

# **EXHIBIT 1**

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

		) Index No. 151136/2021
SMARTMATIC USA CORP., SMARTMATIC	)	
INTERNATIONAL HOLDING B.V., and SGO	)	
CORPORATION LIMITED,	)	
	)	
<i>Plaintiffs,</i>	)	
	)	
-against-	)	
	)	
FOX CORPORATION, FOX NEWS NETWORK,	)	
LLC, LOU DOBBS, MARIA BARTIROMO,	)	
JEANINE PIRRO, RUDOLPH GIULIANI, and	)	
SIDNEY POWELL,	)	
	)	
	)	
<i>Defendants.</i>	)	
	)	

**EXPERT REPORT OF DANIEL R. FISCHER**

March 17, 2022

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## I. QUALIFICATIONS

1. I am President of Compass Lexecon, a consulting firm that specializes in the application of economics to a variety of legal and regulatory issues. I am also the Lee and Brena Freeman Professor of Law and Business Emeritus at The University of Chicago Law School. I have served previously as Dean of The University of Chicago Law School, Director of the Law and Economics Program at The University of Chicago, and as Professor of Law and Business at The University of Chicago Graduate School of Business, the Kellogg School of Management at Northwestern University, and the Northwestern University Law School.

2. Both my research and my teaching have concerned the economics of corporate law and financial markets. I have published approximately fifty articles in leading legal and economics journals and am coauthor, with Judge Frank Easterbrook of the United States Court of Appeals for the Seventh Circuit, of the book *The Economic Structure of Corporate Law* (Harvard University Press, 1991). Courts of all levels, including the Supreme Court of the United States, have cited my articles as authoritative. My curriculum vitae, which contains a list of my publications, is attached hereto as Appendix A.

3. I have served as a consultant or adviser on economic issues to, among others, the United States Department of Justice, the United States Securities and Exchange Commission, the National Association of Securities Dealers, the New York Stock Exchange, the Chicago Board of Trade, the Chicago Mercantile Exchange, the New York Mercantile Exchange, the United States Department of Labor, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Federal Housing Finance Agency, and the Federal Trade Commission.

4. I am a member of the American Economic Association and the American Finance Association. I am also a former Trustee of the Becker Friedman Institute, a former member

of the Board of Directors of the Center for the Study of the Economy and the State at The University of Chicago, and former Chairman of the American Association of Law Schools' Section on Law and Economics.

5. I have testified as an expert witness in multiple proceedings in federal and state courts across the country, as detailed in Appendix A. I have extensive experience on valuation and damages issues for the United States Department of Justice as well as multiple plaintiffs and defendants, and my testimony on these issues has been repeatedly cited favorably and relied upon by multiple courts, including courts in New York.

## **II. ASSIGNMENT AND SUMMARY OF CONCLUSIONS**

6. I have been retained by Kirkland & Ellis LLP, counsel for Fox News Network LLC, as well as for Fox Corporation, Lou Dobbs, Maria Bartiromo, and Jeanine Pirro (collectively, the "Fox Defendants"), to assess certain claims made by Smartmatic USA Corp., Smartmatic International Holding B.V., and SGO Corporation Limited (collectively, the "Plaintiffs"). Specifically, Plaintiffs' Complaint alleges damages of lost profits and lost enterprise value as a result of statements made by attorneys representing former President Donald Trump and broadcasted by the Fox Defendants. I have been asked to review those damages claims and see if they are plausible in light of Plaintiffs' historical financial performance.

7. I understand that Plaintiffs have not produced any documents to date in the litigation, nor have the parties engaged in any discovery. Therefore, this analysis is based solely on the allegations in the Complaint and documents located in the public record. This analysis may be subject to revision based on information obtained in discovery.

8. Plaintiffs' Complaint alleges that the Fox Defendants' coverage of allegations made by attorneys representing former President Donald Trump has caused damage in the amount of \$767.4 million in lost profits over the period from 2021 to 2025 and at least \$2.7

billion in lost enterprise value.<sup>1</sup> To evaluate the plausibility of those claims, I reviewed Plaintiffs' historical financial performance as reflected in publicly available financial records of SGO Corporation.

9. The reality that emerges from these financial records is that Plaintiffs have been a failing enterprise over the past five years—sustaining four years straight of declining revenue, \$82.8 million in losses. To even approach a \$2.7 billion enterprise value would have required a complete reversal of Plaintiffs' past financial performance. Viewed through the lens of Smartmatic's historical financial performance, the damages claimed in the complaint are deeply implausible.

10. Specifically, I found that in order for Plaintiffs to support the revenue forecasts set forth in the Complaint, and therefore justify their lost-profits and enterprise-value allegations, SGO's revenue would need to grow at a rate of +74.35% over the period from 2021 to 2025. To put that in historical perspective, in the past five years, SGO reported a revenue growth rate of -1.65%.

11. I also found that, in order to support their lost profits claims, SGO would need to generate a profit margin of 33.55% over the next five years. But in the past five years, SGO has recorded a loss of \$82.8 million.

12. I also found that more than 80% of Plaintiffs' lost profits claims related to Smartmatic Elections come from outside of North America. Unless Plaintiffs can establish a causal link between the U.S.-based alleged disinformation campaign and their global business, there is

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1. *Smartmatic USA Corp., Smartmatic International Holding B.V., and SGO Corporation Limited, v. Fox Corporation, Fox News Network LLC, Lou Dobbs, Maria Bartiromo, Jeanine Pirro, Rudolph Giuliani, and Sidney Powell* Complaint ("Complaint"), at ¶¶ 494, 519.

an additional level of uncertainty for these claims. Moreover, even if one were to accept Plaintiffs' causal assertion, Smartmatic Elections would have to reverse its historical pattern of negative revenue growth in overseas markets to support their lost profit claims outside of North America.

13. Based on this analysis and based on the information available to me at this time, it is my opinion that this claimed amount of damage is unsupported and bears no relationship to Plaintiffs' actual historical financial performance. Specifically:

- Plaintiffs' implied but-for revenue growth forecasts bear no relationship to their historical pattern of negative growth
- Plaintiffs' but-for profit forecasts bear no relationship to their consistent pattern of generating losses.
- Plaintiffs' \$2.7 billion lost-enterprise-value claim is unsupported and bears no relationship to their consistent pattern of generating losses.

14. In summary, the level of financial performance implied by Plaintiffs' Complaint is entirely inconsistent with Plaintiffs' historical performance, and Plaintiffs nowhere explain how that could be expected to occur. Based on the information available to me now, and before the parties conduct discovery, I find Plaintiffs' damages allegations to be unsupported, implausible, and not rooted in sound financial analysis.

### **III. BACKGROUND**

15. My understanding of the relevant factual background is based solely on the allegations of the Complaint and the public financial filings of Smartmatic's parent company, SGO Corporation Limited. Smartmatic USA Corp. is a Florida-based company (incorporated in

Delaware) founded in 2000.<sup>2</sup> Smartmatic International Holding B.V. is an Amsterdam, Netherlands based company that owns a 100% stake in Smartmatic USA Corp.<sup>3</sup> According to the Complaint, Smartmatic International Holding B.V. “owns multiple companies operating under the Smartmatic brand in almost two dozen countries.”<sup>4</sup> These countries include: United States; Barbados; Australia; United Kingdom; Panama; Haiti; Belgium; Singapore; Netherlands; Mexico; Ecuador; Brazil; Estonia; Taiwan; the Philippines; Colombia; Argentina; Honduras; Pakistan; Italy; Jamaica; and El Salvador.<sup>5</sup>

16. Smartmatic Elections provides election and voting technology and support services.<sup>6</sup> The Complaint details that Smartmatic Elections offers an array of products and services, including: electronic voting machines; electronic counting machines; ballot marking devices; voter management; poll worker support; online voting; and election management platforms.<sup>7</sup>

17. SGO Corporation Limited (“SGO”) is a London, U.K. based holding company that holds a 100% stake in Smartmatic International Holding B.V.<sup>8</sup> SGO also maintains investments in four additional, separate business lines, including Folio and Airlabs.<sup>9</sup> According to its most recent financial statement (2020), Folio is “a digital wallet that hosts digital credentials,

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2. Complaint, at ¶¶ 14, 39.

