on November 16 went even further, setting out to insinuate Newsmax had been, or would be, doing its own independent investigation of Smartmatic. On *Wake Up America*, host Rob Schmitt spoke with Newsmax White House correspondent, Emerald Robinson. (*Wake Up America*, November 16, 2020 (Exhibit 14); Screenshots, *Wake Up America*, November 16, 2020 (Exhibit 15).)



107. Ms. Robinson not only continued to spread disinformation about Smartmatic, but also told viewers Newsmax had been doing its own work to “confirm” claims made about Smartmatic.

Ms. Robinson: More about the Dominion Voting Systems. Sidney Powell who is now officially a lawyer for the President’s legal team expressed more concerns about that company over the weekend suggesting it needs to be investigated. She also pointed to its connection to another company called Smartmatic that’s another voting system software and also shared that an executive from that company has now been added to the Biden transition team, which seems like a conflict of interest. ***We checked it out.*** That executive has definitely been added to Biden’s team. So, interesting developments over the weekend, Rob.

(*Wake Up America*, November 16, 2020 (Exhibit 14).)

108. At the time of this show, Newsmax had not seen any evidence to support the assertion that Smartmatic had rigged the 2020 U.S. election, that its election technology or software had been used anywhere other than Los Angeles County, or that Smartmatic engaged in a *quid pro quo* with “Biden’s team.” Nor did the individuals who appeared on the shows provide Newsmax any evidence to support these assertions. Given the absence of evidence, Newsmax had obvious reasons to doubt the credibility of the people it quoted and the statements and implications it published.

109. On the November 16 broadcast of another Newsmax show, *National Report*, Ms. Robinson continued to spread disinformation about Smartmatic. (*National Report*, November 16, 2020 (First Video) (Exhibit 16); Screenshots, *National Report*, November 16, 2020 (First Video) (Exhibit 17); *National Report*, November 16, 2020 (Second Video) (Exhibit 18); Screenshots, *National Report*, November 16, 2020 (Second Video) (Exhibit 19).)



110. In an exchange between Ms. Robinson and host Shaun Kraisman, it became clear that Newsmax wanted viewers to believe Newsmax had done its own investigation to verify the statements being made about Smartmatic.

Ms. Robinson: Now, as you said, and Sidney Powell's been talking specifically a lot about Dominion voting machines and Smartmatic. She suggests that any American official who allowed these into their states should be investigated for possible conflicts of interest or kickbacks. Now, clearly, that's not how the Biden camp feels, however, because they have added an executive or former executive to Smartmatic. That's the software Powell are talking a lot about that was used in Venezuela's, were heavily implicated and had Venezuela's dirty elections. They've added an executive from that software company to their transition team, his

name is Peter Neffenger. And until recently, he was listed as the chief board member of Smartmatic.

Mr. Kraisman: Absolutely. ***Something smells you got to continue to follow that scent and that's exactly what we're doing.*** Unfortunately, that scent is coming from pretty much all different directions.

(*National Report*, November 16, 2020 (First Video) (Exhibit 16).)

111. In a later segment on *National Report*, hosts Shaun Kraisman and Emma Rechenberg spoke with Victoria Toensing and Joe diGenova. Mr. diGenova is Ms. Toensing's husband and law partner. Newsmax published statements again focused on false implications about Smartmatic executive Peter Neffenger and giving viewers the impression that Smartmatic was widely used in the 2020 U.S. election.

Mr. Kraisman: Well there's a new name in the battle for the election. This name here we're gonna give you is Peter Neffenger. He is a former chief of the Transportation Security Administration and now sits on the board of the company called Smartmatic, which is responsible for the software used to count hundreds of thousands, if not millions of votes, in this specific election.

Ms. Rechenberg: President Trump reacting to this on Twitter, saying quote, "This is crazy!" . . . Victoria, what do you know about Peter Neffenger and why are you concerned about his role with Smartmatic?

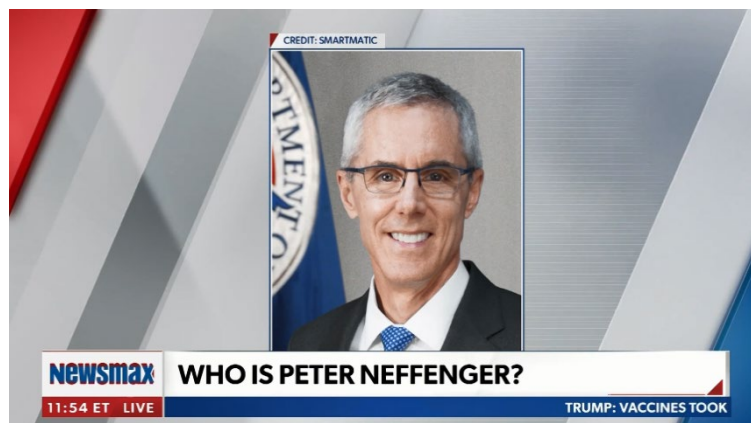
Ms. Toensing: I'm gonna give this one to Joe. . . .

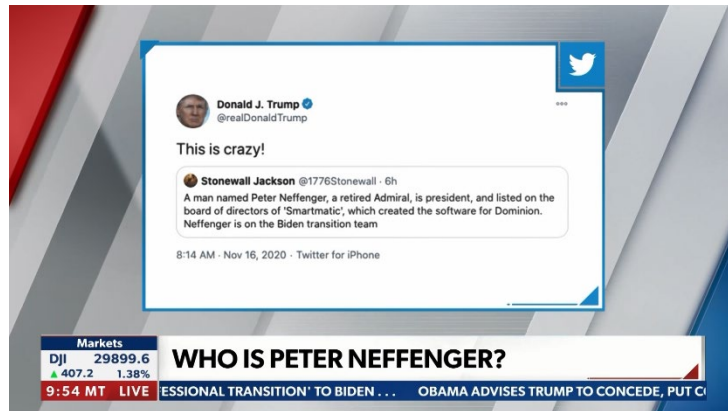
Mr. diGenova: We know about him for this reason. He's a former military guy, former government guy . . . This guy is working for a company, Smartmatic and Dominion, which was created for Hugo Chávez in order to rig elections. Smartmatic has a history of bad performance, of bad election outcomes. They have been deplatformed in many states as a result of poor performance. And

the question becomes, why is someone with his pedigree running a company like this, with this bad pedigree that it has? And the answer is, it's to make sure that government agencies in the states, that want to feel good about what they're doing, can feel good about what they're doing, even though they shouldn't. And I think this entire company needs to be investigated by the Senate They have been investigated before by the House. And a horrible report was written about them. And I think the American people, and the people in the 27 states that had this software running their systems need to ask their public officials, why in the world would you hire this company?

(*National Report*, November 16, 2020 (Second Video) (Exhibit 18).)

112. Newsmax spent this entire segment attacking one individual: Peter Neffenger. Mr. Neffenger is the Chairman of the board of directors of Smartmatic USA Corp. Mr. Neffenger is an American hero. He was previously the Administrator of the Transportation Security Administration (“TSA”). He has a distinguished military career, serving as a Vice Admiral in the U.S. Coast Guard until June 2015. He is a two-time recipient of the Department of Homeland Security’s Distinguished Service Medal and is a Distinguished Fellow at the Atlantic Council, Northeastern University, and the University of Pennsylvania.





113. Mr. Neffenger did nothing to insert himself into the dialogue surrounding the 2020 U.S. election in any way. Yet Newsmax published accusations about Mr. Neffenger that disparaged his distinguished career that he earned through hard work and service to this country.

114. At the time of this show, Newsmax had not seen any evidence to support the assertion that Smartmatic had rigged the 2020 U.S. election, that its election technology or software had been used anywhere other than Los Angeles County, or that Smartmatic engaged in a *quid pro quo* with “Biden’s team.” Nor did the individuals who appeared on the shows provide Newsmax any evidence to support these assertions. Given the absence of evidence, Newsmax had obvious reasons to doubt the credibility of the people it quoted and the statements it published.

2. Newsmax’s disinformation campaign against Smartmatic continued for over a month.

115. Newsmax did not stop with spreading disinformation on November 16. Instead, Newsmax decided to wage a month-long campaign to convince readers and

viewers that Smartmatic was involved in rigging the 2020 U.S. election in favor of Joe Biden and Kamala Harris. Newsmax spread this false story through morning and evening news programs, material posted to its website, and social media posts from its anchors. A slew of “experts” and “sources” appeared frequently on Newsmax’s different programs to spread and reinforce the false narrative. Newsmax selected these guests to appear on their shows because it knew they would contribute to the disinformation campaign.

116. On November 17, Emerald Robinson appeared again on *National Report*. (*National Report*, November 17, 2020 (Exhibit 21); Screenshots, *National Report*, November 17, 2020 (Exhibit 22).) She continued to spread disinformation about Smartmatic, telling Newsmax viewers that Smartmatic’s software was the “DNA” of all voting machines:

Ms. Robinson: But Smartmatic according to this whistleblower, [inaudible] software that is essentially ***the ancestor for the software used by Dominion voting machines and every other vote tabulating machine.*** The whistleblower is saying that ***Smartmatic software is the DNA of every vote tabulating software.***

(*National Report*, November 17, 2020 (Exhibit 21).)



117. At the time of these broadcasts, Newsmax knew there was no evidence supporting a claim that Smartmatic’s election technology and software were widely used or used by other voting machine companies in the 2020 U.S. election. Newsmax had seen no evidence that Smartmatic software was the “DNA” of every vote tabulating software.

118. On November 18 and 19, *The Chris Salcedo Show* perpetuated the disinformation campaign.

119. On November 18, in an interview with Boris Epshteyn, Mr. Salcedo made more false statements and implications about Smartmatic. (*The Chris Salcedo Show*, November 18, 2020 (Exhibit 23); Screenshots, *The Chris Salcedo Show*, November 18, 2020 (Exhibit 24).) For example:

Mr. Salcedo: Let me ask you, Sidney Powell and others are out there talking about Dominion Voting Systems, and they’re talking about this Smartmatic software. To me, this seems to be the, the crux of how millions of votes get changed, if the software is as its built. If the Smartmatic software is like that, the Dominion machines are designed to be tampered with and to change votes.

(*The Chris Salcedo Show*, November 18, 2020 (Exhibit 23).)



120. On November 19, Mr. Salcedo interviewed Victoria Toensing and Joe diGenova on his show. (*The Chris Salcedo Show*, November 19, 2020 (First Video) (Exhibit 25); Screenshots, *The Chris Salcedo Show*, November 19, 2020 (First Video) (Exhibit 26); *The Chris Salcedo Show*, November 19, 2020 (Second Video) (Exhibit 27); Screenshots, *The Chris Salcedo Show*, November 19, 2020 (Second Video) (Exhibit 28).)



121. Mr. Salcedo brought them on for the express purpose of discussing Smartmatic. Mr. diGenova told viewers calculated falsehoods about Smartmatic

sending votes overseas where they would be subject to tampering, and he presented these statements as certainties.

Mr. diGenova: *[W]e know* that Smartmatic, which is the subcontractor, which has the software and does the counting, sends the tabulations to Berlin and to Barcelona for tabulation, they are then returned to the United States. During that time, when those tabulations are going on in Barcelona and Berlin, believe it or not, they can be subjected to tampering, they can be accessed, they can be hacked before they are returned to the United States.

(*The Chris Salcedo Show*, November 19, 2020 (First Video) (Exhibit 25).)

122. On the same broadcast, Newsmax also republished a number of false and defamatory statements about Smartmatic being involved in rigging the 2020 U.S. election previously made by Sidney Powell. Ms. Powell linked Smartmatic and its founding to the late Hugo Chávez. She claimed to have evidence supporting this, but Newsmax never shared the evidence with its viewers because the evidence does not exist and Newsmax knew it had never seen any such evidence.

Ms. Powell: The Dominion Voting Systems, the Smartmatic technology software, and the software that goes in other computerized voting systems here as well, not just Dominion, *were created in—in Venezuela, at the direction of Hugo Chávez to make sure he never lost an election. . . . We have one very strong witness who has explained how it all works.* His affidavit is attached to the pleadings of Lin Wood in, the lawsuit he filed in Georgia. It is a *stunning, detailed affidavit* because he was with Hugo Chávez. While the, he was being briefed on how it worked. He was with Hugo Chávez when he saw it operate to make sure the election came out his way.

(*The Chris Salcedo Show*, November 19, 2020 (First Video) (Exhibit 25).)

123. Ms. Powell also told viewers that a “characteristic feature” of Smartmatic’s election technology and software was “its ability to flip votes”—to rig an election.

Ms. Powell: But one of its most characteristic features [] is its ability to flip votes. [It runs] an algorithm that probably ran all over the country to take a certain percentage of votes from President Trump and flip them to President Biden, which we might never have uncovered had the votes for President Trump not been so overwhelming in so many of these states that it broke the algorithm that had been plugged into the system. And that’s what caused them to have to shut down in the states they shut down in.

(*The Chris Salcedo Show*, November 19, 2020 (First Video) (Exhibit 25).)

124. These were not live statements from Ms. Powell. Newsmax deliberately clipped them for its programs before rebroadcasting them on Mr. Salcedo’s show. At the time of these broadcasts, Newsmax knew there was no evidence supporting a claim that Smartmatic had rigged or stolen the 2020 U.S. election, or that its technology and software were designed for that exact purpose.

125. Finally, in the same November 19 broadcast of *The Chris Salcedo Show*, Newsmax host Grant Stinchfield appeared with Mr. Salcedo. Mr. Stinchfield boasted:

Mr. Stinchfield: We’ve been on the forefront on our show, *Stinchfield*, of going into the Dominion Voting Systems, as well as the Smartmatic software, talking to investigators that have investigated that.

(*The Chris Salcedo Show*, November 19, 2020 (Second Video) (Exhibit 27).)



126. Mr. Salcedo agreed with Mr. Stinchfield that Newsmax has been at the “forefront” of these allegations about Smartmatic:

Mr. Salcedo: Amen to that . . . *Stinchfield* has been very good on the forefront of exploring the Dominion Voting Machines. [*The Chris*] *Salcedo Show* has been exploring and trying to sound the alarm bells for months now about how our votes are tabulated outside the country.

(*The Chris Salcedo Show*, November 19, 2020 (Second Video) (Exhibit 27).)

127. Mr. Stinchfield and Mr. Salcedo continued to make statements falsely stating that Smartmatic sent votes overseas to be counted.

Mr. Stinchfield: And we saw, Chris, that these votes had gone through a server in Frankfurt, Germany. I know there was a lot of talk about what happened to these servers in Frankfurt, Germany, what’s confirmed and what’s not. But what I can tell you is the people that I’ve talked to absolutely prove that votes were going from certain states through this server. And lo and behold, we put up the IP address of that Frankfurt server, the next day, after *Stinchfield* aired that, the server’s taken offline, Chris, you can’t even find it anymore.

Mr. Salcedo: And you know what, just today, [*The*] *Chris Salcedo Show*, somebody across the pond reached out to us, and we’re—

we're going through the whole verification process in this, but they, they say reports exist in foreign governments, foreign intelligence agencies. They have confirmation that this election was, well, was rigged, was stolen, massive voter fraud, and they're sitting on it.

(*The Chris Salcedo Show*, November 19, 2020 (Second Video) (Exhibit 27).)

128. Also on November 19, Grant Stinchfield, on his own self-titled show *Stinchfield*, continued the disinformation campaign about Smartmatic. (*Stinchfield*, November 19, 2020 (First Video) (Exhibit 29); Screenshots, *Stinchfield*, November 19, 2020 (First Video) (Exhibit 30); *Stinchfield*, November 19, 2020 (Second Video) (Exhibit 31); Screenshots, *Stinchfield*, November 19, 2020 (Second Video) (Exhibit 32).)



129. Mr. Stinchfield introduced the show by talking about the “evidence” that would be shown:

Mr. Stinchfield: The media wanted evidence of widespread voter fraud. Well, today the Trump legal team gave it to them. We have a huge show dedicated entirely to the President’s potential path to victory here. Now, I promise you, you will not get more in-depth coverage of today’s blockbuster news than right here on

Stinchfield. It's a promise. Rudy Giuliani, along with his legal team, revealed why they believe this election was stolen from the President. Three members of the Trump legal team come to Stinchfield tonight to lay out their case. The list of allegations are long and all backed up with sworn witness affidavits, no matter what the mainstream media tells you, these affidavits do amount to evidence.

(*Stinchfield*, November 19, 2020 (First Video) (Exhibit 29).)

130. On this episode of *Stinchfield*, Newsmax republished clips of Sidney Powell from a November 19, 2020 press conference. In response to those clips, Mr. Stinchfield made false statements and implications about Smartmatic:

Mr. Stinchfield: Now this all stinks to high heaven. They specifically called into question Dominion's Smartmatic voting software and its ties to, as she said, the Venezuelan government and dictators Chavez and Maduro, using the system to rig the elections there and in Argentina. Now, these are all explosive allegations that again, could flip this entire election on its head. Now Dominion denies all of this, of course, though, they've also denied my request four times to interview them. They don't come forward. The media needs to start covering this, folks. It matters.

(*Stinchfield*, November 19, 2020 (First Video) (Exhibit 29).)

131. Mr. Stinchfield then interviewed Jenna Ellis, introducing her to viewers as a member of President Trump's legal team. At the end of the interview, Ms. Ellis thanked Mr. Stinchfield for covering "the truth and facts." (*Stinchfield*, November 19, 2020 (First Video) (Exhibit 29).)



132. After a commercial break, Mr. Stinchfield continued playing clips of Sidney Powell from the November 19 press conference. He concluded that Ms. Powell “proves all the research that our investigative unit here on *Stinchfield* has been uncovering.” (*Stinchfield*, November 19, 2020 (Second Video) (Exhibit 31).) Newsmax told its viewers that it was doing its own research with its own “investigative unit.”

133. At the time of these broadcasts, Newsmax knew there was no evidence supporting a claim that Smartmatic had rigged or stolen the 2020 U.S. election, or that its technology and software were designed for that exact purpose. Newsmax had not seen any evidence during its investigation to corroborate the statements being made on its shows and none of its guests had provided any evidence. Yet Newsmax knowingly published these lies as part of its disinformation campaign against Smartmatic.

134. On November 21, Mark Kaye, host of his self-titled show *The Mark Kaye Show*, continued Newsmax’s disinformation campaign against Smartmatic.

(*The Mark Kaye Show*, November 21, 2020 (Exhibit 33); Screenshots, *The Mark Kaye Show*, November 21, 2020 (Exhibit 34).)



135. Mr. Kaye used his show to republish statements from Ms. Powell and add his own defamatory statements to the disinformation campaign. He introduced Ms. Powell in such a way as to lead viewers to believe she should be trusted.

Mr. Kaye: Sidney Powell who, really interesting lady, really interesting person. She's a lawyer, she's a badass, she's fighting this thing. And she was on Maria Bartiromo's show yesterday on Fox News to say there is evidence, explosive evidence, that will blow the lid off of this whole entire thing. There's evidence we have that we're bringing to light today that will show you that not only was the election rigged, but that everybody knew it, that the CIA was involved, and it all involves the software. Here she is talking to Maria Bartiromo yesterday listen very closely.

(*The Mark Kaye Show*, November 21, 2020 (Exhibit 33).)

136. Mr. Kaye first implied that Peter Neffenger improperly benefitted from Smartmatic's supposed rigging of the 2020 U.S. election, discussing a republished clip of Ms. Powell.

Ms. Powell: Former Admiral Peter Neffenger, retired Admiral Peter Neffenger, he is President and on the board of directors of Smartmatic and it just so happens he's on Mr. Biden's presidential

transition team, that's going to be non-existent because we're fixing to overturn the results of the election in multiple states.

Mr. Kaye: Alright this guy Peter Neffenger he's on the board of directors for this Dominion software, the Smartmatic software which runs on these Dominion machines. And guess what he's also on Joe Biden's transition team, which she then points out will be non-existent because they're going to overturn the election in several states. And so Maria Bartiromo says how are you going to do that? What are you basically alleging?

(The Mark Kaye Show, November 21, 2020 (Exhibit 33).)

137. Mr. Kaye continued to republish clips of Ms. Powell, including clips stating and implying that Smartmatic's election technology and software were designed to fix, rig, and steal elections.

Ms. Powell: Even their own manual explains how votes can be wiped away. They can put it's like drag and drop Trump votes to a separate folder and then delete that folder.

Mr. Kaye: You can drag and drop the Trump votes to a specific folder and then just delete the folder. Just drag that into the trash and then empty the trash and then you probably want to clear your history so nobody sees, you know that kind of thing. I'm sure there's some kind of cache that needs to be wiped out as well. Okay, you hit Ctrl Alt Delete, whatever it is, but you can drag and drop because it's software, it's a computer.

(The Mark Kaye Show, November 21, 2020 (Exhibit 33).)

138. Finally, Mr. Kaye accused Smartmatic of providing kickbacks to government officials for the use of its machines in various jurisdictions.

Ms. Powell: They did this on purpose. It was calculated they've done it before. We have evidence from 2016 in California. We have so much evidence I feel like it's coming in through a firehose.

Mr. Kaye: They've done it before we have evidence of them doing it in California. They've done it before we have evidence coming in so much evidence I feel like it's coming through a firehose. [Mimics firehose sound.] Just a deluge of evidence that this software and these programs have been used in multiple various elections. Also, she pointed out not just Democrat, but [inaudible] publicans. And here's something else. They have proof of kickbacks. Kickbacks to the people in government who bought these machines for their state elections in the first place.

(*The Mark Kaye Show*, November 21, 2020 (Exhibit 33).)

139. At the time of these broadcasts, Newsmax knew there was no evidence supporting a claim that Smartmatic had rigged or stolen the 2020 U.S. election, or that its technology and software were designed for that exact purpose. Newsmax had not seen any evidence during its investigation to corroborate the statements being made on its shows and none of its guests had provided any evidence. Yet Newsmax knowingly published these lies as part of its disinformation campaign against Smartmatic.

140. On November 21, Sidney Powell appeared on a special Newsmax program called *The Count*. (*The Count*, November 21, 2020 (Exhibit 35); Screenshots, *The Count*, November 21, 2020 (Exhibit 36).)



141. At the time of this broadcast, Newsmax knew there was no evidence supporting a claim that Smartmatic had rigged or stolen the 2020 U.S. election. Newsmax had not seen any evidence during its investigation to corroborate the statements being made on its shows and none of its guests had provided any evidence. Yet Newsmax knowingly published Ms. Powell’s lies as part of its disinformation campaign against Smartmatic. In fact, host Rob Schmitt endorsed Ms. Powell’s statements as “compelling” and allowed Ms. Powell to explain to Newsmax viewers why she had not yet disclosed her “evidence” of election fraud.

Ms. Powell: And we haven’t even begun to present the big fraud case yet that I am still working on. And it’s going to be a blockbuster.

Mr. Schmitt: I mean . . . it’s interesting, obviously . . . you guys had the news conference this week. There was a lot of compelling stuff in there, it sounded like you guys were making progress going down a road of investigation. But as I think anybody understands, when you’re trying to lay out, it takes time to find out what you have. You had a bit of a rub with Tucker Carlson this week, who basically said you didn’t have any evidence when they asked you to come on, what is the truth of the matter there? Because that made a lot of news.

Ms. Powell: Oh, yes. Well he sent me some very abrasive and disrespectful emails or text messages. And I responded politely offering him a different person as a witness who could explain it. I simply didn't have time to do it, then and I sent him a copy of one of the compelling affidavits that we have in the case. And apparently that wasn't sufficient for him. He was having a little bit of a tantrum. . . .

Mr. Schmitt: [W]hat is your timeline? As you look at this, you know, what's the timeline? You think before you can . . . put out some of this evidence that can really . . . if you want to shut the media up when they say you guys have nothing, when will you have some of this stuff that's . . . this hardcore evidence and paper in writing?

Ms. Powell: Well, frankly, the affidavits we've already introduced are hardcore evidence. . . . Then we've got the statistical and mathematical evidence that's absolutely irrefutable.

(*The Count*, November 21, 2020 (Exhibit 35).)

142. Powell continued to make the same false and defamatory statements about Smartmatic during her appearance on *The Count*. While she spent most of the interview discussing the "Dominion system," she makes it clear that she includes Smartmatic as being part of the "Dominion system."

Mr. Schmitt: You're saying Dominion, the Smartmatic Dominion system was used in 2016 when Hillary beat Bernie in the primary?

Ms. Powell: Yes.

Mr. Schmitt: Wow. I don't think we had heard that yet. That's . . . an incredible development right there.

(*The Count*, November 21, 2020 (Exhibit 35).)

143. Ms. Powell then told viewers that Smartmatic rigged the election and that its election technology and software were designed to do exactly that.

Ms. Powell: And they can see it, everybody saw it election night, they saw votes being subtracted from President Trump and appearing on the Biden side of the scale. And that's exactly what this Dominion system was designed to do. . . . And we have eye witness testimony to its entire creation for that very purpose.

Mr. Schmitt: There have been I mean, there have been warnings about this system. We were talking about it earlier, Sidney. I mean, you had senators Warren and Klobuchar that made a big stink about the 2018 midterms saying that they don't trust Dominion. That they saw evidence that votes could be switched using these systems. These are Democrats who ran--for President. What I don't understand is how is how does this get ignored? I mean, this is . . . nationwide, this is a democracy-shocking scandal. If it is true.

Ms. Powell: It is.

Ms. Powell: Just smudge the edge of a ballot and stick it through the machine and the ballot would be rejected. But now they can literally drag and drop hundreds of thousands of votes wherever they want them . . . That's they everybody knew when they bought this system, and that was one of the features of the system.

Ms. Powell: And we also have evidence that there were any number of VPN lines open to the internet for foreign actors to be meddling in it.

(*The Count*, November 21, 2020 (Exhibit 35).)

144. Mr. Schmitt concluded the interview by inviting Ms. Powell back on the show: "I hope that you will join us again to talk about what you continue to find as you continue to investigate." At the time of the show, Newsmax had seen no evidence to support Ms. Powell's statements and had obvious reasons to doubt her

credibility because she had never shown any evidence to support her statements. But that did not matter to Newsmax. Newsmax wanted Ms. Powell on its shows because she would voice the disinformation that Newsmax wanted to spread.

145. On November 25, Newsmax host Michelle Malkin tweeted about Smartmatic, taking the disinformation campaign to social media. She tweeted: “Election watchdog Glenn Chong pushed back against media dismissal of Dominion, Smartmatic & Sequoia ties. ‘It’s not a conspiracy theory;’ the partnerships are ‘established,’ ‘common knowledge,’ and ‘based on hard evidence’ in the Philippines.” (Tweet, @MichelleMalkin, November 25, 2020 (Exhibit 37).)

146. This tweet laid the groundwork for the November 28 broadcast of her show, *Sovereign Nation*, during which she aired clips of Mr. Chong to implicate Smartmatic in a foreign conspiracy to rig elections. (*Sovereign Nation*, November 28, 2020 (Exhibit 38); Screenshots, *Sovereign Nation*, November 28, 2020 (Exhibit 39).)



147. On November 28, Michelle Malkin spent the opening of her show spreading this disinformation about Smartmatic to implicate Smartmatic in an election fraud for the 2020 U.S. election. Ms. Malkin wanted to paint a picture of a complicated web of foreign entities interfering in the 2020 U.S. election—none of which is true.

Ms. Malkin: Three companies implicated in *worldwide election meddling scandals* are intertwined through a *labyrinth of shell companies*. Dominion, Smartmatic and Sequoia. Dominion Voting Systems manufactures both election hardware and software, with headquarters in Toronto, Canada and Denver, Colorado. Smartmatic is the multinational corporation that makes vote-counting machines as well as software and is *purportedly tied to the late Venezuelan dictator Hugo Chávez's regime*. Smartmatic machines have used Dominion software, Sequoia, which was acquired by Dominion in 2010, makes voting machines that have used Smartmatic software.

(*Sovereign Nation*, November 28, 2020 (Exhibit 38).)

148. Ms. Malkin then turns to unverified sources to accuse Smartmatic of election fraud in the Philippines—fraud that she then equates to the 2020 U.S. election.

Ms. Malkin: Watchdogs in the Philippines have grappled with what they believe is *widespread Smartmatic and Dominion-related election manipulation for 10 years*. Attorney and former Filipino Congressman Glenn Chong . . . notes *similarities in how he says his race and others in the Philippines were rigged with what happened here in America*.

(*Sovereign Nation*, November 28, 2020 (Exhibit 38).)

149. Ms. Malkin continued by accusing Smartmatic of “evading scrutiny,” and implied Smartmatic had a role in turning a Texas county “blue” for the first time in 56 years.

Ms. Malkin: [I]nstead of providing answers, several Smartmatic officials left the country. Including a veteran Smartmatic official named Heider Garcia. This Venezuelan-born operative now serves, believe it or not, as election administrator for Tarrant County, Texas. That’s the county which turned blue for the first time since 1964. After the introduction of dum dum dum new electronic voting machines.

(*Sovereign Nation*, November 28, 2020 (Exhibit 38).)

150. At the time of this broadcast, Newsmax knew there was no evidence supporting a claim that Smartmatic had rigged or stolen the 2020 U.S. election. Ms. Malkin’s implication that Smartmatic then brought such activity to a county in Texas is implausible because Smartmatic was not used in Texas. Newsmax had not seen any evidence indicating that Smartmatic was used in Texas when these statements were made.

151. On November 29, Ms. Malkin continued her social media campaign against Smartmatic. She tweeted: “How The Steal Was Done: Dominion, Smartmatic, Sequoia, Antifa, BLM, Soros, Silicon Valley & Fake News.” (Tweet, @MichelleMalkin, November 29, 2020 (Exhibit 40).) This is a day after Ms. Malkin had accused Smartmatic of rigging elections in the U.S. and abroad. The meaning of this Tweet is clear: Dominion, Smartmatic, and this string of parties stole the 2020 U.S. election from President Trump and Vice President Pence. Ms. Malkin and

Newsmax knew there was no evidence supporting a claim that Smartmatic had rigged or stolen the 2020 U.S. election at the time of this Tweet.

152. On December 1, Newsmax show *American Agenda* continued the disinformation campaign. (*American Agenda*, December 1, 2020 (Exhibit 41); Screenshots, *American Agenda*, December 1, 2020 (Exhibit 42).) Newsmax hosts Heather Childers and Bob Sellers invited Ken Timmerman on the broadcast.



