

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
NORTHERN DIVISION  
AT COVINGTON**

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| <b>NICHOLAS SANDMANN, by and<br/>through his parents and natural<br/>guardians, TED SANDMANN and<br/>JULIE SANDMANN,</b> | : | <b>CASE NO.</b>                   |
|  | : |                                   |
| <b>Plaintiffs,</b>   | : | <b>JUDGE</b>                      |
|  | : |                                   |
|  | : | <b>PLAINTIFF’S COMPLAINT WITH</b> |
|  | : | <b>JURY DEMAND</b>                |
|  | : |                                   |
| <b>v.</b>  | : |                                   |
|  | : |                                   |
| <b>NBCUNIVERSAL MEDIA, LLC,</b>  | : |                                   |
|  | : |                                   |
| <b>Defendant.</b>  | : |                                   |
|  | : |                                   |
|  | : |                                   |

**NOW COMES** Nicholas Sandmann, by and through his parents and natural guardians, Ted Sandmann and Julie Sandmann, and by and through counsel, and states his Complaint for Defamation against NBCUniversal Media, LLC as follows:

**INTRODUCTION**

1. This action for defamation arises out of television and online reporting by NBCUniversal Media, LLC, which published false and defamatory accusations against Plaintiff Nicholas Sandmann (“Nicholas”), a minor, the 16-year old student who stood quietly for several minutes after being unexpectedly confronted without explanation by Nathan Phillips (“Phillips”), a Native American activist, who beat a drum and sang loudly within inches of his face on January 18, 2019, at the Lincoln Memorial (the “January 18 incident”).

2. National Broadcasting Company (“NBC”) is the oldest major broadcast network in the United States.

3. NBC was founded in 1926 by Radio Corporation of America (“RCA”), which was owned at the time by General Electric.

4. In 2003, General Electric’s wholly-owned subsidiary, NBC, became NBC Universal as the result of a merger with French company Vivendi Universal.

5. In 2011, as part of a deal through which Comcast Corporation acquired NBC Universal from General Electric and Vivendi, NBC Universal became NBCUniversal Media, LLC, Defendant in this action (“NBCUniversal”).

6. NBCUniversal is wholly owned by Comcast Corporation, a global media and technology conglomerate which is the second-largest broadcasting and cable television company in the world – its businesses include cable communications, cable networks, broadcast television, filmed entertainment, theme parks, and wireless phone service.

7. MSNBC is a cable news network that was started by NBC in 1996, which is wholly-owned by NBCUniversal (and therefore ultimately, Comcast Corporation) as part of its NBCUniversal News Group division.

8. MSNBC has its own website and social media accounts.

9. NBC News is also wholly-owned by NBCUniversal as part of its NBCUniversal News Group division, and NBC News also has its own website and social media accounts.

10. On its Twitter page, NBC News proclaims itself “[t]he leading source of global news and info for more than 75 years.”

11. NBCUniversal, through its NBC Owned Television Stations division, owns at least eleven (11) wholly owned and operated television stations in the United States, each of which maintains its own distinct websites and social media accounts.



12. NBCUniversal's wholly owned and operated television stations, which are in 8 of the top 10 U.S. markets, include NBC Chicago, NBC New York, NBC Los Angeles, NBC Philadelphia, NBC Bay Area, NBC Washington, NBC Miami, NBC San Diego, NBC Boston, NBC Connecticut, and NBC Dallas Fort-Worth (collectively, the "NBC Owned and Operated Stations").

13. In addition to the NBC Owned and Operated Stations, NBCUniversal has over 200 affiliate stations that broadcast NBC programming throughout the United States.

14. NBCUniversal has four (4) NBC affiliate stations in Kentucky and one (1) NBC affiliate station in Cincinnati, Ohio.<sup>1</sup> See <https://www.nbc.com/general/pages/local-stations> (last visited Apr. 30, 2019).

15. NBCUniversal's cable network, MSNBC, advertises itself as a provider of news coverage and political commentary on current events.

16. MSNBC has cycled through a multitude of slogans highlighting its focus on news, including "The Best News on Cable," "MSNBC: The Whole Picture," "America's NewsChannel," and "NBC News on Cable, 24/7."

17. MSNBC promotes itself as being "the premier destination for in-depth analysis of daily headlines through commentary and informed perspectives." See <http://www.nbcuniversal.com/business/msnbc> (last viewed Mar. 23, 2019).

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<sup>1</sup> Greater Cincinnati/Northern Kentucky forms one economic and social region, and the "Greater Cincinnati" metropolitan statistical area as defined by the United States Census Bureau includes parts of Ohio, Kentucky, and Indiana, including the county where this Court is located. See [https://www.bls.gov/oes/current/msa\\_def.htm#O](https://www.bls.gov/oes/current/msa_def.htm#O) (last visited Apr. 30, 2019).

18. MSNBC has a well-known bias in favor of liberal political views and against conservative political views, publicly positioning itself as a liberal alternative to Fox News in October 2010, when it adopted the tagline “Lean Forward” to embrace its self-styled “politically progressive identity.”

19. NBC News division and MSNBC have a well-known bias against conservatives in general and President Donald J. Trump in particular.

20. On January 9, 2019, President Trump publicly asserted that “NBC and MSNBC are going Crazy” and described those two networks as “the Opposition Party working with the Dems.”

21. According to its 2018 Form 10-K filing and Annual Report, Comcast’s 2018 revenue was \$94.507 Billion, and its net income was \$11.731 Billion.

22. According to Comcast’s 2018 10-K filing, NBCUniversal reaches viewers in virtually all U.S. television households through more than 200 affiliated stations across the United States, including the 11 NBC Owned and Operated Stations.

23. NBC’s Owned and Operated Stations collectively reached approximately 32 million U.S. television households as of December 31, 2018, and they represent approximately 29% of U.S. television households, according to Comcast’s 2018 10-K filing.

24. Also according to Comcast’s 2018 10-K filing, MSNBC reached approximately 86 million domestic households as of December 31, 2018.

25. Between January 19 and January 27, 2019, NBCUniversal unleashed its vast corporate wealth, influence, and power against Nicholas to falsely attack him despite the fact that at the time, he was a 16-year old high school student.

26. NBCUniversal attacked Nicholas by relying heavily on biased and unreliable sources without conducting any reasonable investigation of the circumstances surrounding the January 18 incident.

27. NBCUniversal's attacks on Nicholas included at least fifteen (15) defamatory television broadcasts, six (6) defamatory online articles, and many tweets falsely accusing Nicholas and his Covington Catholic High School ("CovCath") classmates of racist acts, including among other things, engaging in racist conduct by instigating a threatening confrontation with several African American men ("the Black Hebrew Israelites") and subsequently instigating a threatening confrontation with Native Americans who were allegedly in the midst of prayer during the Indigenous Peoples March at the National Mall when Nicholas confronted them, during which NBCUniversal asserted Nicholas assaulted both the Black Hebrew Israelites and Native American political activist Phillips.

28. NBCUniversal created a false narrative by portraying the "confrontation" as a "hate crime" committed by Nicholas.

29. Over the course of its coverage, NBCUniversal failed and refused to acknowledge that Nicholas did nothing wrong and continued to perpetuate its false narrative for over one week following the January 18 incident.

30. Indeed, NBCUniversal continued to imply – and even outright state – that Nicholas was culpable for racist behavior for which he should, at the very least, apologize.

31. NBCUniversal continued to promote its false narrative that Nicholas had instigated a racist confrontation with Phillips long after Phillips was exposed as a fraud whose version of events was not entitled to any credibility by responsible members of the media.

32. Instead of accurately reporting on the event, NBCUniversal published and broadcast a false storyline – portraying the January 18 incident as a hate crime even after the truth surfaced.

33. NBCUniversal continued to cling to its description of the January 18 incident as a hate crime in an effort to cover up its journalistic failures and its inaccurate reporting.

34. NBCUniversal created panels on its talk shows to frame the January 18 incident as one involving a “hate crime” and demonstrating “white supremacy” as a result of “whites” being “emboldened” by President Trump’s presence in the White House and repeated these premises over and over, while continuously showing a carefully selected few seconds from the heavily edited videos that omitted the entire context of the incident.

35. NBCUniversal for many days falsely described the incident as having occurred during the Indigenous Peoples March – despite the undisputed evidence that the incident occurred after and apart from the location of the Indigenous Peoples March – thus shoring up its false narrative that Nicholas had perpetrated some type of “hate crime” by aggressively interrupting prayer and song at the Indigenous Peoples March.

36. NBCUniversal published these attacks against Nicholas across its large web of media outlets, including broadcasting and advertising them on NBC, MSNBC, and the NBC Owned and Operated Stations, and also posting them online on the separate websites and/or Twitter accounts for NBC News, MSNBC, the eleven NBC Owned and Operated Stations, the *TODAY Show*, and *NBC Nightly News with Lester Holt*.

37. Throughout its coverage, NBCUniversal refused to admit the truth that incontrovertible video evidence established that Nicholas, a minor child, did nothing

wrong and was instead the victim of two separate groups of adult political activists before becoming the victim of NBCUniversal and the mainstream media.

38. Although NBCUniversal acknowledged on January 19 that there was video indicating that it was Phillips who approached Nicholas – not the other way around as other members of the mainstream media were reporting – as late as January 27, MSNBC was still falsely broadcasting that Phillips was not the aggressor and that video evidence supported Phillips’ claims.

39. Although it was undisputedly clear by January 20 (at the very latest) that Nicholas had done nothing more than stand still while Phillips approached him and beat a drum in his face, as late as January 23 and 24, NBCUniversal was broadcasting and publishing stories indicating that Nicholas had taken actions for which he should apologize and for which Phillips had purportedly forgiven him.

40. Given the breadth of NBCUniversal’s media reach, its false and defamatory accusations against Nicholas were published repeatedly on various outlets and in the process, NBCUniversal’s coverage significantly contributed to a media frenzy that subjected Nicholas to public scorn, ridicule, and serious threats of physical harm.

41. More specifically, NBCUniversal painted the false picture that Nicholas and his CovCath classmates were “a big mob” that had “surrounded these black kids,” the Black Hebrew Israelites, with the two groups “throwing back and forth racial taunts,” and that “it needed one little spark and that mob would have descended on those 4 guys and ripped them apart,” and that Nicholas and his classmates then “targeted” and “surrounded” Phillips, causing Phillips to be “scared” when he was “harassed” and “taunted” by Nicholas and his classmates, who committed a “hate crime.”

42. In making its accusations against Nicholas, NBCUniversal seized the opportunity to convey to the public that such hate crimes were on the rise because “white people feel emboldened to show their racism because they have a friend in the White House.”

43. In short, the false and defamatory gist of NBCUniversal’s collective reporting conveyed to its viewers and readers that Nicholas was the face of an unruly hate mob of hundreds of white racist high school students who physically assaulted, harassed, and taunted two different minority groups engaged in peaceful demonstrations, preaching, song, and prayer.

44. NBCUniversal’s accusations against Nicholas are totally, provably, and unequivocally false.

45. The truth is that Nicholas and his CovCath classmates were bullied, attacked, and confronted with racist and homophobic slurs and threats of violence by the Black Hebrew Israelites, a recognized hate group, before being unexpectedly confronted without explanation by Phillips, an activist, who proceeded to target Nicholas while chanting and beating a drum inches from his face and being flanked by activist companions filming the event.

46. During the January 18 incident, Phillips, a stranger to Nicholas, approached from afar and intentionally confronted the CovCath students before specifically targeting Nicholas, placing himself directly in front of Nicholas.

47. At the time of the confrontation by Phillips, Nicholas and the CovCath students were assembled at the steps of the Lincoln Memorial waiting to meet the buses for their return trip home to Northern Kentucky.

48. Nicholas never moved when Phillips approached him, standing quietly and respectfully for several minutes while Phillips continued to beat his drum and sing in Nicholas' face.

49. Nicholas politely acquiesced in Phillips' chosen course of conduct.

50. Following the January 18 incident, Phillips became a "mainstream media darling," engaging in a publicity tour during which he manufactured out of whole cloth varying and conflicting descriptions of the events prior to, during, and after the January 18 incident in a superficial attempt to garner public sympathy and advance his own political agenda.

51. In certain of his interviews, Phillips had tears in his eyes as he lied and said that Nicholas and the CovCath students were shouting, "Build that wall, build that wall."

52. NBCUniversal was one of several media outlets that ignored Phillips' obvious bias and lack of credibility and provided Phillips a worldwide platform to spread his lies without any effort whatsoever to verify the accuracy of the inflammatory accusations Phillips was making against children or Phillips' background.

53. NBCUniversal took advantage of the social media mob to further its own political and financial agenda.

54. NBCUniversal elevated false, heinous accusations of racist conduct against Nicholas from social media to its worldwide "news" platform without adhering to well-established journalistic standards and ethics, including its failure to take the required steps to ensure accuracy, fairness, completeness, fact-checking, neutrality, and heightened sensitivity when dealing with a minor.

55. Nicholas was an easy target for NBCUniversal to advance its anti-Trump agenda because he was a 16-year-old white, Catholic student who had attended the Right

to Life March that day and was wearing a MAGA cap at the time of the incident which he had purchased earlier in the day as a souvenir.

56. In addition to its substantial broadcast television and online audience, NBCUniversal republished many of its false and defamatory broadcasts and articles to NBC News' approximately 6.45 million Twitter followers; to MSNBC's approximately 2.37 million Twitter followers; to the *TODAY Show's* approximately 4.28 million Twitter followers; to *NBC Nightly News'* approximately 971,000 Twitter followers; and to the over 2.5 million Twitter followers of the 11 NBC Owned and Operated Stations.

57. While NBCUniversal has thus far stood behind its coverage of Nicholas, remaining silent regarding its false and defamatory coverage of the January 18 incident despite the fact that other news outlets have clarified, corrected, and/or retracted several false assertions also made by NBCUniversal that are central to the false and defamatory gist conveyed by NBCUniversal, and have admitted mistakes that were made in coverage of the January 18 incident.

58. For instance, KTXL Fox40 issued "A Note To Our Viewers About Our Covington Coverage," stating, in part, as follows:

"Early reports also contained unverified statements about the students' conduct, including statements by Phillips that they had chanted 'Build That Wall,' and made remarks offensive to Native Americans. Though several videos have come to light since the incident, none of them contains evidence of hostile remarks by the students."

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"Our reports contained other remarks which, after videos emerged and both sides were heard from, proved unsubstantiated or untrue. Sandmann was accused of blocking Phillips' path so he could not climb the steps of the Memorial to pray. Students were accused of assembling in the Indigenous People's space, and taunting and mocking the Native Americans. We reported the Diocese of Covington's condemnation of the Covington Catholic High School students, a denunciation that was retracted in six days



when the church admitted it had rushed to judgment ... saying they had been ‘bullied and pressured into making a statement prematurely.’”

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“The facts now available about this story show no evidence of taunting by the students ... Phillips was not denied freedom of movement – he approached the student gathering and said he wanted to promote peace between the students and the other activist group that taunted them with profanity. Sandmann, for his part, professed the same motive: keeping calm, and preventing the situation from getting out of hand. His behavior, and the prompt arrival of the school buses, achieved this goal. Until the story went viral the next day.”

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“The lion’s share of the denunciations of this event landed on the students, and the focus of attention was on Sandmann, who reportedly had bought his red cap that afternoon. Such is the result of cell phone video presented as news: it shows a small window of reality for a short burst of time. Context, which is essential in any news report, is lacking. Judgments are reached without the benefit of all or even most of the facts. It is a prescription for error[.]”

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“We should have considered that the targets of this story were high school students.”

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“We owe an apology to the students, their families, and the face of the Covington student group, Nick Sandmann. . . . Because of the way this story came together – fueled by a viral video with no on-scene reporting by independent voices – we lost sight of our standard of fairness, context, and accuracy. This is especially serious when the groundswell of misinformed anger fell on a group of teenagers who never sought the attention, let alone the abusive treatment, they got. They deserved better, and so did our viewers.”