3. Complaint, at ¶ 15.

4. Complaint, at ¶ 15.

5. Complaint, at ¶ 15 and note 2. Historically, Smartmatic International Holding B.V. has also operated in Venezuela. *See* § IV.

6. <https://www.smartmatic.com/us/about/>.

7. Complaint, at ¶ 44.

8. SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ending December 31, 2020, at page 38.

9. SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ending December 31, 2020, at page 4.



offers convenience and privacy to consumers, and allows them to verify their identity to businesses and governments.”<sup>10</sup> Airlabs “makes and sells air filtration systems and air quality data from dense sensor networks.”<sup>11</sup> It is my understanding that neither of these companies has the word “Smartmatic” in their company name or on their products.

18. Fox News Network LLC is a wholly-owned subsidiary of Fox Corporation and the “top-rated national cable news channel in both Monday to Friday primetime and total day viewing.”<sup>12</sup> Fox Corporation is a Delaware-incorporated “news, sports and entertainment company” traded on the Nasdaq Global Select Market.<sup>13</sup>

19. My understanding of Plaintiffs’ allegations is as follows. Plaintiffs allege that Mr. Rudolph Giuliani and Ms. Sidney Powell defamed them by creating a false story that “the 2020 U.S. election had been rigged in favor of Joe Biden and Kamala Harris and stolen from Donald Trump and Michael Pence” in part due to the manipulation of election technology provided by Smartmatic.<sup>14</sup> The Complaint further alleges that, from November 12, 2020 to December 10, 2020, the Fox News Defendants aired broadcasts where Fox News reporters interviewed Mr. Giuliani and/or Ms. Powell and questioned them about their allegations.<sup>15</sup> By airing and reporting

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10. SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ending December 31, 2020, at page 4.

11. SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ending December 31, 2020, at page 4.

12. Fox Corporation 10-K for the fiscal year ending June 30, 2021, at page 5. According to the Complaint, “Fox Corporation owns Foxcorp Holdings LLC (100% ownership), Foxcorp Holdings LLC owns Fox Television Holdings LLC (100% ownership), Fox [Television] Holdings LLC owns Fox Television Stations (100% ownership), and Fox Television Stations LLC owns Fox News Networks LLC (100% ownership).” See Complaint, at ¶ 18.

13. Fox Corporation 10-K for the fiscal year ending June 30, 2021, at page 1, 33.

14. Complaint, at ¶¶ 91-93.

15. Complaint, at ¶¶ 95, 133.

on allegations made by the President's lawyers, or those working on his behalf, Plaintiffs allege that the Fox News Defendants defamed Smartmatic.<sup>16</sup> I understand that Fox and the Fox News Defendants deny Smartmatic's allegations.

20. My understanding of Plaintiffs' damages allegations is as follows. Plaintiffs allege that but-for the alleged defamation, revenues for Smartmatic's elections business would have been no less than \$3.1 billion over the next five years.<sup>17</sup> But, Plaintiffs claim, Defendants' alleged actions have "decimated Smartmatic's future business prospects."<sup>18</sup> Plaintiffs allege that "[c]lient contracts that were awarded prior to the 2020 U.S. election or that were otherwise considered close to finalized have been jeopardized ... [a]nd nearly all strategic partners, from financing sources to technology partners, have begun reevaluating their relationships with Smartmatic."<sup>19</sup>

21. As a result of these lost business opportunities, Plaintiffs allege that SGO will suffer \$767.4 million in lost profits due to harm caused to the "business pipeline."<sup>20</sup> Plaintiffs allocate those lost profits across the enterprise. Specifically, Plaintiffs allege \$690 million in lost profits to Smartmatic's Elections line.<sup>21</sup> As shown in Table 1 below, Plaintiffs allege Smartmatic Elections lost profits of \$132.3 million attributable to North America and \$557.7 million attributable to other global markets.

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16. Complaint, at ¶¶ 7, 9, 100.

17. Complaint, at ¶¶ 498, 515.

18. Complaint, at ¶ 470.

19. Complaint, at ¶ 470.

20. Complaint, at ¶ 494.

21. Complaint, at ¶ 503.

**Table 1**  
**Geographic Distribution of Smartmatic Elections Projected Profit**  
**2021 to 2025**  
**(\$ in Millions)**

	Base Contracts			Upselling & Upside Lost Profit	Total Lost Profit
	Original Profit Forecast	Revised Profit Forecast	Lost Profit		
North America	\$131.0	\$28.0	\$103.0	\$29.3	\$132.3
Rest of the World	\$719.0	\$322.0	\$397.0	\$160.7	\$557.7
Total	\$850.0	\$350.0	\$500.0	\$190.0	\$690.0
Rest of the World Percentage	84.6%	92.0%	79.4%	84.6%	80.8%

Note: Upselling and other upside lost profit of \$190 million allocated to the rest of the world based on the rest of the world accounting for 84.6% of the profits on the original profit forecast for base contracts.

Source: Complaint, at ¶¶ 502, 503.

22. In addition, Plaintiffs also allege lost profits of \$38.6 million related to Airlabs, consisting of \$29.8 million in lost profits “due to lost sales of Airlabs products” and “\$8.8 million in lost profits at the Airlabs family due to Smartmatic losing sales of Airlabs products.”<sup>22</sup>

23. Plaintiffs further allege lost profits of \$38.8 million related to Folio, consisting of \$21.4 million in lost profits for Plaintiffs “due to lost sales of Folio products”; and “\$17.4 million in lost profits at the Folio family due to Smartmatic losing sales of Folio products.”<sup>23</sup>

24. Plaintiffs also allege that “the entire SGO Corporation [Limited] enterprise value ... has been damaged by not less than \$2.7 billion” as a result of Defendants’ alleged

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22. Complaint, at ¶ 494.

23. Complaint, at ¶ 494.

conduct.<sup>24</sup> Plaintiffs allege that “Smartmatic Elections alone has suffered at least \$2.4 billion in reputational and enterprise value damages due to the disinformation concocted by Mr. Giuliani and Ms. Powell and spread by the [Fox] Defendants.”<sup>25</sup> Plaintiffs further claim that “Airlabs has suffered at least \$224 million in enterprise value as a result of the expected loss of sales (both through Smartmatic [Elections] and otherwise), resulting in a \$105 million reduction in SGO Corporation [Limited]’s enterprise value through its partial ownership of Airlabs, and Folio likewise has lost another \$215 million in enterprise value.”<sup>26</sup> Combined, Plaintiffs contend that “[f]or SGO Corporation, the enterprise value of its subsidiaries has been decreased by at least \$2.7 billion.”<sup>27</sup>

#### IV. SGO’S FINANCIAL STATEMENTS DEMONSTRATE A CONSISTENT PATTERN OF NEGATIVE REVENUE GROWTH AND LOSSES

25. Plaintiffs’ historical performance is a generally accepted starting point for assessing prospective damages allegations. SGO’s annual financial data are publicly available through the United Kingdom Companies House for the years 2011 through 2020.<sup>28</sup> As stated in its annual filings, SGO’s primary source of revenue is “[e]lection products and services.”<sup>29</sup> SGO’s disclosures demonstrate that it has historically derived the majority of its revenue from outside

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24. Complaint, at ¶ 471.