153. Mr. Timmerman is the author of a book called *The Election Heist*, which was written before the 2020 U.S. election. Despite knowing that Mr. Timmerman had no credible evidence related to the 2020 U.S. election, Newsmax used him to continue its disinformation campaign against Smartmatic. That was the reason Newsmax invited him to appear on its show.

154. Mr. Timmerman added a new twist to the disinformation campaign. Despite readily available information about which voting machines were used throughout the country, Mr. Timmerman stated that Smartmatic's software is the

“DNA” of all voting systems used in the 2020 U.S. election, so Smartmatic is to blame for this “widespread election fraud.” Then Mr. Timmerman doubled down on how Smartmatic caused the “widespread election fraud”: its software has a backdoor that allows the election to be hacked at the precinct level or while votes are sent overseas for counting.

Ms. Childers: It wasn’t just the Dominion voting machines that have had problems and issues. So why has it . . . grown to this level of irregularity?

Mr. Timmerman: Well, [that’s] a very good point that you raise there, Heather. . . . [A]ll of the voting systems we use today in the United States have *the same DNA in the software, they all rose out of or developed out of [] Smartmatic original software*. So they have the same backbone. And [] all of them also seem to have these back-doors, where you can get into the software, either directly at the precinct level or when the data is being transferred overseas to the servers. *By the way, I don’t think any Americans knew that voting data was being transferred to servers overseas in real-time on election night*. That was a pretty big revelation.

(*American Agenda*, December 1, 2020 (Exhibit 41).)

155. At the time of this broadcast, Newsmax and Mr. Timmerman knew there was no evidence supporting a claim that Smartmatic software is the DNA of every voting machine, or that this “DNA” allowed a machine to be hacked during the election or while votes were supposedly sent overseas. Regardless, Newsmax used Mr. Timmerman to dirty Smartmatic’s name more. Now, Newsmax viewers associated Smartmatic with *any* voting machine accused of participating in this

fraud—because Newsmax publishing a report telling viewers that Smartmatic is the “DNA” of all voting systems.

156. On December 13, Newsmax broadcasted an interview between former presidential candidate Mike Huckabee and Sidney Powell on Mr. Huckabee’s show, *Huckabee*. (*Huckabee*, December 13, 2020 (Exhibit 43); Screenshots, *Huckabee*, December 13, 2020 (Exhibit 44).)



157. This interview was pre-taped—he did not speak with Ms. Powell live on his show. At the time of this broadcast, Newsmax had seen no evidence corroborating anything previously said by Ms. Powell. Nevertheless, Newsmax published this interview to continue the disinformation campaign. That is why she was invited to come on the show.

158. Mr. Huckabee introduced Ms. Powell’s interview by telling Newsmax viewers why Ms. Powell is a source to be trusted and that she, in fact, has “evidence” of the election fraud.

Mr. Huckabee: Across the monolithic media we hear there is no evidence. But actually there are hundreds of sworn affidavits which are in fact evidence. My first guest says she *has evidence of voter fraud on the biggest scale in world history*. And [adds that] the Justice Department either needs to get its act together, or be cleaned out from the top down, preferably, as she says, with a fire hose and Clorox. Here's my conversation with former federal prosecutor, attorney for General Michael Flynn and former Trump legal counsel, Sidney Powell.

(Huckabee, December 13, 2020 (Exhibit 43).)

159. Newsmax then used Ms. Powell to tell more lies about Smartmatic.

Ms. Powell: I mean, none of us realized . . . that our votes were being handled on a *Venezuelan-created software platform*, and *sent out of the country to be counted*, again, by *communist nations* with *complete hack-ability and ease of access to almost anyone who wanted it*. . . . We also identified the fact that the *Smartmatic Dominion people left VPNs wide open and unencrypted to allow access by all kinds of foreign actors*, the night of the election. This *election was manipulated by evil nations* like China Communist Party, which owns 75% of the investment company that owns Dominion, and then, also by Iran, there were Serbian people in the system at the time. Lichtenstein, I mean, *there were hackers all over in our own election system during the election*. And we know that the . . . *Dominion machines were created for the very purpose of altering the vote count to ensure the election of people like Hugo Chávez, and Maduro in Venezuela*. The same thing is happening here now and this isn't the first time it's happened, Mike. *We don't even know how many elections have been rigged by virtue of the software*.

Ms. Powell: Well, I think it's extremely unsettling to know that American elections have been just as rigged as elections in third world countries have been.

(Huckabee, December 13, 2020 (Exhibit 43).)

160. At the time of this broadcast on December 13, Newsmax knew there was no evidence supporting any of Ms. Powell's claims that the 2020 U.S. election was rigged. Nevertheless, Newsmax continued to publish her statements as part of its disinformation campaign. Ms. Powell appeared on Newsmax's shows because she was saying what Newsmax wanted to publish.

161. Mr. Huckabee also went out of his way to suggest that Ms. Powell had put forth evidence supporting her claims when she, in fact, had not.

Mr. Huckabee: The media keeps saying "there's no evidence, there's no evidence." You and others have shown ***hundreds of affidavits, sworn statements, under penalty of perjury, that means a person could go to prison for lying about it***, of people who say they saw funny business going on. How come we can't seem to get the media and even the general public interested in the evidence you have amassed and distributed?

(*Huckabee*, December 13, 2020 (Exhibit 43).)

162. Mr. Huckabee concluded the interview by endorsing Ms. Powell, even suggesting she would be his first call, were he to ever face legal trouble: "Well Sidney, I've often said if I ever get in trouble I'm gonna call you, and if you ever hear from me in the middle of the night, please take the call." (*Id.*) After the conclusion of the pre-filmed interview, Mr. Huckabee urged his viewers to take Ms. Powell's allegations seriously, and promoted her social media accounts, website, and recently published book: "Well I hope that we will take seriously some of the really startling revelations that Sidney Powell has shared with us tonight. Because our great republic depends on integrity in our elections. Now you can keep up with

Sidney Powell on Twitter and her website, sidneypowell.com. You can also pick up Sidney's books, including her latest called *Conviction Machine*, wherever books are sold." (*Id.*) This disinformation campaign was mutually beneficial for Newsmax and Ms. Powell.

163. On December 17, Greg Kelly invited two more guests onto his primetime show, *Greg Kelly Reports*, to continue spreading misinformation about Smartmatic: Michael Flynn and Patrick Byrne. (*Greg Kelly Reports*, December 17, 2020 (First Video) (Exhibit 45); Screenshots, *Greg Kelly Reports*, December 17, 2020 (First Video) (Exhibit 46); *Greg Kelly Reports*, December 17, 2020 (Second Video) (Exhibit 47); Screenshots, *Greg Kelly Reports*, December 17, 2020 (Second Video) (Exhibit 48).) Mr. Flynn is the former National Security Advisor for President Trump, who resigned in light of reports that he had lied regarding conversations with a Russian diplomat. Mr. Flynn is also Ms. Powell's former client.



164. Mr. Byrne is the former CEO of the internet discount retailer Overstock.com, and Newsmax introduced him as “a Wall Street and finance heavyweight technologist” who had been “focusing on China” and had “studied [China] in detail with a great team of experts.” (*Greg Kelly Reports*, December 17, 2020 (Second Video) (Exhibit 48).)



165. Mr. Kelly started his interview with Mr. Flynn by bolstering Mr. Flynn’s credibility, even calling him an “intel expert.”

Mr. Kelly: Former General Michael Flynn joins us for all too short a time. He was President Trump’s National Security Advisor. He was unfairly and it looks like illegally targeted by the FBI and rogue prosecutors. General Flynn recently pardoned by the President of the United States. So great to have you here on Newsmax, sir. . . . *[Y]ou’re an intel expert.* There’s not much that’s happening in America that you don’t know or is going on in the cyber world. Your take overall on the election and what should happen next?

(*Greg Kelly Reports*, December 17, 2020 (First Video) (Exhibit 45).)

166. Mr. Flynn identified Smartmatic’s software being subject to “foreign influence”—not just from Venezuela, but all over the world.

Mr. Flynn: [W]ell number one, President Trump won on the third of November. . . . [C]learly there is a . . . foreign influence that is tied to this system. And it goes back to China, likely goes to Russia, likely goes to Iran, we know that Venezuela has, has participated in the development of these machines. There’s been problems all over the country with this, not only Dominion but also this Smartmatic software.

(*Greg Kelly Reports*, December 17, 2020 (First Video) (Exhibit 45).)

167. Mr. Byrne had the same aim during his appearance on the show: make viewers think Smartmatic is tied to foreign entities all over the world.

Mr. Byrne: [T]he truth is there are fingerprints on this . . . certainly Venezuela and Cuba. But also the trail goes back to Iran, Pakistani intelligence, and China. And their fingerprints are [all] over this, including *that Smartmatic gets funded, Chinese money comes into Smartmatic Venezuela, and then it bounces to Smartmatic Panama. . . . So Chinese fingerprints are indeed on Smartmatic.* . . . And it looks to me like they organized a, their one, their assassin’s mace turns out not to be a missile. It turns out to be ‘destroy our election system to take us down.’

(*Greg Kelly Reports*, December 17, 2020 (Second Video) (Exhibit 47).)

168. At the time of this broadcast, Newsmax had not seen any evidence to support the statements it published claiming that Smartmatic was involved in rigging the 2020 U.S. election or that it was funded by China. Nor did the individuals who appeared on the shows provide Newsmax any evidence to support their statements. Given the absence of evidence, Newsmax had obvious reasons to doubt the credibility of the people it quoted and the statements it published.

169. On December 18, *American Agenda* invited Dick Morris on to continue the disinformation campaign. Morris is a regular Newsmax contributor.⁷ (*American Agenda*, December 18, 2020 (Exhibit 49); Screenshots, *American Agenda*, December 18, 2020 (Exhibit 50).)



170. Mr. Morris told viewers that Smartmatic was responsible for “actual intervention in the vote count,” even though he had no evidence of such intervention. At the time of this broadcast, Newsmax knew there was no evidence supporting a claim that Smartmatic had rigged or stolen the 2020 U.S. election. Despite having no evidence, Newsmax published Mr. Morris’s statement that this intervention had been proven in Michigan.

Mr. Sellers: When you suggest there may have been hacking in this case, what kinds of things are you envisioning?

Mr. Morris: . . . ***This is actual intervention in the vote count. This is through Dominion software and Smartmatic*** and the accusation is here is that ***the vote count itself was altered and***

⁷ Mr. Morris now has his own show on Newsmax, which began airing in February 2021.

flipped through that software. You know, it's been proven in one county in Michigan, which had a two-week long forensic audit and showed that the results that originally said that Biden won it with 63% were wrong, and Trump won it by 61%.

(*American Agenda*, December 18, 2020 (Exhibit 49).)

171. On December 23, Newsmax concluded its disinformation campaign with a story posted on its website titled “*Rudy Giuliani: ‘Dominion Shouldn’t Be Counting Votes Anywhere.’*” (Newsmax Website, December 23, 2020 (Exhibit 51).)

In this article, Newsmax author Eric Mack wrote about what was previously said by Mr. Giuliani in attacking the 2020 U.S. election results:

Dominion shouldn’t be counting the votes anywhere. Dominion, when you look into it with just a little bit of investigation, you find out that Dominion uses a software, Smartmatic, which is a company that goes back to 2004. It was founded by two Venezuelans and Cesar Chávez. It has a terrible history of having fixed elections in Argentina, having fixed elections in Venezuela. . . . It got kicked out of Texas for being woefully incompetent. It is still run by these two Venezuelans who are close to [Nicolas] Maduro, and the Dominion company is not an American company. . . . We send our ballots outside the United States to be counted to a company that is allied with Venezuela and China. That’s outrageous.

(*Id.*)

172. At the time of this publication, Newsmax had not seen any evidence to support the statements it published claiming the 2020 U.S. election was rigged, that Smartmatic was involved in fixing the election, or that Smartmatic’s software was used by Dominion. Nor did the individuals who appeared on the shows provide Newsmax any evidence to support their statements. Given the absence of evidence,

Newsmax had obvious reasons to doubt the credibility of the people it quoted and the statements it published.

E. Newsmax used multiple platforms to spread disinformation.

173. Newsmax's disinformation campaign against Smartmatic focused on five themes designed to reinforce each other and persuade people that Smartmatic (along with Dominion) was responsible for stealing the 2020 U.S. election from President Trump. During the Newsmax programs, Newsmax stated and implied:

- Smartmatic's election technology and software were widely used in the 2020 U.S. election;
- Smartmatic fixed, rigged, and stole the 2020 U.S. election for Joe Biden and Kamala Harris;
- Smartmatic's election technology and software (1) were compromised or hacked during the 2020 U.S. election and (2) sent votes overseas to be compromised or hacked;
- Smartmatic was founded and funded by corrupt dictators from socialist and communist countries; and
- Smartmatic's election technology and software were designed to and have fixed, rigged, and stolen elections before.

174. Newsmax used its broadcasting power to disseminate the disinformation campaign, but did not limit itself to its newsroom or morning and evening news programs. Newsmax used all of its various platforms to disseminate the disinformation campaign.

- a. November 14, 2020: Mr. Kennedy appears on *War Room* discussing Smartmatic's role in election fraud and the ability of

Smartmatic's software to be hacked or compromised. (*War Room*, November 14, 2020 (Exhibit 1).)

- b. November 16, 2020: Mr. Salcedo appears on *The Chris Salcedo Show* playing clips of Ms. Powell and discussing Smartmatic's role in election fraud worldwide and ties to Dominion. (*The Chris Salcedo Show*, November 16, 2020 (Exhibit 3).)
- c. November 16, 2020: Mr. Bachman and Ms. Harrington appear on *John Bachman Now* discussing Smartmatic's role in election fraud and ties to Venezuelan dictators. (*John Bachman Now*, November 16, 2020 (Exhibit 5).)
- d. November 16, 2020: Mr. Carr and Mr. Wood appear on *The Howie Carr Show* discussing Smartmatic's role in election fraud worldwide and foreign ties. (*The Howie Carr Show*, November 16, 2020 (Exhibit 7).)
- e. November 16, 2020: Mr. Kelly and Ms. Toensing appear on *Greg Kelly Reports* discussing Smartmatic's role in election fraud and ties to Dominion. (*Greg Kelly Reports*, November 16, 2020 (First Video) (Exhibit 9); *Greg Kelly Reports*, November 16, 2020 (Second Video) (Exhibit 11).)

- f. November 16, 2020: Newsmax posts a link to a video of part of the November 16, 2020 broadcast of *Greg Kelly Reports* on Twitter. (Tweet, @Newsmax, November 16, 2020 (Exhibit 13).)
- g. November 16, 2020: Mr. Schmitt and Ms. Robinson appear on *Wake Up America* discussing Smartmatic's ties to Dominion. (*Wake Up America*, November 16, 2020 (Exhibit 14).)
- h. November 16, 2020: Mr. Kraisman, Ms. Rechenberg, Ms. Toensing, and Mr. diGenova appear on *National Report* discussing Smartmatic's ties to Dominion and Venezuela. (*National Report*, November 16, 2020 (First Video) (Exhibit 16); *National Report*, November 16, 2020 (Second Video) (Exhibit 18).)
- i. November 17, 2020: Greg Kelly retweets a link from Newsmax of a video of a portion of the November 16, 2020 broadcast of *Greg Kelly Reports* on Twitter. (Tweet, @GregKellyUSA, November 17, 2020 (Exhibit 20).)
- j. November 17, 2020: Mr. Kraisman, Ms. Rechenberg, and Ms. Robinson appear on *National Report* discussing Smartmatic's role in election fraud. (*National Report*, November 17, 2020 (Exhibit 21).)

- k. November 18, 2020: Mr. Salcedo and Mr. Epshteyn appear on *The Chris Salcedo Show* discussing Smartmatic's ties to Dominion and the ability of Smartmatic's software to flip votes. (*The Chris Salcedo Show*, November 18, 2020 (Exhibit 23).)
- l. November 19, 2020: Mr. Salcedo, Mr. diGenova, and Mr. Stinchfield appear on *The Chris Salcedo Show* discussing Smartmatic's role in election fraud and ties to Venezuelan dictators. (*The Chris Salcedo Show*, November 19, 2020 (First Video) (Exhibit 25); *The Chris Salcedo Show*, November 19, 2020 (Second Video) (Exhibit 27).)
- m. November 19, 2020: Mr. Stinchfield and Ms. Ellis appear on *Stinchfield* discussing Smartmatic's role in election fraud and ties to Venezuelan dictators. (*Stinchfield*, November 19, 2020 (First Video) (Exhibit 29); *Stinchfield*, November 19, 2020 (Second Video) (Exhibit 31).)
- n. November 21, 2020: Mr. Kaye appears on *The Mark Kaye Show* discussing Smartmatic's role in election fraud and the ability of Smartmatic's software to flip votes. (*The Mark Kaye Show*, November 21, 2020 (Exhibit 33).)

- o. November 21, 2020: Ms. Powell and Mr. Schmitt appear on *The Count* discussing Smartmatic's role in election fraud. (*The Count*, November 22, 2020 (Exhibit 35).)
- p. November 22, 2020: Newsmax rebroadcasts the November 21, 2020 interview of Ms. Powell from *The Count* where Ms. Powell and Mr. Schmitt discuss Smartmatic's role in election fraud.
- q. November 25, 2020: Ms. Malkin makes statements about Smartmatic's role in election fraud worldwide on Twitter. (Tweet, @MichelleMalkin, November 25, 2020 (Exhibit 37).)
- r. November 28, 2020: Ms. Malkin appears on *Sovereign Nation* discussing Smartmatic's role in election fraud worldwide and ties to Venezuelan dictators. (*Sovereign Nation*, November 28, 2020 (Exhibit 38).)
- s. November 29, 2020: Ms. Malkin makes statements about Smartmatic's role in election fraud on Twitter. (Tweet, @MichelleMalkin, November 29, 2020 (Exhibit 40).)
- t. December 1, 2020: Mr. Sellers, Ms. Childers, and Mr. Timmerman appear on *American Agenda* discussing Smartmatic's role in election fraud. (*American Agenda*, December 1, 2020 (Exhibit 41).)

- u. December 13, 2020: Mr. Huckabee airs his interview with Ms. Powell on *Huckabee* discussing Smartmatic's role in election fraud and ties to Venezuelan dictators. (*Huckabee*, December 13, 2020 (Exhibit 43).)
- v. December 17, 2020: Mr. Kelly, Mr. Flynn, and Mr. Byrne appear on *Greg Kelly Reports* discussing Smartmatic's role in election fraud. (*Greg Kelly Reports*, December 17, 2020 (First Video) (Exhibit 45); *Greg Kelly Reports*, December 17, 2020 (Second Video) (Exhibit 47).)
- w. December 18, 2020: Mr. Sellers and Mr. Morris appear on *American Agenda* discussing Smartmatic's role in election fraud and its software's ability to flip votes. (*American Agenda*, December 18, 2020 (Exhibit 49).)
- x. December 23, 2020: Newsmax posts an article titled "*Rudy Giuliani: 'Dominion Shouldn't Be Counting Votes Anywhere.'*" (Newsmax Website, December 23, 2020 (Exhibit 51).)

F. Newsmax presented its news coverage of Smartmatic as factual and based on evidence.

175. Newsmax promotes itself as a new organization that viewers and readers should trust for providing facts. On its website, Newsmax's tagline is "America's News Page." Its CEO, Christopher Ruddy, celebrates "that America is

making the switch to Newsmax TV for fair, unbiased journalism.” (2/25/21 Newsmax, *More Than 5 Million Newsmax App Downloads!* (Exhibit 147).) Mr. Ruddy has also admitted that making claims about election fraud is “great for news” and Newsmax is “getting one million people per minute.” (11/24/20 The New York Times, *Why Newsmax Supports Trump’s False Voter-Fraud Claims* (Exhibit 156).)

176. Newsmax also promotes its anchors and their programs as being reliable sources for facts. For example:

- a. Newsmax asks viewers to watch *Wake Up America* to “start your day with real news and analysis from Rob Finnerty and his team.” Of Mr. Finnerty, Newsmax proudly states he served as an anchor and reporter for CBS and has a passion for news and politics.
- b. Newsmax describes *National Report* as “bringing viewers across the heartland breaking news, and in-depth analysis of the day’s news.” Host Shaun Kraisman is described as a “news anchor, reporter and host,” while host Emma Rechenberg is described as an “award-winning journalist who covers breaking news and politics for Newsmax TV.”
- c. Newsmax describes *John Bachman Now* as “distill[ing] the day’s biggest stories” and “bring[ing] the audience a clear, concise, and informative broadcast,” hosting “experts” to “provide insight and analysis.” Newsmax says Mr. Bachman “enjoys covering politics and news.”
- d. Newsmax describes *American Agenda* as “a live, fast-paced look at national news and international events” with “insightful analysis from lawmakers and experts.” Host Bob Sellers is described by Newsmax as “an Emmy-winning journalist with more than two decades experience covering local and national news,” previously of Fox News and CNBC.

- e. Newsmax says *Greg Kelly Reports* covers “[t]he hardest-hitting stories from coast to coast.” Mr. Kelly is described by Newsmax as a “television personality, journalist, and military veteran.”

177. Newsmax did not present its news coverage of Smartmatic as being opinion, rhetorical hyperbole, or speculation. It did not present its statements regarding Smartmatic as being educated guesses or possibilities. Newsmax presented its statements regarding Smartmatic as being factual. Facts supported by voluminous evidence. Likewise, Newsmax told its viewers and readers that its coverage of Smartmatic was one of the only ways for them to receive reliable and accurate information. Newsmax told its viewers and readers to discredit and ignore whatever they heard from other sources.

178. Newsmax published statements indicating that the information it published about Smartmatic was based on evidence, investigations, and facts. Newsmax intentionally created the impression that what it published about Smartmatic was predicated on reliable, verifiable facts as opposed to speculation or opinion. For example:

- a. Sidney Powell: “We have ***sworn witness testimony*** of why the software was designed. It was designed to rig elections. He was fully briefed on it. And he saw it happen in other countries. It was exported internationally for profit by the people who are behind Smartmatic and Dominion. They did this on purpose, it was calculated. They’ve done it before ***we have evidence*** from 2016 in California. ***We have so much evidence I feel like it’s coming in through a fire hose.***” (*The Chris Salcedo Show*, November 16, 2020 (Exhibit 3); *Greg Kelly Reports*, November 16, 2020 (First Video) (Exhibit 9).)

- b. Sidney Powell: “In fact, every state that bought Dominion for sure should have a criminal investigation or at least a serious investigation of the officers in the states who bought the software. ***We’ve even got evidence of some kickbacks essentially.***” (*The Chris Salcedo Show*, November 16, 2020 (Exhibit 3).)
- c. L. Lin Wood: “[A]gain, to be accurate, I’ll say ***I’m confident they have the smoking guns.*** So I’m saying it in the pool [sic] . . . ***I’ve seen sworn affidavits, I’ve seen sworn video statements.*** I think that Sidney and Rudy have done a magnificent job in a short period of time of piecing together a ***solid legal case***, on what was intended to be a complicated scheme of fraud as it relates to the voting machines.” (*The Howie Carr Show*, November 16, 2020 (Exhibit 7).)
- d. Greg Kelly: “[T]here are people that are getting a little bit impatient about, ok, where is the evidence? Now I think they’re being kind of phony about it because ***they just want to pick apart the evidence.*** They’re never going to give you any credence, so, ***tell us a little about the evidence***, if you can, especially regarding the Dominion company.” (*Greg Kelly Reports*, November 16, 2020 (Second Video) (Exhibit 11).)
- e. Emerald Robinson: “She also pointed to its connection to another company called Smartmatic. That’s another voting system software and also shared that an executive from that company has now been added to the Biden transition team, which seems like a conflict of interest. ***We checked it out.*** That executive ***has definitely been added*** to Biden’s team.” (*Wake Up America*, November 16, 2020 (Exhibit 14).)
- f. Sidney Powell: “Well frankly the ***affidavits*** we’ve already introduced are ***hardcore evidence.*** . . . Then we’ve got the ***statistical and mathematical evidence that’s absolutely irrefutable.***” (*The Count*, November 21, 2020 (Exhibit 35).)
- g. Rudy Giuliani: “***Well, I can prove that they did it in Michigan.***” (*The Chris Salcedo Show*, November 16, 2020 (Exhibit 3).)
- h. Mike Huckabee: “Across the monolithic media we hear there is no evidence. ***But actually there are hundreds of sworn***

affidavits which are in fact evidence. My first guest says she has *evidence of voter fraud on the biggest scale in world history.* [And adds] that the Justice Department either needs to get its act together, or be cleaned out from the top down, preferably, as she says, with a fire hose and Clorox.” (*Huckabee*, December 13, 2020 (Exhibit 43).)

- i. Mike Huckabee: “[T]he media keeps saying there’s no evidence, there’s no evidence. You and others have shown *hundreds of affidavits, sworn statements, under penalty of perjury, that means a person could go to prison for lying about it*, of people who say they saw funny business going on. How come we can’t seem to get the media and even the general public interested in the evidence you have amassed and distributed?” (*Huckabee*, December 13, 2020 (Exhibit 43).)
- j. Grant Stinchfield: “The media wanted evidence of widespread voter fraud. Well, today the Trump legal team gave it to them. We have a huge show dedicated entirely to the President’s potential path to victory here. Now, I promise you, you will not get more in-depth coverage of today’s blockbuster news than right here on Stinchfield. It’s a promise. Rudy Giuliani, along with his legal team, revealed why they believe this election was stolen from the President. Three members of the Trump legal team come to Stinchfield tonight to lay out their case. *The list of allegations are long and all backed up with sworn witness affidavits, no matter what the mainstream media tells you, these affidavits do amount to evidence.*” (*Stinchfield*, November 19, 2020 (First Video) (Exhibit 29).)
- k. Grant Stinchfield: “And she says it proves *all the research that our investigative unit here on Stinchfield has been uncovering.*” (*Stinchfield*, November 19, 2020 (Second Video) (Exhibit 31).)
- l. Mark Kaye: “Sidney Powell who, really interesting lady, really interesting person. She’s a lawyer, she’s a badass, she’s fighting this thing. *And she was on Maria Bartiromo’s show yesterday on Fox News to say there is evidence, explosive evidence, that will blow the lid off of this whole entire thing. There’s evidence we have that we’re bringing to light today that will show you*

that not only was the election rigged, but that everybody knew it, that the CIA was involved, and it all involves the software. Here she is talking to Maria Bartiromo yesterday listen very closely.” (*The Mark Kaye Show*, November 21, 2020 (Exhibit 33).)

- m. Rob Schmitt: “Yeah as we wrap this up, Sidney, I think everybody at home right now wants to see this. They want to see what you say you’ve seen, is that going to be possible at any point? Are we going to be able to see some of these problems and some of these issues, the way these these systems work and the way this Dominion works?” Sidney Powell: ***“Yes, and there’s actually evidence on online now. I mean, we need to try to get our website up to date with the complaints that have already been filed. But exhibits were attached, for example, to Lin Wood’s complaint in Georgia, that are remarkable and stunning, including the affidavit of the young man from Venezuela, who saw Hugo Chavez, create how they did the software, hire people to do it and get it done. And then how it worked to make sure he won every election thereafter. . . .”*** Rob Schmitt: “I can’t, I can’t even imagine and I hope that you will join us again to talk about what you continue to find as you continue to investigate this.” Sidney Powell: “I will do that. And I will try and get more stuff up on we’ve got some—” Mark Halperin: “Or just email it to us.” (*The Count*, November 21, 2020 (Exhibit 35).)

179. In addition, Newsmax brought on a number of guests who were introduced as attorneys, including Ms. Powell. Newsmax discussed these guests’ background and experience as lawyers to create the impression that they were reliable sources of facts. As lawyers, Ms. Powell, Mr. Wood, Ms. Toensing and Mr. diGenova are barred by their ethical codes of conduct from lying when they are representing a client. For example:

- a. Applicable to Ms. Powell (Texas-barred): “In the course of representing a client, a lawyer shall not knowingly (a) make a

false statement of material fact or law to a third person; or (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client.” (Texas Disciplinary Rule of Professional Conduct 4.01.)

- b. Applicable to Mr. Wood (Georgia-barred): “In the court of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.” (Georgia Rules of Professional Conduct 4.1.)
- c. Applicable to Ms. Toensing and Mr. diGenova (DC-barred): “In the course of representing a client, a lawyer shall not knowingly (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.” (District of Columbia Rules of Professional Conduct 4.1.)

180. Newsmax intentionally created the impression that the information it provided regarding Smartmatic was factual by telling readers and viewers to discount or ignore the others who were questioning the basis for the claims. For example:

- a. Greg Kelly: “I believe [Sidney Powell], ***and I don’t believe the critics and the naysayers.*** Why? Because, quite frankly, ***they don’t deserve credibility anymore.*** Everything they’ve said about this President has been wrong. And I give a lot of credit to Maria Bartiromo, asking questions to find out the answers.” (*Greg Kelly Reports*, November 16, 2020 (First Video) (Exhibit 9).)
- b. Mike Huckabee: “The media keeps saying there’s no evidence, there’s no evidence. You and others have shown hundreds of affidavits, sworn statements, under penalty of perjury, that means a person could go to prison for lying about it, of people who say

they saw funny business going on. ***How come we can't seem to get the media and even the general public interested in the evidence you have amassed and distributed?***" (Huckabee, December 13, 2020 (Exhibit 43).)

- c. Grant Stinchfield: "The media wanted evidence of widespread voter fraud. Well, today the Trump legal team gave it to them. We have a huge show dedicated entirely to the President's potential path to victory here. ***Now, I promise you, you will not get more in-depth coverage of today's blockbuster news than right here on Stinchfield. It's a promise.*** Rudy Giuliani, along with his legal team, revealed why they believe this election was stolen from the President. Three members of the Trump legal team come to Stinchfield tonight to lay out their case. The list of allegations are long and all backed up with sworn witness affidavits, ***no matter what the mainstream media tells you***, these affidavits do amount to evidence." (*Stinchfield*, November 19, 2020 (First Video) (Exhibit 29).)
- d. Grant Stinchfield: "***We've been on the forefront on our show, Stinchfield***, of going into the Dominion Voting Systems, as well as the Smartmatic software, ***talking to investigators that have investigated that.***" (*The Chris Salcedo Show*, November 19, 2020 (Second Video) (Exhibit 27).)
- e. Chris Salcedo: "*Stinchfield* has been very good on the forefront of exploring the Dominion Voting Machines. ***[The Chris] Salcedo Show has been exploring and trying to sound the alarm bells for months now about how our votes are tabulated outside the country.***" (*The Chris Salcedo Show*, November 19, 2020 (Second Video) (Exhibit 27).)