A true and correct copy of KTXL Fox40’s statement is attached hereto as *Exhibit A*.

59. After being sued, and while failing to issue an admission of fault, an apology, an adequate correction, or an unequivocal retraction, The Washington Post published an online “Editor’s note related to Lincoln Memorial incident” providing, in part, as follows:

“Subsequent reporting, a student’s statement and additional video allow for a more complete assessment of what occurred, either contradicting or failing to confirm accounts provided in that story – including that Native American activist Nathan Phillips was prevented by one student from moving on, that his group had been taunted by the students in the lead-up to the encounter, and that the students were trying to instigate a conflict.”

The Washington Post published a similar statement in print as follows:

“A Jan. 20 Metro article provided an account from Native American activists about an encounter with a group of high school students from Covington, Ky. Subsequent reporting and video evidence contradicted or failed to corroborate that one of the activists was accosted and prevented from moving on, that the activists had been taunted by the students in the lead-up to the encounter, that the students were trying to instigate a conflict, or that ‘March for Life’ participants chanted ‘Build that wall.’ A Jan. 21 Page One article reported an account by one of the activists that he had heard students earlier make disparaging comments about Native Americans and had heard students shout ‘Go back to Africa!’ The story reported the denial of one student that he had heard any students say anything hateful or racist at any time. The story should have noted that widely circulated video from that day does not corroborate that such statements were made.”

True and correct copies of The Washington Post’s statements are attached hereto as *Exhibit B*.

60. In order to fully compensate Nicholas for the perpetual reputational harm, emotional distress, and mental anguish suffered as a result of NBCUniversal’s false attacks, this action seeks compensatory damages in excess of Seventy-Five Million Dollars (\$75,000,000.00).

61. In order to punish NBCUniversal and to deter NBCUniversal from ever again engaging in false, reckless, malicious, and agenda-driven attacks against children in violation of well-recognized journalistic standards and ethics, this action seeks punitive damages in excess of Two Hundred Million Dollars (\$200,000,000.00).

62. The \$275,000,000.00 demand in this Complaint is 2.344% of Comcast's 2018 net income of \$11,731,000,000.00 without any reduction for NBCUniversal's insurance coverage for defamation.

## **DETAILED FACTUAL BACKGROUND**

### **THE JANUARY 18 INCIDENT**

63. On January 18, 2019, Nicholas attended the March for Life on a school trip chaperoned by sixteen (16) adults, nine (9) of whom were faculty members at CovCath.

64. Nicholas and his classmates were instructed to meet at the steps of the Lincoln Memorial at the National Mall by 5:00 p.m. to catch their buses for the return trip to Kentucky.

65. Nicholas was wearing a red MAGA cap that he had purchased that day as a souvenir.

66. While at the National Mall, a small group of adult men who describe themselves as Black Hebrew Israelites – a recognized hate group – began verbally assaulting and taunting Nicholas and his CovCath classmates with threats of physical violence and vitriolic statements, shouting, among other things, “you only got one n\*\*\*er in the crowd,” “oh, you got two n\*\*\*ers in the crowd,” “get out, n\*\*\*er, get out,” “this is a faggot child molester,” “Christ is coming back to kick yo cracker ass,” “there will be no peace until there is bloodshed,” “incest babies,” “dirty ass crackers,” and “future school shooters.”

67. One of Nicholas' classmates requested and received permission from a school chaperone to engage in CovCath school sports cheers in an effort to ignore and drown out the hate speech being hurled at them by the Black Hebrew Israelites.

68. During a school cheer, Phillips and his activist companions – all of whom had been participating in the Indigenous Peoples March at the National Mall earlier that day – instigated a confrontation with Nicholas and his CovCath classmates.

69. Rather than focusing their attention on the Black Hebrew Israelites, who had been relentlessly hurling insults at both the teenagers for almost an hour and the Native Americans attending the Indigenous Peoples March prior thereto, Phillips and his activist companions deliberately targeted the CovCath students from a distance while beating drums, singing, dancing, and carrying cameras to hopefully capture a viral video moment of the confrontation.

70. When Phillips first approached them, many of the CovCath students “felt like he was coming into their group to join in with the students’ cheers” and some joined in dancing to Phillips’ drumbeat and song.

71. Phillips intentionally walked up to the crowd of CovCath students.

72. Immediately behind and around Phillips were several of his own companions, and Nicholas and the CovCath students did not move toward Phillips or otherwise actively approach or surround him.

73. Nicholas and the students acquiesced in Phillips’ election to confront their group and beat his drum within inches of Nicholas’ face.

74. Once within their group, Phillips freely moved about, briefly walking up to certain students within the group of students, which included many children who were not CovCath students.

75. Phillips then walked directly to where Nicholas was standing on the steps so that he could confront Nicholas and get within inches of his face.

76. Phillips was attired in Native American garb and was a complete stranger to Nicholas.

77. While staring and glaring at Nicholas, Phillips continued to beat his drum and sing loudly within inches of Nicholas' face for several minutes.

78. Contrary to Phillips' lies republished by NBCUniversal in his post-January 18 media interviews that he was trying to move to the top of the steps of the Lincoln Memorial, Phillips approached the students from a distance and walked past clear pathways leading to the Lincoln Memorial.

79. When Phillips made his incursion into the crowd of students and directly confronted Nicholas, Phillips never made any attempt to move past, around, or away from Nicholas even though he could have done so at any time.

80. Prior to being directly confronted by Phillips, Nicholas had not noticed Phillips at the National Mall.

81. Nicholas was startled and confused by the actions of Phillips in singling him out and confronting him.

82. During the confrontation instigated by Phillips, Nicholas stood still, as he was concerned that turning away from Phillips might be misconstrued as a sign of disrespect.

83. While he stood there with Phillips beating a drum near his face and singing loudly, Nicholas remained silent and did not utter a single word to Phillips.

84. Nicholas did not make any gestures by hand or otherwise toward Phillips.

85. Nicholas made only one gesture while being confronted by Phillips – he quietly signaled a classmate to refrain from responding to profanity-laced insults being directed at the student by one of Phillips' companions.

86. At all times, Nicholas acted respectfully, responsibly, appropriately, and in a manner consistent with the values instilled upon him by his family and his faith.

87. The confrontation ended when Nicholas and his fellow CovCath students left the immediate area of the incident to board the buses for their return trip home.

88. When Nicholas and his fellow schoolmates walked away quietly to board the bus, Phillips turned away from the Lincoln Memorial and outwardly celebrated his perceived “win” over Nicholas and his CovCath classmates, with his companion shouting “I got him, man, I got him! ... We won grandpa, we fucking won grandpa!”

89. During the entirety of the January 18 incident, Nicholas:

- (a) did not instigate a confrontation of any kind;
  - (b) did not surround Phillips or the Black Hebrew Israelites;
  - (c) did not target, confront, or assault Phillips or the Black Hebrew Israelites;
  - (d) did not threaten Phillips or the Black Hebrew Israelites;
  - (e) did not move from where he was standing when Phillips approached him;
  - (f) did not block Phillips’ path or egress;
  - (g) did not taunt, mock, or harass Phillips or anyone else present;
  - (h) did not utter a single word toward Phillips;
  - (i) did not engage in chanting, jeering, or clapping at Phillips;
  - (j) did not taunt or hurl any political chant or racial slur at anyone, including Phillips, any other Native American, or the Black Hebrew Israelites;
- and

(k) did not engage in any conduct whatsoever that could even remotely be described or characterized as racist or as a hate crime.

90. Between January 19 and January 27, NBCUniversal recklessly disregarded the truth and falsely accused Nicholas of, among other things, “surrounding” Phillips, “block[ing]” Phillips’ path away from the “ugly mob,” and chanting “build that wall,” as he and his classmates otherwise “harass[ed],” “taunted,” and “mock[ed]” Phillips — which were described as acts of “hate and racism” constituting a “hate crime.”

91. On January 27, MSNBC’s Joy Reid recognized that Nicholas was “the face” of the January 18 incident when she began her broadcast by describing the “encounter between Omaha trial elder Nathan Phillips and a group of white teen-agers from an all-boys private Catholic high school in Kentucky, including the teen who became the face of the incident, Covington Catholic student Nick Sandmann. . . .”

#### **ONLINE VIDEOS OF THE JANUARY 18 INCIDENT**

92. On the evening of January 18, 2019, at 7:33 p.m., Kaya Taitano, a participant in the Indigenous Peoples March, posted online a selectively edited 59 second video depicting only a small portion of the interaction between Nicholas and Phillips, and later that night, she posted a 3 minute 44 second video (collectively, the “Taitano Videos”). See <https://www.instagram.com/p/Bsy8ocfFVAR/> (last visited May 1, 2019); <https://www.youtube.com/watch?v=sIG5ZBofw1k> (last visited May 1, 2019).

93. The Taitano Videos did not show, among other things:

- (a) the Black Hebrew Israelites’ misconduct and homophobic, racist slurs directed at the CovCath students;
- (b) that Phillips had approached the students and inserted himself into their area before confronting Nicholas;

(c) that the students were already engaged in school cheers at the time Phillips approached;

(d) Nicholas engaging in any misconduct, including harassing, mocking, or taunting anyone;

(e) Nicholas making any gesture of any kind except to, at times, awkwardly smile;

(f) Nicholas uttering any words to Phillips or his companions;

(g) Nicholas moving into Phillips' path;

(h) Nicholas blocking Phillips' escape; or

(i) Nicholas physically or verbally threatening Phillips in any manner.

94. At 11:13 p.m. on January 18, 2019, @2020fight, a fake Twitter account with a following of approximately 41,000, tweeted a 1 minute 1 second clip from the Taitano Videos with the comment, "This MAGA loser gleefully bothering a Native American protestor at the Indigenous Peoples March" (the "2020fight Video").

95. Upon information and belief, NBCUniversal did not take any reasonable steps to investigate the @2020fight account to determine whether the video had been edited and whether the account was legitimate.

96. The 2020fight Video, alone, is reported as having been viewed at least 2,500,000 times, retweeted 14,000 times, and liked 27,000 times before the account was suspended by Twitter no later than January 21.

97. Screenshots available online of the 2020fight Video show it was viewed at least 10.6 million times.

98. According to CNN, the @2020fight account was created in December 2016, tweeted an average of 130 times a day, and was suspicious for its high follower count,



unusually high rate of tweets, highly polarized and yet inconsistent political messaging, and the use of someone else's image in the profile photo.

99. Any reasonable, objective, and unbiased journalist would have readily known that the 2020fight Video was little more than a snapshot of a limited portion of the January 18 incident and that accurate and fair reporting on it required investigation into the events which occurred before and after those depicted in the short video clip posted on Twitter.

100. An accurate video as to what occurred on January 18, 2019, was available online on January 19, 2019, less than 24 hours after the 2020fight Video was posted, when Shar Yaqataz Banyamyan, one of the Black Hebrew Israelites who was present for the encounter between Phillips and Nicholas, posted a 1 hour and 46-minute video on Facebook (the "Banyamyan Video").<sup>2</sup>

101. A plethora of additional relevant video of the January 18 incident was also available online but ignored by NBCUniversal and the social media mob as NBCUniversal continued its false reporting and the republication of the false accusations by news outlets.

102. For instance and as examples only, video of Phillips instigating and approaching Nicholas and his classmates rather than the other way around was available on Twitter no later than 9:48 a.m. on January 19, 2019, and continued to appear on social media and in the media on January 19 and 20. *See, e.g.,* <https://twitter.com/mariajudy/status/1086681831804674048> (last visited April 26, 2019) and *Exhibit C*.

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<sup>2</sup> *See* [https://www.youtube.com/watch?v=t3EC1\\_gcr34&feature=youtu.be&t=523](https://www.youtube.com/watch?v=t3EC1_gcr34&feature=youtu.be&t=523) (last visited April 1, 2019).

103. From online video and fair use of media broadcasts, Nicholas' counsel produced a fourteen-minute video distilling what occurred on January 18, entitled "Nicholas Sandmann: The Truth in 15 Minutes" (the "Sandmann Video"), available at <https://www.youtube.com/watch?v=lSkpPaiUF8s> (last visited April 1, 2019).

104. The Banyamyan and Sandmann Videos accurately set forth the truth of the January 18 incident.

105. The Banyamyan and Sandmann Videos demonstrate that this incident was instigated by the Black Hebrew Israelites and Phillips, and that Nicholas was targeted by professional activists whose false accusations neatly fit the mainstream media's and social media's anti-Trump agenda.

106. The Banyamyan and Sandmann Videos demonstrate that Nicholas did not engage in any misconduct and specifically, did not engage in the misconduct attributed to him by NBCUniversal.

#### **NICHOLAS' STATEMENT AND NBCUNIVERSAL INTERVIEW**

107. On the afternoon of January 20, in an attempt to stem the threats of physical violence being made against him, his family, and his CovCath classmates, Nicholas made public a statement in which he provided a detailed and accurate factual description of the January 18 incident. A copy of Nicholas' January 20 statement is attached hereto as *Exhibit D*.

108. In a further attempt to stem the threats of physical violence being made against him, his family, and his CovCath classmates, Nicholas agreed to an interview with Savannah Guthrie that was aired on January 23, 2019, on NBC's *TODAY Show* in which Nicholas reiterated his detailed and accurate factual description of his encounter with Phillips despite accusatory, "victim shaming" questions by Guthrie.

109. During Guthrie’s pre-recorded interview of Nicholas, she unfairly attacked him with inappropriate questions suggesting guilt on his part for the January 18 incident.

110. In particular, Guthrie asked Nicholas: “Do you feel from this experience that you owe anybody an apology? Do you see your own fault in any way?” – despite the clear evidence that this 16-year-old boy did nothing more than simply stand in one place and look respectfully at Phillips.

111. Not only did NBCUniversal include these victim-shaming questions from Guthrie when it aired the interview on the *TODAY Show* on January 23, but NBCUniversal also highlighted them elsewhere – for example, featuring only those two questions in the 30 second video clip broadcast on *NBC Nightly News with Lester Holt* and posted online on January 22 advertising the interview. That video clip has received 7.8 million views as of April 27, 2019. See <https://twitter.com/TODAYshow/status/1087841570479632384> (last visited Apr. 27, 2019).

112. Guthrie also told Nicholas that he was acting “aggressive” by standing still and asked him “[w]hy didn’t you walk away?”

113. Guthrie said at one point during the program that Nicholas was “standing by his actions in this moment gone viral” while NBCUniversal re-played the clip of Nicholas from the Taitano Videos.

114. This grossly one-sided accusatory line of questioning resulted in numerous headlines around the country that further flamed accusations against Nicholas. See, e.g., “Nick Sandmann Won’t Apologize for Staring Down Native American Elder: ‘I Had Every Right,’” available at <https://www.vanityfair.com/hollywood/2019/01/nick-sandmann-today-show-nathan-phillips> (last visited Apr. 27, 2019); “Catholic student in viral video

says he respects Native American elder, but he doesn't owe an apology," *available at* <https://www.cnn.com/2019/01/23/us/nick-sandmann-interview-maga-teens-covington-catholic/index.html> (last visited Apr. 26, 2019).

115. In the interview of Phillips that aired on the *TODAY Show* on the following day, January 24, Guthrie did not ask Phillips if he saw his own fault or if he should apologize, instead saying to Phillips that "he [Nicholas] said when I asked directly that he didn't think he owed an apology but he does wish he had walked away, is that enough for you or do you think he should have apologized?"

116. Similarly, although NBCUniversal repeatedly advertised its interview of Nicholas by focusing on Nicholas' failure to apologize, NBCUniversal advertised its interview of Phillips by focusing on Phillips' purported "forgiveness." See "Native American elder Nathan Phillips on confrontation: 'I forgive him,'" *available at* <https://www.today.com/video/native-american-elder-nathan-phillips-on-confrontation-i-forgive-him-1431131715937> (last visited Apr. 28, 2019).

117. The difference in Guthrie's questioning of Phillips and Nicholas – days after Phillips' lies and ever-changing story were exposed and a 16-year-old was being subjected to death threats, as Guthrie herself acknowledged – was entirely inappropriate and underscored NBCUniversal's bias against Nicholas while perpetuating the false narrative that Phillips was blameless and deserved an apology from Nicholas.