25. Complaint, at ¶ 519.

26. Complaint, at ¶ 519.

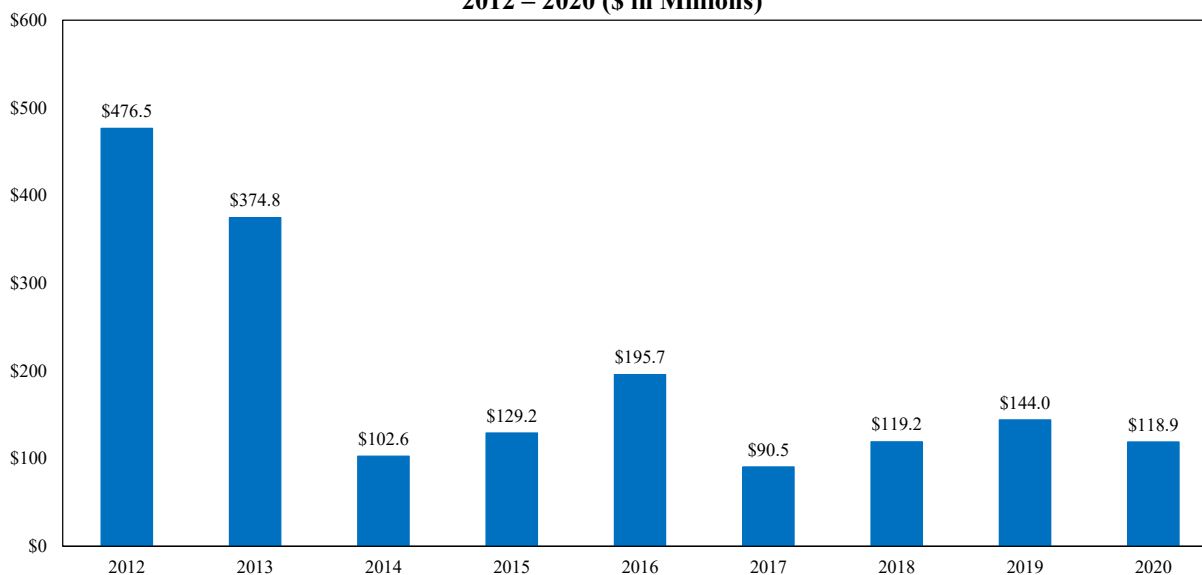
27. Complaint, at ¶ 519.

28. See <https://find-and-update.company-information.service.gov.uk/company/07477910/filing-history>. SGO did not have revenues for 2011. As such, I only consider the 2012 through 2020 timeframe.

29. SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ending December 31, 2020, at page 3.

North America,<sup>30</sup> with key markets in Venezuela and the Philippines.<sup>31</sup> More recently, in 2018, Smartmatic secured a contract in the United States in Los Angeles County.<sup>32</sup> Exhibit 1 below depicts SGO's historical revenues.

**Exhibit 1**  
**SGO Revenue**  
**2012 – 2020 (\$ in Millions)**



Note: Includes SGO Corporation's share of Airlabs non-consolidated revenue.

Sources: SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2013, at page 7; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2014, at page 9; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2015, at page 9; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2016, at page 9; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2017, at page 9; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2018, at page 10; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2019, at page 10, 44; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2020, at page 13, 41.

26. As shown in Exhibit 1 above, in 2012 and 2013, SGO generated revenues of \$477 million and \$375 million, respectively. According to SGO, these revenues were largely driven by electoral services provided to Venezuela and the Philippines.<sup>33</sup> The following year, in

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30. SGO did not disclose geographic breakdown of profits in its financial statements.
31. *See, e.g.*, SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ending December 31, 2014, at page 3.
32. Complaint, at ¶ 65.
33. SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ending December 31, 2013, at page 1. SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ending December 31, 2014, at page 3.

2014, SGO's revenues fell to \$103 million—a decline of 72.61%—and SGO attributed the decline to “additional electoral services being undertaken in Venezuela and additional sale of electoral equipment in the Philippines.”<sup>34</sup> In 2015 and 2016, SGO generated \$129 million and \$196 million, respectively, with SGO again citing electoral services provided in Venezuela and the Philippines as the significant drivers of revenues.<sup>35</sup> In 2017, SGO's revenues declined 53.79%, to \$90 million, with SGO attributing this decline in part to the “abrupt call off of the Venezuela project by the government.”<sup>36</sup> In 2018 and 2019, SGO generated \$119 million and \$144 million in revenue, respectively, citing a new contract with Los Angeles County as a primary driver of revenues.<sup>37</sup> For the most recent year, 2020, SGO's revenues declined 17.45%, to \$119 million. According to SGO, the decline “was largely due to election postponements caused by the Covid-19 pandemic and less equipment sold due to conditions for the contract with Los Angeles County, California (US).”<sup>38</sup> None of these reasons provided by SGO for its financial performance appears to have anything to do with the alleged disinformation campaign.

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34. SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ending December 31, 2014, at page 3.

35. SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ending December 31, 2015, at page 3. SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ending December 31, 2016, at page 3.

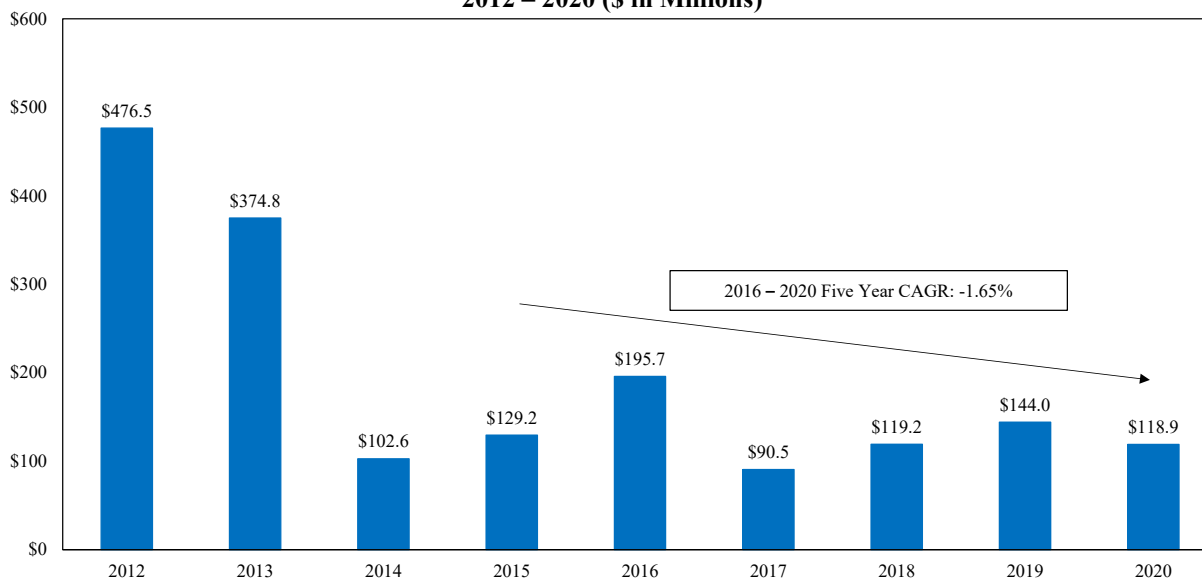
36. SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ending December 31, 2017, at page 3.

37. SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ending December 31, 2018, at page 3. SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ending December 31, 2019, at page 3.

38. SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ending December 31, 2020, at page 3.

27. Overall, from 2012–2020, SGO’s revenue declined more than 75%. From 2015 to 2020, SGO’s revenues fell from \$129 million in 2015 to \$119 million in 2020. SGO’s five-year compound annual growth rate (“CAGR”) is therefore -1.65%, as reflected in Exhibit 2.<sup>39</sup>