III. Newsmax's False Statements and Implications About Smartmatic

181. Newsmax's statements about Smartmatic were false. The demonstrable, verifiable facts are:

- Smartmatic's election technology and software were only used in Los Angeles County, and ***not*** used by any other voting machine company, for the 2020 U.S. election.

- Smartmatic’s election technology and software were **not** used in other voting machines in the 2020 U.S. election, including in Dominion machines.
- Smartmatic’s election technology and software were **not** used to steal the 2020 U.S. election. Nor could they have been, given that Smartmatic’s role was limited to Los Angeles County.
- Smartmatic’s election technology and software were **not** compromised and hacked during the 2020 U.S. election and **no** votes were sent overseas. No one has identified a shred of evidence that there were cyber-security issues in Los Angeles County. The votes were tabulated in Los Angeles County.
- Smartmatic is **not** a Venezuelan company and was **not** founded and funded by corrupt dictators from socialist and communist countries. Smartmatic USA Corp. is based in Florida, and its parent company is based in the United Kingdom. No dictators—corrupt or otherwise, from communist/socialist countries or otherwise—were involved in founding or funding the company.
- Smartmatic’s election technology and software were **not** designed to rig and fix elections and have **not** been used to rig and fix elections before. Smartmatic’s election technology and software were designed for security, reliability, and auditability. No after-the-fact audit has ever found that Smartmatic’s technology or software were used to rig, fix, or steal an election.

182. Newsmax did not let these demonstrable, verifiable facts stand in their way of telling a story that it believed would expand its audience base and, ultimately, allow it to best Fox News in its competition for viewers.

A. Newsmax falsely stated and implied that Smartmatic’s election technology and software were widely used in the 2020 U.S. election.

183. The first lynchpin of Newsmax’s disinformation campaign was to convince readers and viewers that Smartmatic’s election technology and software were widely used during the 2020 U.S. election. Newsmax could not persuade

people that Smartmatic had stolen the election if Smartmatic's election technology and software were not widely used during the 2020 U.S. election, including in battleground states.

184. Newsmax knew that Smartmatic was not used in any state or county outside of Los Angeles County. That fact is easily ascertainable from public records. Perhaps recognizing this flaw with its story, Newsmax tried to hedge its bets by linking Smartmatic to Dominion and other voting machine systems. Newsmax accomplished this by stating and implying that Smartmatic's technology and software was "in the DNA" of every other voting machine, including Dominion machines.

185. Below are some of the statements that were made by Newsmax to create the impression that Smartmatic's election technology and software were widely used during the 2020 U.S. election:

- a. John Bachman: "Well you heard the concerns about Dominion. There's also some voting software called Smart Tech that has caught the attention of a lot of Trump supporters and for good reason" Sidney Powell: "Trump won by not just hundreds of thousands of votes, but by ***millions of votes that were shifted by the software*** that was designed expressly for that purpose." John Bachman: "***Smartmatic*** is what I meant to say there" (*John Bachman Now*, November 16, 2020 (Exhibit 5).)
- b. Emerald Robinson: "But Smartmatic, according to this whistleblower [inaudible] software that is essentially ***the ancestor for the software used by Dominion voting machines and every other vote tabulating machine***. The whistleblower saying that ***Smartmatic software is the DNA of every vote*** []

tabulating software.” (National Report, November 17, 2020 (Exhibit 21).)

- c. L. Lin Wood: “There’s no doubt in my mind about it. It started in Venezuela. It connects into Cuba. It connects into Frankfurt, Germany, where servers were stored, in Barcelona, and it tracks back ultimately to a company known as **SGO Smartmatic**. *They developed the software, that software went into a number of voting machines, almost exclusively used in the Dominion machine.*” (The Howie Carr Show, November 16, 2020 (Exhibit 7).)
- d. Michelle Malkin: “Smartmatic is the multinational corporation that makes vote counting machines as well as software and is purportedly tied to the late Venezuelan dictator Hugo Chávez’s regime. *Smartmatic machines have used Dominion software. Sequoia*, which was acquired by Dominion in 2010, *makes voting machines that have used Smartmatic software.*” (Sovereign Nation, November 28, 2020 (Exhibit 38).)
- e. Kenneth Timmerman: “[A]ll of the voting systems that we use today in the United States have the same DNA in the software, they all *rose out of or developed out of that [] Smartmatic original software*. So they have the same backbone.” (American Agenda, December 1, 2020 (Exhibit 41).)
- f. Rudy Giuliani: “Dominion shouldn’t be counting the votes anywhere. Dominion, when you look into it with just a little bit of investigation, you find out that *Dominion uses a software, Smartmatic*, which is a company that goes back to 2004.” (Newsmax Website, Rudy Giuliani: ‘Dominion Shouldn’t Be Counting Votes Anywhere’, December 23, 2020 (Exhibit 51).)
- g. Sidney Powell: “The Dominion Voting Systems, *the Smartmatic technology software, and the software that goes in other computerized voting systems here as well, not just Dominion*, were created in—in Venezuela, at the direction of Hugo Chávez to make sure he never lost an election.” (The Chris Salcedo Show, November 19, 2020 (First Video) (Exhibit 25).)
- h. Sidney Powell: “But this is a massive election fraud. And *I’m very concerned it involved not only Dominion and that*

Smartmatic software, but that the software essentially was used by other election machines also. It's the software that was the problem. Even their own manual explains how votes can be wiped away. . . . [I]t's like drag and drop, Trump votes to a separate folder and then delete that folder." (*The Chris Salcedo Show*, November 16, 2020 (Exhibit 3).)

- i. Sidney Powell: "And they can see it, everybody saw it election night, they saw votes being subtracted from President Trump and appearing on the Biden side of the scale. And that's exactly what this Dominion system was designed to do. . . . And we have eye witness testimony to its entire creation for that very purpose." Rob Schmitt: "***There have been I mean, there have been warnings about this system. We were talking about it earlier, Sidney. I mean, you had senators Warren and Klobuchar that made a big stink about the 2018 midterms saying that they don't trust Dominion. That they saw evidence that votes could be switched using these systems.*** These are Democrats who ran-- for President." (*The Count*, November 21, 2020 (Exhibit 35).)
- j. Shaun Kraisman: "Well there's a new name in the battle for the election. This name here that we're gonna give you is Peter Neffenger. He is a former chief of the Transportation Security Administration and now sits on the board of ***the company called Smartmatic, which is responsible for the software used to count hundreds of thousands, if not millions of votes, in this specific election.***" (*National Report*, November 16, 2020 (Second Video) (Exhibit 18).)
- k. Joe diGenova: "***And I think the American people, and the people in the 27 states that have this software running their systems*** need to ask their public officials why in the world would you hire this company?" (*National Report*, November 16, 2020 (Second Video) (Exhibit 18).)

186. Individuals who heard and read Newsmax's statements were led to believe that Smartmatic's election technology and software were (1) widely used during the 2020 U.S. election, including in states with close outcomes; and (2) used

by Dominion and other voting machine systems during the 2020 U.S. election. Newsmax intended for individuals who heard or read its statements to draw that conclusion. That conclusion was an important component of the disinformation campaign and their claims of election fraud.

187. Newsmax's statements and implications that Smartmatic's election technology and software were widely used during the 2020 U.S. election are demonstrably false and factually inaccurate. First, Smartmatic's election technology and software were only used in Los Angeles County during the 2020 U.S. election. They were not used in any other county or state during the 2020 U.S. election.

188. Second, Smartmatic's election technology and software were not used in any county or state with close outcomes during the 2020 U.S. election. Smartmatic's election technology and software were not used in Nevada, Arizona, Georgia, Pennsylvania, Michigan, Wisconsin, or Texas. Smartmatic's election technology and software were not used in any counties in these states.

189. Third, Smartmatic's election technology and software were not used by any other voting technology company during the 2020 U.S. election. Smartmatic's election technology and software were not used by another company in Nevada, Arizona, Georgia, Pennsylvania, Michigan, Wisconsin, or Texas (or any counties within these states).

190. Fourth, Smartmatic did not work with or assist any other voting technology company during the 2020 U.S. election. Smartmatic did not count the votes for any other voting technology company, including Dominion. Smartmatic's election technology and software were not involved in collecting, tabulating, or counting any votes outside of Los Angeles County. Dominion and other voting machine companies are Smartmatic's competitors. They compete against each other. Smartmatic does not assist Dominion or other voting machine companies with their projects, and Smartmatic is not a sub-contractor of Dominion or any other voting machine company. They do not work together.

B. Newsmax falsely stated and implied that Smartmatic fixed, rigged, and stole the 2020 U.S. election for Joe Biden and Kamala Harris.

191. Mr. Giuliani and Ms. Powell started a story that the 2020 U.S. election had been fixed, rigged, and stolen from President Trump. Newsmax embraced this story and initiated its own disinformation campaign to spread that story and further its attempts to beat Fox News and become the largest and most influential news platform.

192. Below are some of the statements that were made by Newsmax to create the impression that Smartmatic had fixed, rigged, and stolen the 2020 U.S. election for Joe Biden and Kamala Harris:

- a. John Bachman: "Well you heard the concerns about Dominion. There's also some voting software called Smart Tech that has caught the attention of a lot of Trump supporters and for good reason" Sidney Powell: "*Trump won by not just hundreds*

of thousands of votes, but by millions of votes that were shifted by the software that was designed expressly for that purpose.”
John Bachman: “*Smartmatic is what I meant to say there.*”
(*John Bachman Now*, November 16, 2020 (Exhibit 5).)

- b. Lin Wood: “But when you boil it down, it simply amounts to the fact that the United States of America was relying on voting machines that were subject to manipulation. We might want to go back to the days where we fill in a hand ballot, sign it, let people count it. *Because when you open the door to these types of computers, you’re opening the door for people to manipulate, to hack and to defraud people, and that’s exactly what was done here.* There’s no doubt in my mind about it. It started in Venezuela. It connects into Cuba. It connects into Frankfurt, Germany, where servers were stored, in Barcelona, and *it tracks back ultimately to a company known as SGO Smartmatic.*” (*The Howie Carr Show*, November 16, 2020 (Exhibit 7).)
- c. Michelle Malkin: “*How The Steal Was Done: Dominion, Smartmatic, Sequoia, Antifa, BLM, Soros, Silicon Valley & Fake News ==>*” (Tweet, @MichelleMalkin, November 29, 2020 (Exhibit 40).)
- d. Dick Morris: “*This is actual intervention in the vote count. This is through Dominion software and Smartmatic and the accusation is that the vote count itself was altered and flipped through that software.* You know, it’s been proven in one county in Michigan which had a two-week-long forensic audit and showed that the results originally said that Biden won it with 63% were wrong, and Trump won it by 61%. And we just need that evidence and that information all over the country.” (*America Agenda*, December 18, 2020 (Exhibit 49).)
- e. Sidney Powell: “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.* We have sworn witness testimony of why the software was designed. It was designed to rig elections. He was fully briefed on it. And he saw it happen in other countries. *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 evidence from 2016 in California. We have so much evidence I feel like it's coming in through a fire-hose." (*Greg Kelly Reports*, November 16, 2020 (First Video) (Exhibit 9).)

- f. Sidney Powell: "The Dominion Voting Systems, the ***Smartmatic technology software***, and the software that goes in other computerized voting systems as well, not just Dominion, were created in—in Venezuela at the direction of Hugo Chávez to make sure he never lost an election. . . . But one of its most characteristic features [] is its ability to flip votes. [It runs] an algorithm that ***probably ran all over the country to take a certain percentage of votes from President Trump and flip them to President Biden, which we might never have uncovered, had the votes for President Trump not been so overwhelming in so many of these states that it broke the algorithm that had been plugged into the system.*** And that's what caused them to have to shut down in the states they shut down in." (*The Chris Salcedo Show*, November 19, 2020 (First Video) (Exhibit 25).)
- g. Mark Kaye: "Alright this guy Peter Neffenger, he's on the board of directors for this Dominion software, Smartmatic software, which runs on these Dominion machines. And guess what? He's also on Joe Biden's transition team, which she then points out will be non-existent because they're going to overturn the election in several states." (*The Mark Kaye Show*, November 21, 2020 (Exhibit 33).)
- h. Mark Kaye: "Sidney Powell who, really interesting lady, really interesting person. She's a lawyer, she's a badass, she's fighting this thing. And she was on Maria Bartiromo's show yesterday on Fox News to say there is evidence, explosive evidence, that will blow the lid off of this whole entire thing. ***There's evidence we have that we're bringing to light today that will show you that not only was the election rigged, but that everybody knew it, that the CIA was involved, and it all involves the software.*** Here she is talking to Maria Bartiromo yesterday listen very closely." (*The Mark Kaye Show*, November 21, 2020 (Exhibit 33).)

- i. Sidney Powell: “Former Admiral Peter Neffenger, retired Admiral Peter Neffenger, he is President and on the board of directors of Smartmatic and it just so happens he’s on Mr. Biden’s presidential transition team, that’s going to be non-existent because we’re fixing to overturn the results of the election in multiple states.” (*The Mark Kaye Show*, November 21, 2020 (Exhibit 33).)
- j. Sidney Powell: “***And they can see it, everybody saw it election night, they saw votes being subtracted from President Trump and appearing on the Biden side of the scale.*** And that’s exactly what this Dominion system was designed to do. . . . And we have eye witness testimony to its entire creation for that very purpose.” Rob Schmitt: “There have been I mean, there have been warnings about this system. We were talking about it earlier, Sidney. I mean, you had senators Warren and Klobuchar that made a big stink about the 2018 midterms saying that they don’t trust Dominion. ***That they saw evidence that votes could be switched using these systems.*** These are Democrats who ran-for President.” (*The Count*, November 21, 2020 (Exhibit 35).)
- k. Sidney Powell: “And we also have evidence that there were any number of ***VPN lines open to the internet for foreign actors to be meddling in it.***” Rob Schmitt: “Has anybody given you an explanation that as ***to why they had to turn the machines off.*** You talk about how the ***machines got turned off it then it was a vote dump.***” Sidney Powell: “No well yes our cue or our witness from Venezuela, who saw it all created and how it worked, said that ***he knew as soon as the machines were turned off and those key straights it was because we the people in voting, Trump voting for Trump in a landslide election has essentially broken the algorithm that had been preprogrammed into the machine. So they had to stop counting in those days and areas and backfill the vote with fraudulent mail in ballots or whatever means they used to do it, whether they just injected numbers or trashed, votes for Trump otherwise and change the numbers.*** I don’t know exactly how they did it right now in each spot. But that’s essentially the way it worked.” (*The Count*, November 21, 2020 (Exhibit 35).)

- l. Michael Flynn: “I think that the, well number one, President Trump won on the third of November. The the things that he needs to do right now is he needs to appoint a special counsel immediately. ***He needs to seize all of these Dominion and these other voting machines that we have across the country.***” (Greg Kelly Reports, December 17, 2020 (First Video) (Exhibit 45).)
- m. Patrick Byrne: “For about, for about a decade, our national security folks have been wondering why are the Chinese referring to a coming assassin’s mace, a one-stroke way of taking out the United States? . . . ***I think we’re now experiencing the assassin’s mace. It’s a way of taking us out without fighting, which is, of course the best, the best way.*** This election interference has the, so last time I was on Newsmax a couple weeks ago, it still served two or three weeks ago, it sounded crazy. I was still trying to convince people ***there’s been election, massive industrial-scale election fraud.***” (Greg Kelly Reports, December 17, 2020 (Second Video) (Exhibit 47).)
- n. Greg Kelly: “***Peter Neffenger***, his name has emerged, he worked for the . . . Semantic Systems, I believe, and ***he has a role in the Biden transition team.*** Anything you can tell us about how . . . rather, Smartmatic—how big a deal is this?” Victoria Toensing: “Well he, that’s his subsidiary of Dominion, I know all that structure stuff about him. Dominion is really just a shell company, and ***he was . . . on the board of their subsidiary, which created the software that does the damage that Sidney talks about . . . [A]nd now he’s getting his reward. He’s going to be on the transition team . . . wonder where he goes from there.***” (Greg Kelly Reports, November 16, 2020 (Second Video) (Exhibit 11).)
- o. John Bachman: “Well, you heard the concerns about Dominion. There’s also some voting software called Smart Tech that has caught the attention of a lot of Trump supporters and for good reason. ***Retired Admiral Peter Neffenger is the chairman of Smartmatic. He’s also part of Joe Biden’s transition team.*** Michael Flynn’s attorney, former federal prosecutor, Sidney Powell, says ***it’s not a coincidence.*** But we do need to get to the bottom of all these allegations regarding Dominion, and

Semantic . . . Smartmatic is what I meant to say there.” (*John Bachman Now*, November 16, 2020 (Exhibit 5).)

- p. Chris Salcedo: “[W]ait a minute. You mean to tell me ***a guy who was on the board of directors for the Dominion Smartmatic software is actually part of Biden’s transition team? Does that sound fair?*** I mean, even you libs, even you socialists out there, you can’t think that even passes the smell test.” (*The Chris Salcedo Show*, November 16, 2020 (Exhibit 3).)
- q. Emerald Robinson: “More about the Dominion Voting System. Sidney Powell who’s now officially a lawyer for the President’s legal team expressed more concerns over that company over the weekend suggesting that it needs to be investigated. ***She also pointed to its connection to another company called Smartmatic. That’s another voting system software and also shared that an executive from that company has now been added to the Biden transition team, which seems like a conflict of interest.*** We checked it out. ***That executive has definitely been added to Biden’s team.*** So interesting developments over the weekend.” (*Wake Up America*, November 16, 2020 (Exhibit 14).)
- r. Emerald Robinson: “Now, as you said, and Sidney Powell’s been talking specifically a lot about Dominion voting machines and Smartmatic. She suggests that any American official who allowed these into their states ***should be investigated for possible conflicts of interest or kickbacks.*** Now, clearly, ***that’s not how the Biden camp feels, however, because they have added an executive or, former executive to Smartmatic.*** That’s the software Powell are talking a lot about that was used in Venezuela’s, or were heavily implicated and had Venezuela’s dirty elections. ***They’ve added an executive from that software company to their transition team, his name is Peter Neffenger. And until recently, he was listed as the chief board member of Smartmatic. Now he also used to serve in the Obama administration. So he’s an Obama administration alumnus as well. But those ties are very interesting,*** aren’t they Shaun and Emma?” Shaun Kraisman: “Absolutely. ***Something smells, you got to continue to follow that scent and that’s exactly what we’re doing. Unfortunately, that scent is coming from pretty***

much all different directions.” (*National Report*, November 16, 2020 (First Video) (Exhibit 16).)

- s. Chris Salcedo: “And you know what, just today, [*The*] *Chris Salcedo Show*, somebody across the pond reached out to us, and we’re—we’re going through the whole verification process in this, but they, they say reports exist in foreign governments, foreign intelligence agencies. ***They have confirmation that this election was, well, was rigged, was stolen, massive voter fraud, and they’re sitting on it.***” (*The Chris Salcedo Show*, November 19, 2020 (Second Video) (Exhibit 27).)

193. Individuals who heard and read Newsmax’s statements were led to believe that Smartmatic’s election technology and software were used to fix, rig, and steal the 2020 U.S. election in favor of Joe Biden and Kamala Harris. Newsmax intended for individuals who heard or read its statements to draw that conclusion. That conclusion was an important component of the disinformation campaign.

194. Newsmax’s statements and implications that Smartmatic’s election technology and software were used to fix, rig, and steal the 2020 U.S. election are demonstrably false and factually inaccurate. First, Smartmatic’s election technology and software were not used to fix, rig, or steal the 2020 U.S. election for Joe Biden and Kamala Harris. They were not used to fix the election. They were not used to rig the election. They were not used to steal the election.

195. Second, Smartmatic’s election technology and software were used in Los Angeles County during the 2020 U.S. election. They were not used in any other county or State during the 2020 U.S. election. Smartmatic’s election technology and software could not have been used to fix, rig, or steal the election because they were

not used anywhere during the election outside Los Angeles County. No one has claimed that it was a surprise that Joe Biden and Kamala Harris had more votes in Los Angeles County than the Republican candidates.

196. Third, Smartmatic's election technology and software were not used in any county or state with close outcomes during the 2020 U.S. election. Smartmatic's election technology and software were not used in Nevada, Arizona, Georgia, Pennsylvania, Michigan, Wisconsin, or Texas. Smartmatic's election technology and software were not used in any counties in these states. Smartmatic's election technology and software could not have been used to fix, rig, or steal the election in these states (or counties) because they were not used in those states and counties.

197. Fourth, Smartmatic's election technology and software were not used by any other voting technology company during the 2020 U.S. election. Smartmatic's election technology and software were not used by another company in Nevada, Arizona, Georgia, Pennsylvania, Michigan, Wisconsin, or Texas (or any counties within these states). Smartmatic's election technology and software could not have been used by another company to fix, rig, or steal the 2020 U.S. election because no other company used Smartmatic's election technology and software.

198. Fifth, Smartmatic did not work with or assist any other voting technology company during the 2020 U.S. election. Smartmatic did not count the votes for any other voting technology company, including Dominion. Smartmatic's

election technology and software were not involved in collecting, tabulating, or counting any votes outside of Los Angeles County. Smartmatic's election technology and software could not have been used to manipulate the vote in favor of one candidate over another because its election technology and software were not used outside Los Angeles County.

C. Newsmax falsely stated and implied that Smartmatic's election technology and software (1) were compromised or hacked during the 2020 U.S. election and (2) sent votes overseas to be compromised or hacked.

199. Newsmax was not content to cast Smartmatic as a voluntary and willful participant in a fraud to steal the 2020 U.S. election. Newsmax also told people that Smartmatic's election technology and software were compromised or hacked during the 2020 U.S. election. Specifically, Newsmax told people that Smartmatic's election technology and software has a "backdoor" and other tools that allow for easy manipulation of votes. Newsmax also scared people into thinking that Smartmatic sent votes to foreign countries for counting during the 2020 U.S. election. The impression that Newsmax created was that U.S. votes were leaving U.S. soil and that this meant U.S. votes were being manipulated by foreign, anti-U.S. forces. Newsmax chose to mention "Venezuela" to invoke xenophobia and fear.

200. Below are some of the statements that Newsmax made to create the misimpression that Smartmatic's election technology and software (1) were

compromised or hacked during the 2020 U.S. election and (2) sent votes overseas to be compromised or hacked:

- a. L. Lin Wood: “There’s no doubt in my mind about it. It started in Venezuela. It connects into Cuba. ***It connects into Frankfurt, Germany, where servers were stored, in Barcelona***, and it tracks back ultimately to a company known as SGO Smartmatic. They developed the software . . .” (*The Howie Carr Show*, November 16, 2020 (Exhibit 7).)
- b. Joe diGenova: “[W]e know that Smartmatic, which is the subcontractor, which has the software and does the counting, ***sends the tabulations to Berlin and to Barcelona for tabulation, they are then returned to the United States. During that time, when those tabulations are going on in Barcelona and Berlin, believe it or not, they can be subjected to tampering, they can be accessed, they can be hacked before they are returned to the United States.***” (*The Chris Salcedo Show*, November 19, 2020 (First Video) (Exhibit 25).)
- c. Kenneth Timmerman: “[A]ll of the voting systems that we use today in the United States have the same DNA in the software. They all rose out of or developed out of that [] Smartmatic original software. So they have the same backbone. ***And all of them also seem to have these back-doors, where you can get into the software either directly at the precinct level or when the data is being transferred overseas to these servers. By the way, I don’t think any Americans knew that voting data was being transferred to servers overseas in real-time on Election Night. That was a pretty big revelation.***” (*American Agenda*, December 1, 2020 (Exhibit 41).)
- d. Sidney Powell: “I mean, none of us realized . . . that our votes were being handled on a Venezuelan-created software platform, and ***sent out of the country to be counted, again by communist nations, with complete hack-ability and ease of access to almost anyone who wanted it.*** . . . We also identified the fact that the ***Smartmatic Dominion, people left VPNs wide open and unencrypted to allow access by all kinds of foreign actors, the night of the election.*** This election was ***manipulated by evil***

nations like China Communist Party, which owns 75% of the investment company that owns Dominion, and then also by Iran, there were Serbian people in the system at the time. Lichtenstein, I mean, there were hackers all over in our own election system during the election.” (Huckabee, December 13, 2020 (Exhibit 43).)

- e. Brian Kennedy: “[W]hen you actually scan the ballots, they’re being scanned in machines that are relatively new to this process. They’re made by a company called Smartmatic, as you’ve heard over the last several days. And the CEO of that company is a Venezuelan national, *[a]nd a leftist, and somebody who is not, built these machines using Chinese components that themselves could be hacked into. We’ve not build a system that is at all secure.*” (War Room, November 14, 2020 (Exhibit 1).)
- f. L. Lin Wood: “But when you boil it down, it simply amounts to the fact that the United States of America was relying on *voting machines that were subject to manipulation*. We might want to go back to the days where we fill in a hand ballot, sign it, let people count it. *Because when you open the door to these types of computers, you’re opening the door for people to manipulate, to hack and to defraud people. And that’s exactly what was done here.* There’s no doubt in my mind about it.” (The Howie Carr Show, November 16, 2020 (Exhibit 7).)
- g. Grant Stinchfield: “And we saw, Chris, that *these votes had gone through a server in Frankfurt, Germany*. I know there was a lot of talk about what happened to these servers in Frankfurt, Germany, what’s confirmed and what’s not. *But what I can tell you is the people that I’ve talked to absolutely prove that votes were going from certain states through this server.* And lo and behold, we put up the IP address of that Frankfurt server, the next day, after *Stinchfield* aired that, the server’s taken offline, Chris, you can’t even find it anymore.” (The Chris Salcedo Show, November 19, 2020 (Second Video) (Exhibit 27).)

201. Individuals who heard and read Newsmax’s statements were led to believe that Smartmatic’s election technology and software (1) were compromised

or hacked during the 2020 U.S. election and (2) sent votes overseas to be compromised or hacked. Newsmax intended for individuals who heard or read its statements to draw that conclusion. That conclusion was an important component of the disinformation campaign.

202. Newsmax's statements and implications that Smartmatic's election technology and software (1) were compromised or hacked during the 2020 U.S. election and (2) sent votes overseas to be compromised or hacked are demonstrably false and factually inaccurate. First, Smartmatic's election technology and software were not compromised or hacked during the 2020 U.S. election. There is no evidence of cyber-security problems in connection with the election in Los Angeles County, the only county where Smartmatic's election technology and software were used during the 2020 U.S. election.

203. Second, Smartmatic's election technology and software does not have a "backdoor" that allows votes to be changed, manipulated, or altered in real-time or at all. This is true of the election technology and software that Smartmatic used during the 2020 U.S. election in Los Angeles County. It is also true of the election technology and software that Smartmatic has developed over the years.

204. Third, Smartmatic's election technology and software does not have a built-in functionality that allows for the overriding of security features. This is true of the election technology and software that Smartmatic used during the 2020 U.S.

election in Los Angeles County. It is also true of the election technology and software that Smartmatic has developed over the years.

205. Fourth, Smartmatic's election technology and software ensures auditability of election results. This is one of the primary features of Smartmatic's election technology and software. This is true of the election technology and software that Smartmatic used during the 2020 U.S. election in Los Angeles County. It is also true of the election technology and software that Smartmatic has developed over the years.

206. Fifth, Smartmatic's election technology and software did not send votes to foreign countries for counting, tabulation, or manipulation during the 2020 U.S. election. Smartmatic's election technology and software were used in Los Angeles County. Votes that were cast in Los Angeles County were counted in Los Angeles County.

207. Sixth, Smartmatic's election technology and software were not used by any other voting technology company during the 2020 U.S. election. Smartmatic's election technology and software were not used by another company in Nevada, Arizona, Georgia, Pennsylvania, Michigan, Wisconsin, or Texas (or any counties within these states). Smartmatic's election technology and software could not have been used by another company to count votes because no other company used Smartmatic's election technology and software.

208. Seventh, Smartmatic did not work with or assist any other voting-technology company during the 2020 U.S. election. Smartmatic did not count the votes for any other voting-technology company, including Dominion. Smartmatic's election technology and software were not involved in collecting, tabulating, or counting any votes outside of Los Angeles County. Smartmatic could not have counted votes in a foreign country for another company because Smartmatic did not count votes for another company in the 2020 U.S. election.

209. Eighth, Smartmatic did not use servers located outside the United States for the 2020 U.S. election. Smartmatic could not have used servers located outside the United States to manipulate votes because Smartmatic did not tabulate votes outside of the U.S., nor had any servers outside of the U.S. that were involved in the 2020 U.S. election. Smartmatic could not have stored votes in a foreign-based server for another company during the 2020 U.S. election because no such server even exists.

210. Ninth, Smartmatic's election technology and software used in Los Angeles County in the 2020 U.S. election were not connected to the internet. Votes cast using Smartmatic's election technology and software were hand delivered after paper ballots were printed from Smartmatic's machines. Smartmatic could not have sent votes to a foreign country for manipulation because Smartmatic does not count or tabulate votes—this was done by the election authorities of Los Angeles County.

Also, Smartmatic's voting machines in Los Angeles County were not connected to the internet.

D. Newsmax falsely stated and implied that Smartmatic was founded and funded by corrupt dictators from socialist and communist countries.

211. Newsmax introduced xenophobia into their disinformation campaign. Newsmax's story included describing Smartmatic as a Venezuelan company—a socialist and one-time communist-controlled country. It included stating that Smartmatic was founded by and for Hugo Chávez—the deceased socialist head of Venezuela. And it included stating that Smartmatic received funding from socialist and communist countries like China and Cuba. Newsmax intended to portray Smartmatic as being linked to socialism and communism to make its role in the 2020 U.S. election appear more nefarious.

212. Below are some of the statements that Newsmax made to create the impression that Smartmatic was founded and funded by corrupt dictators from socialist and communist countries:

- a. Victoria Toensing: "Well, I'm not a geek, so I don't talk about the technicalities of Dominion, *but I do know that they were formed in, in Venezuela. And . . . for the purpose of fixing elections for Venezuelan politicians . . .* [W]ell [Smartmatic] is [Neffenger's] subsidiary of Dominion, I know all of that structure stuff about him. Dominion is really just a shell company . . ." (*Greg Kelly Reports*, November 16, 2020 (Second Video) (Exhibit 11).)
- b. L. Lin Wood: "There's no doubt in my mind about it. *It started in Venezuela. It connects into Cuba. It connects into*

Frankfurt, Germany, where servers were stored, in Barcelona, and it tracks back ultimately to a company known as SGO Smartmatic. They developed the software, that software went into a number of voting machines, almost exclusively used in the Dominion machine.” (*The Howie Carr Show*, November 16, 2020 (Exhibit 7).)