#### **AN INVESTIGATION CONFIRMS THE TRUTH**

118. NBCUniversal did not conduct a proper investigation before publishing its false and defamatory statements of and concerning Nicholas.

119. Pressured by the agendas of certain individuals, a false and defamatory statement of and concerning Nicholas was also published by the Diocese of Covington on January 19 before a proper investigation had been conducted by the Diocese.

120. If NBCUniversal had bothered to speak to the Diocese of Covington, it would have learned that the statement was issued without any investigation by the Diocese.

121. For instance, on January 25, 2019, the Diocese of Covington issued a statement stating, among other things, “[w]e should not have allowed ourselves to be bullied and pressured into making a statement prematurely” and “I especially apologize to Nicholas Sandmann and his family...” A true and correct copy of said statement is attached hereto as *Exhibit E*.

122. Subsequently, the Diocese of Covington retained through its counsel a third-party investigative firm, Greater Cincinnati Investigation, Inc. (“GCI”), to investigate and determine the facts of the January 18 incident.

123. On January 22, the Diocese of Covington issued a statement indicating that “the independent, third-party investigation is planned to begin this week” and stating that “[i]t is important for us to gather the facts that will allow us to determine what corrective actions, if any, are appropriate” and that “[w]e pray that we may come to the truth. . . .” See <https://www.archlou.org/statement-regarding-covington-catholic-incident/> (last visited Apr. 26, 2019).

124. On February 11, 2019, GCI issued its Final Investigative Report (the “GCI Report”), a true and correct copy of which is attached hereto as *Exhibit F*.

125. On February 11, 2019, Diocese Bishop Foy released the GCI Report and said in a letter to the Covington Catholic parents that the GCI Report exonerated the

students and demonstrated that the students did not instigate the incident at the Lincoln Memorial. A true and correct copy of said letter is attached hereto as *Exhibit G*.

126. The GCI Report is entirely consistent with all video evidence as well as statements issued by Nicholas and other CovCath students and chaperones.

127. According to the GCI Report, four (4) licensed investigators spent approximately 240 man hours investigating the incident, interviewed 43 students and 13 chaperones, reviewed approximately 50 hours of Internet activity, and attempted to interview Phillips, who failed to respond to phone calls, emails, or investigators who waited outside his home for 6 hours and left a note asking him to contact them.

128. The GCI Report made the following key findings:

(a) Nicholas' January 20 statement accurately reflects the January 18 incident.

(b) There was "no evidence that students responded [to the Black Hebrew Israelites] with any offensive or racist statements of their own."

(c) The students asked their chaperones if they could perform school cheers to drown out the Black Hebrew Israelites' invective, and upon receiving approval, they performed the same cheers that are commonly performed at football or basketball games.

(d) There was "no evidence that the students performed a 'Build the Wall' chant."

(e) Phillips approached the Covington Catholic students.

(f) There was "no evidence of offensive or racist statements by students to Mr. Phillips or members of his group."

(g) The majority, if not all, of the MAGA hats being worn by students were purchased before, during, or after the March for Life.

(h) In previous years, some students had purchased ‘Hope’ hats in support of President Obama.

(i) “Mr. Phillips’ public interviews contain some inconsistencies. . . .”

#### **PHILLIPS’ INCONSISTENT AND FALSE CLAIMS**

129. Phillips is known to have given at least nine (9) interviews to mainstream media, including NBC, CNN, The Washington Post, The Associated Press, Detroit Free Press, MSNBC, Democracy Now!, ABC, and CBS.

130. The accusations of Phillips and his companions, as published and republished by NBCUniversal and the others identified above, are remarkably inconsistent, both with each other and with the video evidence.

131. According to The Washington Post, Phillips stated that the students “suddenly swarmed around him as he and other activists were wrapping up the march.”

132. According to The Associated Press, Phillips stated that “he felt compelled to get between two groups with his ceremonial drum to defuse a confrontation.”

133. According to CNN, Phillips stated he “had *put myself* in a really dangerous situation,” but that he was “surrounded” by Nicholas and his classmates.

134. According to The Washington Post, Phillips said he was trying to “exit out of this situation and finish my song at the Lincoln Memorial.”

135. Again, according to The Washington Post, “Phillips said he was trying to reach the top of the memorial, where friends were standing.”

136. According to Democracy Now!, Phillips stated that “I wasn’t focusing on anybody except taking the youth out of there, the Indigenous youth that was with me, out

of that situation, and that's when Mr. Sandmann stood in front of me and blocked my path.”

137. According to NBCUniversal, Phillips stated that “I was blocked” because “we couldn't go right. We couldn't go left, back.”

138. Contrary to Phillips' public claims that the students yelled “build that wall,” “go back to Africa,” and “go back to the reservation,” and that Phillips has seen video in which you can hear the students shouting “build that wall,” no video evidence exists substantiating this accusation.

139. Contrary to Phillips' claim that the students left because they were “running from the police,” the video evidence and statements of witnesses demonstrate that the students left to catch their buses, and Phillips then turned away from the top of the stairs and celebrated his perceived “win” with his companions.

140. Although Phillips has previously claimed to have served in Vietnam during his service in the U.S. Marines, he was never deployed overseas and is not a Vietnam veteran.

141. Even a cursory review of Phillips' past would have raised serious concerns among objective journalists as to his reliability and credibility as a source for describing the January 18 incident and would have revealed that Phillips was a liar and an agenda-driven activist.

### **NBCUNIVERSAL COVERAGE**

142. NBCUniversal was among the first members of the broadcast and online mainstream media to assassinate Nicholas' character and reputation, airing portions of a false and defamatory interview with Phillips on January 19.



143. NBCUniversal also posted its first false and defamatory article about the January 18 incident on January 19.

144. To the extent the January 18 incident was newsworthy at all, it was not “hot news” or “breaking news.”

145. NBCUniversal did not investigate the January 18 incident prior to publishing its false and defamatory accusations, and any efforts it might now claim to be investigative in nature were woefully inadequate and unreasonably deficient when weighed against journalistic standards, particularly standards governing reporting on minors.

146. Moreover, NBCUniversal and MSNBC continued to push the false narrative that Nicholas and the CovCath students had done something wrong and owed Phillips an apology long after many other members of the mainstream media had recognized their errors and began distancing themselves from Phillips’ lies.

147. Far from attempting to correct their coverage, NBCUniversal and MSNBC doubled and tripled down on their lies – creating and perpetuating the false narrative that Nicholas was guilty of a “hate crime” and racist behavior.

148. To the date of the filing of this Complaint, NBCUniversal has never issued a formal retraction, correction or an apology to Nicholas.

#### **PARTIES, JURISDICTION, AND VENUE**

149. Nicholas Sandmann and his parents reside in Kenton County, Kentucky.

150. Nicholas is a 16-year-old 11th grade student who attends CovCath, an all-male Catholic high school in Park Hills, Kentucky.

151. NBCUniversal is a foreign corporation existing under the laws of the State of Delaware with its principal place of business being located at 30 Rockefeller Plaza, New

York, NY 10112. NBCUniversal may be served by delivery of a copy of the summons and complaint to its duly-appointed registered agent, CT Corporation System, 1200 South Pine Island Road, Plantation, FL.

152. There exists complete diversity of citizenship between Plaintiff and NBCUniversal.

153. The amount in controversy greatly exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interests, costs, and attorneys' fees, as required to sustain subject-matter jurisdiction in this Court.

154. This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a).

155. NBCUniversal's NBC station is the nation's oldest broadcast television station and prides itself on its news coverage, including through *NBC Nightly News* and its wholly owned cable news network MSNBC.

156. NBCUniversal transacts business in the State of Kentucky, including through the distribution of its content through broadcast television, cable television, and the Internet, and NBCUniversal committed the tortious acts identified herein in the State of Kentucky.

157. NBCUniversal published the broadcasts and online articles identified herein in the State of Kentucky.

158. NBCUniversal has intentionally sought and obtained benefits from its tortious acts in the State of Kentucky.

159. NBCUniversal broadcasts its NBC network broadcasts to virtually every household in Kentucky through its affiliate NBC stations in Kentucky and Cincinnati.

160. NBCUniversal directed its conduct at Nicholas, a citizen of Kentucky.

161. Nicholas suffered substantial and perpetual reputational and emotional harm in this District.

162. There is a reasonable and direct nexus between NBCUniversal's tortious conduct in Kentucky and the harm suffered by Nicholas in Kentucky and beyond.

163. NBCUniversal is subject to the jurisdiction of this Court pursuant to KRS § 454.210.

164. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because NBCUniversal is subject to personal jurisdiction in this District and/or a substantial part of the events giving rise to this claim occurred in this District, including publication and injury.

### **CAUSE OF ACTION FOR DEFAMATION**

165. Nicholas reasserts and incorporates by reference paragraphs 1 through 164 of this Complaint as if fully restated herein.

166. NBCUniversal published to third parties without privilege no less than fifteen (15) false and defamatory television broadcasts, six (6) false and defamatory Internet articles, and numerous false and defamatory tweets of and concerning Nicholas.

### **BROADCASTS**

#### **First Broadcast**

167. On January 19, 2019, NBCUniversal aired its first false and defamatory broadcast on NBC Washington, subtitled, *inter alia*: "Native American Elder Harassed in Viral Video Speaks Out" (the "First Broadcast").

168. The First Broadcast was republished online and on at least eleven (11) different platforms – once for each of the NBC Owned and Operated Stations, for a total of at least fifty-five (55) replications.

169. The First Broadcast remains online and can be viewed by the Court at [https://www.nbcwashington.com/news/local/Native-American-Elder-Harassed-in-Viral-Video-Speaks-Out Washington-DC-504610341.html](https://www.nbcwashington.com/news/local/Native-American-Elder-Harassed-in-Viral-Video-Speaks-Out-Washington-DC-504610341.html) (last visited April 26, 2019).

170. The First Broadcast features Nicholas prominently by publication of the Taitano Videos showing Nicholas' face.

171. The First Broadcast published selected portions of a taped interview of Phillips.

172. The First Broadcast conveyed the false and defamatory gist that Nicholas instigated a confrontation with Phillips and otherwise engaged in racist conduct.

173. The First Broadcast conveyed the false and defamatory gist that Nicholas assaulted Phillips.

174. The First Broadcast conveyed the false and defamatory gist that Nicholas engaged in racist taunts.

175. The First Broadcast conveyed the false and defamatory gist that Nicholas disrupted the Indigenous Peoples March as part of his purportedly racist conduct.

176. The First Broadcast conveyed the false and defamatory gist that Nicholas' behavior violated the fundamental standards of his religious community.

177. The First Broadcast conveyed the false and defamatory gist that Nicholas' behavior violated the policies of his school to such an extent that he was subject to expulsion from his school.

178. In its First Broadcast, NBCUniversal published or republished the following false and defamatory statements:

(a) The subtitle "Native American Elder Harassed in Viral Video Speaks Out"

(b) The subtitle "TEENS MOCK NATIVE AMERICAN ELDER"

- (c) The subtitle “VIDEO OF TEENS TAUNTING NATIVE AMERICAN SPARKS OUTRAGE”
- (d) The subtitle “VIRAL VIDEO OF TEENS TAUNTING NATIVE AMERICAN VIETNAM VET AT THE LINCOLN MEMORIAL SPARKS OUTRAGE”
- (e) *“This video blowing up on social media and sparking outrage across the country, a Native American elder taunted by teens wearing MAGA hats, they mocked him on the steps of the Lincoln Memorial during an Indigenous Peoples March. New tonight, News 4’s Darcy Spencer spoke to the man targeted.”* [broadcasting Taitano Video clip of Nicholas’ face]<sup>3</sup>
- (f) “He told me he was frightened when he was surrounded by those teens.”
- (g) *“He’s the Native American shown in a video being harassed and jeered by some Catholic high school students wearing Make America Great Again hats.”* [broadcasting video clip of Nicholas]
- (h) *“Phillips was singing and playing a drum at the Indigenous Peoples rally on Friday near the Lincoln Memorial when it happened.”* [broadcasting video clip of Nicholas]
- (i) (interviewing Phillips) “I was scared. I was afeared.”
- (j) “Phillips is . . . a Vietnam veteran.”
- (k) (interviewing Phillips) “Can this be a turning point? Can this be a point of where hatred is stopped?”

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<sup>3</sup> Throughout this Complaint, *italicized text* will be used to denote portions of the NBCUniversal broadcasts while someone was speaking, and at the same time, either a still photo or a clip from the Taitano Videos was broadcast that focused on the close-up of Nicholas’ face when Phillips was standing directly in front of him, singing and playing his drum.

(l) (interviewing Lauren Howland, International Indigenous Youth Council)  
“To have him disrespected like that and to have him harassed on that level, it’s awful.”

(m) *“The Diocese of Covington and Covington Catholic High School issued a statement that says in part, ‘We condemn the actions of the Covington Catholic High School students... The matter is being investigated and we will take appropriate action, up to and including expulsion.’”*  
[broadcasting video clip of Nicholas]

179. The First Broadcast is still available online, with the only change contained in the description, which now adds that “[o]ther video footage has revealed a more complex portrait of the incident than what was initially described in this video” and includes a “CORRECTION” that Phillips “*did not serve in Vietnam.*”

### **Second Broadcast**

180. On the night of January 19, 2019, NBCUniversal aired its second false and defamatory broadcast on *NBC Nightly News with Lester Holt*, subtitled, *inter alia*: “TEENAGERS TAUNT ELDERS” (the “Second Broadcast”).

181. The Second Broadcast can be viewed by the Court at <https://www.dropbox.com/s/6ngyye6j4bwes2a/2019-01-19%20NBC%20Nightly%20News%20With%20Lester%20Holt%20-%206%2042%2036%20PM%20-%206%2044%2015%20PM.mp4?dl=0> (last visited April 26, 2019).

182. The Second Broadcast features Nicholas prominently by publication of portions of the Taitano Videos.

183. Similar to virtually all of its broadcasts concerning the January 18 incident, the Second Broadcast featured a still of Nicholas’ face or a clip of video from the Taitano

Videos while the January 18 incident was being discussed and/or described (designated by *italics* throughout this Complaint).

184. The Second Broadcast published selected portions of a taped interview of Phillips.

185. The Second Broadcast conveyed the false and defamatory gist that Nicholas instigated a confrontation with Phillips and otherwise engaged in racist conduct.

186. The Second Broadcast conveyed the false and defamatory gist that Nicholas assaulted Phillips.

187. The Second Broadcast conveyed the false and defamatory gist that Nicholas engaged in racist taunts.

188. The Second Broadcast conveyed the false and defamatory gist that Nicholas disrupted the Indigenous Peoples March as part of his purportedly racist conduct.

189. The Second Broadcast conveyed the false and defamatory gist that Nicholas' behavior violated fundamental standards of his religious community.

190. The Second Broadcast conveyed the false and defamatory gist that Nicholas' behavior violated the policies of his school to such an extent that he was subject to expulsion.

191. In its Second Broadcast, NBCUniversal published or republished the following false and defamatory statements:

- (a) The subtitle "TEENAGERS TAUNT ELDERS"
- (b) The subtitle "TEENS SPARK CONTROVERSY AT INDIGENOUS PEOPLES MARCH"
- (c) "Outrage after some teenagers taunted a Native American elder, a Vietnam veteran, during a special ceremony in the nation's capital."