**Exhibit 2**  
**SGO Revenue**  
**2012 – 2020 (\$ in Millions)**



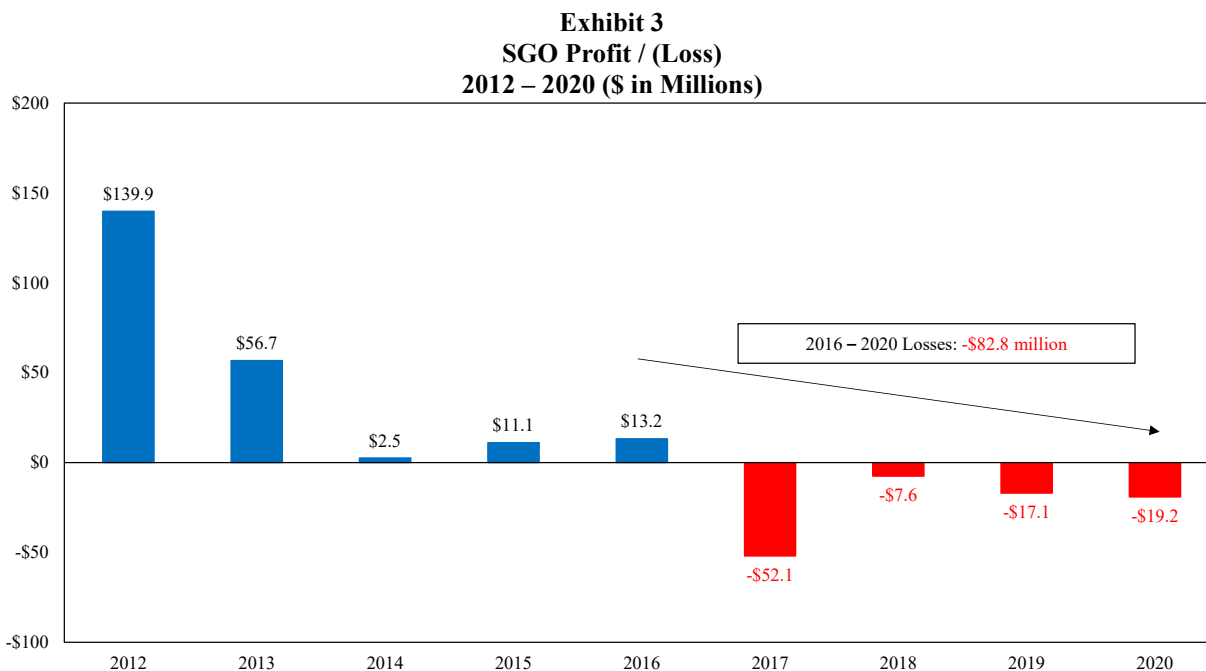
Note: Includes SGO Corporation's share of Airlabs non-consolidated revenue.

Sources: SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2013, at page 7; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2014, at page 9; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2015, at page 9; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2016, at page 9; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2017, at page 9; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2018, at page 10; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2019, at page 10, 44; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2020, at page 13, 41.

28. Not only have SGO’s revenues been declining over time, SGO has also been unprofitable in recent years. As shown in Exhibit 3 below, SGO’s total losses over the past five years exceed \$82 million, and it has reported losses in each of the past four years. Furthermore,

39. CAGR calculates the average annualized growth rate over a given time period such that when the revenue in the base year (e.g., 2015) is compounded annually by this growth rate over the given time period (e.g., from 2016 to 2020 which is 5 years of growth), the base year revenue equals the revenue in the final year (i.e., 2020). This is referred to as a five-year CAGR for 2016 - 2020.

based on SGO's financial statements, SGO had a weighted average profit margin from 2016 to 2020 of -12.39% (calculated by taking the sum of the profits and losses from 2016 to 2020 divided by the sum of the revenue from 2016 to 2020).



Note: Restated figures for 2015 and 2018 were used.

Sources: SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2013, at page 7; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2014, at page 9; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2015, at page 9; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2016, at page 9; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2017, at page 9; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2018, at page 10; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2019, at page 10; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2020, at page 13.

29. As shown in Exhibit 3 above, SGO earned profits of \$139.9 million in 2012 and \$56.7 million in 2013. These profits correspond to the revenues SGO attributed to electoral services provided in Venezuela and the Philippines.<sup>40</sup> In 2014, SGO's profits fell significantly—to only \$2.5 million—after SGO experienced a sharp decline in revenues due to “lower” electoral activity in those jurisdictions.<sup>41</sup> In 2017, profits fell sharply again; SGO reported a loss of \$52.1

40. SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ending December 31, 2013, at page 1.

41. SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ending December 31, 2014, at page 3.



million as a result of “the cancellation of the Venezuela project in 2017 and other projects in Venezuela.”<sup>42</sup> SGO has reported losses in each subsequent year. Most recently, SGO reported a loss of \$19.2 million in 2020, which it attributed to “election postponements due to the pandemic and the impairment of certain receivables and inventory.”<sup>43</sup>

30. Airlabs and Folio are unproven businesses with *de minimis* historical revenue, and they have never been profitable. Airlabs was incorporated on November 16, 2017,<sup>44</sup> yet reported no revenue from 2017 to 2019 and only \$0.7 million in revenue in 2020.<sup>45</sup> Airlabs has never been profitable and has reported losses in each of the last three years.<sup>46</sup> Similarly, Folio was incorporated on May 12, 2014,<sup>47</sup> yet reported no revenue from 2014 to 2020.<sup>48</sup> Folio has never

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42. SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ending December 31, 2017, at page 3.
  43. SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ending December 31, 2020, at page 3.
  44. Airlabs Holding Limited, Certificate of Incorporation of a Private Limited Company.
  45. *See* SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ending December 31, 2019, at page 44; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ending December 31, 2020, at page 41. SGO’s filings do not contain any information with respect to Airlabs’s 2017 revenues, and Airlabs’s 2017 revenues are therefore assumed to be \$0.
  46. *See* SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ending December 31, 2019, at page 44; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ending December 31, 2020, at page 41.
  47. IDBank Limited, Certificate of Incorporation of a Private Limited Company. Folio was previously named IDBank Limited.
  48. Folio disclosed that it had no revenues from 2014 to 2019; Folio did not disclose revenues in 2020, but instead stated that it had no account receivables in 2020. Moreover, Folio states that “[t]he Company is reliant on financial support from SGO Corporation ....” *See* Folio’s Director’s Report and Financial Statements for the year ending December 31, 2015, at page 4-5, 7; Folio’s Director’s Report and Financial Statements for the year ending December 31, 2016, at page 4-5, 7; Folio’s Director’s Report and Financial Statements for the year ending December 31, 2017, at page 4-5, 7; Folio’s Director’s Report and Financial Statements for the year ending December 31, 2018, at page 4-5, 7; Folio’s Unaudited Statutory Accounts for the year ending December 31, 2019, at PDF page 4-5, 8; Folio’s

been profitable, and has reported losses in each of the last four years, including an estimated loss of \$2.1 million in 2020.<sup>49</sup>

**V. PLAINTIFFS' TOTAL DAMAGES CLAIMS BEAR NO RELATIONSHIP TO SGO'S UNPROFITABLE HISTORICAL PERFORMANCE**

31. Plaintiffs' recent financial performance shows an enterprise in decline, facing steeply declining revenues over the past five years and sustaining losses in four of them. Plaintiffs' prospective damages claims stand in stark contrast to this historical reality. As set forth below, Plaintiffs' alleged \$767.4 million in lost profits and \$2.7 billion loss in enterprise value assume a dramatic increase in revenue and substantial profit margins in the next five years. In other words, Plaintiffs' allegations assume a complete turnaround of its financial performance. *See supra* Exhibits 1 – 3. Nothing in the Complaint accounts for these aggressive forecasts. Therefore, I conclude that Plaintiffs' assumptions are unfounded, disconnected from historical performance, and unsupported.

**A. Plaintiffs' Implied But-For Revenue Growth Forecasts Bear No Relationship to SGO's Historical Pattern of Negative Growth**

32. I begin my analysis by evaluating the total revenue projections contained in Plaintiffs' but-for five-year forecasts relative to SGO's historical performance. As detailed above, Plaintiffs have alleged that because of Defendants' alleged actions, they suffered revenue losses that resulted in \$767.4 million in lost profits and a total enterprise loss of \$2.7 billion.<sup>50</sup>

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Unaudited Financial Statement for the year ending December 31, 2020, at PDF page 2, 4.