- c. Liz Harrington: “Sidney Powell is absolutely correct that **this company was actually designed to steal elections for socialist dictator Hugo Chávez in Venezuela.** That’s what Smartmatic was designed to do.” John Bachman: “There’s also concerns about the you know, the **foreign ownership of Smartmatic.**” (*John Bachman Now*, November 16, 2020 (Exhibit 5).)
- d. Michael Flynn: “[C]learly there is a **foreign influence that is tied to this system. And it goes back to China, likely goes to Russia, likely goes to Iran,** we know that **Venezuela has, has participated in the development of these machines.** There’s been problems all over the country with them, not only Dominion but also this Smartmatic software.” (*Greg Kelly Reports*, December 17, 2020 (First Video) (Exhibit 45).)
- e. Patrick Byrne: “[T]he truth is, **there are fingerprints on this . . . certainly Venezuela and Cub. But also the trail goes back to Iran, Pakistani intelligence and China.** And their fingerprints are all over this, including that **Smartmatic gets funded, Chinese money comes into Smartmatic Venezuela, and then it bounces to Smartmatic Panama. . . . Chinese fingerprints are indeed on Smartmatic . . .** and it looks to me like they organized a, their one, their assassin’s base turns out not to be a missile, it turns out to be destroy our election system to take us down.” (*Greg Kelly Reports*, December 17, 2020 (Second Video) (Exhibit 47).)
- f. Rudy Giuliani: “Smartmatic, which is a company that goes back to 2004. It was **founded by two Venezuelans and Cesar Chávez.** It has a terrible history of having fixed elections in Argentina, having fixed elections in Venezuela. . . . It got kicked out of Texas for being woefully incompetent. **It is still run by these two Venezuelans who are close to [Nicolas] Maduro, and the Dominion company is not an American company.** . . . We send our ballots outside the United States to be counted to **a company**

that is allied with Venezuela and China. That's outrageous." (Newsmax Website, *Rudy Giuliani: 'Dominion Shouldn't Be Counting Votes Anywhere'*, December 23, 2020 (Exhibit 51).)

- g. Emerald Robinson: "Now, as you said, and Sidney Powell's been talking specifically a lot about Dominion voting machines and Smartmatic. She suggests that any American official who allowed these into their states should be investigated for possible conflicts of interest or kickbacks. Now, clearly, that's not how the Biden camp feels, however, as they have added an executive, or former executive to Smartmatic. That's the software Powell are talking a lot about that was ***used in Venezuela's, were heavily implicated and had Venezuela's dirty elections.***" (*National Report*, November 16, 2020 (First Video) (Exhibit 16).)
- h. Sidney Powell: "And we know the machine, Dominion machines were created for the very purpose of altering the vote count ***to ensure the election of people like Hugo Chávez, and Maduro in Venezuela.*** The same thing is happening here now and this isn't the first time it's happened, Mike, we don't even know how many elections have been rigged by virtue of the software." (*Huckabee*, December 13, 2020 (Exhibit 43).)
- i. Sidney Powell: "The Dominion Voting Systems, the Smartmatic technology software, and the software that goes in other computerized voting systems as well, not just Dominion, ***were created in—in Venezuela, at the direction of Hugo Chávez to make sure he never lost an election.*** We have one very strong witness who has explained how it all works. His affidavit is attached to the pleadings of Lin Wood in, the lawsuit he filed in Georgia. It is a stunning, detailed affidavit because ***he was with Hugo Chávez. While the, he was being briefed on how it worked. He was with Hugo Chávez when he saw it operate to make sure the election came out his way.***" (*The Chris Salcedo Show*, November 19, 2020 (First Video) (Exhibit 25).)
- j. Joe diGenova: "Smartmatic and Dominion, ***which was created for Hugo Chavez in order to rig elections.*** Smartmatic has a history of bad performance, of bad election outcomes. They have been deplatformed in many states as a result of poor performance. And the question becomes, why is someone with

his pedigree running a company like this? . . . They have been investigated before by the House. And a horrible report was written about them. And I think the American people and the people in the 27 states that have this software running their systems need to ask their public officials, why in the world you would hire this company?” (*National Report*, November 16, 2020 (Second Video) (Exhibit 18).)

- k. Grant Stinchfield: “Now this all stinks to high heaven. They specifically called into question Dominion’s ***Smartmatic voting software and its ties to, as she said, the Venezuelan government and dictators Chavez and Maduro, using the system to rig the elections there and in Argentina.*** Now, these are all explosive allegations that again, could flip this entire election on its head. Now Dominion denies all of this, of course, though, they’ve also denied my request four times to interview them. They don’t come forward. The media needs to start covering this, folks. It matters.” (*Stinchfield*, November 19, 2020 (First Video) (Exhibit 29).)
- l. Michelle Malkin: “Wow, instead of providing answers, ***several Smartmatic officials left the country. Including a veteran Smartmatic official named Heider Garcia. This Venezuelan-born operative now serves, believe it or not, as an election administrator for Tarrant County, Texas. That’s the county which turned blue for the first time since 1964. After the introduction of dum dum dum new electronic voting machines.*** Hmm. Well, evading scrutiny seems to be part of the vote hacking playbook. Last week Dominion officials bailed out of a state legislative hearing in battleground Pennsylvania. GOP state representative Dawn Keefer asked the questions that Dominion won’t answer.” (*Sovereign Nation*, November 28, 2020 (Exhibit 38).)
- m. Joe diGenova: “We know about him for this reason. He’s a former military guy, former government guy . . . ***This guy is working for a company, Smartmatic and Dominion, which was created for Hugo Chávez in order to rig elections.*** Smartmatic has a history of bad performance, of bad election outcomes. They have been deplatformed in many states as a result of poor

performance.” (*National Report*, November 16, 2020 (Second Video) (Exhibit 18).)

213. Individuals who heard and read Newsmax’s statements were led to believe that Smartmatic was founded and funded by corrupt dictators from socialist and communist countries. Newsmax intended for individuals who heard or read its statements to draw that conclusion. That conclusion was an important component of the disinformation campaign.

214. Newsmax’s statements and implications that was founded and funded by corrupt dictators from socialist and communist countries are demonstrably false and factually inaccurate. First, Smartmatic USA Corp. is an American company. Smartmatic USA Corp. was founded in Florida and incorporated in Delaware in 2000.

215. Second, Smartmatic USA Corp. is not owned, operated, or controlled by a Venezuelan company. Smartmatic USA Corp. is a wholly-owned subsidiary of a Netherlands-based and incorporated company, which is a wholly-owned subsidiary of a United Kingdom-based and incorporated company. The Netherlands is not a socialist or communist country. The United Kingdom is not a socialist or communist country.

216. Third, Smartmatic was founded by Antonio Mugica and Roger Piñate in Florida in 2000. Smartmatic was not founded or funded by Hugo Chávez. Smartmatic was not founded or funded by the Venezuelan government. No member

of Hugo Chávez's administration sat on Smartmatic's Board or in any other position for Smartmatic.

217. Fourth, Smartmatic has not received funding from China or Cuba. Smartmatic did not receive funding from China or Cuba prior to the 2020 U.S. election (nor thereafter). Smartmatic has not provided election technology or software in connection with any election in China or Cuba.

218. Fifth, Smartmatic ceased participating in elections in Venezuela in 2017. Smartmatic ceased to provide election technology and software in Venezuela after the government announced total vote counts that differed from the actual vote count. Smartmatic publicly revealed that the Venezuelan government had announced an inflated total vote count in 2017.

E. Newsmax falsely stated and implied that Smartmatic's election technology and software were designed to and have fixed, rigged, and stolen elections before.

219. Newsmax was not content portraying Smartmatic as having stolen the 2020 U.S. election. Newsmax decided to indict everything the company had done for the last twenty years. Newsmax portrayed Smartmatic and its products as serving only one function: fixing, rigging, and stealing elections. Newsmax even went as far as to accuse Smartmatic of having rigged prior elections in the United States and in other countries. Newsmax added credibility to its story about Smartmatic stealing the 2020 U.S. election for Joe Biden and Kamala Harris by telling people that the

sole purpose of Smartmatic and its products is to steal elections and that Smartmatic has successfully done this before.

220. Below are some of the statements that Newsmax made to create the impression that Smartmatic's election technology and software were designed to fix, rig, and steal elections and have been used to fix, rig, and steal elections before:

- a. Liz Harrington: "Sidney Powell is absolutely correct that *this company was actually designed to steal elections* for socialist dictator Hugo Chávez in Venezuela. *That's what Smartmatic was designed to do.*" John Bachman: "There's also concerns about the you know, foreign ownership of Smartmatic." (*John Bachman Now*, November 16, 2020 (Exhibit 5).)
- b. Emerald Robinson: "Powell says that this is a high-ranking military official who had come forward as a whistleblower detailing his firsthand experience watching votes be changed during a [p]residential election in Venezuela, specifically in 2013. This whistleblower says that the software that was used was [inaudible] was Smartmatic. *And it was designed specifically* for Hugo Chávez and his successor in order *to manipulate votes without detection.*" (*National Report*, November 17, 2020 (Exhibit 21).)
- c. L. Lin Wood: "This is a scheme developed initially in Venezuela. And *the scheme amounts to being able to go and buy an election in any given country. They did it in Argentina. They've done it in Chile.* Now they've sold it to someone with the interest in manipulating the presidency of the United States." (*The Howie Carr Show*, November 16, 2020 (Exhibit 7).)
- d. Michelle Malkin: "Election watchdog Glenn Chong pushed back against media dismissal of Dominion, Smartmatic & Sequoia ties. 'It's not a conspiracy theory;' the partnerships are 'established,' 'common knowledge,' and '*based on hard evidence*' in the *Philippines*. #ProtectTheVote." (Tweet, @MichelleMalkin, November 25, 2020 (Exhibit 37).)

- e. Rudy Giuliani: “Dominion, when you look into it with just a little bit of investigation, you find out that Dominion uses a software, Smartmatic, which is a company that goes back to 2004. It was founded by two Venezuelans and Cesar Chávez. ***It has a terrible history of having fixed elections in Argentina, having fixed elections in Venezuela.***” (Newsmax Website, *Rudy Giuliani: ‘Dominion Shouldn’t Be Counting Votes Anywhere’*, December 23, 2020 (Exhibit 51).)
- f. Rob Schmitt: “You’re saying Dominion, ***the Smartmatic Dominion system, was used in 2016 when Hillary beat Bernie in the primary?***” Sidney Powell: “***Yes.***” Schmitt: “Wow. I don’t think we’d heard that yet. That’s . . . an incredible development right there.” (*The Count*, November 21, 2020 (Exhibit 35).)
- g. Joe diGenova: “This guy is working for a company, Smartmatic and Dominion, which was created for Hugo Chávez in order to rig elections. ***Smartmatic has a history of bad performance, of bad election outcomes. They have been deplatformed in many states as a result of poor performance.*** And then the question becomes, why is someone with his pedigree running a company like this with this bad pedigree that it has?” (*National Report*, November 16, 2020 (Second Video) (Exhibit 18).)
- h. Chris Salcedo: “Let me ask you, Sidney Powell and others are out there talking about Dominion Voting Systems, and they’re talking about this Smartmatic software. To me, this seems to be the, the crux of how millions of votes get changed, if the software is as its build. ***If the Smartmatic software is like that, the Dominion machines are designed to be tampered with and to change votes.***” (*The Chris Salcedo Show*, November 18, 2020 (Exhibit 23).)
- i. Sidney Powell: “And we know the machine, Dominion machines were ***created for the very purpose of altering the vote count*** to ensure the election of people like Hugo Chávez, and Maduro in Venezuela. The same thing is happening here now and ***this isn’t the first time it’s happened, Mike, we don’t even know how many elections have been rigged by virtue of the software.***” (*Huckabee*, December 13, 2020 (Exhibit 43).)

- j. Victoria Toensing: “Well, I’m not a geek, so I don’t talk about the technicalities of Dominion, but I do know that ***they were formed in Venezuela. And . . . for the purpose, of fixing elections*** for Venezuelan politicians . . . [W]ell . . . [Smartmatic is Neffenger’s] subsidiary of Dominion, I know all of that structure stuff about him. Dominion is really just a shell company . . .” (*Greg Kelly Reports*, November 16, 2020 (Second Video) (Exhibit 11).)
- k. Chris Salcedo: “[T]o all the dictatorships around the globe who are interested in these sham elections. You know, maybe they’re big over in Iran, where they always rigged their elections. The Ayatollah Khomeini . . . whoever the president is over there, and in Tehran, all the votes are tabulated right there with using the Smartmatic Dominion software. . . . ***[T]hey issue voting software with a directive of here’s how you change the results.*** Why would you issue a voting machine that says here’s, here’s a step-by-step process and how you can change the results.” (*The Chris Salcedo Show*, November 16, 2020 (Exhibit 3).)
- l. Michelle Malkin: “***Watchdogs in the Philippines have grappled with what they believe is widespread Smartmatic and Dominion-related election manipulation for 10 years.*** Attorney and former Filipino Congressman Glen Chong scoured audit log[s] to uncover how Smartmatic machines had somehow pre-loaded and transmitted thousands of votes before polls even opened . . . Chong also exposed automatic vote padding and shaving manipulation by Smartmatic machines. Plus what he says is missing and out-of-sequence ballot images.” (*Sovereign Nation*, November 28, 2020 (Exhibit 38).)
- m. Sidney Powell: “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.*** We have sworn witness testimony of why the software was designed. It was designed to rig elections. He was fully briefed on it. And he saw it happen in other countries. It was exported internationally for profit by the people who are behind Smartmatic and Dominion. ***They did this on purpose. It was calculated. They’ve done it before we have evidence from 2016 in California.*** We have so much evidence I feel like it’s coming

in through a fire hose.” (*Greg Kelly Reports*, November 16, 2020 (First Video) (Exhibit 9).)

- n. Sidney Powell: “But this is a massive election fraud. And I’m very concerned it involved not only Dominion and that Smartmatic software, but that the software essentially was used by other election machines also. It’s the software that was the problem. *Even their own manual explains how votes can be wiped away. . . . [I]t’s like drag and drop, Trump votes to a separate folder and then delete that folder.* It’s absolutely brazen how people bought this system and why they bought this system.” (*The Chris Salcedo Show*, November 16, 2020 (Exhibit 3).)
- o. Mark Kaye: “You can *drag and drop the Trump votes to a specific folder and then just delete the folder. Just drag that into the trash and then empty the trash, and then you probably want to clear your history so nobody sees, you know that kind of thing.* I’m sure there’s some kind of cache that needs to be wiped out as well. Okay you hit, Ctrl Alt Delete, whatever it is, but you can drag and drop because it’s software, it’s a computer, and we all know that computers can pretty much do anything. Computers do pretty much everything in our day. . . . Why wouldn’t they be able to drag and drop these votes?” (*The Mark Kaye Show*, November 21, 2020 (Exhibit 33).)
- p. Mark Kaye: “*They’ve done it before and we have evidence of them doing it in California. They’ve done it before we have evidence coming in so much evidence I feel like it’s coming through a firehose.* [Mimics firehose sound.] Just a deluge of evidence that this software and these programs have been used in multiple various elections. Also, she pointed out not just Democrat, but [inaudible] publicans. And here’s something else. They have proof of kickbacks. *Kickbacks to the people in government who bought these machines for their state elections in the first place.* . . . Financial benefits to family members. . . . This is happening now with voting machines. She alleges, *she says there’s . . . evidence of kickbacks where some governors, some state officials, some election person said look, we’ll give you a \$100 million contract to do all of our voting, you get to bring in all of your voting machines . . . we’ll pay you*

\$100 million. You don't think some of that money is going to find its way back in the coffers? . . . Election insurance. Okay, you know what, I will give you the contract for the state of Pennsylvania. I'll give you the contract that you run all of our elections. You bring me all of your computers in here and your IT guys. And you can run every election from here for the next 30 years. But you have to make sure that I win. . . . I'll give you \$100 million for the contract. It's yours . . . does that not sound plausible? Does that not sound feasible? . . . I mean this is definitely something that A: Happens. And B: Needs to be wiped out of existence. And C: The only way to do that is through these lawsuits. Through these affidavits, bringing this to light. Because as Joe Biden said, he didn't need your votes. I don't need your votes to get elected. No, of course not. He's been giving kickbacks to some company so he gets all the votes he needs." (*The Mark Kaye Show*, November 21, 2020 (Exhibit 33).)

- q. Sidney Powell: ***"Even their own manual explains how votes can be wiped away. They can put it's like drag and drop Trump votes to a separate folder and then delete that folder."*** (*The Mark Kaye Show*, November 21, 2020 (Exhibit 33).)
- r. Sidney Powell: "They did this on purpose. ***It was calculated they've done it before. We have evidence from 2016 in California.*** We have so much evidence I feel like it's coming in through a firehose." (*The Mark Kaye Show*, November 21, 2020 (Exhibit 33).)
- s. Sidney Powell: "And they can see it, everybody saw it election night, they saw votes being subtracted from President Trump and appearing on the Biden side of the scale. ***And that's exactly what this Dominion system was designed to do. . . . And we have eye witness testimony to its entire creation for that very purpose.***"
 Rob Schmitt: "There have been I mean, there have been warnings about this system. We were talking about it earlier, Sidney. I mean, you had senators Warren and Klobuchar that made a big stink about the 2018 midterms saying that they don't trust Dominion. That they saw evidence that votes could be switched using these systems. These are Democrats who ran--for President." (*The Count*, November 21, 2020 (Exhibit 35).)

- t. Sidney Powell: “Just smudge the edge of a ballot and stick it through the machine and the ballot would be rejected. ***But now they can literally drag and drop hundreds of thousands of votes wherever they want them . . . That’s they everybody knew when they bought this system, and that was one of the features of the system.*** We’ve got people lying now and saying that, things that have happened that ran people out of voting areas, and we’ve got tons of evidence, I’ve just, it’s so much it’s hard to pull it all together.” (*The Count*, November 21, 2020 (Exhibit 35).)
- u. Sidney Powell: “And we also have evidence that there were any number of VPN lines open to the internet for foreign actors to be meddling in it.” Rob Schmitt: “Has anybody given you an explanation that as to why they had to turn the machines off. You talk about how the machines got turned off it then it was a vote dump.” Sidney Powell: “***No well yes our cue or our witness from Venezuela, who saw it all created and how it worked, said that he knew as soon as the machines were turned off and those key straights it was because we the people in voting, Trump voting for Trump in a landslide election has essentially broken the algorithm that had been preprogrammed into the machine.*** So they had to stop counting in those days and areas and backfill the vote with fraudulent mail in ballots or whatever means they used to do it, whether they just injected numbers or trashed, votes for Trump otherwise and change the numbers. I don’t know exactly how they did it right now in each spot. But that’s essentially the way it worked.” (*The Count*, November 21, 2020 (Exhibit 35).)

221. Individuals who heard and read Newsmax’s statements were led to believe that Smartmatic’s election technology and software were designed to fix, rig, and steal elections and that Smartmatic had, in fact, fixed, rigged, or stolen elections before. Newsmax intended for individuals who heard or read its statements to draw that conclusion. That conclusion was an important component of the disinformation campaign.

222. Newsmax's statements and implications that Smartmatic's election technology and software were designed to fix, rig, and steal elections and have been used for that purpose before are demonstrably false and factually inaccurate. First, Smartmatic's election technology and software were not designed to fix, rig, or steal elections. Smartmatic's election technology and software were designed to ensure secure, reliable, and auditable elections.

223. Second, Smartmatic's election technology and software have not been used to fix, rig, or steal elections. Smartmatic's election technology and software have been used in thousands of elections over the last twenty years. Smartmatic's election technology and software has not been used to fix, rig, or steal any of those elections.

224. Third, Smartmatic's election technology and software have not been used to change votes from one candidate to another in any election. Smartmatic's election technology and software ensures auditable elections. No audit of an election in which Smartmatic participated has identified any instances of Smartmatic's election technology and software changing votes from one candidate to another.

225. Fourth, Smartmatic's election technology and software have not been used to delete or eliminate votes for a particular candidate. Nor do any manuals used with Smartmatic's election technology and software include instructions on how votes for a particular candidate can be deleted or eliminated by clicking and

dragging, by creating folders, or otherwise. Smartmatic's election technology and software creates audit trails. Audit trails are inconsistent with the notion of deleting and eliminating votes.

226. Fifth, Smartmatic ceased participating in elections in Venezuela in 2017. Smartmatic ceased to provide election technology and software in Venezuela after the government announced total vote counts that were different from the actual vote count. Smartmatic publicly revealed that the Venezuelan government had announced an inflated total vote count in 2017.

227. Sixth, Hugo Chávez had no role in the development or design of Smartmatic's election technology and software. Nor were Smartmatic's election technology and software developed in coordination with Mr. Chávez. Smartmatic's election technology and software were developed to ensure secure, reliable, and auditable elections.

IV. Newsmax Acted with Actual Malice and Ill Will Towards Smartmatic⁸

228. Newsmax knew that the statements and implications that it made about Smartmatic were false and/or it acted with reckless disregard for whether its statements and implications were true. Newsmax did not care about making truthful statements about Smartmatic. Newsmax was motivated to tell a false story about

⁸ Smartmatic's discussion of Newsmax's actual malice is not an admission that Smartmatic must allege and prove Newsmax acted with actual malice to establish liability or obtain damages.

how Smartmatic fixed, rigged, and stole the 2020 U.S. election for Joe Biden and Kamala Harris.

229. Newsmax's actual malice with respect to their statements and implications about Smartmatic is illustrated by the following facts:

- Newsmax had no basis for its statements about Smartmatic's role in the 2020 U.S. election.
- Newsmax had obvious reasons to doubt what it was saying about Smartmatic outside of the 2020 U.S. election because it had seen no evidence to support what it was saying.
- Newsmax had obvious reasons to doubt Ms. Powell's and Mr. Giuliani's veracity and the veracity of its many other guests because no guest ever provided the "evidence" they claimed to have about Smartmatic, which confirmed none existed.
- Newsmax possessed or had access to a significant volume of information that contradicted the story it told about Smartmatic. Newsmax either reviewed this information (and therefore knew its statements and implications were false) or purposefully avoided reviewing this information because it did not want to know the truth.

230. Newsmax also acted with ill will towards Smartmatic. Newsmax did not mind destroying Smartmatic's reputation because it served its financial interests. For Newsmax, this was not about providing fair and neutral reporting of a debate. Newsmax did not even try to do that. Instead, this was about trying to beat Fox News, endearing itself to the millions of Americans who supported President Trump, and making money.⁹

⁹ As noted above, references to "Newsmax" includes its anchors, hosts, and producers. The allegations that follow, which discuss how "Newsmax" acted with actual malice, should be read

A. Newsmax had no support for its statements and implications regarding Smartmatic.

231. Newsmax peddled a story about Smartmatic and its election technology and software. Its story fit a preconceived narrative—that the 2020 U.S. election had been fixed, rigged, and stolen. Newsmax inserted Smartmatic into this false story without any basis for doing so.

1. Newsmax did not have sources to prove something that did not happen.

232. There is one irrefutable fact that undermines nearly everything that Newsmax said about Smartmatic during its disinformation campaign: Smartmatic's only role in the 2020 U.S. election was as a provider of election technology and software to Los Angeles County. This fact was known to Newsmax or readily ascertainable, and it puts the lie to nearly everything it said.

233. Newsmax stated and implied that Smartmatic's election technology and software were widely used in other voting machines, including Dominion's, in the 2020 U.S. election, including in states with close outcomes. Newsmax did not have any source for this statement and implication because Smartmatic's election technology and software were only used in Los Angeles County and no other voting

and understood to include the anchors, hosts, and producers of the shows at issue. Those anchors, hosts, and producers knew they lacked evidence to support what they were publishing and these individuals reviewed and/or had access to information showing that what they published was not accurate.

machines, including Dominion's, used Smartmatic's election technology and software during the 2020 U.S. election.

234. Newsmax stated and implied that Smartmatic fixed, rigged, and stole the 2020 U.S. election for Joe Biden and Kamala Harris. Newsmax did not have any source for this statement and implication because Smartmatic's election technology and software were not used in any state other than California and was not used in any of the states with close outcomes.

235. Newsmax stated and implied that Smartmatic was founded and funded by corrupt dictators from socialist and communist countries. Newsmax did not have any source with firsthand knowledge supporting claims about the company being founded and funded by corrupt dictators because that did not happen.

236. Newsmax stated and implied that Smartmatic's election technology and software were designed to fix, rig, and steal elections, and that Smartmatic has done exactly that in prior elections. Newsmax did not have any source with firsthand knowledge supporting this statement and implication because it never happened.

237. Newsmax stated and implied that Smartmatic's election technology and software (1) were compromised or hacked during the 2020 U.S. election and (2) sent votes overseas to be compromised or hacked. Newsmax did not have any source for this statement and implication because no one has raised cyber-security concerns

with the election in Los Angeles County and the votes in Los Angeles County were counted and tabulated by Los Angeles County officials in the county.

2. Newsmax has even admitted it had no basis for its statements and implications about Smartmatic.

238. Newsmax has acknowledged—partially and begrudgingly—that it had no basis for the statements and implications it broadcast and published about Smartmatic. On December 11, Smartmatic sent a retraction demand letter to Newsmax Media, Inc. (12/11/20 Retraction Demand Letter to Newsmax (Exhibit 54).) The 18-page retraction demand letter identified many of the false and misleading statements published by Newsmax, explained the reasons the statements were false and misleading, and requested a full and complete retraction.

239. Newsmax did not issue a retraction. Instead, on December 19, Newsmax published an article on its website titled “*Facts About Dominion, Smartmatic You Should Know.*” (12/19/20 Newsmax, *Facts About Dominion, Smartmatic You Should Know* (Exhibit 52).) At no point in this article did Newsmax retract its statements, but it did confirm that there was no evidence to support the claims that Newsmax had been publishing about Smartmatic for the last month. The article acknowledged the following:

- a. Newsmax has found no evidence either Dominion or Smartmatic owns the other or has any business association with each other.
- b. Newsmax has no evidence Dominion uses Smartmatic’s software or vice versa.

- c. No evidence has been offered that Dominion or Smartmatic used software or reprogrammed software that manipulated votes in the 2020 election.
- d. Neither Dominion nor Smartmatic has any relationship with George Soros.
- e. Smartmatic is a U.S. company and not owned by the Venezuelan government, Hugo Chávez, or any foreign official or entity.

240. However, for other defamatory and false statements Newsmax made about Smartmatic, the best Newsmax could muster was to repeat what Smartmatic had already said on the issue. This is despite voluminous, publicly available information proving the truth of each of these statements:

- a. “***Smartmatic has stated*** its software was only used in the 2020 election in Los Angeles, and was not used in any battleground state contested by the Trump campaign and Newsmax has no evidence to the contrary.” (12/19/20 Newsmax, *Facts About Dominion, Smartmatic You Should Know* (Exhibit 52).)
- b. “***Smartmatic states*** it has no operations in Venezuela. While the company did election projects in Venezuela from 2004 to 2017, it states it never was founded by Hugo Chávez, nor did it have a corrupt relationship with him or the Venezuelan government.” (12/19/20 Newsmax, *Facts About Dominion, Smartmatic You Should Know* (Exhibit 52).)

241. Newsmax also acknowledged its lack of evidence during various programs after receiving the retraction letter. It began on December 19 with *The Count*. (*The Count*, December 19, 2020 (Exhibit 53).) Host Rob Schmitt read a statement on air on behalf of Newsmax during the last few minutes of the show.

Mr. Schmitt: All right before we go, I’m just going to read this to you. Since Election Day, various guests, attorneys, and elected officials have appeared on Newsmax and offered opinions and

claims about Smartmatic and Dominion systems, both companies that offer voting software here in the U.S. Newsmax would like to clarify its news coverage and note that it has not reported as true certain claims made about these companies. There are several facts that our viewers and readers should be aware of. Newsmax has found no evidence that either Dominion or Smartmatic owns the other, or has any business associate with each other. We have no evidence that Dominion uses Smartmatic software or vice versa. No evidence has been offered that Dominion or Smartmatic used software or reprogram[med] software that manipulated votes in the 2020 election. Smartmatic has stated its software was only used in the 2020 election in Los Angeles, and was not used in any battleground states contested by the Trump campaign, and Newsmax has no evidence to the contrary. Dominion has stated its company has no ownership relationship with the Pelosi family, the Feinstein family, the Clinton family, Hugo Chávez, or the government of Venezuela. Neither Dominion nor Smartmatic has any relationship with George Soros. Smartmatic is a U.S. company and not owned by the Venezuelan government, Hugo Chávez, or any foreign official or entity. Smartmatic states that it has no operations in Venezuela. While the company did election projects in Venezuela from 2004 to 2017, it states it never was founded by Hugo Chávez nor did it have a corrupt relationship with him or the Venezuelan government. For more on this, you can go to Newsmax.com and read facts about Dominion, Smartmatic, anything like that you want to see we have it there on the website.

(*The Count*, December 19, 2020 (Exhibit 53).)

242. Newsmax had anchors on its other programs read the same statement in subsequent days. On December 21, this statement ran on *American Agenda*, *John Bachman Now*, *The Chris Salcedo Show*, *Greg Kelly Reports*, and *National Report*. On December 22, this statement also ran on *Wake Up America*. At no point when airing these statements did Newsmax take responsibility for the calculated falsehoods it published about Smartmatic or retract its statements. But, with these

statements, Newsmax acknowledged that it had no evidence for what it broadcast and published.

243. None of the facts presented in Newsmax's statement were new information. All of these facts were available to Newsmax prior to, and during, its disinformation campaign. Newsmax knew its statements were false based on publicly available information; or, if it did not review the publicly available information, notwithstanding a month-long campaign, that amounts to purposeful avoidance of the truth.

244. As further evidence of Newsmax's actual malice, even after Newsmax received Smartmatic's retraction letter on December 11, it continued to broadcast calculated falsehoods about Smartmatic on December 13, December 17, and December 18 and published an article on its website with calculated falsehoods on December 23.