- (d) “*A troubling scene many are calling racist played out in Washington yesterday on the steps of the Lincoln Memorial – some students harassing an older Native American man, a Vietnam vet, in the midst of a special ceremony.*” [broadcasting video clip of Nicholas]
- (e) “... The video appears to show dozens of youths wearing Make America Great Again hats *mocking Native American elder and Vietnam veteran Nathan Phillips.*” [broadcasting video clip of Nicholas]
- (f) (interviewing Phillips) “... ‘I was there singing and I heard them saying “build that wall, build that wall.”’”
- (g) “The Diocese of Covington saying in a statement, ‘the matter is being investigated and we will take appropriate action, up to and including expulsion.’”
- (h) “*It’s unclear how the event started. Tonight some wondering how this peaceful rally became a sad display of disrespect.*” [broadcasting video clip of Nicholas]

### **Third Broadcast**

192. On the morning of January 20, 2019, NBCUniversal aired its third false and defamatory broadcast, also published online, on *AM Joy* on MSNBC subtitled, *inter alia*: “VIRAL VIDEO SHOWS HIGH SCHOOL STUDENTS WEARING ‘MAGA’ HATS AND MOCKING NATIVE AMERICANS” (the “Third Broadcast”).

193. The Third Broadcast was also posted on the MSNBC Facebook account.

194. The Third Broadcast remains available online and can be viewed by the Court at <https://www.msnbc.com/am-joy/watch/nathan-phillips-native-american-man-harassed-by-high-schoolers-tells-his-story->



[1429118531532?cid=sm\\_npd\\_ms\\_fb\\_ma&fbclid=IwAR28HWR7Jg11GZvW\\_q\\_pmrQn\\_CjOpoSFQGcEnqOSSkz\\_N2K-TB5Ml9eKSjHw](https://www.facebook.com/npd.ms.fb.ma/?cid=sm_npd_ms_fb_ma&fbclid=IwAR28HWR7Jg11GZvW_q_pmrQn_CjOpoSFQGcEnqOSSkz_N2K-TB5Ml9eKSjHw) (last visited Apr. 26, 2019).

195. The Third Broadcast features Nicholas prominently by publication of portions of the Taitano Videos.

196. The Third Broadcast included a telephone interview of Phillips.

197. The Third Broadcast conveyed the false and defamatory gist that Nicholas instigated a confrontation with Phillips and the Black Hebrew Israelites and otherwise engaged in racist conduct.

198. The Third Broadcast conveyed the false and defamatory gist that Nicholas assaulted Phillips and the Black Hebrew Israelites.

199. The Third Broadcast conveyed the false and defamatory gist that Nicholas engaged in racist taunts.

200. The Third Broadcast conveyed the false and defamatory gist that Nicholas disrupted the Indigenous Peoples March as part of his purportedly racist conduct.

201. The Third Broadcast conveyed the false and defamatory gist that Nicholas' behavior violated the fundamental standards of his religious community.

202. The Third Broadcast conveyed the false and defamatory gist that Nicholas' behavior violated the policies of his school to such an extent that he was subject to expulsion.

203. The Third Broadcast included narrative by Joy Reid, along with a telephone interview by Reid of Phillips.

204. In its Third Broadcast, NBCUniversal published or republished the following false and defamatory statements:

- (a) The subtitle “VIRAL VIDEO SHOWS HIGH SCHOOL STUDENTS WEARING ‘MAGA’ HATS AND MOCKING NATIVE AMERICANS”
- (b) The title and subtitle of the Internet version of the Third Broadcast, “Nathan Phillips, Native American man harassed by high schoolers, tells his story” and “Covington Catholic High School students wearing MAGA hats surrounded and taunted a Native American man as he performed the ‘American Indian Movement’ song about strength and courage.”
- (c) (Reid) “A moment from the [Indigenous Peoples] March has gone viral.” [then broadcasting video clip of Nicholas from Taitano Videos]
- (d) “*The Catholic Diocese of Covington which oversees the school said in a statement, quote ‘We condemn the actions of the Covington Catholic School students towards Nathan Phillips specifically, and Native Americans in general. We extend our deepest apologies to Mr. Phillips. This behavior is opposed to the Church’s teachings on the dignity and respect of the human person.’ The diocese also said the matter is under investigation and that some students could be expelled.*” [broadcasting video clip of Nicholas]
- (e) (interviewing Phillips) “*It started at the end of our rally there on the Washington Monument grounds.*” [broadcasting video of Nicholas]
- (f) (Reid) “*So wait, you’re saying there were two different groups of people who were confronting each other, the students and another group?*” [broadcasting video of Nicholas]
- (g) (Phillips) “*That was a build-up of about 2 hours of back and forth between the Black Israelites and the students. And we were standing*

*there, watching this. First they came there, there was about 6 of them. They went away. They came back with about 20. They went away. They came back with about 60. They surrounded these black kids, these black guys, and taunting them and throwing back and forth racial taunts, back and forth. ... Then they went away, that 60 went, then they came back, 100 maybe 200 of them. And then they were just a big mob, just ugly, ugly mob, you know.”* [broadcasting video of Nicholas]

(h) (Reid) “[W]hat did you think was happening, what did you think *their goal was in facing you?*”

(Phillips) “*Well, the goal of, what happened was that . . . their attention was on the Black Israelites, and when I seen what was happening right at the end, and where it was getting to, there was just like it needed that one little spark and that mob would have descended on those 4 guys and ripped them apart. That’s what it looked like, that’s what it felt like.”* [broadcasting video of Nicholas]

(i) (Phillips) “*[W]e’re at the end of our Indigenous Peoples March. . . . But look at my America here, look at my white and black brothers over here that they’re tearing at each other...”* [broadcasting video of Nicholas]

205. During the Third Broadcast, Reid admitted that there are “so many people who took video” and that “you can see at one point that you [Phillips] walk between these two groups of people. . . .”

206. Despite the fact that Reid was aware of, and admittedly personally had seen, the longer video footage clearly showing Phillips approaching Nicholas and the CovCath students from far away, Reid and NBCUniversal continued their false narrative

throughout the Third Broadcast by replaying over and over an approximately thirty (30) second clip from the Taitano Videos and never showing any footage from any of the longer videos that demonstrated what actually happened during the January 18 events.

#### **Fourth Broadcast**

207. On the afternoon of January 20, 2019, NBCUniversal aired its fourth false and defamatory broadcast, also published online, on *MSNBC Live with Kendis Gibson*, subtitled, *inter alia*: “TRUMP REPORT CARD: GRADING PRESIDENT TRUMP ON RACE RELATIONS” (the “Fourth Broadcast”).

208. The Fourth Broadcast remains available online and can be viewed by the Court at <https://www.msnbc.com/kendis-gibson/watch/has-president-trump-improved-america-s-racial-tensions-1429211203702> (last visited April 26, 2019).

209. The Fourth Broadcast features Nicholas prominently by publication of the Taitano Videos.

210. The Fourth Broadcast conveyed the false and defamatory gist that Nicholas’ actions during the January 18 incident constituted one of many recent “hate crimes” committed as a result of Donald Trump’s presidency.

211. The Fourth Broadcast conveyed the false and defamatory gist that Nicholas engaged in racist taunts.

212. The Fourth Broadcast conveyed the false and defamatory gist that Nicholas disrupted the Indigenous Peoples March as part of his purportedly racist conduct.

213. The Fourth Broadcast included narrative by Kendis Gibson, along with his discussion with MSNBC panelists including Danielle Moodie-Mills, MSNBC contributor and host of political talk show #WokeAF; Katie Phang, MSNBC legal commentator; Basil Smikle, Democratic strategist; and Noah Rothman, MSNBC contributor.

214. In its Fourth Broadcast, NBCUniversal published or republished the following false and defamatory statements:

- (a) The subtitle “VIRAL MOMENT AT INDIGENOUS PEOPLES MARCH”
- (b) (Gibson) *“It is the viral video many people are talking about this weekend – an interaction between Native American activists and a group of high school students from the Cincinnati area who were in D.C. for the anti-abortion March for Life. It’s one of several recent incidents under scrutiny. In Brooklyn you recall, a prep school is under fire after video surfaced of students in black face. Add that to the Permit Patties and the Barbecue Beckies of the past two years and it begs the question of where we are right now as a country at the halfway point of the Trump presidency. ... I stopped at Permit Patty and Barbecue Becky because there were so many. ... Do you think, what is it – what has happened since two years ago today? Is it that we have more cell phones that are shooting these incidents or are these incidents on the rise?”* [broadcasting video of Nicholas]
- (c) (Moodie-Mills) “I think that what we are seeing is what we knew to be true when Trump was campaigning before he became President. When he comes out of the gate talking about Mexicans being rapists and murderers and playing to the bottom of American sensibilities and playing to race, and racism, this is what was going to happen. It is not that there are more people with cameras. It’s that more white people feel emboldened to show their racism because they have a friend in the White House. No one – no one has come out against what they saw yesterday on the Lincoln

Memorial, on the steps of the Lincoln Memorial. You haven't heard from Mitch McConnell – these are kids from, from his state. You haven't heard from the President condemning what he saw, you know, "This is not what my Make American Great Again means," as they're chanting 'build the wall.'"

(d) (Gibson) "We do have the FBI data that shows hate crimes are on the rise. Up 17% from 2016." [broadcasting graphic titled "HATE CRIMES UP IN TRUMP ERA"]

(e) (Phang) "Donald Trump took the training wheels off of racism. . . . Other than emboldening people, there's no guard rails anymore."

215. MSNBC and its panel led off its discussion about the increase of "hate crimes" under President Trump by broadcasting the Taitano Video showing Nicholas' face, and they discussed the January 18 incident in the context of the FBI statistics regarding "hate crimes."

216. Under the Hate Crime Statistics Act, 28 U.S.C. § 534, the FBI data on hate crimes includes "crimes against persons," including "aggravated assault, simple assault, intimidation. . . ." See <https://www.fbi.gov/services/cjis/ucr/hate-crime> (last visited Apr. 26, 2019).

217. Toward the end of the segment, as each panelist provided a "grade" for President Trump's race relations, Smikle gave his grade of "F" and added that "as a kid that went to Catholic school for 12 years, that video just, just hurt my heart." Gibson responded that "[i]t is tough for a lot of people to watch."

218. This exchange between Smikle and Gibson demonstrates that the gist of the entire segment discussing the rise in hate crimes and President Trump's poor grades on

race relations was focused on, and was of and concerning, Nicholas and the January 18 incident.

### **Fifth Broadcast**

219. On the night of January 20, 2019, NBCUniversal aired its fifth false and defamatory broadcast on MSNBC on *Kasie DC*, subtitled, *inter alia*: “CONFRONTATION AT LINCOLN MEMORIAL GOES VIRAL” (the “Fifth Broadcast”).

220. The Fifth Broadcast (in two different segments) can be viewed by the Court at (1) <https://www.dropbox.com/s/n31f4kocaepshlo/2019-01-20%20Kasie%20DC%20-%208%2038%2047%20PM%20-%208%2041%2018%20PM.mp4?dl=0> and (2) <https://www.dropbox.com/s/4qu97s8d8tll8xv/2019-01-20%20Kasie%20DC%20-%208%2044%2019%20PM%20-%208%2051%2006%20PM.mp4?dl=0> (last visited April 26, 2019).

221. The Fifth Broadcast features Nicholas prominently by publication of the Taitano Videos.

222. The Fifth Broadcast conveyed the false and defamatory gist that Nicholas instigated a confrontation with Phillips and otherwise engaged in racist conduct.

223. The Fifth Broadcast conveyed the false and defamatory gist that Nicholas assaulted Phillips.

224. The Fifth Broadcast conveyed the false and defamatory gist that Nicholas engaged in racist taunts.

225. The Fifth Broadcast conveyed the false and defamatory gist that Nicholas’ behavior violated the fundamental standards of his religious community.

226. The Fifth Broadcast conveyed the false and defamatory gist that Nicholas’ behavior violated the policies of his school to such an extent that he was subject to expulsion.

227. The Fifth Broadcast conveyed the false and defamatory gist that Nicholas' actions during the January 18 incident constituted one of many recent "hate crimes" committed in this country.

228. During the initial segment of the Fifth Broadcast, Peter Alexander, the substitute host that night, interviewed Senator James Lankford and asked him about the January 18 incident. During the second segment of the Fifth Broadcast, Alexander talked to the MSNBC panel including Marc Morial, president of the National Urban League; Michael Steele, former RNC Chairman; and Sam Stein, MSNBC contributor.

229. In its Fifth Broadcast, NBCUniversal published or republished the following false and defamatory statements:

Segment 1

- (a) (Alexander) "[Y]ou saw what was a scene, and we're still trying to fully understand the context of all of it, but there certainly was taunting by some young men, many of them wearing Make America Great hats, to a Native American on the steps of the Lincoln Memorial yesterday."
- (b) (Alexander) "Is that taunting ever appropriate, sir, to a Native American on the steps of the Lincoln Memorial?"
- (c) Still photograph of The New York Times' headline "Viral Video Shows Boys in 'Make American Great Again' Hats Surround Native Elder" along with photograph of Nicholas from Taitano Videos

Segment 2

- (d) (Alexander) "By now it's likely that you've seen this video of a group of high school students in a face-off with a Native American elder and a Vietnam Veteran." [broadcasting clip from Taitano Videos]



- (e) (Alexander) *“It’s a lot to make sense of tonight, and while how it all started remains in dispute, the net result is that video, and Americans again trying to figure out where race relations stand in this country.”*  
[broadcasting clip of Nicholas]
- (f) Still photograph of NBC headline “Catholic school to investigate taunting of Native Americans” with a photograph of Nicholas from Taitano Videos
- (g) “The Diocese of Covington released a statement apologizing to Phillips and saying quote “This behavior is opposed to the Church’s teachings on the dignity and respect of the human person. The matter is being investigated and we will take appropriate action, up to and including expulsion.”
- (h) (Alexander) “[T]his really is a part of a broader sort of moment in America, right, where things just get ugly out of nowhere on MLK weekend, for heaven’s sakes, this exchange, whatever the origins of it were, happens on the steps of the Lincoln Memorial.”
- (i) (Steele) “We’ve come a long, long way from the days of dogs, police dogs, and fire hoses and lynchings and those types of things, but those activities take different forms today and they manifest themselves very differently.  
[subtitle “VIRAL VIDEO IGNITES DEBATE ABOUT RACE RELATIONS IN AMERICA”] The KKK, the Nazis, they aren’t running around in hoods and burning crosses, they’re getting tiki torches and wearing Izods and pullovers. . . . *And walking in public.*” [broadcasting still photo of Nicholas from Taitano Videos with NBC headline “Catholic school to investigate taunting of Native Americans”]

- (j) (Stein) “You can’t separate the larger context from the video. As much as we want to say that’s one singular incident, the fact of the matter is that hate crimes are definitely on the rise.”
- (k) (Morial) “I do not see it as complicated or nuanced. I don’t see it as Democrats looking at it one way or Republicans looking at it another way. I think the Archdiocese of Covington, Kentucky, put it straight. These actions of our students are inconsistent with the teachings of our Church, and that if we verify that what we’ve seen already has happened, we’re going to discipline and we may expel these students. . . . *We have to condemn this . . .* and help them understand why this is inappropriate and how mocking people is not the American way.” [broadcasting still photo of Nicholas from Taitano Videos with New York Times headline “Viral Video Shows Boys in ‘Make America Great Again’ Hats Surround Native Elder”]
- (l) (Stein) “Clearly on the video, there is some reprehensible actions by these students . . . even the odd sort of smugness of the kid getting into this man’s face. That’s clearly evident and no one can deny, no one should, deny it. . . . I don’t think what these kids did was excusable.”

230. Toward the end of the second segment of the Fifth Broadcast, Alexander finally advised his viewers that Nicholas had issued a statement earlier that day denouncing the “outright lies” about him, and Alexander admitted that “it says a lot about this sort of Twitter-culture we live in where . . . a 10-second video is enough for people to draw conclusions – it’s a reminder to all of us we’ve got to wait for answers before we really start to – uh, come to our final conclusions on these types of topics.”

231. Despite Alexander’s admission that we need to “wait” before reaching conclusions, and despite Alexander’s admission that the video clip showed by MSNBC was a “short section of video, part of a much longer series of exchanges,” MSNBC continued during the Fifth Broadcast to broadcast only the same brief clip from the Taitano Videos and failed to show any clips from any of the other longer videos that were readily available by the night of January 20 that showed how the incident actually occurred.