49. Folio's Unaudited Financial Statement for the year ending December 31, 2020, at PDF page 4.

50. Complaint, at ¶¶ 494, 519; *see supra* ¶¶ 21, 24.

33. To support their damages numbers, Plaintiffs allege that, but for the alleged disinformation campaign, Smartmatic Elections would have generated profits of \$1.04 billion (consisting of \$850 million in direct profits and an additional \$190 million from upselling)<sup>51</sup> on \$3.1 billion in revenue over the next five years (2021-2025).<sup>52</sup> In addition, they further allege that Airlabs and Folio will also suffer lost profits.<sup>53</sup> While Plaintiffs do not provide but-for revenue projections for Airlabs and Folio, these revenue projections can be imputed based on Plaintiffs' claimed profit margin for Smartmatic Elections, which is 33.55%, as calculated by dividing the total expected profits (\$1.04 billion) over the total expected revenue (\$3.1 billion).<sup>54</sup> Applying this profit margin to Plaintiffs' but-for profits claims for sales of Airlabs and Folio products results in minimum projected revenues from 2021 to 2025 of \$162.2 million and \$137.7 million respectively.<sup>55</sup> All told, Plaintiffs allege that, but for the alleged defamation, SGO as an enterprise would have generated \$3.4 billion in revenue over the next five years.

34. Plaintiffs do not provide an annual breakdown for the (minimum) \$3.4 billion in revenue they allege SGO would have realized over a five-year period in the absence of

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51. Complaint, at ¶¶ 502-503.

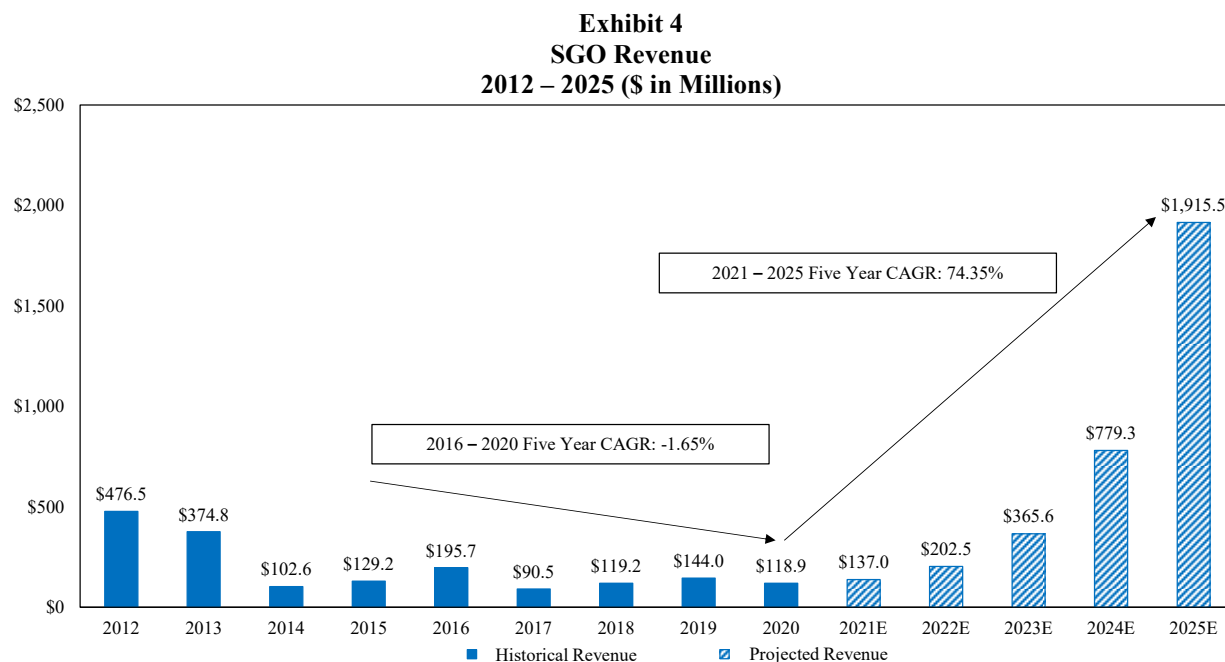
52. Complaint, at ¶ 498.

53. Complaint, at ¶¶ 504-505, 507-508.

54. Note that the original profit forecast was based on a pipeline of contract revenues, which may have been, or may need to be, weighted by the probability of actually receiving the contract. Plaintiffs have provided no additional detail on such probabilities.

55. Airlabs-related revenue from 2021 to 2025 of \$162.2 million equals total but-for profits from 2021 to 2025 of \$54.4 million (\$45.6 million in profits from sales of Airlabs products by Smartmatic and \$8.8 million in profits from sales of Airlabs products by Airlabs of which Smartmatic owns a 47.17% stake) divided by profit margin of 33.55%. *See* Complaint, at ¶¶ 505-506. Folio-related revenue from 2021 to 2025 of \$137.7 million equals total but-for profits from 2021 to 2025 of \$46.2 million (\$28.8 million in profits from sales of Folio products by Smartmatic and \$17.4 million in profits from sales of Folio products by Folio) divided by profit margin of 33.55%. *See* Complaint, at ¶¶ 507-508.

the alleged disinformation campaign. To compare Plaintiffs' total claimed future five-year revenue to their historical performance, I calculated the CAGR that distributes Plaintiffs' claimed (minimum) \$3.4 billion in revenue across their five-year estimation period.<sup>56</sup> This results in a CAGR of 74.35% over Plaintiffs' five-year forecast period. As shown in Exhibit 4 below, this five-year projected CAGR is inconsistent with SGO's five-year historical revenue CAGR of -1.65%.



Note: Includes SGO Corporation's share of Airlabs non-consolidated revenue.

Sources: Complaint, at ¶¶498, 502-503, 505-508, 515; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2013, at page 7; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2014, at page 9; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2015, at page 9; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2016, at page 9; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2017, at page 9; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2018, at page 10; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2019, at page 10, 44; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2020, at page 13, 41.

35. To put it another way, Plaintiffs' claimed damages necessarily imply that, but for the alleged defamation, SGO's revenues would have grown by 74.35% over a five-year

56. Given SGO's actual revenue in 2020 and that the sum of SGO's projected revenue from 2021 to 2025 must equal \$3.4 billion, I can calculate SGO's projected revenue in 2025, assuming SGO's constant growth from 2021 to 2025. From there, I can calculate the CAGR from 2021 to 2025. See *infra* Exhibit 4.

period. Plaintiffs provide no support for their assumption that SGO's revenues would have grown by such a significant amount when, looking at the historical record, it is clear that their revenues *declined* over the previous five-year period. Plaintiffs' but-for revenue forecasts are therefore both unsupported and contradicted by their historical pattern of declining revenues.

**B. Plaintiffs' But-For Profit Forecasts Bear No Relationship to SGO's Consistent Pattern of Generating Losses**

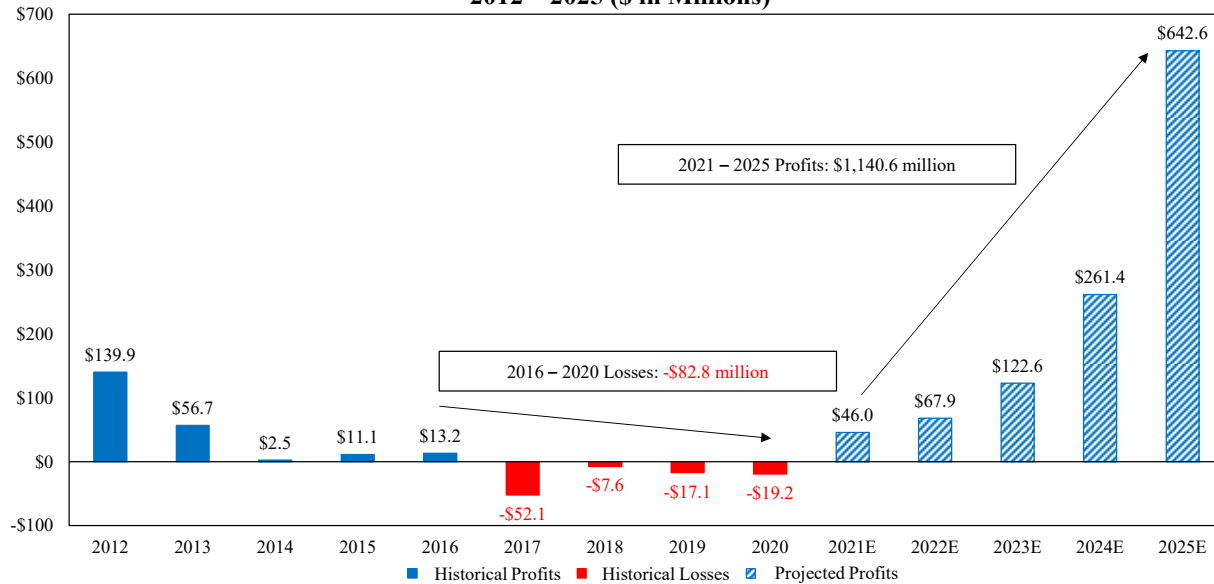
36. I now evaluate the profit projections implied by Plaintiffs' but-for five-year forecasts. Plaintiffs allege that prior to Defendants' purported actions, SGO was projected to generate more than \$1,140.6 million in total profits over the next five years across all of their business segments. As previously described, they allege that because of Defendants' actions, they have lost \$767.4 million of these projected profits and \$2.7 billion in enterprise value.