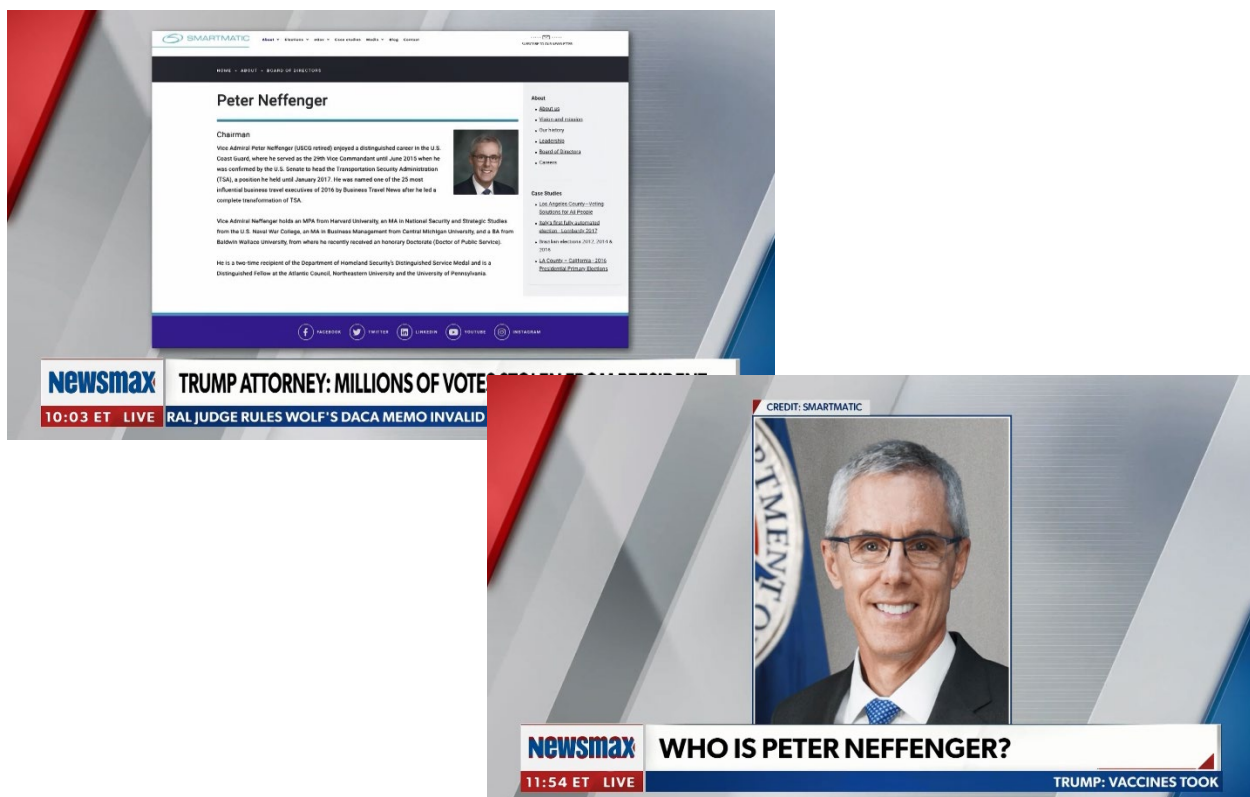
3. Newsmax purposefully avoided learning the truth about Smartmatic and its election technology and software.

245. Newsmax purposefully avoided learning the truth about Smartmatic and its election technology and software, establishing its actual malice.

246. First, Newsmax intentionally avoided obtaining information from Smartmatic. No one from Newsmax ever contacted Smartmatic to verify any statements it made or published. Smartmatic's website includes a "Contact" page that provides addresses, phone numbers, and email addresses by which Newsmax

could have contacted Smartmatic. It also provides a specific link for “Media Inquiries.” Newsmax did not care to get Smartmatic’s response to its statements about Smartmatic. It was pushing a preconceived story, and it did not want factual information from Smartmatic to contradict its story.

247. In fact, Newsmax’s own broadcasts show that it was aware of Smartmatic’s website and had accessed it to get certain graphics from Smartmatic to use in its broadcasts about Peter Neffenger. On the November 16, 2020 broadcast of *National Report*, Newsmax showed an image of Peter Neffenger’s profile on Smartmatic’s website. (*National Report*, November 16, 2020 (Second Video) (Exhibit 18).) Later in the same broadcast, Newsmax aired a picture of Mr. Neffenger and gave credit for the photo to “Smartmatic.”



248. Second, Newsmax allowed a myriad of guests to appear on its various news programs and make false statements and implications about Smartmatic without showing any proof or evidence for those statements. Newsmax did not require its guests to provide proof or evidence for their statements. Newsmax also knew that its “investigation” did not verify the veracity of the statements and implications it published. Newsmax purposefully avoided requiring its guests to prove what they were saying because Newsmax selected the guests who would make unsubstantiated lies.

249. Third, Newsmax did not interview anyone with personal knowledge of Smartmatic’s involvement in the 2020 U.S. election or the allegations being made about Smartmatic. Newsmax’s guests did not have any role in the 2020 U.S. election. They did not work with Smartmatic, Dominion, or any other voting machine technology. They did not work at the polls on election day. They were not involved with Smartmatic’s voting technology and software used in Los Angeles County. Newsmax let whoever it wanted, regardless of a clear lack of personal knowledge, appear on Newsmax shows and make false statements and implications about Smartmatic. Newsmax purposefully avoided obtaining guests with personal knowledge of Smartmatic’s 2020 U.S. election because those guests would have contradicted the preconceived story being told by Newsmax. Nor did Newsmax invite any guests to claim exactly the opposite.

250. Fourth, Newsmax purposefully avoided election technology experts. For instance, Fox News repeatedly broadcast statements from Eddie Perez, the Global Director at the Open Source Election Technology Institute. Newsmax was clearly following Fox's coverage of these issues, frequently rebroadcasting portions of Fox's reporting. So Newsmax was aware of Mr. Perez and avoided him and other experts because the facts they would have offered were inconsistent with the story Newsmax wanted to convey about Smartmatic. Despite being aware of Mr. Perez's appearance on Fox News, Newsmax continued publishing false statements and implications about Smartmatic after Mr. Perez's appearance. Mr. Perez first appeared on Fox News on December 18, 2020. Newsmax published false statements and implications about Smartmatic on December 18 and December 23.

B. Newsmax had access to information showing its statements and implications about Smartmatic and its technology and software were factually inaccurate.

251. Newsmax knew its statements and implications regarding Smartmatic and its technology and software were false, or it acted with reckless disregard for the truth when making its statements. Newsmax possessed and/or had access to information that showed its statements were false. Newsmax also made statements for which it had no factual basis.

1. Newsmax knew Smartmatic's election technology and software were not widely used in other voting machines in the 2020 U.S. election (and were not used in contested states).

252. A myriad of information was available to Newsmax that showed its statements and implications about Smartmatic and the use of its technology and software in the 2020 U.S. election (and in contested states) were false. Newsmax either ignored this information, and thereby acted with reckless disregard or broadcast and published its false statements knowing they were false based on this information.

253. First, before the disinformation campaign, there was publicly available and easily accessible information showing what company's election technology and software were selected for and used in each state in the country (and by county), including in contested states such as Georgia, Michigan, Pennsylvania, Arizona, Wisconsin, Nevada, and Texas.

254. Each state publicly disclosed the election technology used in the 2020 U.S. election. This information showed that Smartmatic did not provide or manufacture any technology or software in any contested states discussed by Newsmax.

255. Georgia: In 2019, Georgia's RFP process demonstrated that Smartmatic was not chosen for the 2020 U.S. election. In response to the RFP, three separate companies submitted a bid. Those companies were: (1) ES&S, (2) Smartmatic, and (3) Dominion. Georgia chose two companies to advance in the

process and to undergo further consideration: ES&S and Dominion. Smartmatic was not chosen. After further process with ES&S and Dominion, Dominion got the contract with Georgia. (11/30/20 Georgia Press Conference on 2020 Election Recount Update Transcript (Exhibit 63).) The State of Georgia also publicly disclosed that it was using Dominion's election technology for the 2020 U.S. election—not Smartmatic. (Georgia Secretary of State Press Release, *Security-Focused Tech Company, Dominion Voting to Implement New Verified Paper Ballot System* (Exhibit 64); 8/9/19 Office of Georgia Secretary of State Certification for Dominion Voting System (Exhibit 60).)

256. Michigan: On January 24, 2017, Michigan's State Administrative Board approved only three vendors of voting systems: Dominion, ES&S, and Hart InterCivic. (Michigan Secretary of State Jocelyn Benson, *Voting System Purchase* (Exhibit 67).) In early November 2020, the State of Michigan publicly identified the use of the Dominion election management system and voting machines. There was no mention of Smartmatic. (11/6/20 Michigan Department of State Press Release, *False claims from Ronna McDaniel have no merit* (Exhibit 68).) The Secretary of State for Michigan also had a voting systems map on its website that identified the vendor/manufacture for different locations. The map identified three companies: (1) Dominion, (2) Hart InterCivic, and (3) ES&S. Smartmatic was not identified. (Michigan Voter Information Center, *Voting Systems Map* (Exhibit 66).)

257. Pennsylvania: The state of Pennsylvania publicly identified the election technology and software certified for use on its website. ES&S and Dominion were identified for use by Pennsylvania. Smartmatic was not identified. (Pennsylvania Department of State, *Electronic Voting Systems Certified After January 1, 2018* (Exhibit 70).). Pennsylvania was explicit in the voting systems available for use in the 2020 general election. On April 4, 2018, Acting Secretary of State Robert Torres required each of Pennsylvania's 67 counties to select new voting systems by no later than December 31, 2019, and to implement them no later than the June 2, 2020 primary election. (Pennsylvania Pressroom, *Department of State Tells Counties To Have New Voting Systems In Place By End Of 2019* (Exhibit 71).) The Pennsylvania Department of State subsequently certified the following providers of electronic voting systems: (1) Unisyn, (2) ES&S, (3) Dominion, (4) ClearBallot, and (5) Hart Verity Voting. (Pennsylvania Department of State, *Electronic Voting Systems Certified After January 1, 2018* (Exhibit 70).) Counties then had the option to choose only from seven electronic voting systems offered by those five providers. Smartmatic was not one of them. (Votes PA, *New Voting Systems* (Exhibit 72).)

258. Arizona: The state of Arizona publicly identified the election technology and software used for the 2020 U.S. election by manufacturer on its website. Smartmatic was not one of them. (Arizona Secretary of State, *2020 Election Cycle/Voting Equipment* (Exhibit 75).)

259. Wisconsin: In February 2020, the state of Wisconsin published a list of the voting equipment used by each municipality within the State. Smartmatic appears nowhere on that list. (Wisconsin Election Commission, *Voting Equipment List by Municipality February 2020* (Exhibit 77).) In addition, the Wisconsin election commission publicly identified the approved voting equipment manufacturers on its website. Smartmatic was not identified. (Wisconsin Election Commission, *Voting Equipment* (Exhibit 78).)

260. Nevada: As of November 2020, all jurisdictions in Nevada used voting systems from either Dominion or ES&S. Smartmatic was not used. (Nevada Secretary of State, *Voting System Testing and Security List* (Exhibit 80).)

261. Texas: The state of Texas publicly identified the election technology and software certified for use on the website of the Secretary of State, VoteTexas.gov. The website identifies Dominion, ES&S, and Hart InterCivic as certified for use in Texas's elections. (VoteTexas.gov, *How to Vote* (Exhibit 143).) Smartmatic was not identified. Furthermore, the Texas Secretary of State's website makes clear that it was Dominion—not Smartmatic—that had previously had issues with the State of Texas. But regardless, any issues had been resolved by the State of Texas since it selected and certified Dominion as one of its voting systems. (Texas Secretary of State, *Voting System Examination(s) and Status for Dominion* (Exhibit 144).)

262. Second, before the disinformation campaign, it was widely known that another company, ES&S, was the nation's largest manufacturer of voting technology. It was also widely known that three main election technology companies dominated the U.S. market for elections: (1) ES&S, (2) Dominion, and (3) Hart InterCivic. This list did not include Smartmatic. For example:

- a. On October 29, 2018, it was reported that a trio of companies—ES&S, Dominion, and Hart InterCivic—sell and service more than 90 percent of the machinery on which votes in the country are cast and results tabulated. (10/29/18 AP Article, *US election integrity depends on security-challenged firms* (Exhibit 107); 10/29/18 AP Article, *Security-challenged firms are gatekeepers of US elections* (Exhibit 108).)
- b. On March 27, 2019, Senator Amy Klobuchar and others sent a letter to the country's three largest election system vendors with questions on their security in anticipation of the 2020 U.S. election. Those vendors were (1) ES&S, (2) Dominion, and (3) Hart InterCivic—not Smartmatic. (3/27/19 Klobuchar Press Release, *Ranking Members Klobuchar, Warner, Reed, and Peters Press Election Equipment Manufacturers on Security* (Exhibit 109).)

- c. On December 6, 2019, Senators Elizabeth Warren, Amy Klobuchar, and others sent letters to the private equity firms that owned or had investments in the vendors responsible for the “vast majority of voting machines and software in the United States” with questions in anticipation of the 2020 U.S. election, noting that these vendors collectively distribute voting machines and software for “over 90% of all eligible voters in the United States.” Those vendors were (1) ES&S, (2) Dominion, and (3) Hart InterCivic—not Smartmatic. (12/10/19 Warren Press Release, *Warren, Klobuchar, Wyden, and Pocan Investigate Vulnerabilities and Shortcomings of Election Technology Industry with Ties to Private Equity* (Exhibit 113)). Defendant Powell, in fact, attached these letters to a complaint she filed in Georgia on November 26, 2020, an amended complaint she filed in Michigan on November 29 2020, a complaint she filed in Wisconsin on December 1, 2020, a complaint she filed in Arizona on December 2, 2020, and an amended complaint she filed in Wisconsin on December 3, 2020. *See* 20-CV-04809 Docket #1-26 (Georgia); 20-CV-01771 Docket #1-24 (Wisconsin); 20-CV-13134 Docket #6-16 (Michigan); 20-CV-

2321 Docket #1-7 (Arizona); 20-CV-01771 Docket #9-16 (Wisconsin).

- d. On October 28, 2019, it was reported that half of the country votes on machines made by ES&S. (10/28/19 ProPublica Article, *The Market for Voting Machines is Broken. This Company Has Thrived in It* (Exhibit 111).)
- e. On May 2, 2019, it was reported that three companies dominate the market for voting machines in the country, with ES&S being the largest, followed by Dominion and Hart InterCivic. (5/2/19 NPR Article, *Trips to Vegas and Chocolate-Covered Pretzels: Election Vendors Come Under Scrutiny* (Exhibit 110).)
- f. On March 3, 2020, it was reported that ES&S, Dominion, and Hart InterCivic “together control about 90 percent of the U.S. market for voting systems.” (11/3/20 Politico Article, *Playbook PM: Halftime* (Exhibit 120).)
- g. On October 28, 2020, it was reported that ES&S and Dominion together produce the technology used by over three-quarters of U.S. voters, and the third-largest player was Hart InterCivic. (10/28/20 WSJ Article, *Early Voting Shines Spotlight on Consolidated Voting-Equipment Market* (Exhibit 118).)

263. This type of publicly available information showed that Smartmatic's election technology was not widely used in the 2020 U.S. election and was not used in contested states.

264. Third, each major company or manufacturer of election technology and software identified on their own websites the use of their technology or software in the 2020 U.S. election before and during the disinformation campaign. This also showed the very limited use of Smartmatic's technology and software in the 2020 U.S. election (*i.e.*, only in one county in California). For example:

265. ES&S: Before and during the disinformation campaign, ES&S's website provided information that contradicted statements by Newsmax about the use of Smartmatic's election technology in the 2020 U.S. election. For example, ES&S's website identified the wide use of its voting machines in the country, including its success in the 2020 election in Wisconsin and Pennsylvania jurisdictions (both within contested states) and touted the success of its high-speed ballot counting technology. (11/1/20 ES&S Website, *Getting the facts straight about elections* (Exhibit 95); 11/11/20 ES&S Website, *ES&S Equipment Efficiently, Accurately, Securely Records Election History* (Exhibit 96); 11/26/20 ES&S Website, *Getting the facts straight about elections updated* (Exhibit 97).)

266. Hart InterCivic: Before and during the disinformation campaign, Hart InterCivic's website provided information that contradicted statements by Newsmax

about the use of Smartmatic’s election technology in the 2020 U.S. election. For example, Hart InterCivic’s website identified the widespread use of its technology systems in the country. (9/25/20 Hart Website, *Voting System Security Technology* (Exhibit 98); 9/28/20 Hart Website, *More Texas Counties Choose Hart InterCivic’s Verity Voting* (Exhibit 99).)

267. Dominion: Before and during the disinformation campaign, Dominion’s website provided information that contradicted statements by Newsmax about the use of Smartmatic’s election technology in the 2020 U.S. election. For example, Dominion’s website identified that it was serving customers in 28 states and Puerto Rico. Its website indicates the states in which its machines were used for the 2020 election. (11/1/20 Dominion Website, *About Dominion* (Exhibit 87).)

268. Fourth, on November 17, 2020 Dominion sent an email to Newsmax’s booking producer, Alicia Hesse. Among other responsibilities, Hesse is involved with soliciting guests to speak on Newsmax TV—including on Greg Kelly’s show *Greg Kelly Reports*. Upon information and belief, Hesse shared the contents of the emails she received from Dominion with the hosts and other producers for the shows she books. The November 17, 2020 email included the following information from a Dominion fact check called “SETTING THE RECORD STRAIGHT” (Exhibit 160):

- a. That “Dominion is not, and has never been, owned by Smartmatic,” with detailed facts, and that Dominion has “no ownership relationships” with Smartmatic nor “any ties to Venezuela”;
- b. A link to the Michigan Secretary of State’s website “which debunks false or erroneous claims about voting in Detroit, as well as a user-error incident in Antrim County”; and
- c. A link to the Georgia Secretary of State’s website with the statement from Republican Secretary of State Brad Raffensperger that “every legal vote was cast and accurately counted” in Georgia.

269. In all, beginning on November 17, 2020—and repeatedly thereafter, including but not limited to, November 18, November 19, November 20, November 23, November 24, November 25, November 26, November 30, December 3, December 5, December 14, and December 17—Dominion sent Newsmax producer Alicia Hesse correspondence detailing Newsmax’s defamatory falsehoods about Dominion, explaining how and why those defamatory falsehoods were false, and providing citations to independent sources confirming the falsity of those calculated falsehoods and the calculated falsehoods made about Smartmatic.

270. Fifth, Smartmatic sent Newsmax a retraction demand letter on December 11, 2020. (12/11/20 Retraction Demand Letter to Newsmax (Exhibit 54).) The 18-page letter identified some of Newsmax's false statements that Smartmatic's election technology and software were widely used, including in Dominion's voting machine systems, in the 2020 U.S. election and explained why those statements were false.

271. Sixth, on December 18, 2020 and December 22, 2020, Dominion sent retraction demand letters to Newsmax. (12/18/2020 and 12/22/20 Dominion Retraction Demand Letters to Newsmax (Exhibit 56).) The December 18 letter included information demonstrating that the claims Newsmax had been broadcasting and publishing about Smartmatic were false.

272. Seventh, Smartmatic's website provided information about the company, its technology and software, and its limited role in the 2020 U.S. election. Smartmatic's website stated as of November 14 that Smartmatic's ballot marking devices were "used exclusively in Los Angeles County" and "were not used in any other state or any other jurisdiction in California or anywhere else in the U.S." (11/14/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 83).) Smartmatic's website stated as of November 16 that Smartmatic voting machines were specifically not used in Pennsylvania, Georgia, Arizona, Nevada, Michigan, or

North Carolina. (11/16/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 84).)

273. On information and belief, Newsmax was aware of the factual information from the Smartmatic website, particularly as it relates to the states where Smartmatic's election technology and software were and were not used in the 2020 U.S. election. Before and during the disinformation campaign, there was information available that identified Smartmatic's limited role in the 2020 U.S. election.

274. On information and belief, Newsmax was also aware that Smartmatic's VSAP technology used in Los Angeles County was owned by the county, had been created by employees in Smartmatic's U.S.-based office, and that all code used in the system was developed in the United States and had never been offshore. (*See, e.g., 3/3/20 Politico Article, Los Angeles County's risky voting experiment* (Exhibit 114).)

275. Eighth, Newsmax did not attempt to email Smartmatic to obtain basic information, such as its role in the 2020 U.S. election or its relationship to Dominion or other voting systems, before its first broadcast accusing Smartmatic of fraud in connection with the election. This could have been easily done, and it is telling that Newsmax avoided getting this type of information from the company.

276. Ninth, organizations involved in certifying voting technology like the Election Assistance Commission (EAC) published information about the use of election technology in the 2020 U.S. election.

277. For example, all of the states where Newsmax claimed fraud had occurred use some aspect of the federal testing and certification program for election technology and software. (NCSL Voting System Standards, *Testing and Certification* (Exhibit 139).) The U.S. Election Assistance Commission (EAC) publicly identifies the voting systems that have been certified by the EAC by county and state. It provides a table on its website where a user can determine the manufacturer, product, and version of any technology and software used. It shows that Smartmatic was not used in any of the contested states. (U.S. EAC, *Voting Systems by Jurisdiction* (Exhibit 140).)

278. Tenth, before and during the disinformation campaign, organizations who identify and track election and voting equipment made information publicly available that showed the limited role of Smartmatic and its election technology and software in the 2020 U.S. election. For example, Verified Voting (<http://www.verifiedvoting.org>) keeps a running map of all voting equipment in the United States, broken down by county. Anyone can get on the website, look up any county in the United States, and determine whether a company's voting technology

or software was used, and obtain detailed descriptions of it. (Verified Voting Website, *The Verifier – Search – November 2020* (Exhibit 141).)

279. Eleventh, before and during the disinformation campaign, there was publicly available and easily accessible information that shows Smartmatic and Dominion are two separate companies. For example, the state filings for both companies, Smartmatic and Dominion, shows that they are two separate companies. (3/30/20 Smartmatic USA Corp. Annual Report filed with Florida Secretary of State (Exhibit 116); 6/25/10 Dominion Voting Systems, Inc. Statement of Foreign Entity Authority filed with Colorado Secretary of State (Exhibit 101).)

280. There was also litigation between the companies and the public filings clearly establish that the companies are separate, that they are competitors, and that their technology is separate. (9/18/12 Smartmatic Press Release, *Smartmatic International Sues Dominion Voting Systems for Licensing Breach and Improper Business Practices* (Exhibit 103); 5/1/13 Mem. Opinion In *Smartmatic Int’l Corp. v. Dominion Voting Systems Int’l Corp.*, no. 7844-VCP (Del. Chan.) (Exhibit 105).)

281. Twelfth, Smartmatic’s own website also had information that made clear that Smartmatic had no ties to Dominion Voting Systems—no ownership ties, no software leasing, and no business at all between the two companies. It further noted that in 2009, Smartmatic licensed scanning machines from Dominion for use in the Philippines for a Smartmatic election project, which was Smartmatic’s first

and only contract with Dominion, that it was short-lived, and ended in a lawsuit. It further noted that that was the first and last time that Smartmatic and Dominion tried to do business together. (11/27/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 85).)

282. Thirteenth, Dominion's website similarly provided information that made clear it was a distinctly separate company from, and fierce competitor to Smartmatic, and not using Smartmatic's election technology and software. (11/13/20 Dominion Website, *Election 2020: Setting the Record Straight: Facts & Rumors* (Exhibit 89); 11/17/20 Dominion Website, *Election 2020: Setting the Record Straight, Fact Versus Rumors* (Exhibit 90); 11/25/20 Dominion Website, *Election 2020: Setting the Record Straight, Fact Versus Rumors* (Exhibit 92); 11/26/20 Dominion Website, *Election 2020: Setting the Record Straight, Fact Versus Rumors* (Exhibit 93); 12/3/20 Dominion Website, *Election 2020: Setting the Record Straight, Fact Versus Rumors* (Exhibit 94).)

2. Newsmax knew Smartmatic's election technology and software were not used to fix, rig, or steal the 2020 U.S. election.

283. A myriad of information was available to Newsmax that showed its statements about Smartmatic and the use of its technology and software to fix, rig, and steal the 2020 U.S. election were false. Newsmax either ignored this information, and thereby acted with reckless disregard, or published its false statements knowing they were false based on this information.

284. First, before and during the disinformation campaign, there was publicly available and easily accessible information showing that Smartmatic's technology and software were not used widely in the 2020 U.S. election (and only in Los Angeles County) and thus could not have been used to fix, rig, or steal a national election. This information is discussed above. This information also made clear that the system Smartmatic provided to Los Angeles County does not count, tabulate, or store votes and that County officials tabulate the votes by counting the paper ballots produced by the system and cast by voters. (11/27/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 85); 11/11/20 Smartmatic Website, *Los Angeles County – Voting Solutions for All People* (Exhibit 125).)

285. Second, before the disinformation campaign, there was publicly available and easily accessible information showing the efforts around securing the 2020 U.S. election, which make claims of a fixed, rigged, and stolen election not credible.

286. For example, a joint statement was issued by national security agencies confirming the security of the election infrastructure and process in place for the 2020 U.S. election and that any threats to the election would be vigilantly monitored. On November 5, 2019, the Department of Justice (Attorney General William Barr), the Department of Defense (Secretary Mark Esper), the Department of Homeland Security (Acting Secretary Kevin McAleenan), the Office of the Director of National

Intelligence (Acting Director Joseph Maguire), the FBI (Director Christopher Wray), the National Security Agency (U.S. Cyber Command Commander and Director Gen. Paul Nakasone), and the Cybersecurity Infrastructure Security Agency (Director Christopher Krebs) issued a joint statement.

287. In the statement, they stated that “[e]lection security is a top priority for the U.S. government” and that “[i]n an unprecedented level of coordination, the U.S. government is working with all 50 states and territories, local officials, and private sector partners to identify threats, broadly share information, and protect the democratic process.” “While at this time we have no evidence of a compromise or disruption to election infrastructure that would enable adversaries to prevent voting, change vote counts, or disrupt the ability to tally votes, we continue to vigilantly monitor any threats to U.S. elections.” (11/5/19 FBI National Press Office, *Joint Statement from DOJ, DOD, DHS, DNI, FBI, NSA, and CISA on Ensuring Security of 2020 Elections* (Exhibit 112).) No such threats were identified or reported by any of these agencies. Unsurprisingly, Newsmax had seen no evidence contradicting the joint statement by the national security agencies. Newsmax does not have more resources than the federal government and did not have access to information that the federal government had not reviewed.

288. Third, before and during the disinformation campaign, election experts and officials published statements rejecting any claims of vote rigging for the 2020

U.S. election. No state or federal government officials identified Smartmatic and its election technology and software as being used or even potentially implicated in a computer fraud to fix, rig, or steal the 2020 U.S. election.

289. Indeed, election officials and election security experts have long been clear that voter fraud is extraordinarily rare, and our system has strong checks in place to protect the integrity of the voting process in the country. For example:

290. On September 24, 2020, Christopher Wray, Director of the FBI, stated during a hearing before the U.S. Senate Committee on Homeland Security and Government Affairs that “we have not seen, historically, any kind of coordinated national voter fraud effort in a major election, whether it’s by mail or otherwise.” (9/24/20 CNN Transcript (Exhibit 117).)

291. On November 4, 2020, the National Association of Secretaries of State (NASS) and the National Association of State Election Directors (NASED) issued a statement: “[o]ver the course of the election, more than 100 million ballots were safely and securely cast, both in-person and by mail.” (11/4/20 Post-Election Joint Statement from NASS and NASED (Exhibit 121).)

292. The NASS and NASED also issued a joint statement on October 30, 2020 to “express their confidence in [the] nation’s elections systems, processes, safety and security.” It further stated that “[s]tate election officials have been working diligently to bolster cybersecurity, strengthen existing infrastructure,

address election misinformation and disinformation, as well as provide administrative and technical support for local election officials.” And it made clear that “[v]oters and members of the media should be diligent in the face of election misinformation. Think critically about the source of information before repeating or retweeting it ... contact your election official with any questions or concerns and follow verified election official social media accounts.” (10/30/20 NASS and NASED 2020 Election Preparations and Reminders (Exhibit 119).)

293. On November 12, 2020, the U.S. Elections Infrastructure Government Coordinating Council and the Election Infrastructure Sector Coordinating Executive Committees issued a definitive statement that “[t]he November 3rd election was the most secure in American history.” It further stated, “[t]here is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised.” And “[o]ther security measures like pre-election testing, state certification of voting equipment, and the U.S. Election Assistance Commission’s (EAC) certification of voting equipment help to build additional confidence in the voting systems used in 2020.” (11/12/20 Cybersecurity & Infrastructure Security Agency, *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committee* (Exhibit 127).)

294. On November 16, 2020, a group of election security specialists issued a statement saying that there was no credible evidence of computer fraud in the 2020

election outcome. These specialists indicated they had studied the security of voting machines, voting systems, and technology used for government elections for decades. They stated “[a]nyone asserting that a US election was ‘rigged’ is making an *extraordinary* claim, one that must be supported by persuasive and verifiable evidence. Merely citing the existence of technical flaws does not establish that an attack occurred, much less that it altered an election outcome. It is simply speculation.” Further, “[w]e 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.” (11/16/20 Letter from Election Security Specialists (Exhibit 130).)

295. On November 19, 2020, it was reported that a spokeswoman for the National Association of Secretaries of State (NASS) said, “[e]lections in the United States of America are administered, run, counted and certified by state and local election officials. We have never heard of votes being tabulated in a foreign country.” (11/19/20 Verify, *No evidence that presidential election votes were tallied overseas* (Exhibit 132).)

296. On November 29, 2020, a piece was published in which Chris Krebs, former Director of the CISA, stated that Election Day “was quiet. And there was no indication or evidence that there was any evidence of hacking or compromise of election systems on, before, or after November 3 ... We did a good job. We did it right. I’d do it a thousand times over.” (11/30/20 CBS News, *Fired Director of U.S. Cyber Agency Chris Krebs Explains Why President Trump’s Claims of Election Interference Are False* (Exhibit 136).)

297. On December 1, 2020, Attorney General William Barr stated, “To date, [DOJ investigators] have not seen fraud on a scale that could have effected a different outcome in the election.” (12/1/20 AP Article, *Disputing Trump, Barr says no widespread election fraud* (Exhibit 137).)