232. NBCUniversal continued its false narrative that it was not clear how the incident started and that the January 18 incident was a “hate crime” during the Fifth Broadcast even though it was clear by that point that the description was false and that Nicholas had not committed any racist acts whatsoever – much less any criminal or racist behavior that could be characterized as a “hate crime” or an indication of the state of “race relations” in America.

### **Sixth Broadcast**

233. Early on Monday morning, January 21, 2019, NBCUniversal aired its sixth false and defamatory broadcast on the *TODAY Show*, subtitled, *inter alia*, “CONFRONTATION GOES VIRAL: STUDENT SPEAKS OUT AFTER TAUNTING CAUGHT ON TAPE” (the “Sixth Broadcast”).

234. The Sixth Broadcast can be viewed by the Court at <https://www.dropbox.com/s/sv5hywcu9podmdz/2019-01-21%20Today%20-%207%2011%2041%20AM%20-%207%2014%2030%20AM.mp4?dl=0> (last visited April 26, 2019).

235. The Sixth Broadcast features Nicholas prominently by publication of the Taitano Videos.

236. The Sixth Broadcast published portions of a taped interview of Phillips.

237. The Sixth Broadcast conveyed the false and defamatory gist that Nicholas instigated a confrontation with Phillips and the Black Hebrew Israelites and otherwise engaged in racist conduct.

238. The Sixth Broadcast conveyed the false and defamatory gist that Nicholas assaulted Phillips.

239. The Sixth Broadcast conveyed the false and defamatory gist that Nicholas engaged in racist taunts.

240. The Sixth Broadcast conveyed the false and defamatory gist that Nicholas disrupted the Indigenous Peoples March as part of his purportedly racist conduct.

241. The Sixth Broadcast conveyed the false and defamatory gist that Nicholas' behavior violated the fundamental standards of his religious community.

242. The Sixth Broadcast conveyed the false and defamatory gist that Nicholas' behavior violated the policies of his school to such an extent that he was subject to expulsion.

243. During the Sixth Broadcast, Craig Melvin introduced the discussion of the January 18 incident and also introduced Ron Allen, who in turn introduced his pre-recorded report on the January 18 incident.

244. In its Sixth Broadcast, NBCUniversal published or republished the following false and defamatory statements:

(a) The sub-title "STUDENT SPEAKS OUT AFTER TAUNTING CAUGHT ON TAPE"

(b) (Melvin) "[N]ew questions this morning surrounding *an incident that went viral over the weekend*. A lot of folks are talking about this, and it shows a group of high school students from Kentucky *appearing to*

*taunt a Native American elder during a rally in Washington.”*

[broadcasting clip of Nicholas from Taitano Videos]

- (c) (Allen) *“Those students ... have been widely condemned for what many see as racist behavior. Now they are facing possible expulsion from school.”* [broadcasting still photo of Nicholas]
- (d) In the pre-recorded report by Ron Allen (the “Ron Allen Video”) that was broadcast during the Sixth Broadcast:
- i. (interviewing Phillips) *“I was scared. I was afeared.”*
  - ii. (Phillips) *“I intervened and things just escalated from there.”*
  - iii. (Allen) *“The member of the Hebrew Israelites who filmed the initial encounter tells NBC News it started when the students started mocking them.”*
  - iv. (Allen) *“[T]he Kentucky Catholic school and Diocese that some of the students belong to saying in a statement they ‘condemn the actions of the students’ and ‘we extend our deepest apologies to Mr. Phillips. We will take appropriate action up to and including expulsion.’”*
  - v. (interviewing Covington, Kentucky Mayor Joseph Meyer) *“It represented a behavior and an attitude that certainly does not reflect the values that we here in Covington, Kentucky, have and promote.”* [broadcasting video of Nicholas]

245. During the Sixth Broadcast, NBCUniversal included very brief clips from other videos that had been available online for at least two days.

246. However, NBCUniversal continued primarily to broadcast the same clip from the Taitano Videos and broadcast only approximately four seconds from the longer,

more relevant Banyamyan Video of Phillips and his group walking across to confront Nicholas and his CovCath classmates.

247. During the Sixth Broadcast, Allen described the Banyamyan Video as a “new” video even though it had been available since January 19, less than 24 hours after the Taitano Videos were posted and at least 36 hours prior to the Sixth Broadcast.

### **Seventh Broadcast**

248. Also on Monday morning, January 21, 2019, NBCUniversal aired its seventh false and defamatory broadcast on *MSNBC Live with Hallie Jackson*, subtitled, *inter alia*, “VIRAL CONFRONTATION: TEENS APPEAR TO TAUNT NATIVE AMERICAN ELDER” (the “Seventh Broadcast”).

249. The Seventh Broadcast can be viewed by the Court at <https://www.dropbox.com/s/fb70qou42ylplyd/2019-01-21%20MSNBC%20Live%20With%20Hallie%20Jackson%20-%2010%2038%2018%20AM%20-%2010%2045%2031%20AM.mp4?dl=0> (last visited Apr. 26, 2019).

250. The Seventh Broadcast features Nicholas prominently by publication of the Taitano Videos.

251. The Seventh Broadcast published portions of a taped interview of Phillips.

252. The Seventh Broadcast conveyed the false and defamatory gist that Nicholas instigated a confrontation with Phillips and the Black Hebrew Israelites and otherwise engaged in racist conduct.

253. The Seventh Broadcast conveyed the false and defamatory gist that Nicholas assaulted Phillips.

254. The Seventh Broadcast conveyed the false and defamatory gist that Nicholas engaged in racist taunts.

255. The Seventh Broadcast conveyed the false and defamatory gist that Nicholas' behavior violated the fundamental standards of his religious community.

256. The Seventh Broadcast conveyed the false and defamatory gist that Nicholas' behavior violated the policies of his school to such an extent that he was subject to expulsion.

257. During the Seventh Broadcast, Hallie Jackson introduced the segment, which included a report from Ron Allen, followed by an interview of Tara Houska, one of the organizers of the Indigenous Peoples March.

258. In its Seventh Broadcast, NBCUniversal published or republished the following false and defamatory statements:

- (a) The subtitle "TEENS APPEAR TO TAUNT NATIVE AMERICAN ELDER"
- (b) (Jackson) "*The encounter as you can see there caught on tape shows a group of teenagers in those red Make America Great Again hats appearing to taunt a Native American veteran.*" [broadcasting video of Nicholas]
- (c) (Allen) "The students from Kentucky . . . are being widely condemned on social media and elsewhere for what appears to be racist behavior directed at that Native American elder. The students are even facing the possible threat of being expelled from school because of what they do – they did."
- (d) The republication of the false and defamatory statements in the Ron Allen Video.

- (e) (interviewing Houska) “[B]ehind me, I saw maybe 100 students *who were getting louder and louder and louder, all wearing Make America Great Again hats. . . . I saw the elder that was there, Nathan Phillips, and the people around him, but I didn’t realize what would end up happening – which was them surrounding him and chanting ‘build the wall’ and a youth standing directly in his face in a very leering, aggressive manner.*” [broadcasting video of Nicholas]
- (f) (Houska) “*Clearly those students have no idea who Native American people are, to surround an Indigenous elder and chant ‘build the wall’ kind of exposes that it really has nothing to do with border security, it seems like it’s an issue of race and white supremacy.*” [broadcasting video of Nicholas]
- (g) (Houska) “It was unequivocally condemned by the high school. They said there is no gray area. So to the people that are saying back and forth well it was this version and I have this angle, I was there, and I witnessed something that was very aggressive and something that was very frightening ... and to see that kind of level of antagonism and hate, you can’t fake that.”

259. Although Allen said to MSNBC’s viewers “here’s a look at the video, take a look for yourself,” MSNBC then played the same short clip from the Taitano Videos that MSNBC and NBCUniversal had been playing over and over for the prior two days.

260. MSNBC showed only approximately four seconds of the portion of the Banyamyan Video that showed Phillips walking across and past the open steps, directly to the CovCath students, and eventually zeroing in on Nicholas.



261. Allen disingenuously said that “I think it’s safe to say that a lot of people hope to see more video to shed more light on exactly what might have happened here” – despite the fact that MSNBC had access to all of the video it needed at that point to accurately show what had happened when Phillips approached Nicholas.

262. MSNBC, however, did not share that video with its viewers and instead falsely claimed that additional video was needed to determine what had happened.

### **Eighth Broadcast**

263. During its mid-day news show on Monday morning, January 21, 2019, NBCUniversal aired its eighth false and defamatory broadcast on *MSNBC Live with Craig Melvin*, subtitled, *inter alia*, “VIRAL CONFRONTATION: VIRAL VIDEO OF APPARENT CONFRONTATION BETWEEN STUDENTS AND NATIVE AMERICAN SPARKS OUTRAGE” (the “Eighth Broadcast”).

264. The Eighth Broadcast, which is in three (3) different segments, can be viewed by the Court at:

(1) [https://www.dropbox.com/s/2ivupg4pfpj8r/2019-01-22%20MSNBC%20Live%20With%20Craig%20Melvin%20-%2011\\_36\\_44%20AM%20-%2011\\_37\\_08%20AM.mp4?dl=0](https://www.dropbox.com/s/2ivupg4pfpj8r/2019-01-22%20MSNBC%20Live%20With%20Craig%20Melvin%20-%2011_36_44%20AM%20-%2011_37_08%20AM.mp4?dl=0);

(2) [https://www.dropbox.com/s/qis1mhdj9l4rune/2019-01-22%20MSNBC%20Live%20With%20Craig%20Melvin%20-%2011\\_40\\_38%20AM%20-%2011\\_42\\_57%20AM.mp4?dl=0](https://www.dropbox.com/s/qis1mhdj9l4rune/2019-01-22%20MSNBC%20Live%20With%20Craig%20Melvin%20-%2011_40_38%20AM%20-%2011_42_57%20AM.mp4?dl=0); and

(3) [https://www.dropbox.com/s/wqwmypokqsv3y7z/2019-01-22%20MSNBC%20Live%20With%20Craig%20Melvin%20-%2011\\_46\\_32%20AM%20-%2011\\_50\\_12%20AM%20%281%29.mp4?dl=0](https://www.dropbox.com/s/wqwmypokqsv3y7z/2019-01-22%20MSNBC%20Live%20With%20Craig%20Melvin%20-%2011_46_32%20AM%20-%2011_50_12%20AM%20%281%29.mp4?dl=0) (last visited April 26, 2019).

265. The Eighth Broadcast features Nicholas prominently by publication of the Taitano Videos.

266. The Eighth Broadcast published portions of a taped interview of Phillips.

267. The Eighth Broadcast conveyed the false and defamatory gist that Nicholas instigated a confrontation with Phillips and the Black Hebrew Israelites and otherwise engaged in racist conduct.

268. The Eighth Broadcast conveyed the false and defamatory gist that Nicholas assaulted Phillips.

269. The Eighth Broadcast conveyed the false and defamatory gist that Nicholas engaged in racist taunts.

270. The Eighth Broadcast conveyed the false and defamatory gist that Nicholas disrupted the Indigenous Peoples March as part of his purportedly racist conduct.

271. The Eighth Broadcast conveyed the false and defamatory gist that Nicholas' behavior violated the fundamental standards of his religious community.

272. The Eighth Broadcast conveyed the false and defamatory gist that Nicholas' behavior violated the policies of his school to such an extent that he was subject to expulsion.

273. During the Eighth Broadcast, Melvin provided an introduction during segment 1; the Ron Allen pre-recorded video was re-broadcast during segment 2; and Melvin interviewed Chase Iron Eyes, Indigenous Peoples March spokesman, during segment 3.

274. In its Eighth Broadcast, NBCUniversal published or republished the following false and defamatory statements:

Segment 1

- (a) (Melvin) “*Outrage over that now viral video showing teenagers from Kentucky appearing to taunt a Native American elder at a Washington March.*” [broadcasting photo of Nicholas from Taitano Videos]

Segment 2

- (b) (Melvin) “New questions this morning about a now viral video showing a group of high school students from Kentucky appearing to taunt a Native American elder in Washington, D.C. over the weekend.”
- (c) The republication of the false and defamatory statements in the Ron Allen Video.

Segment 3

- (d) (Melvin) “There are new questions this morning about that video that *went viral involving a group of teenagers at the Indigenous Peoples March.*” [broadcasting video of Nicholas]
- (e) (interviewing Chase Iron Eyes) “*The young MAGA-swag-hat-wearing kids, numbering between 60 and 100, obviously felt antagonized by that [the Black Israelites’ bigotry], and Nathan Phillips, one of our elders, who was closing out the day’s ceremonies . . . what we perceived was a very tense situation, and our elder, Nathan Phillips, did what he thought he could offer and standing in a peaceful and prayerful way and tried to defuse that situation. . . .*” [broadcasting video of Nicholas]
- (f) (Chase Iron Eyes) “We have a racially charged environment with a President who is giving license to this kind of behavior, so when these kids show up and they’re being very loud, very disruptive, and doing the

tomahawk chop . . . it doesn't matter how people spin it. Our elder felt threatened there. He apprehended, he felt, there was an apprehension of a legitimate and objective threat of harm or violence or offensive contact.”

275. As in the Seventh Broadcast, MSNBC falsely presented the Banyamyan Video as “new,” but showed only a few seconds of the relevant portion of that video and did not provide viewers with a full review of the video showing Phillips targeting Nicholas and his CovCath classmates.

276. Instead of broadcasting the truth, NBCUniversal continued to create a false narrative that Nicholas' actions during the January 18 incident created some type of racial conflict or contributed to problems with race relations in this country.

### **Ninth Broadcast**

277. On the night of Monday, January 21, 2019, NBCUniversal aired its ninth false and defamatory broadcast on *NBC Nightly News with Lester Holt*, subtitled, *inter alia*, “CONTROVERSIAL CONFRONTATION” (the “Ninth Broadcast”).

278. The Ninth Broadcast can be viewed by the Court at <https://www.dropbox.com/s/59fweszprk4q1v7/2019-01-21%20NBC%20Nightly%20News%20With%20Lester%20Holt%20-%207%2011%2007%20PM%20-%207%2013%2005%20PM.mp4?dl=0> (last visited April 26, 2019).

279. The Ninth Broadcast features Nicholas prominently by publication of the Taitano Videos.

280. The Ninth Broadcast conveyed the false and defamatory gist that Nicholas assaulted Phillips and otherwise engaged in racist conduct.

281. The Ninth Broadcast conveyed the false and defamatory gist that Nicholas engaged in racist taunts.

282. During the Ninth Broadcast, Lester Holt introduced a report by Ron Allen. Allen's piece includes clips of interviews with Phillips and a short clip from an interview with Tara Houska, one of the organizers of the Indigenous Peoples March.

283. In its Ninth Broadcast, NBCUniversal published or republished the following false and defamatory statements:

- (a) (Allen) "*This face to face confrontation igniting charges of racism. Kentucky high school students accused of mocking Native American elder, Nathan Phillips. . .*" [broadcasting video clip of Nicholas from Taitano Videos]
- (b) (interviewing Phillips) "I was scared. I was afeared."
- (c) (Phillips) "I intervened and things just escalated from there."
- (d) (interviewing Houska) "He got caught doing something that was incredibly racist and disrespectful, and now he's backpedaling."
- (e) (Allen) "The school and local diocese have apologized to Phillips, a Vietnam veteran, and the search for more video and answers continues."

284. The Ninth Broadcast was aired the night of January 21 – 3 days after the initial Taitano Videos were published and at least 2 days after longer videos were published accurately showing what happened during the January 18 incident.

285. During the Ninth Broadcast, Holt said that "new video is giving us a more complete picture of what happened in that viral confrontation. . ." and that "the student at the center of all this is defending himself. . . ."

286. By the time of the Ninth Broadcast on the night of January 21, numerous celebrities and journalists had already apologized to Nicholas for speaking too hastily about the January 18 incident. For example, Jamie Lee Curtis had apologized on Sunday,

January 19, for her initial remarks condemning Nicholas. *See, e.g.*, <https://people.com/politics/jamie-lee-curtis-apologizes-comments-student-native-american-elder/> (last visited Apr. 25, 2019).