37. Again, these forecasts bear no relationship to SGO's recent financial performance.<sup>57</sup> Although Plaintiffs do not provide annual breakdowns of their alleged but-for profits, one can apply Plaintiffs' claimed profit margin for Smartmatic Elections (33.55%) to the annualized revenue projections shown in Exhibit 4 above (*see supra* page 17) to distribute the \$1,140.6 million in total alleged but-for profits across five years to impute annual but-for profit projections. Exhibit 5 below depicts SGO's actual historical profits and Plaintiffs' alleged but-for annualized profit forecasts.

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57. *See supra* ¶¶ 25-29.

**Exhibit 5**  
**SGO Profit / (Loss)**  
**2012 – 2025 (\$ in Millions)**



Note: Restated figures for 2015 and 2018 were used.

Sources: Complaint, at ¶¶498, 502-503, 505-508, 515. SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2013, at page 7; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2014, at page 9; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2015, at page 9; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2016, at page 9; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2017, at page 9; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2018, at page 10; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2019, at page 10; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2020, at page 13.

38. As Exhibit 5 demonstrates, Plaintiffs' profit forecasts bear no relationship to SGO's recent financial performance. SGO has generated total losses of \$82.8 million over the past five years, including losses in each of the last four years. Plaintiffs provide no support for their assertion that SGO would have been expected to generate over \$1,140.6 million in future profits given SGO's consistent pattern of generating real-world losses. Consequently, Plaintiffs' but-for profit forecasts are both unsupported and contradicted by their consistent, real-world pattern of generating losses.

**C. Plaintiffs' But-For \$2.7 Billion Damage Claim Bears No Relationship to SGO's Consistent Pattern of Generating Losses**

39. Having analyzed Plaintiffs' claimed revenue and profit projections, I now turn to evaluating Plaintiffs' \$2.7 billion lost-enterprise-value claim. For this, I employ a

discounted cash flow model (“DCF”), which is a commonly used tool to estimate the enterprise value of a firm in the fields of finance and economics. A DCF calculates the enterprise value of a firm as the sum of the present value of its projected future cash flows for a forecast period (typically, five years) plus a terminal value, which represents the present value of all future profits extending past the forecast period into perpetuity.<sup>58</sup>

40. When conducting a DCF valuation, future projections are commonly estimated by reference to historical financial performance.<sup>59</sup> The use of historical data assumes that future performance will resemble past performance and future growth is estimated based on a quantitative analysis of historical cash flows. For example, future growth is commonly estimated using the CAGR, the geometric average of cash flows generated over the historical period.<sup>60</sup> A five-year historical period is commonly evaluated based on the operating cycle of the industry in which a firm operates.<sup>61</sup> While there are instances in which longer historical data series may be appropriate, data beyond five years is often considered stale, having little relationship to future expectations.<sup>62</sup>

41. To be sure, there are instances where past performance may not be indicative of future expectations. But in cases like that, where future projections deviate

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58. *See, for example, Hitchner, J.R., 2017. Financial Valuation, Fourth Edition at 133-134 and 138-140.*

59. *See, for example, Hitchner, J.R., 2017. Financial Valuation, Fourth Edition at 133-134 (“Projections often are determined by reference to historical financial information that has been normalized. Used as a foundation for future expectations, normalized financial statements may include both balance sheet and income statement adjustments.”).*

60. *See, for example, Galanti, J.R., 2017. Litigation Services Handbook: The Role of The Financial Expert, Chapter 11 Business Valuation, Sixth Edition at 11.17.*

61. *See, for example, Hitchner, J.R., 2017. Financial Valuation, Fourth Edition at 129-130.*

62. *See, for example, Hitchner, J.R., 2017. Financial Valuation, Fourth Edition at 129-130.*

significantly from past performance, adequate support must exist to support such a view.<sup>63</sup> For example, it would not be sufficient to simply assert that a firm with a long history of losing money will suddenly be profitable; there must be some basis to support this expectation, such as an expected significant increase in the size of a market, or an introduction of some new business model or technology. Consequently, both Plaintiffs' historical financial performance, as well as their support for their future projections (or lack thereof) are particularly relevant to my analysis.

42. Plaintiffs allege that SGO had an enterprise value that was "materially in excess" of \$2.7 billion prior to the alleged disinformation campaign and that the alleged disinformation campaign resulted in a loss of enterprise value of at least \$2.7 billion.<sup>64</sup> In other words, SGO claims that the alleged disinformation campaign resulted in a complete loss of its business's value. Again, my analysis demonstrates that Plaintiffs' allegations are unsupported and bear no relationship to Plaintiffs' consistent, real-world pattern of generating losses.

43. As previously described, the enterprise value of a firm can be estimated using a DCF by calculating the present value of future projected cash flows (*e.g.*, profits) plus the present value of terminal value (*i.e.*, the value today of Plaintiffs' profits projected beyond 2025). Plaintiffs' five-year projected profits are both unsupported and at odds with their historical performance, as demonstrated above. But by taking Plaintiffs' but-for five-year projected profits at face value, along with Plaintiffs' claims that SGO's enterprise value was at least \$2.7 billion

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63. See, for example Hitchner, J.R., 2017. Financial Valuation, Fourth Edition at 133-134.

64. Complaint, at ¶ 515 ("Prior to the disinformation campaign, SGO Corporation's enterprise value was materially in excess of \$2.7 billion, even assuming a modest multiplier."). Complaint, at ¶ 519 ("For SGO Corporation, the enterprise value of its subsidiaries has been decreased by at least \$2.7 billion.").



prior to the alleged disinformation campaign, I can solve for the minimum present value of terminal value implied by Plaintiffs' \$2.7 billion damages claim.<sup>65</sup>

44. In Exhibit 6 below (*see infra* page 23), I conduct a DCF analysis based on Plaintiffs' claims. My analysis discounts Plaintiffs' five-year but-for profit projections (as shown in Exhibit 5 above, *see supra* page 19) by an estimate of SGO's weighted average cost of capital ("WACC") and solves for the present value of terminal value such that enterprise value equals Plaintiffs' claimed \$2.7 billion.<sup>66</sup> As shown in Exhibit 6, Plaintiffs' but-for profit projections and (minimum) \$2.7 billion lost-enterprise-damages claim implies that SGO's minimum present value of terminal value is more than \$1.88 billion.

45. In other words, in addition to claiming lost profits for the years 2021 through 2025 (as shown in Table 1, *see supra* page 8), Plaintiffs' lost-enterprise-value claim results in alleged damages from 2026 through perpetuity with a present value exceeding \$1.88 billion. As demonstrated above (*see supra* ¶ 10), this claim requires SGO to have produced a 74.35% revenue growth rate and 33.55% profit margin for the years 2021 through 2025—projections that are implausible based on SGO's historical performance of declining revenues and losses. Given that Plaintiffs' five-year forecasts are unsupported, their claim that SGO would have generated

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65. Given that the Complaint does not provide free cash flows, I instead use projected profits as per the Complaint based on linear growth. For the DCF, I apply a 9.3% weighted average cost of capital ("WACC") to calculate the present value based on data provided by Bloomberg (pulled as of March 8, 2022, using the "MR" setting).