298. Fourth, individual states that were contested in the 2020 U.S. election performed audits and/or issued statements verifying their election process and rejecting claims of fraud or rigging. For example:

299. Georgia: A November 19, 2020 Audit Report for the Georgia Presidential Contest stated “[f]rom November 11 to November 19, 2020, county election officials in Georgia, conducted a statewide risk-limiting audit of the Presidential Contest from the November 2020 General Election, as ordered by the Georgia Secretary of State.” In reporting the outcome, it noted “the audit confirmed the original result of the election, namely that Joe Biden won the Presidential Contest

in the State of Georgia.” (11/19/20 Georgia Risk-Limiting Audit Report (Exhibit 61); *see also* 11/19/20 Georgia Secretary of State, *Historic First Statewide Audit of Paper Ballots Upholds Result of Presidential Race* (Exhibit 62) (“Due to the tight margin of the race and the principles of risk-limiting audits, this audit was a full manual tally of all votes cast. The audit confirmed that the original machine account accurately portrayed the winner of the election.”).)

300. On November 30, 2020, Georgia’s Secretary of State, Brad Raffensperger, held a press conference and made clear that none of the allegations of potential election violations cast doubt on the integrity of the state’s election results. At the conference, he stated: “There are those who are exploiting the emotions of many Trump supporters with fantastic claims, half-truths, misinformation, and, frankly, they are misleading the President as well apparently.” (11/30/20 Georgia Press Conference on 2020 Election Recount Update Transcript (Exhibit 63).)

301. On January 6, 2021, Georgia’s Secretary of State, Brad Raffensperger, sent a letter to Congress with a “Point by Point Refutation of False Claims about Georgia Elections.” It described the multiple steps taken to confirm that the Presidential election result was accurate and the software on the voting machines was accurate. It includes a section that addresses the allegations regarding Dominion

Voting Machines and clearly states the claims were false. (1/6/21 Georgia Secretary of State Letter to Congress (Exhibit 65).)

302. Michigan: Michigan's Bureau of Election made information about its election security available on its website, www.Michigan.gov/ElectionSecurity, including that "[t]here is no evidence voting machines in Michigan have ever been compromised or that votes have been changed." (1/5/21 Michigan Secretary of State, *Michigan's election was secure and fair, and the results are accurate* (Exhibit 69).)

303. Pennsylvania: On November 12, 2020, Governor Tom Wolf tweeted, from his official government account, "Allegations of fraud and illegal activity have been repeatedly debunked. Pennsylvania had a free, fair, and secure election." (Tweet, @GovernorTomWolf, November 12, 2020 (Exhibit 73).)

304. On November 13, 2020, Governor Wolf issued the following statement: "All Pennsylvanians can have confidence in our election system and the accuracy of the vote." "The U.S. Department of Homeland Security's conclusion that our nation had the most secure election in history reaffirms the commitment to protecting our votes by local, state and national officials. Allegations of fraud and unfounded rumors of illegal activity have been repeatedly debunked. Those deliberate and false attacks are un-American and harm our democracy, and we should reject them. I thank the election and cyber-security experts for verifying that our nation's election

was protected and secure.” (11/13/20 Governor Tom Wolf, *U.S. Election was ‘most secure in American history’ Federal Agency says* (Exhibit 74).)

305. Arizona: On December 1, 2020, in response to allegations from former President Trump that Arizona’s election had been tainted by “corruption,” Governor Doug Ducey issued a nine-tweet thread explaining that Arizona’s election had been fair and free from fraud. Specifically, he stated: “In Arizona, we have some of the strongest election laws in the country, laws that prioritize accountability and clearly lay out procedures for conducting, canvassing, and even contesting the results of an election.” (Tweet, @DougDucey, December 1, 2020 (Exhibit 76).)

306. Wisconsin: On or about December 16, 2020, Wisconsin’s Elections Commission, on its website, answered the question of whether Dominion voting equipment flipped votes from Trump to Biden: “[a]bsolutely not. Twenty-eight reporting units using Dominion systems were randomly selected after the election and audited for the Presidential contest, and all the audits confirmed that the hand-counted paper ballots exactly matched the electronic results from the machines.” It also answered the question of whether there was widespread fraud in the 2020 election - saying there was no evidence of such fraud. And it stated that the claims made about Dominion have not been substantiated. (11/16/20 Wisconsin Elections Commission, *Did Dominion voting equipment flip votes from Trump to Biden* (Exhibit 79).)

307. Nevada: On November 5, 2020, Nevada Governor Steve Sisolak held a press conference, in which he stated: “Nevada is widely recognized as being a leader in election administration, and I continue to have the utmost confidence in the abilities of Nevada’s local election officials and Secretary of State Barbara Cegavske to accurately count every eligible vote cast in the Silver State. Our election administration officials are required to keep counting under state law and that is exactly what they’ll do until every vote is counted. Despite national pressure, our election officials and public servants continue to prioritize accuracy and fairness in this process. That should make all Nevadans proud. I ask all Nevadans to support our election workers, trust this process and respect the results when they are certified as final.” (11/5/20 Nevada Governor, *Gov. Sisolak issues statement on President Trump’s comments on the election* (Exhibit 81).)

308. And Nevada state officials have expressly stated after certification of the election results that there was no evidence of voter fraud. In Secretary of State Barbara Cegavske’s “*Facts v. Myths: Nevada 2020 Post-General Election*” document, posted on the Nevada Secretary of State website, the Secretary stated, “We have yet to see any evidence of widespread fraud.” (*Facts v. Myths: Nevada 2020 Post-General Election* (Exhibit 82).)

309. In addition, on November 10, 2020, the New York Times reported contacting officials in every state on November 9 and 10, and that officials in all

states but Texas reported no major voting issues. (11/10/20 NYT Article, *The Times Called Officials in Every State: No Evidence of Voter Fraud* (Exhibit 123).)

310. Fifth, election technology companies issued public statements rejecting claims of fraud or rigging the 2020 U.S. election. For example, on November 7, 2020, Dominion issued a statement that “[t]here are no credible reports or evidence of any system software errors in Georgia or Michigan.” (11/7/20 Dominion Website, *Statement on Viral Claims/Rumors About Dominion Voting Systems* (Exhibit 88).)

311. On November 12, 2020, Dominion’s website included a page to set the record straight, including that the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (CISA) has debunked claims of voter fraud. It further stated “[n]o credible reports or evidence of any software issues exist. While no election is without isolated issues, Dominion Voting Systems are reliably and accurately counting ballots. State and local officials have publicly confirmed the integrity of the process.” 11/13/20 Dominion Website, *Election 2020: Setting the Record Straight: Facts & Rumors* (Exhibit 89); 11/17/20 Dominion Website, *Setting the Record Straight, Facts & Rumors* (Exhibit 90); 12/3/20 Dominion Website, *Election 2020: Setting the Record Straight: Facts & Rumors* (Exhibit 94).)

312. Sixth, on November 17, 2020 Dominion sent an email to Newsmax’s booking producer, Alicia Hesse. Among other responsibilities, Hesse is involved

with soliciting guests to speak on Newsmax TV—including on Greg Kelly’s show *Greg Kelly Reports*. Upon information and belief, Hesse shared the contents of the emails she received from Dominion with the hosts and other producers for the shows she books. The November 17, 2020 email included the following information from a Dominion fact check called “SETTING THE RECORD STRAIGHT” (Exhibit 160):

- a. CISA’s November 12 statement that there was “no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised”;
- b. That “[v]ote deletion/switching assertions are completely false,” along with specific factual information in support of this;
- c. A link to the Michigan Secretary of State’s website “which debunks false or erroneous claims about voting in Detroit, as well as a user-error incident in Antrim County”;
- d. A link to the Georgia Secretary of State’s website with the statement from Republican Secretary of State Brad Raffensperger that “every legal vote was cast and accurately counted” in Georgia; and
- e. That “Assertions of voter fraud conspiracies are 100% false” along with links to the EAC and CISA websites noting that all

U.S. voting systems, including Dominion's, "must provide assurance that they work accurately and reliably" under EAC "and state certification and testing requirements."

313. In all, beginning on November 17, 2020—and repeatedly thereafter, including but not limited to, November 18, November 19, November 20, November 23, November 24, November 25, November 26, November 30, December 3, December 5, December 14, and December 17—Dominion sent Newsmax producer Alicia Hesse correspondence detailing Newsmax's defamatory falsehoods about Dominion, explaining how and why those defamatory falsehoods were false, and providing citations to independent sources confirming the falsity of those calculated falsehoods and the calculated falsehoods made about Smartmatic.

314. Seventh, Smartmatic sent Newsmax a retraction demand letter on December 11, 2020. (12/11/20 Retraction Demand Letter to Newsmax (Exhibit 54).) The 18-page letter identified some of Newsmax's false statements that Smartmatic's election technology and software were used to fix, rig, or steal the 2020 U.S. election and explained why those statements were false.

315. Eighth, on December 18, 2020 and December 22, 2020, Dominion sent retraction demand letters to Newsmax. (12/18/2020 and 12/22/20 Dominion Retraction Demand Letters to Newsmax (Exhibit 56).) The December 18 letter

included information demonstrating that the claims Newsmax had been broadcasting and publishing about Smartmatic were false.

3. Newsmax knew that Smartmatic's election technology and software (1) were not compromised or hacked during the 2020 U.S. election and (2) did not send votes overseas to be compromised or hacked.

316. Information was available to Newsmax that showed its statements about Smartmatic's election technology and software being compromised or hacked during the 2020 U.S. election or sending votes overseas to be compromised or hacked were false. Newsmax either ignored this information, and thereby acted with reckless disregard, or broadcast and published its false statements knowing they were false based on this information.

317. First, as discussed above, before the disinformation campaign, there was publicly available and easily accessible information that Smartmatic's technology and software were used in only one county in the 2020 U.S. election, Los Angeles County. Newsmax's statements about compromises and/or hacking for the 2020 U.S. election primarily related to contested states and did not include the one state where Smartmatic's election technology and software were used (California was not contested).

318. Second, before and during the disinformation campaign, there was publicly available information that showed there were no issues in the one county where Smartmatic's election technology and software were used during the 2020

U.S. election, Los Angeles County. Smartmatic and its system came through the 2020 election in that county “with flying colors” as noted by an initial case study made available on Smartmatic’s website. There are no reports that Smartmatic’s election technology and software had been compromised or hacked. (11/11/20 Smartmatic Website, *Los Angeles County – Voting Solutions for All People* (Exhibit 125); 11/10/20 Los Angeles Times Article, *L.A.’s \$300-million voting systems gets high marks as votes trickle in across California* (Exhibit 124).)

319. There was also information publicly available before the disinformation campaign about the work of Los Angeles County to certify Smartmatic’s voting system for use, including descriptions of the state testing and certification process, which exceeds the guidelines recommended by the U.S. Elections Assistance Commission (EAC) (and California’s standards are also considered the most rigorous in the country). That information showed that every voting system goes through functional testing, source code review, accessibility and volume testing, and red team security testing that involved experts trying to “break into” the voting system. Smartmatic’s system for Los Angeles County passed. (10/1/20 California Secretary of State Press Release, *Los Angeles County Launches VSAP 2.1 Voting System Certified* (Exhibit 57); 12/15/20 California Secretary of State Website, *Voting Technologies Approved for Use in California* (Exhibit 59).)

320. The Smartmatic system that was actually used in the general election for Los Angeles County was VSAP 2.1, which was certified by California in October 2020. California Secretary of State Padilla said in a press release that VSAP was an “historic milestone in election administration” and that the “public design and testing process for VSAP was one of the lengthiest and most inclusive ever conducted for voting technology.”¹⁰ Secretary Padilla said that the system underwent functional testing and source code review, among other things, and that California’s Voting System Standards exceeded the Voluntary Voting System Guidelines recommended by the U.S. Elections Assistance Commission and “are considered the most rigorous in the country.” In his October 1, 2020 certification, Secretary Padilla stated that VSAP 2.1 “satisfies the accuracy, accessibility, usability, and security standards set forth in the California Voting Systems Standards and California law.” (10/1/20 California Secretary of State, *Conditional Approval of Los Angeles County’s Voting Solutions for All People (VSAP) 2.1 Voting Systems* (Exhibit 58).)

321. Third, as discussed above, before and during the disinformation campaign, there was publicly available information that the 2020 U.S. election was secure, and federal and state officials confirmed there was no basis to any claims of hacking. For example:

¹⁰ Available at <https://www.sos.ca.gov/administration/news-releases-and-advisories/2020-news-releases-and-advisories/ap20091-los-angeles-county-vsap-21-voting-system-certified>.

- a. On November 4, 2020, the Director of the Cybersecurity and Infrastructure Security Agency issued a statement that “after millions of Americans voted, we have no evidence any foreign adversary was capable of preventing Americans from voting or changing vote tallies.” (11/4/20 Statement from CISA Director Krebs Following Final Day of Voting (Exhibit 122).)
- b. On November 12, 2020, the U.S. Elections Infrastructure Government Coordinating Council and the Election Infrastructure Sector Coordinating Executive Committees issued a joint statement that “[t]he 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.” It further stated, “[t]here is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised.” And “[o]ther security measures like pre-election testing, state certification of voting equipment, and the U.S. Election Assistance Commission’s (EAC) certification of voting equipment help to build additional confidence in the voting systems used in 2020.” “While we know there are many

unfounded claims and opportunities for misinformation about the process of our selections, we can assure you we have the utmost confidence in the security and integrity of our elections, and you should too.” (11/12/20 Cybersecurity & Infrastructure Security Agency, *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committee* (Exhibit 127).)

- c. On November 12, 2020, a competitor company’s Vice Chair, Sam Derheimer, signed the Joint Statement from the Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees providing that “There is no evidence that any voting system deleted or lost votes, changed votes, or was in any compromised.” (11/12/20 Cybersecurity & Infrastructure Security Agency, *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committee* (Exhibit 127).)
- d. On December 1, 2020, Attorney General Barr specifically addressed claims about Smartmatic and Dominion in an interview with the Associated Press: “There’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." (12/1/20 AP Article, *Disputing Trump, Barr says no widespread election fraud* (Exhibit 137).)

322. Fourth, there was publicly available information by government officials that have authority over the election process about procedures and processes to test and certify any election technology used, including for the 2020 U.S. election. The information clearly shows various and rigorous testing and certification processes to prevent hacking or any compromise to the voting systems during the election. (CISA, *#Protect2020 Rumor vs. Reality* (Exhibit 142).)

323. Fifth, before and during the disinformation campaign, Smartmatic's website indicated that its technology had been validated by institutions such as the Carter Center, the United Nations, the Organization of American States, and the European Union. Smartmatic also provided information that its election software had processed more than 5 billion votes over 20 years without a breach. (11/27/20 Smartmatic Website, *Fact-checked* (Exhibit 85).)

324. Sixth, there were articles available on Smartmatic's website before and during the disinformation campaign about the use of Smartmatic's technology and

software in Los Angeles County (and owned by the county). These articles show that the technology is not connected to the Internet, is not used to count votes, and does not store any data. It is noted that county officials tabulate votes by counting the paper ballots produced by the devices and cast by voters. (11/11/20 Smartmatic Website, *Los Angeles County—Voting Solutions for All People* (Exhibit 125).)

325. Seventh, as discussed above, on November 19, 2020, it was reported that a spokeswoman for the National Association of Secretaries of State (NASS) said: “Elections in the United States of America are administered, run, counted and certified by state and local election officials. We have never heard of votes being tabulated in a foreign country.” (11/19/20 Verify, *No evidence that presidential election votes were tallied overseas* (Exhibit 132).)

326. Eighth, before and during the disinformation campaign, various companies providing election technology issued statements contradicting claims related to votes being sent to foreign countries. (11/13/20 Scytl Website, *Scytl strongly denies the false information related to the U.S. elections* (Exhibit 128); 11/13/20 Dominion Website, *Election 2020: Setting the Record Straight: Facts & Rumors* (Exhibit 89); 11/21/20 Dominion Website, *Election 2020: Setting the Record Straight, Fact Versus Rumors* (Exhibit 91); 11/26/20 Dominion Website, *Statement from Dominion on Sidney Powell’s Charges* (Exhibit 93); 12/3/20

Dominion Website, *Election 2020: Setting the Record Straight: Facts & Rumors* (Exhibit 94).)

327. Ninth, it was widely reported and known in November 2020 that claims related to votes being sent to foreign countries were false. (11/16/20 Reuters Article, *Fact check: the U.S. military has not seized election servers in Germany* (Exhibit 131); 11/19/20 AP Article, *AP Fact Check: Trump legal team's batch of false vote claims* (Exhibit 133); 11/15/20 AP Article, *False reports claim election servers were seized in Germany* (Exhibit 129).)

328. Tenth, on November 17, 2020 Dominion sent an email to Newsmax's booking producer, Alicia Hesse. Among other responsibilities, Hesse is involved with soliciting guests to speak on Newsmax TV—including on Greg Kelly's show *Greg Kelly Reports*. Upon information and belief, Hesse shared the contents of the emails she received from Dominion with the hosts and other producers for the shows she books. The November 17, 2020 email included the following information from a Dominion fact check called "SETTING THE RECORD STRAIGHT" (Exhibit 160):

- a. CISA's November 12 statement that there was "no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised";

- b. That “[v]ote deletion/switching assertions are completely false,” along with specific factual information in support of this; and
- c. That “Assertions of voter fraud conspiracies are 100% false” along with links to the EAC and CISA websites noting that all U.S. voting systems, including Dominion’s, “must provide assurance that they work accurately and reliably” under EAC “and state certification and testing requirements.”

329. In all, beginning on November 17, 2020—and repeatedly thereafter, including but not limited to, November 18, November 19, November 20, November 23, November 24, November 25, November 26, November 30, December 3, December 5, December 14, and December 17—Dominion sent Newsmax producer Alicia Hesse correspondence detailing Newsmax’s defamatory falsehoods about Dominion, explaining how and why those defamatory falsehoods were false, and providing citations to independent sources confirming the falsity of those calculated falsehoods and the calculated falsehoods made about Smartmatic.

330. Eleventh, Smartmatic sent Newsmax a retraction demand letter on December 11, 2020. (12/11/20 Retraction Demand Letter to Newsmax (Exhibit 54).) The 18-page letter identified some of Newsmax’s false statements that Smartmatic’s election technology and software (1) were compromised or hacked

during the 2020 U.S. election and (2) sent votes overseas to be compromised or hacked and explained why those statements were false.

331. Twelfth, on December 18, 2020 and December 22, 2020, Dominion sent retraction demand letters to Newsmax. (12/18/2020 and 12/22/20 Dominion Retraction Demand Letters to Newsmax (Exhibit 56).) The December 18 letter included information demonstrating that the claims Newsmax had been broadcasting and publishing about Smartmatic were false.

4. Newsmax knew that corrupt dictators did not control Smartmatic.

332. Information was available to Newsmax that showed its statements about Smartmatic being a Venezuelan company and being controlled by corrupt dictators were false. Newsmax either ignored this information, and thereby acted with reckless disregard, or broadcast and published its false statements knowing they were false based on this information.

333. First, before and during the disinformation campaign, information about the corporate status of Smartmatic USA was publicly available and easy to confirm from state and other public filings. It was founded and maintains its base office in Boca Raton, Florida. Indeed, its filing with the Florida Secretary of State identifies that it is incorporated in Delaware and has a business address in Boca Raton, Florida. (7/13/12 Florida Division of Corporations Smartmatic USA Corp. Filing Record (Exhibit 102).)

334. Second, before and during the disinformation campaign, information about the corporate status of SGO Corporation was publicly available and easy to confirm from public filings. Since its inception, SGO Corporation has reported and updated information about its shareholders to the government of the United Kingdom and that information is publicly available on a government website.

335. Third, before and during the disinformation campaign, information about the corporate status of Smartmatic was publicly available from its website. Its website notes it is a U.S. company, regardless of where its founders or shareholders happen to have been born. It states that it has no ties to governments or political parties—no alliances, relationships or “deals” with any politician, political organization, or government. It also states that its founders adhere to a strict ethics code that prohibits them from making political donations. (11/14/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 83); 11/27/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 85).)

336. Fourth, before and during the disinformation campaign, information about Smartmatic’s history with Venezuela was publicly available from its website and other sources. The company was founded by three engineers from Venezuela. And the company has made public statements that they do not have any ties to Venezuela or Hugo. (10/30/06 Fox News Article, *Voting Machines Cos: No Ties to Chávez* (Exhibit 100).)

337. Fifth, before and during the disinformation campaign, information about Smartmatic’s participation in election projects in Venezuela was publicly and widely known. Smartmatic did elections there from 2004 to 2017, but stopped its work there after blowing the whistle on false results reporting by the government for the 2017 election. Indeed, its technology helped prove the government was reporting false turnout numbers. (3/6/18 Business Wire Article, *Smartmatic Announces Cease of Operations in Venezuela* (Exhibit 106); 11/27/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 85).)

338. Sixth, on November 17, 2020 Dominion sent an email to Newsmax’s booking producer, Alicia Hesse. Among other responsibilities, Hesse is involved with soliciting guests to speak on Newsmax TV—including on Greg Kelly’s show *Greg Kelly Reports*. Upon information and belief, Hesse shared the contents of the emails she received from Dominion with the hosts and other producers for the shows she books. The November 17, 2020 email included a Dominion fact check called “SETTING THE RECORD STRAIGHT” that stated “Dominion is not, and has never been, owned by Smartmatic,” with detailed facts, and that Dominion has “no ownership relationships” with Smartmatic and “no ties to Venezuela.” (11/17/20 SETTING THE RECORD STRAIGHT (Exhibit 160).)

339. In all, beginning on November 17, 2020—and repeatedly thereafter, including but not limited to, November 18, November 19, November 20, November

23, November 24, November 25, November 26, November 30, December 3, December 5, December 14, and December 17—Dominion sent Newsmax producer Alicia Hesse correspondence detailing Newsmax’s defamatory falsehoods about Dominion, explaining how and why those defamatory falsehoods were false, and providing citations to independent sources confirming the falsity of those calculated falsehoods and the calculated falsehoods made about Smartmatic.

340. Seventh, Smartmatic sent Newsmax a retraction demand letter on December 11, 2020. (12/11/20 Retraction Demand Letter to Newsmax (Exhibit 54).) The 18-page letter identified some of Newsmax’s false statements that Smartmatic was funded and founded by corrupt dictators and explained why those statements were false.

341. Eighth, on December 18, 2020 and December 22, 2020, Dominion sent retraction demand letters to Newsmax. (12/18/2020 and 12/22/20 Dominion Retraction Demand Letters to Newsmax (Exhibit 56).) The December 18 letter included information demonstrating that the claims Newsmax had been broadcasting and publishing about Smartmatic were false.

5. Newsmax knew Smartmatic’s election technology has not been designed to or used to fix, rig, or steal elections.

342. Information was available to Newsmax that showed its statements about Smartmatic’s election technology and software being designed and used to fix, rig, or steal elections and successfully doing so in prior elections were false.

Newsmax either ignored this information, and thereby acted with reckless disregard, or broadcast and published its false statements knowing they were false based on this information.

343. First, before and during the disinformation campaign, information about audited elections that Smartmatic participated in, all over the world, was publicly available, and such information does not support statements that it has been used to fix, rig, or steal elections.

344. Second, before and during the disinformation campaign, information about the success and security of Smartmatic's election technology and software was publicly available from its website. For example, its website stated that its election technology had handled billions of votes in election projects on five continents, without a single discrepancy and has never been compromised. Its election technology and software were designed to ensure secure, transparent, and auditable elections (and not to change votes or rig elections). (Smartmatic Website, *Facts About Smartmatic* (Exhibit 86).)

345. There was publicly available information at the time of the disinformation campaign to show that third-party validators had authenticated Smartmatic's technology, including the State of California, PriceWaterhouseCoopers, and the U.S. Election Assistance Commission. The United Nations, Organization of American States, and the European Union have also

validated Smartmatic's technology. Former U.S. President Jimmy Carter of the Carter Center has called Smartmatic's electronic voting solution in Venezuela "the best in the world." (9/21/12 Smartmatic Press Release, *Carter: "The electoral system in Venezuela is the best in the world"* (Exhibit 104); 11/27/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 85).)

346. Third, as discussed above, before and during the disinformation campaign, information about the certification of Smartmatic's election technology for Los Angeles County and Smartmatic's registration with the U.S. Election Assistance Commission was publicly available.

347. Fourth, before and during the disinformation campaign, information was publicly available that showed Smartmatic had been approved as a Department of Defense vendor and a founding member of the Department of Homeland Security Election Infrastructure Sector Coordinating Council.

348. Fifth, Smartmatic sent Newsmax a retraction demand letter on December 11, 2020. (12/11/20 Retraction Demand Letter to Newsmax (Exhibit 54).) The 18-page letter identified some of Newsmax's false statements that Smartmatic's election technology and software were designed to and have fixed, rigged, and stolen elections before and explained why those statements were false.

C. Newsmax had obvious reasons to doubt the veracity of Ms. Powell, Mr. Giuliani, and its other guests.

349. Newsmax broadcast and published statements made by Ms. Powell, Mr. Giuliani, and other guests regarding Smartmatic's role in the 2020 U.S. election; Smartmatic's ownership, founding and funding; its election technology and software; and its executives. Newsmax used Ms. Powell and Mr. Giuliani as two voices for the disinformation campaign, but also used a parade of other guests and supposed "experts" to further the message that Newsmax wanted to convey. These other guests include Liz Harrington, Victoria Toensing, Joe diGenova, L. Lin Wood, Ken Timmerman, Dick Morris, Brian Kennedy, Michael Flynn, and Patrick Byrne. Newsmax had obvious reasons to doubt the veracity of Ms. Powell, Mr. Giuliani, and these other guests, and, on information and belief, Newsmax doubted their veracity. Not only should Newsmax have doubted the veracity of these guests, but Newsmax purposefully sought out those guests that would expand on the lies being published about Smartmatic.

1. Newsmax's guests did not provide or disclose evidence for their statements about Smartmatic.

350. None of the guests provided Newsmax credible support for their statements and implications regarding Smartmatic. No one introduced Newsmax to any person with firsthand knowledge of the claims they made about Smartmatic. Nor did anyone identify for Newsmax a person with firsthand knowledge of the claims they made about Smartmatic. On information and belief, Newsmax would

have published an interview of someone with firsthand knowledge if that person existed.

351. Ms. Powell, Mr. Giuliani, and other guests also did not provide Newsmax with any documentation showing (a) Smartmatic's election technology and software were widely used by Dominion and other voting machines during the 2020 U.S. election, (b) Smartmatic's election technology and software changed or altered votes during the 2020 U.S. election, (c) Smartmatic's election technology and software were compromised or hacked during the 2020 U.S. election and sent votes to foreign countries during the 2020 U.S. election, (d) Smartmatic was founded and funded by Hugo Chávez, or (e) Smartmatic's election technology and software were designed to fix, rig, and steal elections and had done so before.

352. There were a handful of guests who appeared on Newsmax who referenced having "evidence" or "proof." But Newsmax never identified, disclosed, or set forth in its publications any such evidence. Newsmax would have published the "evidence" and "proof" if it existed or had been provided to Newsmax by a guest.

2. Newsmax did not corroborate the statements made about Smartmatic.

353. Newsmax was not able to independently corroborate the statements being made about Smartmatic by Ms. Powell, Mr. Giuliani, and others. Newsmax had over a month to identify a source corroborating the statements and implications made by Ms. Powell, Mr. Giuliani, and others. Instead of identifying a source

corroborating them, Newsmax issued a statement in which it acknowledged the absence of evidence to support what Ms. Powell, Mr. Giuliani, and others had stated.

354. For example, Ms. Powell, Mr. Giuliani, and others made statements regarding Dominion owning Smartmatic and Smartmatic owning Dominion. The falsity of those statements is readily apparent from the publicly available information provided to the State of Georgia, which showed their respective ownership structures. The falsity of the statements was confirmed by Dominion and Smartmatic in public statements on November 17. Newsmax never corroborated Ms. Powell's, Mr. Giuliani's, and others' claims to the contrary, which undercut their reliability across the board.

3. Newsmax was aware of publicly available information that contradicted the statements it published about Smartmatic.

355. First, Newsmax knew that credible sources, with firsthand knowledge, had contradicted the statements being made by Ms. Powell, Mr. Giuliani, and others. During the disinformation campaign, Newsmax was aware that Smartmatic had published statements contradicting what was being said by Ms. Powell, Mr. Giuliani, and others, including contradicting the claim that Smartmatic was widely used during the 2020 U.S. election or used by Dominion or any other voting machine company during the 2020 U.S. election.

356. During the disinformation campaign, Newsmax was aware that Dominion had published statements contradicting what was being said by

Ms. Powell, Mr. Giuliani, and others, including contradicting the claim that Smartmatic's election technology or software was used by Dominion or other voting machine companies during the 2020 U.S. election.

357. During the disinformation campaign, Newsmax was aware that government officials and agencies published statements contradicting what was being said by Ms. Powell, Mr. Giuliani, and others. Many of those statements are discussed above. Among other things, Newsmax was aware of, or purposefully avoided, the following statements that contradicted Ms. Powell's, Mr. Giuliani's, and others' claims that Smartmatic had fixed, rigged, or stolen the 2020 U.S. election:

- a. November 4: Cybersecurity and Infrastructure Security Agency Christopher Krebs issued a statement: "[W]e have no evidence any foreign adversary was capable of preventing Americans from voting or changing vote tallies." (11/4/20 Cybersecurity & Infrastructure Security Agency, *Statement from CISA Director Krebs Following Final Days of Voting* (Exhibit 122).)
- b. November 10: The New York Times reported contacting officials in every state on November 9 and 10, and that officials in all states but Texas reported no illegal voting or major voting issues. (11/10/20 New York Times Article, *The Times Called*

Officials in Every State: No Evidence of Voter Fraud (Exhibit 123).)

- c. November 12: The Elections Infrastructure Government Coordinating Council Executive Committee and the Election Infrastructure Sector Coordinating Council issued a joint statement: “The November 3rd election was the most secure in American history ... There is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised.” (11/12/20 Cybersecurity & Infrastructure Security Agency, *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees* (Exhibit 127).)
- d. December 1: Attorney General William Barr said in an interview: “There’s been one assertion that would be systematic 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.” (12/1/20 Associated Press Article, *Disputing Trump, Barr says no widespread election fraud* (Exhibit 137).)

358. Second, Newsmax was aware that the election officials in Nevada, Arizona, Georgia, Pennsylvania, Michigan, and Wisconsin did not support and contradicted the statements being made by Ms. Powell, Mr. Giuliani, and others regarding the security of the elections in their states and votes being changed by election technology or software. Each of the states provided updates during the disinformation campaign. None corroborated the statements being made by Ms. Powell, Mr. Giuliani, or others. If Newsmax was not aware of their statements, then Newsmax purposefully avoided them because the statements were widely known and being published by other news organizations.