287. Thus, NBCUniversal’s continued narrative trying to paint the Banyamyan Video as “new” and to characterize Nicholas’ truthful descriptions of the January 18 incident as “defending himself” was nothing more than NBCUniversal’s attempt to obfuscate the fact that NBCUniversal had from the very beginning provided false information about the January 18 incident.

288. By the night of Monday, January 21, it had been established that in fact Phillips approached Nicholas and Nicholas had done nothing wrong.

### **Tenth Broadcast**

289. On Tuesday morning, January 22, 2019, NBCUniversal aired its tenth false and defamatory broadcast on *MSNBC Live with Stephanie Ruhle*, subtitled, *inter alia*, “FUELING CONTROVERSY: TRUMP DEFENDS STUDENTS IN VIRAL VIDEO SHOWING APPARENT CONFRONTATION WITH NATIVE AMERICAN VETERAN” (the “Tenth Broadcast”).

290. The pre-recorded report by Gabe Gutierrez that was broadcast during the Tenth Broadcast was also published by NBCUniversal that morning, January 22, on the *TODAY Show*.

291. The Tenth Broadcast can be viewed by the Court at <https://www.dropbox.com/s/f9536x5e47jw61b/2019-01-22%20MSNBC%20Live%20With%20Stephanie%20Ruhle%20-%209%2038%2046%20AM%20-%209%2042%2058%20AM.mp4?dl=0> (last visited April 26, 2019).

292. The Tenth Broadcast features Nicholas prominently by publication of the Taitano Videos.

293. The Tenth Broadcast published portions of a taped interview of Phillips.

294. The Tenth Broadcast conveyed the false and defamatory gist that Nicholas instigated a confrontation with Phillips and the Black Hebrew Israelites and otherwise engaged in racist conduct.

295. The Tenth Broadcast conveyed the false and defamatory gist that Nicholas assaulted Phillips.

296. The Tenth Broadcast conveyed the false and defamatory gist that Nicholas engaged in racist taunts.

297. The Tenth Broadcast conveyed the false and defamatory gist that Nicholas' behavior violated the fundamental standards of his religious community.

298. The Tenth Broadcast conveyed the false and defamatory gist that Nicholas' behavior violated the policies of his school to such an extent that he was subject to expulsion.

299. During the Tenth Broadcast, Hallie Jackson, who was hosting for Stephanie Ruhle, introduced Gabe Gutierrez, who reported live and also introduced his pre-recorded report.

300. In its Tenth Broadcast, NBCUniversal published or republished the following false and defamatory statements:

(a) (Gutierrez) "The school and local diocese had previously condemned the kids' actions, and said they were looking at possible expulsion."

(b) (Gutierrez) "One of those men [the Hebrew Israelites] says it all started when the students mocked them."

- (c) (Gutierrez) “Phillips’ account has been interpreted differently. On Saturday, he told The Washington Post ‘he felt threatened by the teens and that they swarmed around him.’ When he tried to leave, ‘that guy in the hat wouldn’t let him retreat.’ But he’s also told The Detroit Free Press that he decided to intervene between the students and the other group, calling it the moment he put himself ‘between beast and prey.’”
- (d) “*He [Phillips] now says Sandmann should have accepted responsibility for his actions and should face consequences. ‘Instead of being expelled, the students should go through some kind of sensitivity training, that uh, they should uh, cultural education of some kind, and if they don’t, then don’t graduate.’*” [broadcasting video of Nicholas]

#### **Eleventh Broadcast**

301. Also on Tuesday morning, January 22, 2019, NBCUniversal aired its eleventh false and defamatory broadcast on *MSNBC Live with Craig Melvin*, subtitled, *inter alia*, “FUELING CONTROVERSY: TRUMP DEFENDS STUDENTS IN VIRAL VIDEO SHOWING APPARENT CONFRONTATION WITH NATIVE AMERICAN VETERAN” (the “Eleventh Broadcast”).

302. The Eleventh Broadcast can be viewed by the Court at [https://www.dropbox.com/s/rboxue1nuwn4e57/2019-01-22%20MSNBC%20Live%20With%20Craig%20Melvin%20-%2011\\_33\\_20%20AM%20-%2011\\_42\\_24%20AM.mp4?dl=0](https://www.dropbox.com/s/rboxue1nuwn4e57/2019-01-22%20MSNBC%20Live%20With%20Craig%20Melvin%20-%2011_33_20%20AM%20-%2011_42_24%20AM.mp4?dl=0) (last visited Apr. 26, 2019).

303. The Eleventh Broadcast features Nicholas prominently by publication of the Taitano Videos and photographs from those videos.



304. The Eleventh Broadcast conveyed the false and defamatory gist that Nicholas instigated a confrontation with Phillips and otherwise engaged in racist conduct.

305. The Eleventh Broadcast conveyed the false and defamatory gist that Nicholas assaulted Phillips.

306. The Eleventh Broadcast conveyed the false and defamatory gist that Nicholas engaged in racist taunts.

307. In the Eleventh Broadcast, Craig Melvin introduced the segment and then interviewed Matt Welch, Editor-in-Large at Reason Magazine, and Karine Jean-Pierre, MSNBC contributor and Senior Advisor at moveon.org.

308. In its Eleventh Broadcast, NBCUniversal published or republished the following false and defamatory statements:

(a) (Melvin) “[T]he Kentucky school at the center of that viral video *appearing to show students taunting a Native American elder. . . .*”  
[broadcasting video of Nicholas]

(b) “I talked to an organizer from the event on Monday’s show – this gentleman, he was there. He painted a different picture of what happened than what the students are describing. This is what he told me: ‘. . . We know what we saw, and it doesn’t matter how people spin it. Our elder felt threatened there.’”

(c) (Melvin) “There’s video showing the kids doing the tomahawk chop, other racial gestures. . . .”

(d) (Jean-Pierre) “Look, this is not an isolated incident, and unfortunately it will – we will continue to see more of these types of incidents, and I’ll tell you right now why – it’s because of Donald Trump. . . . Look, racism and

bigotry absolutely existed before Donald Trump, but what he has done is, he has allowed people, especially his base, people to support him, to feel that they are emboldened and they can do these types of things in public.”

(e) (Jean-Pierre) “Let’s not forget Charlottesville – Charlottesville where a young woman was murdered by a neo-Nazi. . . . Dr. Martin Luther King would not want us to be quiet on any of this. And I believe the organizers. I believe the elders.”

(f) (Melvin) “Here’s the thing, Matt Welch – racial *incidents are going to keep happening in this country*. . . . Do you think that as long as this President is in the White House, *we are going to continue to see the reaction and over-reaction that we have sometimes to incidents like this*. . . ?” [broadcasting photo of Nicholas from Taitano Videos]

309. Early during the Eleventh Broadcast, Welch aptly recognized that “we’ve lost our damn fool minds – we’re at Day 4 of parsing the smirk of a teen-ager. . . . We are freaking out over what was at first a one-minute, kind of deceptively-presented video” [then broadcasting same “deceptively-presented” clip of Nicholas from Taitano Videos].

310. Welch later points out to Melvin that “there’s video evidence of that kid – the smirky-kid – telling his other friend ‘hey, you know, knock it off arguing with this Native American elder over here, let’s try to cool things down. . . .’”

311. MSNBC does not, however, broadcast this video described by Welch even though it was readily available at the time of the Eleventh Broadcast.<sup>4</sup>

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<sup>4</sup> This video evidence described by Welch is included in the Sandmann Video.

312. Welch also pointed out that Phillips gave “two very conflicting stories – versions of the events.”

313. Despite the caution voiced by Welch and his recognition that the initial video – the one that MSNBC was continuing to replay over and over – was “deceptive[],” Melvin and MSNBC nevertheless continued to portray the January 18 incident as a “racial incident” while a larger-than-life-sized photograph of Nicholas loomed in the background.

### **Twelfth Broadcast**

314. On Tuesday night, January 22, 2019, NBCUniversal aired its twelfth false and defamatory broadcast on *NBC Nightly News with Lester Holt*, subtitled, *inter alia*, “COVINGTON STUDENT AT CENTER OF VIRAL CONFRONTATION SPEAKS OUT” (the “Twelfth Broadcast”).

315. The Twelfth Broadcast can be viewed by the Court at <https://www.dropbox.com/s/cfqivorrcftogiv/2019-01-22%20NBC%20Nightly%20News%20With%20Lester%20Holt%20-%207%2009%2010%20PM%20-%207%2011%2059%20PM%20%281%29.mp4?dl=0> (last visited April 26, 2019).

316. The Twelfth Broadcast features Nicholas prominently by publication of the Taitano Videos.

317. The Twelfth Broadcast published portions of a taped interview of Phillips.

318. The Twelfth Broadcast conveyed the false and defamatory gist that Nicholas instigated a confrontation with Phillips and otherwise engaged in racist conduct.

319. The Twelfth Broadcast conveyed the false and defamatory gist that Nicholas assaulted Phillips.

320. The Twelfth Broadcast conveyed the false and defamatory gist that Nicholas' behavior violated the policies of his school to such an extent that he was subject to expulsion.

321. In the Twelfth Broadcast, Lester Holt introduced and closed the segment, with Gabe Gutierrez providing the substance of the report.

322. In its Twelfth Broadcast, NBCUniversal published or republished the following false and defamatory statements:

- (a) (interviewing Nathan Phillips) "I was afraid. I felt threatened, cause when we were there and we were in front of them, they surrounded us."
- (b) The subtitle "NATIVE AMERICAN ELDER SAYS HE FELT 'THREATENED' BY STUDENTS"
- (c) (Gutierrez) "*Phillips says the students should accept responsibility for their actions. 'The students should go through some kind of sensitivity training, cultural education of some kind.'*"
- (d) (Gutierrez) "The diocese had initially said they could face expulsion."
- (e) (Holt) "And by the way, Savannah went on to ask Sandmann about allegations he and his classmates instigated the confrontation. . . ."

### **Thirteenth Broadcast**

323. Early Wednesday morning, January 23, 2019, NBCUniversal broadcast its interview of Nicholas with Savannah Guthrie during the *TODAY Show*. Later that morning, NBCUniversal aired its thirteenth false and defamatory broadcast on *MSNBC Live with Craig Melvin*, subtitled, *inter alia*, "NBC NEWS EXCLUSIVE: KENTUCKY STUDENT IN VIRAL VIDEO SPEAKS OUT" (the "Thirteenth Broadcast").

324. The Thirteenth Broadcast remains available online and can be viewed by the Court at <http://www.msnbc.com/craig-melvin/watch/prof-eddie-glaude-underneath-this-is-a-sense-of-double-standard-1430616131985> (last visited April 26, 2019).

325. The Thirteenth Broadcast features Nicholas prominently by publication of the Taitano Videos.

326. The Thirteenth Broadcast conveyed the false and defamatory gist that Nicholas instigated a confrontation with Phillips and otherwise engaged in racist conduct.

327. The Thirteenth Broadcast conveyed the false and defamatory gist that Nicholas assaulted Phillips.

328. The Thirteenth Broadcast conveyed the false and defamatory gist that Nicholas engaged in racist taunts.

329. In the Thirteenth Broadcast, Craig Melvin provided commentary and interviewed Professor Eddie Glaude, MSNBC contributor and Chair of the Center for African-American Studies at Princeton University.

330. In its Thirteenth Broadcast, NBCUniversal published or republished the following false and defamatory statements:

- (a) (Melvin) “We are in a moment where our country’s divides, both politically and culturally, can be captured in a frame of video – and the *images in this case of a Kentucky teenager, wearing a Make America Great Again hat, and a Native American elder beating a drum, cleave our society. . . . In reviewing all of the video we have of this incident, we see the moment does not start here. . . .* What’s unclear in the video is who actually started the confrontation.” [broadcasting video of Nicholas]

- (b) (Melvin) “We should note we have reached out to the other man in that video, Nathan Phillips, to comment on Sandmann’s statement that he has nothing to apologize for. He did not provide comment, but he has told us in previous interviews that he walked between the students to intervene but soon felt threatened when the students surrounded him.”
- (c) (Melvin) “One of the things that the young man did not say in that interview, two very simple words: ‘I’m sorry.’ Had he uttered those words, would that have changed any of this?”
- (d) (interviewing Glaude) “There was a sense in which the hat announced a certain set of political commitments. Alyssa Milano, I think, the actress, describes the hat as the modern day white sheet. . . . The hat in some ways represents for many of us a kind of racial animus. . . .” [then broadcasting video of Nicholas]
- (e) (Glaude) “There were also words. There were a lot of people who said that, you know, ‘build the wall, build the wall,’ said that that was shouted. . . . We saw footage later on of the young, young men cat-calling at young women walking by. There’s so much there that we need to unpack.”

#### **Fourteenth Broadcast**

331. On Thursday morning, January 24, 2019, NBCUniversal aired its fourteenth false and defamatory broadcast on the *TODAY Show*, subtitled, *inter alia*, “NATHAN PHILLIPS SPEAKS OUT” (the “Fourteenth Broadcast”).

332. The Fourteenth Broadcast was an interview of Phillips by Savannah Guthrie presented as a response to the interview of Nicholas that was broadcast on the *TODAY Show* the previous day.

333. The Fourteenth Broadcast is online and can be viewed by the Court at <https://www.today.com/video/native-american-elder-nathan-phillips-on-confrontation-i-forgive-him-1431131715937> (last visited April 26, 2019).

334. The Fourteenth Broadcast features Nicholas prominently by publication of the Taitano Videos.

335. The Fourteenth Broadcast conveyed the false and defamatory gist that Nicholas instigated a confrontation with Phillips and otherwise engaged in racist conduct.

336. The Fourteenth Broadcast conveyed the false and defamatory gist that Nicholas assaulted Phillips.

337. The Fourteenth Broadcast conveyed the false and defamatory gist that Nicholas engaged in racist taunts.

338. In its Fourteenth Broadcast, NBCUniversal published or republished the following false and defamatory statements as part of the interview of Phillips by Guthrie:

(a) Q: “He [Nicholas] said when I asked directly that he didn’t think he owed an apology but he does wish that he would have walked away. Was that enough for you, or do you think he should have apologized?”<sup>5</sup>

(Phillips) “If there was an apology, there’d be an apology for his own behavior to a lot of other peoples besides me, I’d be like way down on the list of his people he needs to apologize to. What because of the tomahawk chop and the mocking, and those things, and in one of his statements he did say he was the leader of that, he got permission from this school teacher, so, you know, there’s a lot of times he could have walked away.”

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<sup>5</sup> “Q:” denotes where questions are presented only for context.

(b) Q: *“Did you hear anyone say ‘build that wall?’ It isn’t audible on the video clips I think that are out there, but did you hear that?”*

*(Phillips) “You know, I did hear that. And I have seen some out there, on the Internets, where there’s, you can hear them saying ‘build that wall.’”*  
*[broadcasting video of Nicholas]*

(c) Q: “And how did you feel in that moment, did you yourself feel threatened?”

*(Phillips) “Well, all that anger was directed at those four individuals, the Black Israelites and the youth there, um, and it was getting really explosive and so when I put, when we were – when I started praying, I asked Creator, God, to protect me, to stand with me, and I was just, to witness what was happening, and then when I put myself in prayer and used that drum to reach to God, um, that mass of young men surrounded me and the folks that were with me. . . .”*

(d) (Guthrie) “He [Nicholas] said yes, he thinks now he should have walked away. Do you think, sir, you should have walked away?”

*(Phillips) “That’s what I was trying to do. I was trying to walk away. There was a spot, there was a place where I could take my peoples, because we were surrounded. We couldn’t go right. We couldn’t go left, back, you know. And then, I was still in prayer, still singing, and then I was looking past the crowd and I took that first step and that crowd backed up. I took a second step and that crowd started scattering or breaking apart there. And I took a third part [sic] and I actually seen a, a clear space, and I said that’s the space, and we started going that way. And from somewhere,*



from a clear space, a person was there (gesturing with his hand directly in front of his face).”

(e) (Guthrie) “You feel you were blocked.”