66. Although Plaintiffs allege that SGO had an enterprise value that was "materially in excess" of \$2.7 billion prior to the alleged defamation, they do not define "materially in excess." Consequently, my analysis uses \$2.7 billion as Smartmatic's enterprise value prior to the alleged misconduct. *See supra* footnote 64.

significant profits beyond their five-year forecast period from 2026 through perpetuity in the absence of the disinformation campaign is similarly flawed and speculative.<sup>67</sup>

**Exhibit 6**  
**SGO: Discounted Cash Flow Analysis**  
**As of January 1, 2021**  
**(\$ in Millions)**

		2021E	2022E	2023E	2024E	2025E	Terminal	2021E to 2025E
Profit	[A]	\$46.0	\$67.9	\$122.6	\$261.4	\$642.6	\$642.6	\$1,140.6
WACC	[B]	9.3%	9.3%	9.3%	9.3%	9.3%	9.3%	
Discount Period	[C]	0.5	1.5	2.5	3.5	4.5	5.0	
Discount Factor	$[D] = 1 / (1 + [B])^{[C]}$	0.96	0.88	0.80	0.73	0.67	0.64	
Present Value of Profit	$[E] = [A] \times [D]$	\$44.0	\$59.5	\$98.2	\$191.5	\$430.7		\$823.8
		Total						
Present Value of Profit From 2021 to 2025	$[F] = \text{SUM}([E])$	\$823.8						
Terminal Year Profit	$[G] = [A] \text{ in Terminal}$	\$642.6						
Implied Terminal Profit Multiple	[H]	4.55x						
Terminal Value	$[I] = [G] \times [H]$	\$2,926.7						
Enterprise Value	$[J] = [F] + [I]$	\$2,700.0						
<b>Present Value of Terminal Value</b>	$[K] = [I] \times [D] \text{ in Terminal}$	<b>\$1,876.2</b>						

Notes and Sources:

[A]: Calculated based on revenue assuming linear increase in growth rate and profit margin of 33.55% per Exhibits 4 & 5.

[B]: Per Bloomberg, L.P.

[C]: Based on mid-year convention.

[H]: Implied profit multiple to yield \$2.7 billion in enterprise value.

[J]: Assumed to be \$2.7 billion which is the minimum implied by the Complaint at ¶ 515 to be conservative: "Prior to the disinformation campaign, SGO Corporation's enterprise value was materially in excess of \$2.7 billion."

**VI. PLAINTIFFS' OVERSEAS CLAIMS ACCOUNT FOR MORE THAN 80 PERCENT OF SMARTMATIC'S ALLEGED LOST PROFITS AND ARE INCONSISTENT WITH HISTORICAL OVERSEAS REVENUE PERFORMANCE**

46. As shown in Table 1 (*see supra* page 8), more than 80% of Plaintiffs' Smartmatic Elections claimed five-year lost profits come from outside of North America. Unless Plaintiffs can establish a causal link between the U.S.-based alleged disinformation campaign and their global business, there is an additional level of uncertainty for these lost profit claims.

67. For purposes of this report, I have assumed that, as Plaintiffs claim, their enterprise value has been permanently impaired as a result of the alleged defamation. I express no view on whether that assumption has any validity. I note for now that the Complaint does not explain why the alleged disinformation campaign's effect on the enterprise would be permanent as opposed to transitory.

47. In Exhibit 7 below, I conduct a similar DCF analysis based on Plaintiffs' claims attributable only to Smartmatic Elections' overseas business (*i.e.*, outside of North America). As before, my analysis distributes Plaintiffs' alleged five-year but-for profit projections across the years 2021 through 2025, discounts them by an estimate of SGO's WACC, and solves for the present value of the terminal value such that enterprise value equals the Smartmatic Elections overseas portion of Plaintiffs' claimed \$2.7 billion, which is \$2.3 billion.<sup>68</sup> As shown in Exhibit 7, in addition to claiming lost Smartmatic Elections overseas profits for the years 2021 through 2025 (as shown in Table 1, *see supra* page 8), Plaintiffs are also claiming lost enterprise value related to Smartmatic Elections overseas business from 2026 through perpetuity with a present value exceeding \$1.61 billion. Given that Plaintiffs have not demonstrated how the U.S.-based disinformation campaign could have impacted their Smartmatic Elections overseas business, these claims are unsupported and speculative.

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68. \$2.3 billion equals \$2.7 billion x 84.6% which represents the portion of the five-year original profit forecast for base contracts from outside of North America per Table 1.

**Exhibit 7**  
**SGO Overseas Business: Discounted Cash Flow Analysis**  
**As of January 1, 2021**  
**(\$ in Millions)**

		2021E	2022E	2023E	2024E	2025E	2021E to Terminal	2025E
Profit	[A]	\$13.1	\$24.1	\$59.4	\$183.9	\$684.4	\$684.4	\$964.8
WACC	[B]	9.3%	9.3%	9.3%	9.3%	9.3%	9.3%	
Discount Period	[C]	0.5	1.5	2.5	3.5	4.5	5.0	
Discount Factor	$[D] = 1 / (1 + [B])^{[C]}$	0.96	0.88	0.80	0.73	0.67	0.64	
Present Value of Profit	$[E] = [A] \times [D]$	\$12.5	\$21.1	\$47.6	\$134.7	\$458.7		\$674.5
		Total						
Present Value of Profit From 2021 to 2025	$[F] = \text{SUM}([E])$	\$674.5						
Terminal Year Profit	$[G] = [A]$ in Terminal	\$684.4						
Implied Terminal Profit Multiple	[H]	3.67x						
Terminal Value	$[I] = [G] \times [H]$	\$2,510.5						
Enterprise Value	$[J] = [F] + [I]$	\$2,283.9						
<b>Present Value of Terminal Value</b>	$[K] = [I] \times [D]$ in Terminal	<b>\$1,609.4</b>						

## Notes and Sources:

[A]: Calculated based on revenue assuming linear increase in growth rate and profit margin of 33.55%. Revenue for 2019A and 2020A equals total revenue less revenue in North America per SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2020, at page 13, 30. Airlabs 2020A revenue assumed to be outside of North America. Sum of revenue from 2021E to 2025E outside of North America is total revenue of \$2,875.9 million per Exhibit 4 multiplied by overseas share of the original profit forecast from base contracts of 84.6% per Table 1.

[B]: Per Bloomberg, L.P.

[C]: Based on mid-year convention.

[H]: Implied profit multiple to yield \$2,283.9 million in enterprise value.

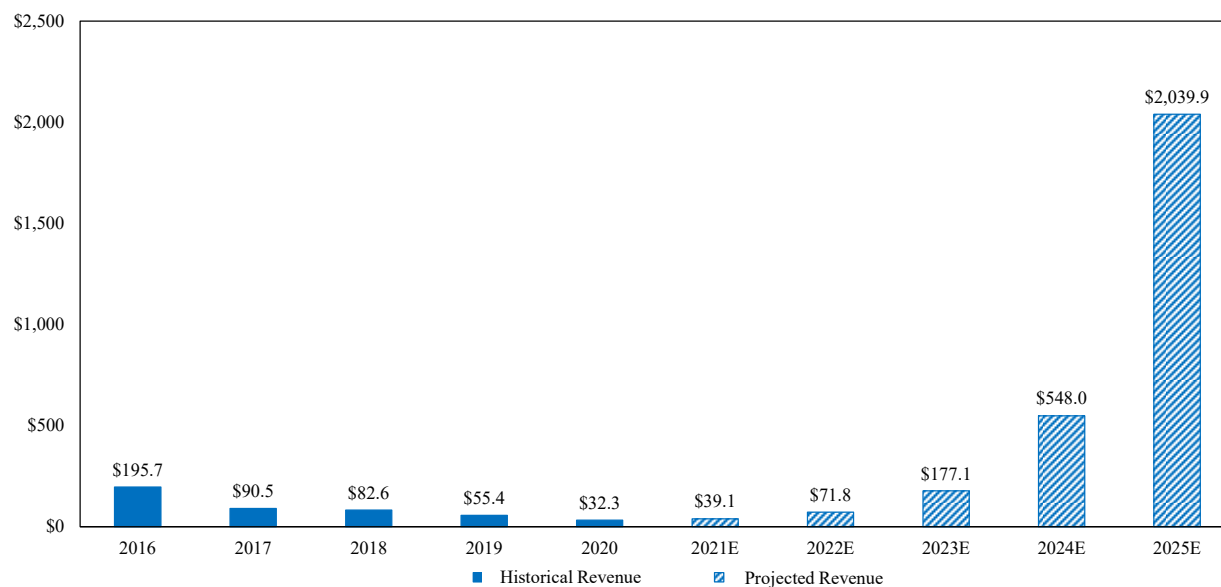
[J]: Assumed to be \$2,283.9 million which equals \$2.7 billion which is the minimum implied by the Complaint to be conservative, multiplied by 84.6% which is the percentage of profits from the original forecast coming from outside of North America per Table 1.