359. Third, Newsmax was aware, or should have been aware, that Ms. Powell's, Mr. Giuliani's, and others' statements about Smartmatic's election technology and services were contradicted by the testing conducted by the U.S. Election Assistance Commission. The U.S. Election Assistance Commission has a testing program that EAC-certified machines must pass before being used for elections.

Before voting machines and election management systems are used in elections, the systems undergo rigorous hardware and software testing by laboratories accredited by the EAC and the National Institutes of Standards and Technology (NIST). The testing encompasses security, accuracy, functionality, accessibility, usability, and privacy based on requirements in the EAC's Voluntary Voting System Guidelines (VVSG).

(12/3/20 U.S. Election Assistance Commission Website, *How the U.S. Election Assistance Commission Facilitates Fair and Secure Elections* (Exhibit 138).)

360. Fourth, Newsmax knew, or should have known, that any election technology or software that was certified by the EAC and used in the 2020 U.S. election had been tested for “security, accuracy, functionality, accessibility, usability, and privacy.” Ms. Powell’s, Mr. Giuliani’s, and others’ statements regarding Smartmatic’s software cannot be reconciled with this certification.

361. Fifth, Newsmax knew, or should have known, that election technology specialists contradicted what Mr. Giuliani, Ms. Powell, and others said about Smartmatic’s software being used by Dominion or other voting machine companies to switch or alter votes. For example, Eddie Perez was interviewed by the New York Times on November 11. (11/11/20 NYT Article, *No, Dominion voting machines did not delete Trump votes* (Exhibit 126).) On November 11, the New York Times quoted Mr. Perez as saying:

Many of the claims being asserted about Dominion and questionable voting technology is misinformation at best and, in many cases, they’re outright disinformation.

I’m not aware of any evidence of specific things or defects in Dominion software that would lead one to believe that votes had been recorded or counted incorrectly.

362. Mr. Perez was not the only one. On November 16, election security specialists issued a statement addressing claims that election technology and software had been manipulated to rig the 2020 U.S. election. (11/16/20, Letter from Election Security Specialists (Exhibit 130).) The statement read:

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.

363. Newsmax knew, or should have known, that election security specialists debunked the statements being made by Ms. Powell, Mr. Giuliani, and others regarding Smartmatic’s election technology and software fixing, rigging, or stealing the election. Based on information readily available to Newsmax, it knew or should have known that Ms. Powell’s, Mr. Giuliani’s, and others’ statements about Smartmatic’s election technology and software changing or stealing votes were unsubstantiated and technically incoherent.

364. Sixth, Newsmax knew that Mr. Giuliani’s, Ms. Powell’s, and others’ statements regarding an election fraud involving Smartmatic were inconsistent with statements made by attorneys in court. For example:

- a. November 17: Mr. Giuliani appeared for the plaintiff in *Donald J. Trump for President, Inc. vs. Boockvar*, filed in Pennsylvania. This was the only election-related case in which Mr. Giuliani appeared before a court. During the hearing, Mr. Giuliani stated: “This is not a fraud case.” (11/20/20 New York Times Article, *Trump Campaign Lawyers Step Up but Are Swiftly Knocked Down* (Exhibit 134).)

- b. November 11: Johnathan Goldstein appeared for the plaintiff in *Donald J. Trump for President, Inc. v. Montgomery County Board of Elections*, filed in Pennsylvania. During the hearing, Mr. Goldstein stated: “I am not calling the Board of the DNC or anybody else involved in this a liar. Everybody is coming to this with good faith.” (*Id.*)
- c. November 12: Kory Langhofer appeared for the plaintiff in *Donald J. Trump for President, Inc. v. Hobbs*, filed in Arizona. During the hearing, Mr. Langhofer stated: “This is not a fraud case.” (*Id.*)

365. The statements made by attorneys in court were not consistent with Ms. Powell’s, Mr. Giuliani’s, and others’ claim that Smartmatic had perpetrated a “fraud” by fixing, rigging, and stealing the 2020 U.S. election. Newsmax knew that Ms. Powell, Mr. Giuliani, and others lacked credibility based on the fact that lawyers representing President Trump contradicted their statements in court. If Newsmax did not know that President Trump’s lawyers were making contradictory statements in court, then Newsmax purposefully avoided learning that fact because Newsmax was aware of the litigation and easily could have learned what was being said.

4. Newsmax knew its guests were biased and not credible sources, but failed to disclose that fact to its audience.

366. From November 14 through December 18, Newsmax brought on a series of guests that made defamatory statements about Smartmatic. Newsmax had reason to doubt the veracity of each of these guests and the extent to which they would have relevant knowledge or information about their claims. As discussed above, during this timeframe there was publicly available information that contradicted the statements made about Smartmatic during Newsmax broadcasts. From this alone, Newsmax had reason to doubt the truthfulness and credibility of each of its guests. But in addition to this, Newsmax should have doubted the veracity of each guest based on information specific to each individual. Yet Newsmax presented each one as an authoritative and reliable source of facts about Smartmatic because Newsmax was using these guests to push its false narrative about Smartmatic.

367. Dick Morris: Mr. Morris is a political commentator, author, and previous political campaign consultant. He served as an advisor to President Bill Clinton but was forced to resign after it was reported that he allowed an escort to eavesdrop on calls to the White House. Mr. Morris has been called “an amateur prognosticator with ulterior motives,” whose views are often “willfully illogical and wrong.”¹¹ Mr. Morris has been called out in the past for crossing journalistic ethical

¹¹ Available at <https://newrepublic.com/article/85668/dick-morris-obama-2012-japan-economy>.

lines by “accepting paid advertisements” on his personal website “from candidates that he discussed on the air at Fox.”¹² Morris was let go by Fox News in 2013 after making “ridiculous” predictions about the 2012 presidential election for which he faced widespread criticism.¹³

368. Mr. Morris lost supporters after he was fired from Fox in 2013, and the 2020 U.S. election was the perfect opportunity to regain a following and advance his career. Mr. Morris knew how important it was to Newsmax to increase its ratings and encourage viewers to leave Fox News. If Mr. Morris helped Newsmax with this goal by participating in a disinformation campaign against Smartmatic, he would be rewarded. And he was. Mr. Morris was rewarded by Newsmax with his own show called *Dick Morris Democracy*, which began airing on Newsmax in February 2021.

369. Newsmax was aware, or should have been aware, that Mr. Morris is an unreliable source for information on Smartmatic and that he had no evidence to support his claims about Smartmatic. On December 18, 2020, on a broadcast of *American Agenda*, Mr. Morris accused Smartmatic of altering and flipping votes through its software. (*American Agenda*, December 18, 2020 (Exhibit 49).) He did not provide any evidence to substantiate this claim and had no firsthand knowledge

¹² Available at <https://apnews.com/article/9e36da7f0e2e47e1a6258d070b216d13>.

¹³ Available at <https://theweek.com/articles/467889/fox-news-cleans-house-network-restore-credibility>; <https://www.politico.com/story/2013/05/fox-news-palin-gingrich-santorum-morris-091891>.

to support this claim. Newsmax published Mr. Morris's statements without informing viewers of the various reasons Mr. Morris was not credible and was biased.

370. Victoria Toensing and Joseph diGenova: Ms. Toensing and Mr. diGenova are spouses and partners at their own law firm. The couple got their professional start in the 1980s when Toensing served as a deputy assistant general in the Justice Department during the Reagan administration and Mr. diGenova served as a U.S. Attorney in the District of Columbia. Over the years the couple has “been involved in numerous scandals and legal battles related to Donald Trump’s presidency.”¹⁴ For example, during the 2017 Robert Mueller investigation into President Trump’s ties with Russia, Mr. diGenova falsely asserted that the allegations were “cooked up by the FBI and Justice Department to frame Trump and ensure he wouldn’t become president.”¹⁵ And in 2019, Mr. diGenova started a conspiracy about George Soros, claiming he was in control of the FBI and the State Department and was trying to take over Ukraine. And Ms. Toensing, because of her representation of a Ukrainian oligarch, is wrapped up in the FBI investigation of Rudy Giuliani and his dealings with Ukraine.

¹⁴ Available at <https://www.businessinsider.com/victoria-toensing-joseph-digenova-rudy-giuliani-allies-fbi-investigation-2021-5>.

¹⁵ *Id.*

371. Ms. Toensing and Mr. diGenova served as lawyers for President Trump during the 2020 U.S. election. However, Newsmax knew their names are not on any of the election litigation filed by the Trump campaign following the election. And as discussed below, all of the lawsuits filed by the Trump campaign were shams as they relate to Smartmatic.

372. Newsmax was aware, or should have been aware, that Ms. Toensing and Mr. diGenova were unreliable sources for information about Smartmatic and are known for promoting unsubstantiated conspiracy theories. When Ms. Toensing and Mr. diGenova appeared on Newsmax broadcasts, Newsmax knew that they did not have any evidence to support their claims about Smartmatic. Newsmax broadcast and published Ms. Toensing's and Mr. diGenova's statements without informing viewers of the various reasons Ms. Toensing and Mr. diGenova were not credible and were biased.

373. Michael Flynn: In 2017, Mr. Flynn was fired from his position as the White House national security advisor just 24 days into President Trump's administration. He was let go for lying to the FBI about contacts with the Russian ambassador. After this incident, Mr. Flynn "went off the rails ideologically," and became a vocal supporter of the far-right conspiracy movement, QAnon. (2/6/21 The New York Times, *Pushing QAnon and Stolen Election Lies, Flynn Re-emerges* (Exhibit 157).) As part of his association with QAnon, Mr. Flynn launched a media

venture titled, ‘Digital Soldiers,’ which involves the use of a website he built to push out conspiracy theories.¹⁶

374. In 2012, Mr. Flynn served as the director of the Defense Intelligence Agency. Even then, he was known for commonly making false assertions of fact. It became so common that his subordinates began calling Mr. Flynn’s assertions, ‘Flynn facts.’¹⁷

375. Mr. Flynn twice pled guilty in December 2017 to lying to the FBI about contacts with Russia. For years after 2017, Mr. Flynn was part of drawn-out legal battles, and with the end of President Trump’s presidency nearing, Mr. Flynn sought a presidential pardon. To gain favor with President Trump, Mr. Flynn aligned himself with President Trump after the 2020 U.S. election and participated in the defamation campaign against Smartmatic. Not surprisingly, Mr. Flynn received a pardon from President Trump on November 25, 2020.

376. In addition, Mr. Flynn has used the disinformation campaign about the 2020 election for financial gain. After the Russia investigation, Mr. Flynn expressed that he needed to focus on paying down millions of dollars in legal fees he amassed defending himself in the investigation. To pay those bills, Mr. Flynn has been “leveraging his public persona into cold, hard cash.” (2/6/21 The New York Times,

¹⁶ Available at <https://www.nytimes.com/2021/02/06/us/politics/michael-flynn-qanon.html>.

¹⁷ *Id.*

Pushing QAnon and Stolen Election Lies, Flynn Re-emerges (Exhibit 157).) Mr. Flynn's visibility with the public allows him to promote his merchandise which features QAnon mottos and t-shirts that say #FightLikeAFlynn.

377. Newsmax was aware, or should have been aware, that Mr. Flynn is an unreliable source for information about Smartmatic and is known for promoting unsubstantiated conspiracy theories. When Mr. Flynn appeared on Newsmax broadcasts, Newsmax knew that he did not have any evidence or firsthand knowledge to support his claims about Smartmatic. Newsmax broadcast and published Mr. Flynn's statements without informing viewers of the various reasons Mr. Flynn was not credible and was biased.

378. Liz Harrington: Ms. Harrington is a conservative journalist, former Republican National Committee official, and the current spokesperson for President Trump. Immediately following the 2020 U.S. election, Ms. Harrington began spreading conspiracies about the legitimacy of the election. In interviews the week of November 8, 2020, Ms. Harrington made baseless assertions that President Biden did not legitimately win the election and that there was evidence of systemic fraud in the election. Just days later, on November 11, CNN published a fact check debunking Ms. Harrington's "ridiculous" assertions.¹⁸ Ms. Harrington made

¹⁸ Available at <https://www.cnn.com/2020/11/11/politics/fact-check-elizabeth-harrington-rnc-fraud-biden/index.html>.

defamatory statements about Smartmatic during a Newsmax broadcast on November 16, 2020. This was five days after the CNN fact check.

379. Ms. Harrington served as a Republican National Committee official in 2020 when she was a vocal part of the disinformation campaign against Smartmatic. She saw the disinformation campaign as an opportunity to get the attention of President Trump and advance her career. It worked. In June 2021, Ms. Harrington became the spokesperson for President Trump. When President Trump announced that Ms. Harrington was selected for the spokesperson position, he stated, “Liz Harrington is a fighter. She was an important part of our receiving more votes than any incumbent President in U.S. history, far more than we received the first time we won.”¹⁹ In response, while alluding the 2020 U.S. election, Ms. Harrington stated that she would continue to “stand for the truth.”²⁰

380. Newsmax was aware, or should have been aware, that Ms. Harrington was spreading false information about the 2020 election. In addition, when Ms. Harrington appeared on Newsmax, Newsmax knew that she did not have any evidence or firsthand knowledge to support her claims about Smartmatic. Newsmax broadcast and published Ms. Harrington’s statements without informing viewers of the various reasons Ms. Harrington was not credible and was biased.

¹⁹ Available at <https://www.independent.co.uk/news/world/americas/us-politics/trump-liz-harrington-spokesperson-twitter-b1866530.html>.

²⁰ *Id.*

381. Patrick Byrne: Mr. Byrne is the former CEO of the internet discount retailer Overstock.com. Mr. Byrne has a long prior history of fabricating fantastical stories without ever providing a shred of evidence to support their truth in order to serve his own personal interests. For instance, Mr. Byrne was previously ordered to pay an approximately \$1 million defamation judgment for falsely accusing a Canadian businessman of being connected to “Osama bin Laden’s favorite financier,” the Colombian drug cartel, the Russian mafia, and al Qaeda’s Golden Chain. (5/6/16 *Nazerali v. Mitchell*, No. S116979, 2016 BCSC 810, Correct Judgment (Sup. Ct. of British Columbia) (Exhibit 161).) The court concluded that Mr. Byrne and his collaborators had “engaged in a calculated and ruthless campaign to inflict as much damage on [his victim’s] reputation as they could achieve. It is clear on the evidence that their intention was to conduct a vendetta in which the truth . . . was of no consequence. Their mission was to expose what they conceive to be corrupt business practices . . . [Their victim] became a convenient means to that end, even when he himself could not be demonstrated to be corrupt.” (*Id.*)

382. Mr. Byrne had an affair with a notorious Russian-agent, Maria Butina. He claims that the FBI told him to end his affair with Ms. Butina and facilitate an \$18 million bribe of Hillary Clinton in January 2016. The \$18 million bribe was supposedly (according to Mr. Byrne) part of a plot by then-President Obama to

ensure that he could “control” Ms. Clinton once she became President.²¹ Mr. Byrne has publicly claimed that this set of alleged experiences somehow tipped him off that the 2020 election would be rigged back in August 2020, at which time he set out to hire a group he calls the “Bad News Bears” to “reverse-engineer” the supposed election-rigging to come.²²

383. During the 2020 election, Mr. Byrne served as the CEO of Sidney Powell’s organization, Defending the Republic, which was founded to help Ms. Powell fund her own efforts to falsely accuse Smartmatic of rigging the 2020 U.S. election. After the U.S. Supreme Court declined to hear a case seeking to throw out the 2020 election results, Mr. Byrne falsely claimed in early December 2020 that Chief Justice John Roberts “may be compromised,” because his name, according to Mr. Byrne, appears on the flight manifest of the notorious Jeffrey Epstein’s private jet.²³

384. It is evident from the illustration of Mr. Byrne above that Newsmax doubted or should have doubted his veracity. Newsmax was aware that Mr. Byrne is an unreliable source for information about Smartmatic and is known for promoting

²¹ Available at <https://rumble.com/vc419j-patrick-m.-byrne-ceo-of-overstock.com-exposes-deep-state-election-fraud.html>.

²² Available at <https://www.deepcapture.com/2021/01/how-djt-lost-the-white-house-introduction-why-i-was-involved-before-november-3-and-what-i-learned-by-doing-so/>.

²³ Available at <https://rumble.com/vbpgi7-patrick-byrne-dissecting-the-election-fraud.html>.

unsubstantiated conspiracy theories. When Mr. Byrne appeared on Newsmax broadcasts, Newsmax knew that he did not have any evidence or firsthand knowledge to support his claims about Smartmatic. Newsmax broadcast and published Mr. Byrne's statements without informing viewers of the various reasons Mr. Byrne was not credible and was biased.

385. Ken Timmerman: Mr. Timmerman, a political writer and conservative activist, was also motivated to participate in a disinformation campaign about Smartmatic by the opportunity to promote himself. In August 2020, Timmerman published a book titled, "The Election Heist." The book centered around predictions that that 2020 U.S. election would be rigged and stolen. His theories could only be proven correct if the election was stolen, so a disinformation campaign about Smartmatic and the 2020 U.S. election played to his advantage. On his website, Mr. Timmerman brags that he "predicted the EXACT scheme that played itself out in Michigan, Georgia, Pennsylvania, and elsewhere, where Democrat party operatives hacked into vote tabulating software to alter the vote count on election night."²⁴ And Mr. Timmerman used his time on Newsmax to generate sales for his book. His own website states, "here's a taste [of the book] from Bob Seller's *American Agenda* on Newsmax TV."²⁵

²⁴ Available at <http://www.kentimmerman.com/>.

²⁵ *Id.*

386. Newsmax was aware, or should have been aware, that Mr. Timmerman was spreading false information about the 2020 election. In addition, when Mr. Timmerman appeared on Newsmax, Newsmax knew that he did not have any evidence or firsthand knowledge to support his claims about Smartmatic. Newsmax broadcast and published Mr. Timmerman's statements without informing viewers of the various reasons Mr. Timmerman was not credible and was biased.

387. Sidney Powell: Ms. Powell is an attorney and the author of a self-published book that purports to expose 'the Deep State.' Ms. Powell briefly pursued litigation challenging the 2020 presidential election beginning on November 25, 2020, but all of her cases were summarily dismissed by federal judges by December 9, 2020.

388. Ms. Powell filed four lawsuits containing accusations about Smartmatic: *Pearson v. Kemp*, No. 20-cv-4809 (N.D. Ga., filed on November 25, 2020); *King v. Whitmer*, No. 20-cv-13134 (E.D. Mich., filed on November 25, 2020); *Feehan v. Wisconsin Elections Commission*, No. 20-cv-1771 (E.D. Wis., filed on December 1, 2020); and *Bowyer v. Ducey*, No. 02-cv-02321 (D. Ariz., filed on December 2, 2020).

389. Ms. Powell filed each of these four lawsuits in bad faith, knowing that the plaintiffs she represented lacked standing, were barred from bringing claims against state officials under the Eleventh Amendment, were precluded by the

equitable doctrine of laches from filing the complaints, brought claims that already had been rendered moot, and failed to state a claim.

390. The lawsuits that Powell filed were shams as they relate to Smartmatic. Powell's lawsuits were telling for what they did not include:

- a. The lawsuits had no affidavit or statement by any Smartmatic or Dominion employee admitting using election technology or software to alter votes in the 2020 elections.
- b. The lawsuits had no affidavit or statement by anyone who claimed personal knowledge that Smartmatic had done anything to fix, rig, or steal the 2020 U.S. election.
- c. The lawsuits had no affidavit or statement by anyone familiar with the election technology and software that Smartmatic used in the 2020 U.S. election.
- d. The lawsuits had no affidavit or statement by any current or former Smartmatic employee that the company's election technology and software were designed to fix, rig, or steal elections.
- e. The lawsuits had no allegations or support for the notion that Smartmatic was using the same election technology and software

in 2020 in the United States as had been used on Venezuelan elections years earlier.

- f. The lawsuits had no allegations or support for the notion that state or county election officials had committed fraud in the 2020 U.S. election.

391. Of the four lawsuits brought by Ms. Powell, all resulted in immediate dismissals for the very reasons Ms. Powell knew these suits were shams: lack of standing, Eleventh Amendment immunity, laches, mootness, and failure to state a claim, among other reasons. *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).

392. Newsmax knew that when Ms. Powell appeared on its broadcast on November 16, 2020, she had not yet filed any lawsuits related to the 2020 U.S. election. And when Ms. Powell appeared on Newsmax again on December 13, 2020, Newsmax knew that all of Powell’s lawsuits had been dismissed. Newsmax knew that the judges that dismissed Ms. Powell’s cases called them “nothing but speculation and conjecture,” and “largely based on anonymous witnesses, hearsay, and irrelevant analysis of unrelated elections.” *King v. Whitmer*, 505 F. Supp. 3d 730 (E.D. Mich. Dec. 7, 2020). They likewise concluded that even those witnesses and so-called “experts” “reach implausible conclusions, often because they are

derived from wholly unreliable sources.” *Bowyer v. Ducey*, 506 F. Supp. 3d 699 (D. Ariz. Dec. 9, 2020).

393. As a result of Ms. Powell’s repeated lies and her frivolous election fraud lawsuits, she was sanctioned in Michigan in August 2021. In the court’s order on the sanctions motion, the presiding federal judge observed that the “volume” of Ms. Powell’s purported evidence did not “equate with legitimacy or veracity” and that Ms. Powell had submitted “fantastical” evidence in support of her claims. (8/25/21 Opinion and Order, *King v. Whitmer*, No. 2-20-cv-13134 (E.D. Mich.) (Exhibit 158).)

394. Ms. Powell told Newsmax that Smartmatic’s election technology and software had been widely used by Dominion and other voting machine companies in the 2020 U.S. election and had been used to fix, rig, and steal the election for Joe Biden and Kamala Harris. But when Ms. Powell filed her lawsuits, she could not make or substantiate the claims. Newsmax knew based on the lawsuits that Ms. Powell filed that she could not substantiate her claims about Smartmatic.

395. Ms. Powell also served briefly served as a lawyer for the Trump Campaign in November 2020. However, the Trump Campaign publicly distanced themselves from Ms. Powell on November 22. They issued the following statement: “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.” (Tweet, @JennaEllisEsq., November 22, 2020 (Exhibit 135).)

396. Newsmax knew that Ms. Powell had not filed any lawsuits on behalf of the Trump Campaign or otherwise at the time that the Trump Campaign publicly distanced itself and President Trump from Ms. Powell. Ms. Powell’s failure to file any lawsuits consistent with the statements that she had made about Smartmatic gave Newsmax additional reasons to doubt her credibility. Nonetheless, Newsmax never informed its audience of the various reasons Ms. Powell was not credible and was biased.

D. Newsmax knowingly violated generally accepted journalistic standards when publishing the reports.

397. Upon information and belief, Newsmax requires its anchors, reporters, and producers to adhere to a code of conduct or ethics when investigating and publishing news reports. One of the reasons for journalists to adhere to a code of conduct is to make sure that they do not act with reckless disregard for the truth in investigating or verifying a report and do not publish misleading reports, particularly news reports being portrayed as presenting facts or evidence.

398. However, Newsmax violated those generally accepted journalism standards. It did so because adhering to them would not have allowed it to: (a) purposefully avoid learning the truth about Smartmatic and its technology and software and use in the 2020 U.S. election; (b) publish the factually inaccurate and

misleading reports about Smartmatic and its technology and software; and (c) interject Smartmatic into a wide-ranging criminal fraud to fix the 2020 election.

399. Newsmax violated, at least, eleven generally accepted journalism standards. First, generally accepted journalism standards encourage reporters and producers to be accurate and fair when gathering and reporting information. Newsmax violated this standard because, among other things, it reported information that it knew was not accurate, it reported information it knew was misleading, and it purposefully avoided learning the truth that was inconsistent with its preconceived narrative that Smartmatic had stolen the 2020 U.S. election.

400. Second, generally accepted journalism standards encourage anchors, reporters, and producers to verify information before releasing it. Newsmax violated this standard because, among other things, it did not verify or corroborate the information provided by its sources (whom they had obvious reasons to doubt) and did not verify or corroborate the many serious and broad-ranging statements and implications it published about Smartmatic. Newsmax made no effort to reach out to Smartmatic before the start of its disinformation campaign for comment and/or to verify the accuracy of any statements and implications being made about Smartmatic, its history, its business, its technology or software, and/or its role in the 2020 U.S. election.

401. Third, generally accepted journalism standards encourage reporters and producers to gather and update information before and after publication of each report. Newsmax violated this standard because it purposefully avoided gathering information inconsistent with its preconceived narrative and did not fully and properly update its reporting after being told and learning its reporting was factually inaccurate and misleading.

402. Take just one example. On December 11, 2020, Smartmatic informed Newsmax that it provided technology and software to only Los Angeles County and “had no involvement, direct or indirect, in any other country or state in the United States.” (12/11/20 Smartmatic to Newsmax Retraction Letter (Exhibit 54).) Yet, Newsmax persisted in reporting that Smartmatic stole the 2020 U.S. election for Joe Biden and Kamala Harris on December 13, December 17, December 18, and December 23.

403. Fourth, generally accepted journalism standards encourage reporters and producers to disclose information about their sources so that readers and viewers can make informed decisions regarding credibility. Newsmax violated this standard because it failed to disclose its sources’ lack of credibility and lack of firsthand knowledge. As discussed above, Newsmax had obvious reasons to doubt the veracity of Ms. Powell and others. But, instead of disclosing those doubts, Newsmax endorsed what they were saying.

404. Fifth, generally accepted journalism standards encourage reporters and producers to seek out opposing views for a report. Newsmax violated this standard because it intentionally avoided publishing statements by others who would have directly contradicted the false information that they presented.

405. Sixth, generally accepted journalism standards encourage reporters and producers to avoid distorting facts. Newsmax violated this standard because it did not provide the proper context for the statements made in the disinformation campaign. For example, Newsmax rarely called out Ms. Powell or others for stating that they had or have evidence to support their statements about Smartmatic without actually showing or disclosing the evidence.

406. Seventh, generally accepted journalism standards encourage reporters and producers to treat sources and subjects with respect. Newsmax violated this standard. Newsmax attacked an under-the-radar election company that participated in one county during the 2020 U.S. election. Newsmax also attacked Smartmatic as a company with ties to communists. Newsmax made Smartmatic out to be a criminal in the minds of its readers and viewers. Newsmax did not care about the damage they did to Smartmatic.

407. Eighth, generally accepted journalism standards encourage reporters and producers to consider the long-term impact of their publications. Newsmax violated this standard by publishing reports with the intent of harming Smartmatic

and undermining the public's confidence in the integrity of the 2020 U.S. election. Newsmax did not consider the long-term impact of its disinformation campaign on Smartmatic or the country.

408. Ninth, generally accepted journalism standards encourage reporters and producers to avoid conflicts of interest. Newsmax violated this standard by allowing Ms. Powell and others to elevate their own self-interest above fairness and accuracy.

409. Tenth, generally accepted journalism standards encourage reporters and producers to be transparent with readers and viewers. Newsmax violated this standard by failing to disclose to readers and viewers that it was not broadcasting and publishing an objective, fact-based report about Smartmatic. Newsmax misled readers and viewers into believing that it was reporting news as a result of a fact-driven "investigation," when it was not.

410. Eleventh, generally accepted journalism standards encourage reporters and producers to admit and correct mistakes. Newsmax violated this standard by failing to admit and correct the factual inaccuracies from the disinformation campaign after being informed of them. Smartmatic sent Newsmax a retraction demand. While Newsmax published a statement after receiving the demand, Newsmax did not issue the requested retraction and did not fully admit and correct all of its mistakes.

411. Newsmax's violations of generally accepted journalism standards demonstrate the intentionality of its actions. Newsmax's reckless disregard for the truth and purposeful avoidance of the truth were not the result of mistake or ignorance. Newsmax knew what it should do to investigate and report on the events following the 2020 U.S. election. Newsmax knew what it should do based on generally accepted journalism standards. Newsmax intentionally and knowingly ignored those standards. It did so for self-promotion and preservation, and it maliciously attacked Smartmatic for these reasons.

E. Newsmax used its disinformation campaign against Smartmatic for financial gain and acted with ill-will and improper motives.

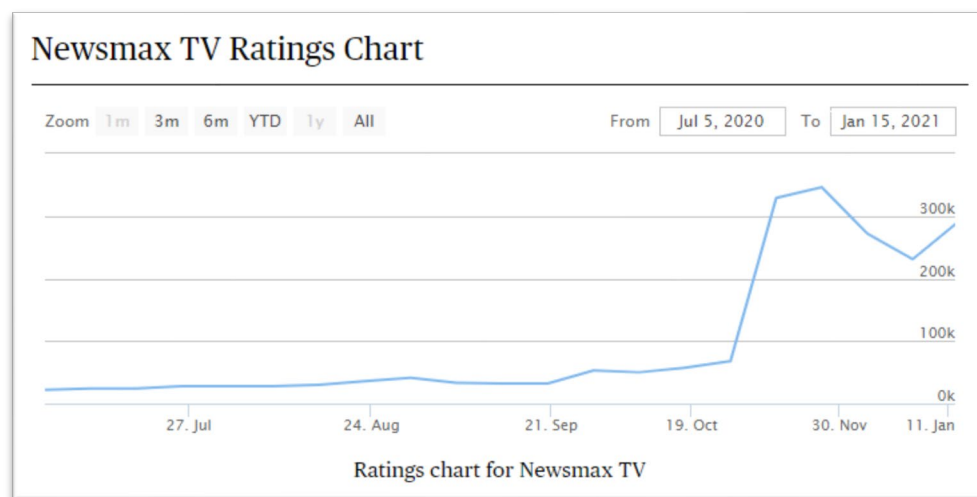
412. Newsmax not only knowingly participated in publishing false information about Smartmatic during the disinformation campaign, but it also did so with ill-will and improper motives for self-preservation, self-promotion, and financial and other gains.

413. On information and belief, Newsmax was motivated, in part, by the desire for ratings, to cater to individuals and companies supporting President Trump, and to avoid losing viewers to competing media organizations like Fox News and OANN (One America News Network).

414. As discussed earlier, Newsmax was trying to compete with Fox News, the most watched cable news channel in history. When President Trump became critical of Fox's coverage of him and the election, Newsmax saw this as an

opportunity to gain viewers and curry favor with the millions of people who voted for President Trump.