(Phillips) “Oh, I was blocked.”

339. During the Fourteenth Broadcast, NBCUniversal gave Phillips yet another platform for his false statements that Nicholas and his classmates had “surrounded” him, even though the video footage was available and demonstrated prior to the time of the Fourteenth Broadcast that Phillips’ claims were lies.

340. During the Fourteenth Broadcast, Guthrie intentionally misrepresented Nicholas’ statements during her interview of him, including by falsely saying that Nicholas now says he “should” have walked away. To the contrary, Nicholas stated during his interview that although he wishes he “could” have walked away, he had “every right” to stand his ground.

341. Throughout the Fourteenth Broadcast, NBCUniversal continued to show clips from the Taitano Videos – the same clips that had been described correctly on MSNBC days earlier as “deceptively-presented” – instead of the longer clips that accurately showed what actually happened during the January 18 incident.

### **Fifteenth Broadcast**

342. On Sunday, January 27, 2019 – 9 days after the January 18 incident – NBCUniversal aired its fifteenth false and defamatory broadcast on *AM Joy* on MSNBC, subtitled, *inter alia*, “VIRAL VIDEO OF CONFRONTATION BETWEEN STUDENTS AND NATIVE AMERICAN ACTIVIST SPARKS OUTRAGE” (the “Fifteenth Broadcast”).

343. The Fifteenth Broadcast remains online and can be viewed by the Court at <https://www.msnbc.com/am-joy/watch/native-american-activist-and-teens-in-viral-video-receive-controversial-media-coverage-1432774723819> (last visited April 26, 2019).

344. The Fifteenth Broadcast features Nicholas prominently by publication of the Taitano Videos.

345. The Fifteenth Broadcast conveyed the false and defamatory gist that Nicholas instigated a confrontation with Phillips and otherwise engaged in racist conduct.

346. The Fifteenth Broadcast conveyed the false and defamatory gist that Nicholas assaulted Phillips.

347. The Fifteenth Broadcast conveyed the false and defamatory gist that Nicholas engaged in racist taunts.

348. The Fifteenth Broadcast conveyed the false and defamatory gist that Phillips was the victim and was being falsely accused of initiating the confrontation with Nicholas.

349. The Fifteenth Broadcast began by playing a portion of the Fourteenth Broadcast in which Guthrie asked Phillips what he thought about Nicholas' "version of this encounter," and Phillips answered that he thought it was "coached and written up for him, insincerity, lack of responsibility. . . ."

350. During the Fifteenth Broadcast, Joy Reid provided commentary and moderated a panel made up of Dallas Goldtooth, national organizer for Indigenous Environmental Network; Jonathan Capehart, MSNBC contributor; and E.J. Dionne, MSNBC contributor and senior fellow at the Brookings Institution.

351. In its Fifteenth Broadcast, NBCUniversal published or republished the following false and defamatory statements:

- (a) (interviewing Goldtooth) “*He [Nathan Phillips] was not the aggressor in this situation. . . . Since the first videos came out, we’ve seen longer videos the behavior that we saw that the kids enacted is utterly inexcusable and shows a deeply rooted sense of superiority and privilege that white people feel towards black and brown people, specifically in this case, Indigenous peoples. And we really have to call it out for that, what it is: white supremacy. So I think that it’s just, it’s absurd but it’s not surprising to see right-wing media to try to flip the switch to make it seem as though Nathan Phillips was the aggressor in this situation and to really absolve the youth and their behavior, and particular the chaperones and their lack of involvement to control their youth and the ugly displays of mockery and racism that they displayed on that day.*” [broadcasting video of Nicholas]
- (b) (Reid) “You did see a certain evolution, even in some mainstream media, of the coverage, that reversed the situation to make Nathan Phillips sound like he was the aggressor, like he went after the young man, um, the teenager, Sandmann.”
- (c) (Reid) “The Catholic Diocese actually apologized to . . . Sandmann. . . . What do you make of the fact that this has become an issue between a Catholic Diocese which sent students to be political actors . . . but who are now saying but they’re just kids and we – and apologizing to them?”
- (d) (Dionne) “There were a lot of Catholics, I think, who were particularly disturbed by the disrespect showed to the Native American elder. . . . [W]e also have to think about the symbolism of the MAGA hat now. . . .”

(e) (Reid) “What does it say to you, just about the general respect for indigenous people in this country . . . just the general disbelief, people not believing Elder Phillips – even with video. . . .?”

352. Although all three of the panelists on the Fifteenth Broadcast mentioned the longer videos that were available, and despite the fact that Reid said that “we’re going to show that video in just a little bit,” MSNBC once again failed to broadcast any portion of the longer, more accurate video that exposes Phillips’ lies – instead, MSNBC continued to replay the short clips from the Taitano Videos that had already been called out several days earlier on NBCUniversal as being “deceptively-presented.”

353. The online description for the Fifteenth Broadcast states that “[a] Native American activist and teens in a viral video have received controversial media coverage on FOX News and other outlets. Joy Reid and her panel discuss.”

354. The false gist of the Fifteenth Broadcast was that the conservative media were falsely portraying Nicholas as the victim of the January 18 incident – yet another attempt to obfuscate NBCUniversal’s own false and defamatory coverage of the incident.

355. The First through Fifteenth Broadcasts are collectively referred to herein as the “Broadcasts.”

## **ARTICLES**

### **First Article**

356. On January 19, 2019, NBCUniversal published online its first false and defamatory article entitled “Video of teens taunting man at Indigenous Peoples March sparks outrage” (the “First Article”). A true and correct copy of the First Article is attached hereto as *Exhibit H*.

357. The First Article referenced and included the viral Taitano Videos prominently featuring Nicholas, and emphasized Nicholas' alleged involvement, including by referring to him as "a male [who] taunts him [Phillips] smilingly and gets close to his face."

358. The First Article conveyed the false and defamatory gist that Nicholas instigated a confrontation with Phillips and otherwise engaged in racist conduct.

359. The First Article conveyed the false and defamatory gist that Nicholas engaged in racist taunts.

360. The First Article conveyed the false and defamatory gist that Nicholas assaulted Phillips.

361. The First Article conveyed the false and defamatory gist that Nicholas disrupted the Indigenous Peoples March as part of his purportedly racist conduct.

362. The First Article conveyed the false and defamatory gist that Nicholas' behavior violated the fundamental standards of his religious community.

363. The First Article conveyed the false and defamatory gist that Nicholas' behavior violated the policies of his school to such an extent that he was subject to expulsion.

364. In its First Article, NBCUniversal published or republished the following false and defamatory statements:

- (a) The headline "Video of teens taunting man at Indigenous Peoples March sparks outrage"
- (b) "Some students wearing Make America Great Again hats and clothing surrounded and taunted a Native American troupe as it performed the 'American Indian Movement' song about strength and courage."

- (c) “In social media videos of the incident Phillips can be seen singing as a male taunts him smilingly and gets close to his face.”
- (d) ““We condemn the actions of Covington Catholic High School students towards Nathan Phillips specifically, and Native Americans in general, Jan. 18, after the March for Life, Washington, D.C.,’ the archdiocese’s statement reads. ‘We extend our deepest apologies to Mr. Phillips. This behavior is opposed to the Church’s teachings on the dignity and respect of the human person.’ The archdiocese said the matter was under investigation and students could be expelled.”
- (e) “During the incident some young people surrounded Native Americans and others start to jump and chant.”
- (f) “Phillips told NBC News that some of the young people surrounding him chanted support for President Trump’s proposal to build a wall along the U.S.-Mexico border.”
- (g) ““Chants of ‘Build the wall’ and other things that were even worse,’ he said as he stood in the rain in Washington. ‘They were brought up to believe I’m less than human.’”

### **Second Article**

365. On January 19, 2019, NBCUniversal published online its second false and defamatory article entitled “Catholic Diocese Apologizes After Students in ‘MAGA’ Hats Mock Native American” (the “Second Article”). A true and correct copy of the Second Article is attached hereto as *Exhibit I*.

366. The Second Article was published by each of the NBC Owned and Operated Stations, and the Description Video (defined below) was republished online by NBCUniversal on at least fifty-five (55) occasions.

367. The Description Video can be viewed by the Court at [https://www.nbcnewyork.com/news/national-international/Kentucky-Diocese-Investigates-After-Students-Mock-Native-Americans-Indigenous-Peoples-March-DC-504597712.html?fb\\_comment\\_id=2220647671300320\\_2223535061011581](https://www.nbcnewyork.com/news/national-international/Kentucky-Diocese-Investigates-After-Students-Mock-Native-Americans-Indigenous-Peoples-March-DC-504597712.html?fb_comment_id=2220647671300320_2223535061011581) (last visited April 1, 2019).

368. The Second Article purported to be an Associated Press article, but in fact NBCUniversal materially altered the original Associated Press article, thereby rendering the wire service defense inapplicable.

369. The Second Article referenced and linked to the viral Taitano Videos which prominently feature Nicholas.

370. The Second Article conveyed the false and defamatory gist that Nicholas instigated a confrontation with Phillips and otherwise engaged in racist conduct.

371. The Second Article conveyed the false and defamatory gist that Nicholas engaged in racist taunts.

372. The Second Article conveyed the false and defamatory gist that Nicholas assaulted Phillips.

373. The Second Article conveyed the false and defamatory gist(s) of the First Broadcast.

374. In its Second Article, NBCUniversal published or republished the following false and defamatory statements:

- (a) A video broadcasting a portion of the Taitano Videos that includes the following false captioned descriptions of the January 18 incident added by NBCUniversal (the “Description Video”):
- i. The caption under the video “Students from a Kentucky Catholic High School appeared to harass and mock a Native American demonstrator during a rally in Washington D.C.”
  - ii. **“YESTERDAY STUDENTS WERE CAUGHT ON FILM HARASSING AN OLDER NATIVE AMERICAN MAN ON THE STEPS OF THE LINCOLN MEMORIAL”**
  - iii. **“VIDEOS CIRCULATING ONLINE SHOW A TEEN STARING AT AND STANDING EXTREMELY CLOSE TO NATHAN PHILLIPS, A VIETNAM VETERAN”**
  - iv. **“OTHER STUDENTS, WEARING ‘MAKE AMERICA GREAT AGAIN’ HATS SURROUNDED THEM, SOME APPARENTLY CHANTING, LAUGHING AND JEERING”**
  - v. **“OFFICIALS SAID THEY WILL TAKE ‘APPROPRIATE ACTION, UP TO AND INCLUDING EXPULSION’”** (all emphasis in original)
- (b) “A diocese in Kentucky apologized Saturday after videos emerged showing students from a Catholic boys’ high school mocking Native Americans outside the Lincoln Memorial after a rally in Washington.”
- (c) “The actions that he was involved in, you know, who allows the children to treat others that way? Who teaches our children that? What was in



their minds? You know, chants of ‘build the wall’ and other things that were even worse.”

- (d) “I was scared. I was afeared. . . .’ Phillips told NBC News.”
- (e) “In a joint statement, the Roman Catholic Diocese of Covington and Covington Catholic High School apologized to Phillips. Officials said they are investigating and will take ‘appropriate action, up to and including expulsion.’ ‘We extend our deepest apologies to Mr. Phillips,’ the statement read. ‘This behavior is opposed to the Church’s teachings on the dignity and respect of the human person.’”
- (f) “In an interview with the Washington Post, Phillips said he felt threatened by the teens. ‘It was getting ugly, and I was thinking: “I’ve got to find myself an exit out of this situation and finish my song at the Lincoln Memorial,”’ he said. ‘I started going that way, and that guy in the hat stood in my way and we were at an impasse. He just blocked my way and wouldn’t allow me to retreat.’”
- (g) “In a video posted to Instagram, Phillips wiped away tears. ‘When I was there singing, I heard them saying ‘Build that wall, build that wall,’ Phillips said.”
- (h) “Chase Iron Eyes said Phillips was swarmed though some video posted on social media seems to show Phillips walking into the crowd of students.”

### **Third Article**

375. On January 20, 2019, NBCUniversal published online its third false and defamatory article entitled “Nathan Phillips, Native American man harassed by high

schoolers, tells his story” (the “Third Article”). A true and correct copy of the Third Article is attached hereto as *Exhibit J*.

376. The Third Article updated NBCUniversal’s First Article and also added new false and defamatory statements.

377. The Third Article referenced the viral Taitano Videos which prominently feature Nicholas, and emphasized Nicholas’ alleged involvement, including by referring to him as “a male [who] taunts him [Phillips] smilingly and gets close to his face.”

378. The Third Article conveyed the false and defamatory gist that Nicholas instigated a confrontation with Phillips and the Black Hebrew Israelites and otherwise engaged in racist conduct.

379. The Third Article conveyed the false and defamatory gist that Nicholas engaged in racist taunts.

380. The Third Article conveyed the false and defamatory gist that Nicholas assaulted Phillips.

381. The Third Article communicated the false and defamatory gist that Nicholas’ behavior violated the fundamental standards of his religious community.

382. The Third Article communicated the false and defamatory gist that Nicholas’ behavior violated the policies of his school to such an extent that he was subject to expulsion.

383. In its Third Article, NBCUniversal published or republished the following false and defamatory statements:

- (a) The headline “Nathan Phillips, Native American man harassed by high schoolers, tell his story”

- (b) “Some students wearing Make America Great Again hats and clothing appeared to surround and may have taunted a Native American troupe as it performed the ‘American Indian Movement’ song about strength and courage.”
- (c) “In social media videos of the incident Phillips can be seen singing as a male taunts him smilingly and gets close to his face.”
- (d) “‘We condemn the actions of Covington Catholic High School students towards Nathan Phillips specifically, and Native Americans in general, Jan. 18, after the March for Life, Washington, D.C.,’ the archdiocese’s statement reads. ‘We extend our deepest apologies to Mr. Phillips. This behavior is opposed to the Church’s teachings on the dignity and respect of the human person.’ The archdiocese said the matter was under investigation and students could be expelled.”
- (e) “During the incident some young people surrounded Native Americans and others start to jump and chant.”
- (f) “Phillips said the students surrounded the significantly smaller group [of Black Hebrew Israelites], as participants of the Indigenous People’s March watched on the sideline.”
- (g) “Phillips told NBC News that some of the young people surrounding him chanted support for President Trump’s proposal to build a wall along the U.S.-Mexico border.”
- (h) “‘Chants of ‘Build the wall’ and other things that were even worse,’ he said as he stood in the rain in Washington. ‘They were brought up to believe I’m less than human.’”

#### **Fourth Article**

384. On January 20, 2019, NBCUniversal published online its fourth false and defamatory article entitled “Native American Says He Tried to Ease Tensions at Mall” (the “Fourth Article”). A true and correct copy of the Fourth Article is attached hereto as *Exhibit K*.

385. The Fourth Article was published online by each of the NBC Owned and Operated Stations.

386. The Fourth Article referenced and included a link to the viral Taitano Videos prominently featuring Nicholas.

387. The Fourth Article purported to be an Associated Press article, but in fact NBCUniversal materially altered the original Associated Press article, thereby rendering the wire service defense inapplicable.

388. The Fourth Article conveyed the false and defamatory gist that Nicholas instigated a confrontation with Phillips and otherwise engaged in racist conduct.

389. The Fourth Article conveyed the false and defamatory gist that Nicholas engaged in racist taunts.

390. The Fourth Article conveyed the false and defamatory gist that Nicholas assaulted Phillips.

391. The Fourth Article conveyed the false and defamatory gist that Nicholas’ behavior violated the fundamental standards of his religious community.

392. The Fourth Article conveyed the false and defamatory gist that Nicholas’ behavior violated the policies of his school to such an extent that he was subject to expulsion.

