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VIA E-FILE AND EMAIL

The Honorable David B. Cohen, J.S.C.
Supreme Court of the State of New York, New York County
71 Thomas Street, Part 58, Room 305
New York, New York 10013

Re: *Smartmatic USA Corp., et al. v. Fox Corporation, et al.*,
NYS Supreme Court, New York County, Index No. 151136/2021

Dear Justice Cohen:

We represent Plaintiffs Smartmatic USA Corp., Smartmatic International Holding B.V., and SGO Corporation Limited (collectively “Smartmatic”). We write to advise the Court that on Friday, November 12, 2021, Smartmatic filed a precautionary lawsuit *solely* against Defendant Sidney Powell in the United States District Court for the District of Columbia (the “Precautionary Lawsuit”). This Precautionary Lawsuit was filed to guard against any statute of limitations issues with respect to Ms. Powell should this Court find that it lacks personal jurisdiction over her.

As the Court is aware, Smartmatic commenced this action on February 4, 2021 against Defendants for defamation and disparagement in connection with Fox’s coverage of the 2020 U.S. election. Many of the statements at issue in this action, including those made by Ms. Powell, began shortly after the November 2020 U.S. election. Ms. Powell is the only Defendant contesting personal jurisdiction. In the event this Court were to dismiss Ms. Powell for lack of personal jurisdiction, Smartmatic would have to prosecute its claims against Ms. Powell in a lawsuit timely commenced in another forum that has personal jurisdiction over her. With respect to this timing, many states have a one-year statute of limitations for defamation actions. Smartmatic therefore had to file a separate lawsuit at this time to comply with this limitation.

Recently, a federal district court in the District of Columbia found that it had personal jurisdiction over Ms. Powell for her conduct related to making defamatory and disparaging statements about another election company, Dominion Voting Systems (“Dominion”).¹ The court’s finding was based, in part, on its recognition that Ms. Powell traveled to and rented hotel rooms in the District of Columbia to make some of the statements at issue in Dominion’s lawsuit against Ms. Powell. *US Dominion, Inc. v. Powell*, No. 1:21-CV-00040 (CJN), 2021 WL 3550974, at *15 (D.D.C. Aug. 11, 2021). Many of those statements made by Ms. Powell about Dominion

¹ US Dominion, Inc., Dominion Voting Systems, Inc., and Dominion Voting Systems Corporation (together, “Dominion”) have a pending lawsuit against Ms. Powell in the U.S. District Court for the District of Columbia (No. 1:21-cv-00040 (CJN)).

from D.C. include statements at issue in this action because Ms. Powell was speaking of Dominion and Smartmatic.

The District of Columbia “is one of a minority of jurisdictions that has not adopted a general equitable ‘saving’ statute to toll statutes of limitations.” *East v. Graphic Arts Indus. Joint Pension Tr.*, 718 A.2d 153, 156 (D.C. 1998). “[D.C.’s] current rule means that, contrary to the usual concern about judicial economy, much less making the courts available and avoiding unnecessary litigation and litigation costs, a plaintiff must file in all possible fora in order to avoid a later limitations bar.” *Curtis v. Aluminum Ass’n*, 607 A.2d 509, 512 (D.C. 1992) (Rogers, C.J. and Schwelb, J. concurring). Thus, mindful of this, Smartmatic has filed the Precautionary Lawsuit in U.S. District Court for the District of Columbia.

Notwithstanding Smartmatic’s filing of the Precautionary Lawsuit, Smartmatic’s preferred forum is—and always has been—in this Court in New York. And this is the forum where Smartmatic can and wishes to litigate all its claims together against all of Defendants, including Ms. Powell. Smartmatic filed the Precautionary Lawsuit only to preserve its claims against Ms. Powell if this Court finds that it does not have personal jurisdiction over Ms. Powell. Smartmatic had no choice but to file the Precautionary Lawsuit given that the District of Columbia has not adopted a “saving” statute. Smartmatic plans to ask the U.S. District Court for the District of Columbia to stay proceedings with respect to the Precautionary Lawsuit until after this Court resolves Ms. Powell’s jurisdictional objection.

We thank the Court for its time and attention to this matter.

Respectfully submitted,

/s/ Edward C. Wipper
Edward C. Wipper