415. Newsmax's ratings spiked on Election Night. Over 3 million viewers tuned in to the network on November 3, and Newsmax TV boasted its highest ratings ever in the week following the election.



416. From the beginning of July 2020 to the week before Election Day, Newsmax averaged 58,000 viewers from 7 p.m. to 10 p.m. on weekdays. The week after the election, Newsmax's ratings jumped to almost ten times Newsmax's pre-election ratings. In the same period, daytime viewership also increased nearly ten-fold. In February 2021, Newsmax claimed that it had generated five million downloads of the mobile apps through which it has streamed its news coverage since the 2020 election, with Newsmax CEO Christopher Ruddy celebrating "that America is making the switch to Newsmax TV for fair, unbiased journalism."

Newsmax saw a spike in viewership and ratings as a result of spreading disinformation about Smartmatic and its election technology and software.

V. Newsmax's disinformation campaign irreparably harmed Smartmatic and its election technology and software.

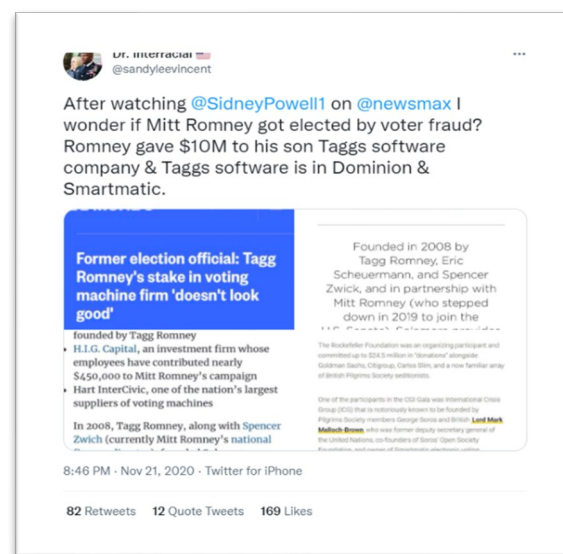
417. Newsmax published its defamatory statements about Smartmatic on multiple programs over an elongated period of time. Newsmax's defamatory statements were then republished by individuals who read or watched them originally on a Newsmax distribution channel. Newsmax knew and understood this republication would happen. As a result, through Newsmax's publication and republication, Newsmax's defamatory statements about Smartmatic were widely and generally disseminated, particularly in the United States where Newsmax has its largest audience base.

418. Newsmax's defamatory statements were a proximate and substantial cause of Smartmatic's name and brand becoming synonymous with election fraud with members of the general public and government officials, particularly those in the United States. Newsmax's defamatory statements cast Smartmatic as one of the voting machine companies, along with Dominion, that rigged the 2020 U.S. election; and, even worse, Newsmax's defamatory statements created the impression that Smartmatic's software was not to be trusted because it was Smartmatic's software that switched votes in voting machines regardless of who supplied the machines.

419. Prior to the 2020 U.S. election, Smartmatic was a known and trusted name among individuals responsible for selecting election technology and systems in voting jurisdictions in the United States and across the world. Smartmatic was not, however, a household name. Smartmatic's long history of helping to conduct secure, accurate, and auditable elections was not known among the general public.

420. Newsmax's defamatory statements irreparably tarnished Smartmatic's name and brand with members of the general public, particularly in the United States, who read or watched its publications. Below are just a few examples of the reactions people had to Newsmax's publications:

- a. People who read or watched Newsmax's publications came to believe that Smartmatic's election technology and software were used to rig and steal elections.



- b. People who read or watched Newsmax's publications came to believe that vote counts reported in an election using Smartmatic's technology and software were not real but had been manipulated.



- c. People who read or watched Newsmax's publications came to believe that Smartmatic's election technology and software were used to rig and steal the 2020 U.S. election.



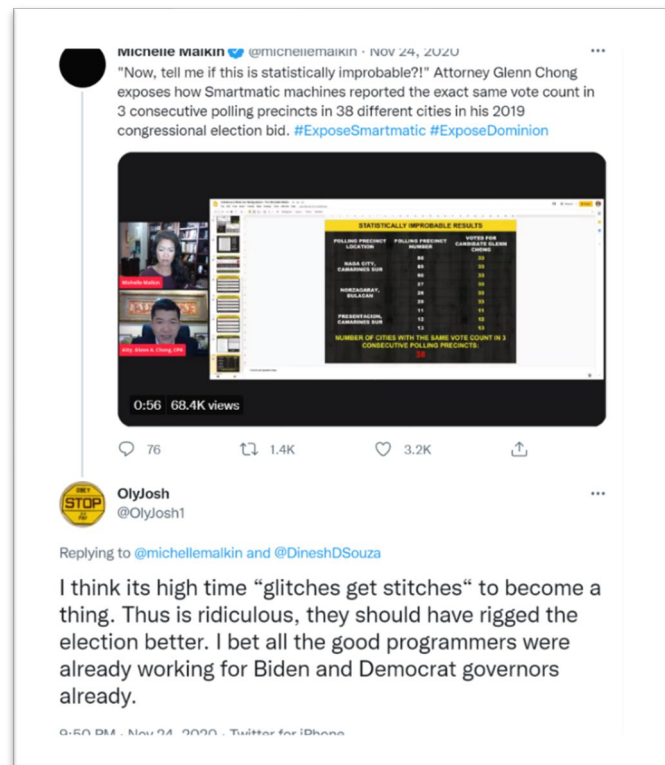
- d. People who read or watched Newsmax's publications equated Smartmatic with Dominion, the other voting machine company that Newsmax indicated rigged the 2020 U.S. election by using Smartmatic software to switch votes.



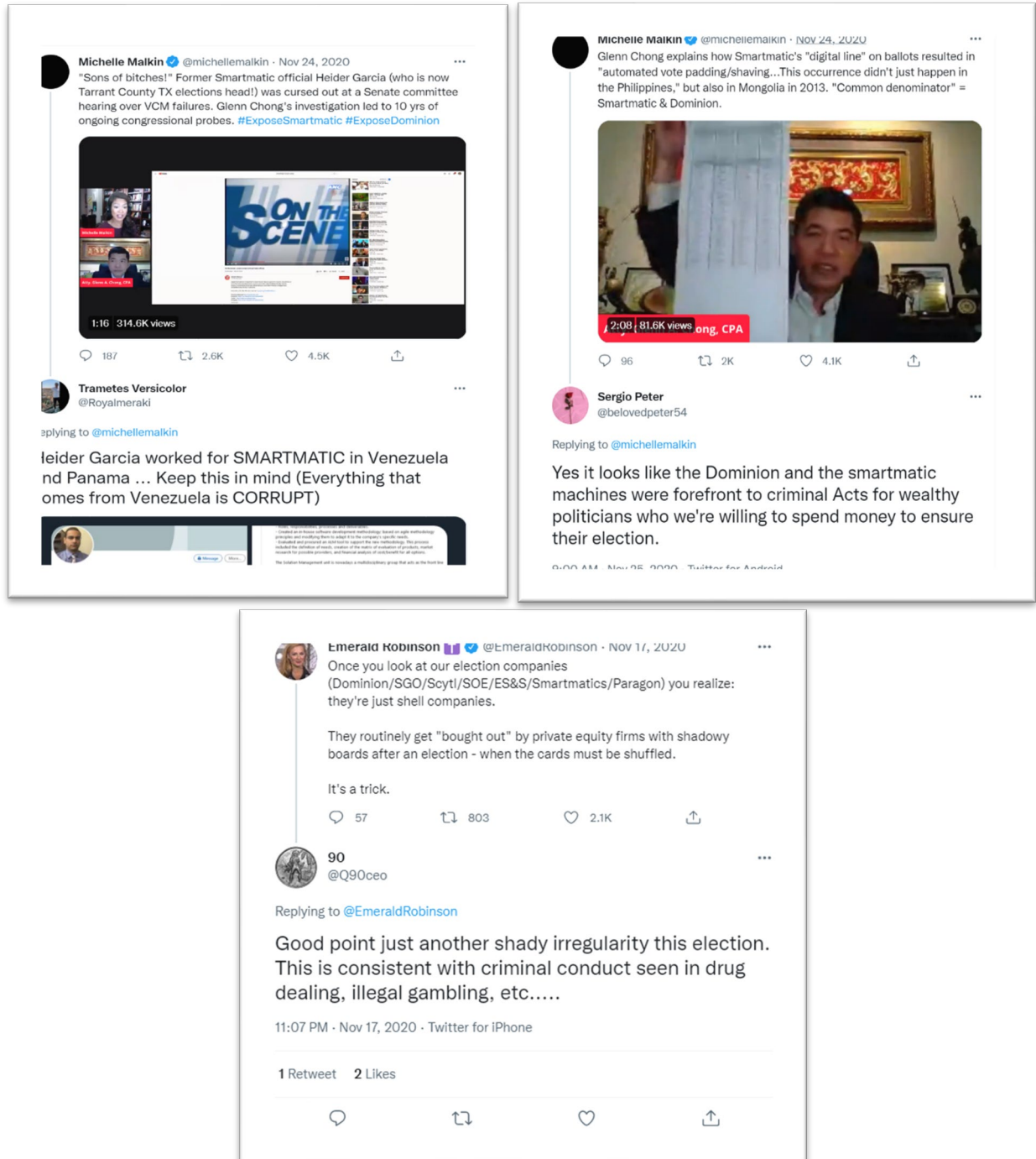
e. People who read or watched Newsmax’s publications came to believe that Smartmatic used servers located in foreign countries during the 2020 U.S. election.



f. People who read or watched Newsmax's publications came to believe that violence was proper retaliation against Smartmatic's employees and officers.



- g. People who read or watched Newsmax's publications came to believe that Smartmatic was corrupt and engaged in criminal activities.



421. Smartmatic's name and brand similarly suffered with government officials, particularly those in the United States, who did not have firsthand experience with Smartmatic and electronic voting technology. Government officials with firsthand knowledge of Smartmatic's role in the 2020 U.S. election, *e.g.*, officials in Los Angeles County, were happy with how the election was conducted and confident in its outcome. Government officials who watched or read Newsmax's publications about Smartmatic received a very different message.

422. Newsmax's defamatory statements about Smartmatic and Dominion were a substantial cause of certain government officials becoming critical of the companies, specifically, and electronic voting, generally. Government officials who had not previously opposed the use of electronic voting began to do so following Newsmax's publications. This includes government officials directly or indirectly involved in the selection of the voting system used in their jurisdiction and the companies who supply machines and services for the selected voting system.

423. The widespread and general distribution of Newsmax's publications about Smartmatic, thus, contributed to a crisis situation for Smartmatic, particularly in the United States where Newsmax has its largest audience base. Smartmatic's reputation has been irreparably tarnished. Smartmatic's officers and employees have been threatened. Smartmatic's operations have come under attack—physically

and electronically. Smartmatic has incurred the following out-of-pocket expenses as a result.

- a. Smartmatic has been required to spend in excess of \$400,000 on public relations and crisis management following Newsmax's publication of its defamatory statements and will spend millions more in the coming years.
- b. Smartmatic has been required to spend in excess of \$100,000 on cybersecurity following Newsmax's publication of its defamatory statements and will spend millions more in the coming years.
- c. Smartmatic has been required to spend in excess of \$700,000 on retention and recruitment for personnel following Newsmax's publication of its defamatory statements and will spend millions more in the coming years.

424. Newsmax's publication of its defamatory statements about Smartmatic, and the republication of those statements, was a substantial cause of these out-of-pocket expenses. Newsmax's defamatory statements were read or watched by a significant audience base through publication and republication, particularly in the United States. The reaction had by that audience base, as well as the reputational

harm directly linked to the publications, was a substantial cause of these out-of-pocket expenses.

425. Moreover, Newsmax's publication of its defamatory statements was a substantial cause of Smartmatic's diminished business value and prospects, particularly in the United States where Newsmax has its largest audience base. Prior to the 2020 U.S. election, Smartmatic's business value and prospects were linked to its reputation in the industry for providing technology and software that guaranteed secure, accurate, and auditable elections. Individuals responsible for selecting voting systems in the United States and across the world understood they would not be second-guessed if they selected Smartmatic. They understood that selecting electronic voting and Smartmatic was a safe choice based on Smartmatic's track record for providing secure, accurate, and auditable election results.

426. Newsmax's defamation campaign was a direct assault on the reputation that Smartmatic relied upon for its business value and prospects. Newsmax branded Smartmatic as a corrupt company whose election technology and software were used to fix, rig, and steal elections. Far from providing secure, accurate, and auditable election results, Newsmax branded Smartmatic as a company whose technology and software meant elections were not secure, accurate, or auditable.

427. Newsmax's branding of Smartmatic as a corrupt company substantially contributed to a "no win" situation for Smartmatic with individuals responsible for

selecting voting systems, particularly in the United States. On the one hand, individuals who were not previously familiar with Smartmatic now have a negative impression of electronic voting systems, including those offered by Smartmatic. Those individuals are less likely to select electronic voting systems for their jurisdictions, and, even if they do, they are even less likely to select Smartmatic. Newsmax's publications contributed to that negative impression.

428. On the other hand, individuals who were familiar with Smartmatic prior to the publication of Newsmax's defamatory statements have a constituency problem. Individuals familiar with Smartmatic understand its election technology and software ensure secure, accurate and auditable election results. However, for some of them, their constituents have been exposed to, and believe, Newsmax's defamatory statements about Smartmatic, Dominion, and election technology. As a result, their selection of electronic voting, generally, and Smartmatic, specifically, would be second-guessed by their constituents. These individuals are less likely to select electronic voting systems for their jurisdictions, and, even if they do, they are even less likely to select Smartmatic. Newsmax's publications contributed to this constituency problem.

429. This "no win" situation has significantly diminished Smartmatic's business value and prospects. Prior to the 2020 U.S. election, based on its historical business and pipeline, Smartmatic's election-related business was valued in excess

of \$3.0 billion based on a modest multiplier.²⁶ Now, following Newsmax's publication of its defamatory statements, Smartmatic's election-related business is valued at less than \$1 billion. The general and widespread publication and distribution of Newsmax's defamatory statements about Smartmatic were a substantial cause of a portion of this business valuation decline.

430. Smartmatic sent retraction demand letters to Newsmax before filing this lawsuit. (12/11/20 Retraction Demand Letter to Newsmax (Exhibit 54); 10/27/21 Second Retraction Demand Letter to Newsmax (Exhibit 55).) Newsmax did not fully and completely retract its statements and implications.

FIRST CAUSE OF ACTION

(Defamation for False Statements and Implications about Plaintiff Smartmatic)

431. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-430 of this Complaint as if fully stated herein.

432. Newsmax published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic participated in a criminal conspiracy to fix, rig, and steal the 2020 U.S. election. These false statements are pleaded in paragraphs 185, 192, 200, 212, and

²⁶ Smartmatic's business pipeline includes sales and opportunities through subsidiaries wholly-owned by Smartmatic International Holding B.V. in the United States, Barbados, Australia, United Kingdom, Panama, Haiti, Belgium, Singapore, Netherlands, Mexico, Ecuador, Brazil, Estonia, Taiwan, and the Philippines as well as branches in Colombia, Argentina, Honduras, Pakistan, Italy, Jamaica, and El Salvador.

220, which set forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole. (*See* ¶ 174.)

433. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic.

434. These false statements and implications were and would reasonably understood by third parties to have a defamatory character.

435. These false implications were both intended and endorsed by Newsmax.

436. These statements and implications were false for the reasons stated in paragraphs 181, 187-190, 194-198, 202-210, 214-218, and 222-227.

437. These statements and implications were broadcast and published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

438. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Newsmax.

439. These statements and implications were defamatory because they exposed Smartmatic to public hate, contempt, ridicule, and disgrace, and because they induced an evil and unsavory opinion of Smartmatic and its business into the minds of a substantial number of the community.

440. These statements and implications were defamatory *per se* since they charged Smartmatic with a serious crime and were of a nature tending to injure Smartmatic in its trade, business, and profession.

441. Newsmax acted with fault, at least negligence, and with actual malice. Newsmax knew these defamatory statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when they broadcast, published, and republished them. The allegations related to Newsmax's actual malice include but are not limited to those pleaded in paragraphs 228-416.

442. Newsmax also acted to deliberately and maliciously injure Smartmatic out of hatred, ill-will or spite, and/or for improper motives.

443. Newsmax also failed to exercise due care to prevent the publication or utterance of these defamatory statements and implications during their broadcasts and publications.

444. Before filing this complaint, Smartmatic provided notice to and demanded that Newsmax retract their false and defamatory statements and

implications in a comparable time, place, and manner in which they broadcast, published, and republished them. Newsmax failed to do so.

445. These false statements and implications by Newsmax were a substantial factor in causing Smartmatic to suffer irreparable harm to its reputation and suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

446. As a direct and proximate result of these false statements and implications by Newsmax, Smartmatic has also suffered and will continue to suffer actual, consequential, and special damages in an amount that will be determined at trial.

447. Smartmatic is also entitled to punitive damages because Newsmax acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

PRAYER FOR RELIEF

448. Wherefore, Plaintiffs Smartmatic USA Corp., Smartmatic International Holding B.V., and SGO Corporation Limited pray for judgment against Defendant Newsmax Media, Inc. for each of the causes of action raised herein. Plaintiffs respectfully requests a judgment in their favor and against Defendant for:

- a. Compensatory damages in an amount to be determined at trial;
- b. Actual, consequential, and special damages in an amount to be determined at trial;
- c. Punitive damages;

- d. Reasonable and necessary attorneys' fees;
- e. Reasonable and necessary costs of the suit;
- f. Prejudgment and post-judgment interest at the highest lawful rates; and
- g. Such other and further relief as this Court deems just and appropriate.

JURY DEMAND

Smartmatic demands a trial by a jury of twelve jurors.

Dated: November 3, 2021

BENESCH, FRIEDLANDER, COPLAN &
ARONOFF LLP



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Attorneys for the Plaintiffs

**SUPERIOR COURT
CIVIL CASE INFORMATION STATEMENT (CIS)**

COUNTY: **(N)** K S

CIVIL ACTION NUMBER: N21C-11-

<p>Caption:</p> <p><u>SMARTMATIC USA CORP.,</u></p> <p><u>SMARTMATIC INTERNATIONAL,</u></p> <p><u>HOLDING B.V., and SGO CORPORATION</u></p> <p><u>LIMITED, Plaintiffs,</u></p> <p><u>v.</u></p> <p><u>NEWSMAX MEDIA, INC., Defendant.</u></p>	<p>Civil Case Code: <u>CDEF</u></p> <p>Civil Case Type: <u>Defamation</u> <small>(SEE REVERSE SIDE FOR CODE AND TYPE)</small></p> <p>MANDATORY NON-BINDING ARBITRATION (MNA) _____</p> <p>Name and Status of Party filing document: <u>Smartmatic USA Corp., Smartmatic International</u> <u>Holding B.V., and SGO Corporation Limited/</u> <u>Plaintiffs.</u></p> <p>Document Type: (E.G.; COMPLAINT; ANSWER WITH COUNTERCLAIM) <u>Complaint</u></p> <p style="text-align: right;">JURY DEMAND: YES <u>X 12</u> No _____</p>
<p>ATTORNEY NAME(S):</p> <p><u>Michael J. Barrie & Kate Harmon</u></p> <p>ATTORNEY ID(S):</p> <p><u>DE 4684 & DE 5343</u></p> <p>FIRM NAME:</p> <p><u>Benesch, Friedlander, Coplan & Aronoff LLP</u></p> <p>ADDRESS:</p> <p><u>1313 N. Market St., Suite 1201</u></p> <p><u>Wilmington, DE 19801</u></p> <p>TELEPHONE NUMBER:</p> <p><u>(302) 442-7010</u></p> <p>FAX NUMBER:</p> <p><u>(302) 442-7012</u></p> <p>E-MAIL ADDRESS:</p> <p><u>mbarrie@beneschlaw.com;</u></p> <p><u>kharmon@beneschlaw.com</u></p>	<p>IDENTIFY ANY RELATED CASES NOW PENDING IN THE SUPERIOR COURT OR ANY RELATED CASES THAT HAVE BEEN CLOSED IN THIS COURT WITHIN THE LAST TWO YEARS BY CAPTION AND CIVIL ACTION NUMBER INCLUDING JUDGE'S INITIALS:</p> <p><u>US Dominion, Inc. v. Newsmax Media, Inc., C.A. No.:</u></p> <p><u>N21C-08-063 EMD</u></p> <p>EXPLAIN THE RELATIONSHIP(S):</p> <p><u>The Defendant in this matter is the same as in the matter</u> <u>listed above and issues raised in this Complaint grow out</u> <u>of the same event or transaction as the complaint filed in</u> <u>the matter listed above such that assignment of this</u> <u>matter to Judge Davis would be the most efficient use</u> <u>of judicial resources.</u></p> <p>OTHER UNUSUAL ISSUES THAT AFFECT CASE MANAGEMENT:</p> <p>_____ _____ _____ _____</p> <p>(If ADDITIONAL SPACE IS NEEDED, PLEASE ATTACH PAGE)</p>

THE PROTHONOTARY WILL NOT PROCESS THE COMPLAINT, ANSWER, OR FIRST RESPONSIVE PLEADING IN THIS MATTER FOR SERVICE UNTIL THE CASE INFORMATION STATEMENT (CIS) IS FILED. THE FAILURE TO FILE THE CIS AND HAVE THE PLEADING PROCESSED FOR SERVICE MAY RESULT IN THE DISMISSAL OF THE COMPLAINT OR MAY RESULT IN THE ANSWER OR FIRST RESPONSIVE PLEADING BEING STRICKEN.

SUPERIOR COURT CIVIL CASE INFORMATION STATEMENT (CIS) INSTRUCTIONS

CIVIL CASE TYPE

Please select the appropriate civil case code and case type (e.g., **CODE** - **AADM** and **TYPE** - **Administrative Agency**) from the list below. Enter this information in the designated spaces on the Case Information Statement.

APPEALS

AADM - Administrative Agency
ACER - Certiorari
ACCP - Court of Common Pleas
AIAB - Industrial Accident Board
APSC - Public Service Commission
AUIB - Unemployment Insurance Appeal Board

COMPLAINTS

CABT – Abatement
CASB – Asbestos
CAAA - Auto Arb Appeal
CMIS - Civil Miscellaneous
CACT - Class Action
CCON – Condemnation
CCLD – Complex Commercial Litigation Division (**NCC ONLY**)
CDBT - Debt/Breach of Contract
CDEJ - Declaratory Judgment
CDEF - Defamation
CEJM - Ejectment
CATT - Foreign & Domestic Attachment
CFJG - Foreign Judgment
CFRD - Fraud Enforcement
CINT - Interpleader
CLEM - Lemon Law
CLIB - Libel
CMAL - Malpractice
CMED - Medical Malpractice
CPIN - Personal Injury
CPIA - Personal Injury Auto
CPRL - Products Liability
CPRD - Property Damage
CRPV - Replevin
CSPD - Summary Proceedings Dispute
CCCP - Transfer from CCP
CCHA - Transfer from Chancery

MASS TORT

CABI - Abilify Cases
CBEN - Benzene Cases
CFAR - Farxiga Cases
CHON - Honeywell Cases
CMON - Monsanto Cases
CPEL - Pelvic Mesh Cases
CPLX - Plavix Cases
CPPI - PPI Cases
CTAL - Talc Cases
CTAX - Taxotere Cases
CXAR - Xarelto Cases

INVOLUNTARY COMMITMENTS

INVC- Involuntary Commitment

MISCELLANEOUS

MAGM - AG Motion - Civil/Criminal Investigations *
MADB - Appeal from Disability Board *
MAFF - Application for Forfeiture
MAAT - Appointment of Attorney
MGAR - Appointment of Guardianship
MCED - Cease and Desist Order
MCON - Civil Contempt/Capias
MCVP - Civil Penalty
MSOJ - Compel Satisfaction of Judgment
MSAM - Compel Satisfaction of Mortgage
MCTO - Consent Order
MIND - Destruction of Indicia of Arrest *
MESP - Excess Sheriff Proceeds
MHAC - Habeas Corpus
MTOX - Hazardous Substance Cleanup
MFOR - Intercept of Forfeited Money
MISS - Issuance of Subpoena
MLEX - Lien Extension
MMAN - Mandamus
MWIT - Material Witness *
MWOT - Material Witness - Out of State
MRAT - Motion for Risk Assessment
MROP - Petition for Return of Property
MCRO - Petition Requesting Order
MROD - Road Resolution
MSEL - Sell Real Estate for Property Tax
MSEM - Set Aside Satisfaction of Mortgage
MSSS - Set Aside Sheriff's Sale
MSET - Structured Settlement
MTAX - Tax Ditches
MREF - Tax Intercept
MLAG - Tax Lagoons
MVAC - Vacate Public Road
MPOS - Writ of Possession
MPRO - Writ of Prohibition

MORTGAGES

MCOM - Mortgage Commercial
MMED - Mortgage Mediation
MORT - Mortgage Non-Mediation (Res.)

MECHANICS LIENS

LIEN - Mechanics Lien

*** Not eFiled**

DUTY OF THE PLAINTIFF

Each plaintiff/counsel shall complete the attached Civil Case Information Statement (CIS) and file with the complaint.

DUTY OF THE DEFENDANT

Each defendant/counsel shall complete the attached Civil Case Information Statement (CIS) and file with the answer and/or first responsive pleading.

SMARTMATIC USA CORP.,
SMARTMATIC INTERNATIONAL
HOLDING B.V., and SGO
CORPORATION LIMITED,

Plaintiffs,

v.

NEWSMAX MEDIA, INC.,

Defendant.

TO THE PROTHONOTARY:

NEWSMAX MEDIA, INC.
c/o Cogency Global Inc.
850 New Burton Road, Suite 201
Dover, DE 19904

Dated: November 3, 2021

**BENESCH, FRIEDLANDER,
COPLAN & ARONOFF LLP**

/s/ Michael J. Barrie

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Kate Harmon (DE Bar ID 5343)
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-and-

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kclausing@beneschlaw.com

Counsel to Plaintiffs

Per Deputy

TO THE ABOVE NAMED DEFENDANT:

In case of your failure, within 20 days after service hereof upon you, exclusive of the day of service, to serve on Plaintiffs' attorney named above an answer to the complaint (and, if the complaint contains a specific notation requiring the Defendant to answer any or all allegations of the complaint by affidavit, an affidavit of defense), judgment by default will be rendered against you for the relief demanded in the complaint.

Lisa Fontello
Prothonotary

Per Deputy

File & ServeXpress Transaction Receipt

File & ServeXpress Transaction ID: 67065646

Submitted by: LouAnne Molinaro, Benesch Friedlander Coplan & Aronoff LLP - Delaware

Authorized by: Michael J Barrie, Benesch Friedlander Coplan & Aronoff LLP - Delaware

Authorize and file on: Nov 3 2021 12:50PM EDT 

Court: DE Superior Court-New Castle County
Case Class: Civil
Case Type: CDEF - Defamation
Case Name: Smartmatic USA Corp. v. Newsmax Media, Inc.

Transaction Option: Originating Event
Billing Reference: 74498.3
Note to Clerk: Spoke with Sydney on 11/2/2021 regarding filing; filing will need to be split up due to size; exhibits will be filed after complaint has been accepted and case # is assigned.

Documents List

4 Document(s)			
Originating Document, 232 Pages Document ID: 88341137			
Document Type: Complaint	Access: Public	Statutory Fee: \$211.25	Linked:
Document title: Complaint			
Attached Document, 2 Pages Document ID: 88341138 Related Document ID: 88341137			
Document Type: Case Information Statement	Access: Public	Statutory Fee: \$1.25	Linked:
Document title: Superior Court Civil Case Information Statement (CIS)			
Attached Document, 2 Pages Document ID: 88341139 Related Document ID: 88341137			
Document Type: Praecipe	Access: Public	Statutory Fee: \$1.25	Linked:
Document title: Praecipe			
Attached Document, 2 Pages Document ID: 88341140 Related Document ID: 88341137			
Document Type: Summons	Access: Public	Statutory Fee: \$1.25	Linked:
Document title: Summons			

Close All

Sending Parties (6)

Party	Party Type	Attorney	Firm	Attorney Type
SGO Corporation Limited (pending)	Plaintiff	Barrie, Michael J	Benesch Friedlander Coplan & Aronoff LLP - Delaware	Attorney in Charge
SGO Corporation Limited (pending)	Plaintiff	Harmon, Kate	Benesch Friedlander Coplan & Aronoff LLP - Delaware	Attorney in Charge
Smartmatic International Holding B.V.	Plaintiff	Barrie,	Benesch Friedlander Coplan & Aronoff LLP -	Attorney in

(pending)		Michael J	Delaware	Charge
Smartmatic International Holding B.V. (pending)	Plaintiff	Harmon, Kate	Benesch Friedlander Coplan & Aronoff LLP - Delaware	Attorney in Charge
Smartmatic USA Corp. (pending)	Plaintiff	Barrie, Michael J	Benesch Friedlander Coplan & Aronoff LLP - Delaware	Attorney in Charge
Smartmatic USA Corp. (pending)	Plaintiff	Harmon, Kate	Benesch Friedlander Coplan & Aronoff LLP - Delaware	Attorney in Charge

Case Parties

Party	Party Type	Attorney	Firm	Attorney Type
Newsmax Media, Inc. (pending)	Defendant	No Answer on File	Firm TBD	N/A
SGO Corporation Limited (pending)	Plaintiff	Barrie, Michael J	Benesch Friedlander Coplan & Aronoff LLP - Delaware	Attorney in Charge
SGO Corporation Limited (pending)	Plaintiff	Harmon, Kate	Benesch Friedlander Coplan & Aronoff LLP - Delaware	Attorney in Charge
Smartmatic International Holding B.V. (pending)	Plaintiff	Barrie, Michael J	Benesch Friedlander Coplan & Aronoff LLP - Delaware	Attorney in Charge
Smartmatic International Holding B.V. (pending)	Plaintiff	Harmon, Kate	Benesch Friedlander Coplan & Aronoff LLP - Delaware	Attorney in Charge
Smartmatic USA Corp. (pending)	Plaintiff	Barrie, Michael J	Benesch Friedlander Coplan & Aronoff LLP - Delaware	Attorney in Charge
Smartmatic USA Corp. (pending)	Plaintiff	Harmon, Kate	Benesch Friedlander Coplan & Aronoff LLP - Delaware	Attorney in Charge

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