393. In its Fourth Article, NBCUniversal published or republished the following false and defamatory statements:

- (a) The republication of the false and defamatory statements in the First Broadcast with the following caption: “Nathan Phillips ... says he was saddened and frightened when a crowd of high school students harassed him Friday.”
- (b) The republication of the Description Video.
- (c) “A Native American who was seen in online video being taunted outside the Lincoln Memorial said Sunday he felt compelled to get between two groups with his ceremonial drum to defuse a confrontation.”
- (d) “Other videos also showed ... the students ... taunt them [the Black Hebrew Israelites] in return.”
- (e) “In a joint statement, the Roman Catholic Diocese of Covington and Covington Catholic High School apologized and said they are investigating and will take ‘appropriate action, up to and including expulsion.’ ‘We extend our deepest apologies to Mr. Phillips,’ the diocese statement read. ‘This behavior is opposed to the Church’s teachings on the dignity and respect of the human person.’”
- (f) “He said his first interaction with the students came when they entered an area permitted for the Indigenous Peoples March. ‘They were making remarks to each other – (such as) ‘In my state those Indians are nothing but a bunch of drunks.’ How do I report that?’ he said. ‘These young people were just roughshodding through our space, like what’s been going

on for 500 years here – just walking through our territories, feeling like “this is ours.””

- (g) “During the incident, Phillips said he heard people chanting, ‘Build that wall’ or yelling, ‘Go back to the reservation.’”
- (h) “At one point, he said, he sought to ascend to the Lincoln statute and ‘pray for our country.’ Some students backed off, but one student wouldn’t let him move, he added.”
- (i) ““They went from mocking us and laughing at us to singing with us.””

### **Fifth Article**

394. On January 24, 2019, NBCUniversal published online its fifth false and defamatory article entitled “Nathan Phillips, Native American activist in D.C. standoff, forgives Catholic school students” (the “Fifth Article”). A true and correct copy of the Fifth Article is attached hereto as *Exhibit L*.

395. The Fifth Article included a photograph of Nicholas.

396. The Fifth Article conveyed the false and defamatory gist that Nicholas instigated a confrontation with Phillips and the Black Hebrew Israelites and otherwise engaged in racist conduct.

397. The Fifth Article conveyed the false and defamatory gist that Nicholas engaged in racist taunts.

398. The Fifth Article conveyed the false and defamatory gist that Nicholas assaulted Phillips.

399. In its Fifth Article, NBCUniversal published or republished the following false and defamatory statements:

- (a) The republication of the false and defamatory statements in the Fourteenth Broadcast.
- (b) “Phillips said he heard the students chanting ‘build that wall,’ and he was ‘trying to walk away.’”
- (c) ““That mass of young men surrounded me and the folks that were with me,’ Phillips said, adding that when [sic] he did find a clearing to walk through, but suddenly in the “clear space, a person was there.’ ‘I was blocked,’ Phillips said.”
- (d) “Phillips said Sandmann owes many people an apology. He believed the group of students were ‘mocking’ Native Americans, and Sandmann ‘was the leader of that.’”

### **Sixth Article**

400. On January 24, 2019, NBCUniversal published online its sixth false and defamatory article entitled “Nathan Phillips on viral encounter with Nick Sandmann: ‘I forgive him’” (the “Sixth Article”). A true and correct copy of the Sixth Article is attached hereto as *Exhibit M*.

401. The Sixth Article was published online by each of the NBC Owned and Operated Stations.

402. The Sixth Article included a photograph and video of Nicholas.

403. The Sixth Article conveyed the false and defamatory gist that Nicholas instigated a confrontation with Phillips and the Black Hebrew Israelites and otherwise engaged in racist conduct.

404. The Sixth Article conveyed the false and defamatory gist that Nicholas engaged in racist taunts.

405. The Sixth Article conveyed the false and defamatory gist that Nicholas assaulted Phillips.

406. In its Sixth Article, NBCUniversal published or republished the following false and defamatory statements:

- (a) The republication of the false and defamatory statements in the Fourteenth Broadcast.
- (b) “In a TODAY interview that aired Wednesday, Sandmann defended his actions and said he had nothing to apologize for when he and his classmates surrounded Phillips.”
- (c) “Phillips said he tried to make his way through the crowd peacefully. ‘That’s what I was trying to do. I was trying to walk away. There was a spot, there was a place I could take my peoples because we were surrounded, we couldn’t go right, we couldn’t go left,’ he said. Phillips said he spotted a clear area but then suddenly found himself head-on with Sandmann and his classmates. ‘Oh, I was blocked,’ he said.”
- (d) “‘Because what I was seeing was the fabric of America being torn apart by bigotry, hate, prejudice, division,’ he said.”
- (e) “‘I did hear that [‘build that wall’]. I have seen some [videos] out there, on the internets, where you can hear them saying build that wall,’ he said.”

407. The First through Sixth Articles are collectively referred to herein as the “Articles.”



## TWEETS

408. NBCUniversal posted numerous tweets about the January 18 incident that linked to various portions of the false and defamatory Broadcasts and Articles identified herein.

409. For example, on January 21, 2019, MSNBC posted on its @MSNBC Twitter page and published to its approximately 2.37 million followers a tweet that linked to an online article that included the following false and defamatory statements from the Sixth Broadcast (the “First Tweet”):

- (a) “Those students ... have been widely condemned for what many see as racist behavior. Now they are facing possible expulsion from school.”
- (b) The republication of the false and defamatory statements in the Ron Allen Video.

410. The Court can review the First Tweet at <https://twitter.com/MSNBC/status/1087188924114583552> (last visited April 1, 2019).

411. On January 21, 2019, NBCUniversal posted on its @NBCWashington Twitter page and published to approximately 295,000 followers a tweet that linked to an online article that included the false and defamatory Description Video (the “Second Tweet”).

412. The Court can review the Second Tweet at <https://twitter.com/nbcwashington/status/1087428377496170499> (last visited April 1, 2019).

413. On January 21, 2019, NBCUniversal posted on its @MSNBC Twitter page a link to a portion of the Seventh Broadcast with the false and defamatory statements from

Tara Houska (the “Third Tweet”) with the quote “*I was there, and I witnessed something that was very aggressive and something that was very frightening.*” See *infra* at para. 258(f) and (g) [including photograph of Nicholas from Taitano Videos].

414. The Court can review the Third Tweet at <https://twitter.com/MSNBC/status/1087380759701270528> (last visited May 1, 2019).

415. The First, Second, and Third Tweets, along with any other tweets that included or linked to the false and defamatory Articles or Broadcasts identified herein, in whole or in part, are collectively referred to herein as the “Tweets.”

416. The Tweets, Broadcasts, and Articles are collectively referred to herein as the “False and Defamatory Accusations.”

417. As the natural and foreseeable consequence of its actions, NBCUniversal knew that its False and Defamatory Accusations would be republished by others, including media outlets and others on social media.

#### **NICHOLAS IS A PRIVATE FIGURE**

418. Nicholas is a private figure for the purposes of this defamation action, having lived his entire life outside of the public eye.

419. Prior to the January 18 incident, Nicholas had no notoriety of any kind in the community at large.

420. Nicholas did not engage the public’s attention to resolve any public issue that could impact the community at large.

421. Nicholas made no public appearances prior to the false accusations against him.

422. Nicholas has not inserted himself into the forefront of any public issue.

423. Nicholas' limited public statements after the accusations against him were reasonable, proportionate, and in direct response to the false accusations against him and do not render Nicholas a limited purpose public figure.

**NBCUNIVERSAL PUBLISHED NEGLIGENTLY AND MALICIOUSLY**

424. NBCUniversal published its False and Defamatory Accusations negligently and with actual knowledge of falsity or a reckless disregard for the truth.

425. As one of the world's leading news outlets, NBCUniversal knew but ignored the importance of verifying damaging and, in this case, incendiary accusations against a minor child prior to publication.

426. Instead, NBCUniversal recklessly rushed to publish its False and Defamatory Accusations in order to advance its own political agenda and to create a false narrative in which it framed the January 18 incident as being part of a rising trend in "hate crimes."

427. NBCUniversal negligently published its False and Defamatory Accusations by departing from the reasonable standard of care employed by journalists, including those standards articulated by the Society of Professional Journalists' Code of Ethics.

428. NBCUniversal's conduct demonstrated a purposeful avoidance of the truth and the publication of the False and Defamatory Accusations with actual knowledge of falsity following its review of the complete video evidence and Nicholas' statement no later than January 19.

429. NBCUniversal negligently and recklessly published its False and Defamatory Accusations by failing to conduct a reasonable investigation prior to publication.

430. NBCUniversal's duty to investigate is heightened where, as here, the January 18 incident was not breaking news and involved a minor child.

431. NBCUniversal negligently and recklessly published its False and Defamatory Accusations by relying on unreliable and biased sources with questionable credibility.

432. NBCUniversal negligently and recklessly published its False and Defamatory Accusations by failing to conduct a reasonable investigation and relying on unreliable sources for its accusations.

433. Indeed, NBCUniversal relied primarily upon interviews with Phillips and other participants and organizers in the Indigenous People March who had biased pre-dispositions.

434. Phillips is wholly unreliable and lacks credibility, as shown in part by his false claim to have served in Vietnam while a member of the military, his status as a professional activist with a known bias against President Trump and his supporters, his documented history of making similar false accusations, his use of the January 18 incident to promote his own political and personal agenda, the contradictions in his story established in his interviews, and the video evidence that undeniably refutes his narrative.

435. NBCUniversal had obvious reasons to doubt the veracity of its purported firsthand sources, including because they are manifestly biased and because the short video evidence on which NBCUniversal relied did not show Nicholas or the students uttering the chants or slurs they were accused of making or blocking Phillips' egress.

436. NBCUniversal consciously elected to ignore this contrary information in favor of its pre-conceived false narrative against President Trump and his supporters.

437. NBCUniversal negligently and recklessly failed to consult publicly available information demonstrating its False and Defamatory Accusations to be false, including, without limitation, other video evidence available online demonstrating that Phillips specifically approached the students and specifically confronted Nicholas, and that Nicholas did not engage in surrounding, mocking, taunting, blocking, or otherwise physically intimidating Phillips or anyone else present.

438. Not only was NBCUniversal aware that the snippets of video it reviewed and broadcast did not support its False and Defamatory Accusations, but NBCUniversal also was aware that the video it reviewed was unsourced and obviously incomplete; nonetheless, NBCUniversal published its accusations against Nicholas without any reasonable investigation.

439. In fact, upon information and belief, prior to publishing its False and Defamatory Accusations, NBCUniversal knew that the Black Hebrew Israelites had hurled slurs and taunts at the students, who responded with school cheers, and that Phillips had confronted Nicholas and his classmates. But NBCUniversal wholly omitted and otherwise contradicted this information.

440. NBCUniversal continued to publish its False and Defamatory Accusations with actual knowledge of falsity, having reviewed video evidence and statements of Nicholas Sandmann contradicting its False and Defamatory Accusations.

441. NBCUniversal failed to broadcast the relevant portions from the longer videos that accurately depicted showed what happened during the January 18 incident.

442. NBCUniversal negligently and recklessly failed to seek information from other obvious sources who were present at the January 18 incident and would have

demonstrated its False and Defamatory Accusations to be false, including Nicholas, and upon information and belief, his classmates, and/or the chaperones.

443. NBCUniversal negligently and recklessly published its False and Defamatory Accusations despite internal inconsistencies in Phillips' statements, as well as material differences in his statements to other outlets published January 19 and 20.

444. NBCUniversal negligently and recklessly published its False and Defamatory Accusations in derogation of accepted principles of journalistic standards, including by failing to use heightened sensitivity when dealing with juveniles.

445. NBCUniversal negligently and recklessly published its False and Defamatory Accusations in derogation of accepted principles of journalistic standards, including by failing to verify each accusation before publication.

446. NBCUniversal negligently and recklessly published its False and Defamatory Accusations in derogation of accepted principles of journalistic standards, including by failing to take special care not to misrepresent or oversimplify its coverage, and by failing to provide accurate context to its False and Defamatory Accusations.

447. NBCUniversal negligently and recklessly published its False and Defamatory Accusations in derogation of accepted principles of journalistic standards, including by failing to avoid stereotyping.

448. NBCUniversal negligently and recklessly published its False and Defamatory Accusations in derogation of accepted principles of journalistic standards, including by failing to examine the way in which its own biases and agenda shaped its false reporting.

449. NBCUniversal negligently and recklessly published its False and Defamatory Accusations in derogation of accepted principles of journalistic standards, including by failing to treat Nicholas as a human being deserving of respect.

450. NBCUniversal negligently and recklessly published its False and Defamatory Accusations in derogation of accepted principles of journalistic standards, including by wrongfully placing an anti-Trump, anti-Catholic, and anti-pro-life agenda over the harm its False and Defamatory Accusations caused to Nicholas.

451. Upon information and belief, at the time of its initial reporting of and concerning Nicholas, NBCUniversal did not know Nicholas' age and did not make any reasonable attempt to ascertain it despite the general knowledge that Nicholas was a high school student and thus a minor.

452. Nicholas' counsel propounded a written demand for retraction of the False and Defamatory Accusations upon NBCUniversal on March 20, 2019. A true and correct copy of the March 20, 2019, retraction demand is attached hereto as *Exhibit N*.

453. NBCUniversal's actual malice is further evidenced by its failure to retract its False and Defamatory Accusations.

454. NBCUniversal published its False and Defamatory Accusations with common law malice, including because it intended to harm Nicholas because he was a Catholic student at the March for Life wearing a MAGA hat, and it consciously ignored the threats of harm that it knew would inevitably ensue from its accusatory coverage in favor of its political agenda.

455. NBCUniversal published its False and Defamatory Accusations with common law malice, demonstrated by its failure to retract its False and Defamatory Accusations despite the harm and danger it knew would be inflicted upon Nicholas.

456. NBCUniversal published its False and Defamatory Accusations with common law malice, including because it callously ignored the consequences of its actions upon a minor child.

### **DAMAGES**

457. The publication of the False and Defamatory Accusations directly and proximately caused substantial and permanent damage to Nicholas.

458. As a direct and proximate result of the False and Defamatory Accusations, NBCUniversal created a false reputation for Nicholas, branding him as a racist and instigator of a hate crime.

459. By imposing a false reputation on Nicholas, the False and Defamatory Accusations deprive Nicholas, a minor, of his right to create through his own acts and words his unique reputation as an adult and human being.

460. The False and Defamatory Accusations are now forever a part of the historical Internet record and will haunt and taint Nicholas for the remainder of his natural life and impugn his reputation for generations to come.

461. The False and Defamatory Accusations were republished by third parties and members of the mainstream and social media mob, which was reasonably foreseeable.

462. The False and Defamatory Accusations against Nicholas are defamatory per se, as they are libelous on their face without resort to additional facts, and as clearly demonstrated here, subjected Nicholas to public hatred, contempt, scorn, obloquy, and shame.

463. As a direct and proximate result of the False and Defamatory Accusations, Nicholas suffered permanent, perpetual harm to his reputation.



464. As a direct and proximate result of the False and Defamatory Accusations, Nicholas suffered severe emotional and mental distress.

465. As a direct and proximate result of the False and Defamatory Accusations, Nicholas is forced to live his life in a constant state of concern over his safety and the safety of his family.

466. NBCUniversal published its False and Defamatory Accusations with actual malice and common law malice, thereby entitling Nicholas to an award of punitive damages.

467. NBCUniversal's conduct was outrageous and willful, demonstrating that entire want of care that raises a conscious indifference to consequences.

468. Nicholas is entitled to an award of punitive damages to punish NBCUniversal and to deter it from repeating such egregiously unlawful misconduct in the future.

**WHEREFORE**, Nicholas respectfully prays:

(a) That judgment be entered against NBCUniversal for substantial compensatory damages in an amount not less than Seventy-Five Million Dollars (\$75,000,000.00);

(b) That judgment be entered against NBCUniversal for punitive damages in an amount not less than Two Hundred Million Dollars (\$200,000,000.00);

(c) That Nicholas recover his reasonable attorneys' fees and expenses from NBCUniversal;

(d) That all costs of this action be taxed to NBCUniversal; and

(e) That the Court grant all such other and further relief that the Court deems just and proper, including equitable relief.

Respectfully submitted this 1st day of May, 2019.

**L. LIN WOOD, P.C.**

/s/ L. Lin Wood

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