48. Even if one were to accept Plaintiffs' assertion that their Smartmatic Elections overseas business was impacted by the alleged disinformation campaign, Plaintiffs' but-for revenue projections are inconsistent with their historical pattern of declining revenues. As shown in Exhibit 8 below, Plaintiffs' revenues outside of North America consistently declined from 2016 to 2020 and bear no relationship to Plaintiffs' but-for overseas revenue projections. These revenues were calculated by starting from the 2020 actual overseas revenue and growing the revenue linearly such that the sum of overseas revenue from 2021 to 2025 is equal to Plaintiffs' implied overseas revenue, which is \$2.9 billion.<sup>69</sup> In other words, to support Plaintiffs' lost profit

69. \$2.9 billion equals \$3.4 billion total revenue from 2021 to 2025 multiplied by 84.6% which represents the portion of the five-year original profit forecast for base contracts from

claims outside of North America, Smartmatic Elections would have to reverse its historical pattern of negative revenue growth in overseas markets.

**Exhibit 8**  
**SGO: Overseas Revenue**  
**2016 - 2025 (\$ in Millions)**



Note: Includes SGO Corporation's share of Airlabs non-consolidated revenue which is assumed to be outside of North America.  
Sources: SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2017, at page 9, 26; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2018, at page 10, 29; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2019, at page 10, 32, 44; SGO Corporation Limited Annual Report and Consolidated Financial Statements for the year ended December 31, 2020, at page 13, 30, 41.

49. I confirm that the opinions expressed in this report reflect my true and complete expert opinion on the matters which I have been requested to consider.

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outside of North America. *See supra* ¶ 33 and Table 1.



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March 17, 2022

**APPENDIX A**

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**March 2022**

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Professor of Law and Business, Northwestern University School of Law (1/1/2006 – 5/2011). Professor, Kellogg School of Management (courtesy appointment, 1/1/2006 – 5/2011).

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Attorney with Levy and Erens, Chicago, Illinois (7/79 - 6/80).

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Payback: The Conspiracy to Destroy Michael Milken and His Financial Revolution, Harper Business (1995).

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**ARTICLES**

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### **EDUCATION**

University of Chicago Law School, Chicago, Illinois; J.D. 1977, cum laude; Order of the Coif; Comment Editor, Vol. 44, University of Chicago Law Review; Approximately top 1% of the Class. Awarded Casper Platt Award for best paper written by a student of the University of Chicago Law School; awarded Jerome N. Frank Prize for excellence in legal writing while a member of the University of Chicago Law Review, 1975 - 1977. Studied law

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Brown University, Providence, Rhode Island; M.A. 1974 in American History.

Cornell University, Ithaca, New York; major-American History; minor-Economics; B.A. 1972.

### **TESTIMONY**

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Deposition of Daniel R. Fischel In Re: American Realty Capital Properties, Inc. Litigation, In the United States District Court, Southern District of New York, Civil Action No. 1:15-mc-00040-AKH Class Action (July 25, 2019).

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- Deposition of Daniel R. Fischel In Re: Daniel Turocy, et al. vs. El Pollo Loco Holdings, Inc., et al., In the United States District Court, Central District of California, Southern Division, Case No. 8:15-cv-01343-DOC-KES (April 12, 2018).
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- Testimony of Daniel R. Fischel In Re: Saguaro Power Co. v. Pioneer Americas LLC d/b/a Olin Chlor Alkali Products, In AAA Case No. 01-16-0005-1073 (June 30, 2017).
- Testimony of Daniel R. Fischel In Re: Syngenta AG MIR 162 Corn Litigation, In the United States District Court for the District of Kansas, Master File No. 2:14-MD-02591-JWL-JPO (June 19, 2017).
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Deposition of Daniel R. Fischel in David E. Brown, et al. v. Authentec, Inc. et al., In the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida, Civil Division, Case No. 05-2012-CA-57589 (September 18, 2012).

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Deposition of Daniel R. Fischel In Re: Walter B. Hewlett, individually and as Trustee of the William R. Hewlett Revocable Trust, and Edwin E. van Bronkhorst as Co-Trustee of the William R. Hewlett Revocable Trust v. Hewlett-Packard Company, in the Court of the Chancery of the State of Delaware in and for New Castle County (April 24, 2002).

Deposition of Daniel R. Fischel In Re: California Federal Bank, FSB, v. The United States of America, in the United States District Court of Federal Claims, Case No. 92-138C (April 16 and 17, 2002).

Deposition of Daniel R. Fischel In Re: Computer Associates Class Action Securities Litigation, in the United States District Court, Eastern District of New York, File No. 98-CV-4839 (TPC) (MLO) (March 19 and 20, 2002).

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Affidavit of Daniel R. Fischel In Re: Jack M. Webb, Special Deputy Receiver for American Eagle Insurance Company v. Elvis Mason, Mason Best Company, L.P., Don D. Hutson, American Eagle Group, Inc., Marion Phillip Guthrie, Frederick G. Anderson, George F. Cass, Richard M. Kurz, Patricia S. Pickard, Arthur Andersen & Co., L.L.P., and Towers, Perrin Forester & Crosby, Inc., D/B/A Tillinghast, In the District Court of Travis County, Texas, 201<sup>st</sup> Judicial District, Cause No. 99-08253 (September 7, 2001).

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Declaration of Daniel R. Fischel In Re: Walter Green, on behalf of himself and all others similarly situated v. Merck-Medco Managed Care, L.L.C., United States District Court, Southern District of New York, Civil Action No. 99 CIV 0847 (CLB) (June 18, 2001).

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Affidavit of Daniel R. Fischel In Re: T. Rowe Price Recovery Fund, L.P., and Carl Marks Management Co., L.P., individually and derivatively on behalf of Seaman Furniture Co., Inc. v. James Rubin, M.D. Sass Associates, Inc., Resurgence Asset Management, L.L.C., M.D. Sass Corporation Resurgence Partners, L.P., M.D. Sass Corporate Resurgence International, Ltd., Robert Symington, Byron Haney, Alan Rosenberg, Steven H. Halper, and Peter McGeough and Seaman Furniture Co., Inc., In the Court of Chancery of the State of Delaware in and for New Castle County, C.A. No. 18013, (June 7, 2000).

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Deposition of Daniel R. Fischel In Re: McMahan & Company, Frole, Revy Investment Co., Inc. and Wechsler & Krumholz, Inc. v. Warehouse Entertainment, Inc., Louis A. Kwiker, George A. Smith, Michael T. O'Kane, Lawrence K. Harris, et al., United States District Court, Southern District of New York, Index No. 88 Civ. 0321 (SS) (AJP), (July 16, 1996 and June 10, 1996).

Deposition of Daniel R. Fischel In Re: Joseph W. and Helen B. Teague, Steven Allen Barker, Rita Strahowski, Swanee Beck, and Lifetime Partners of PTL, as representatives of a nationwide class consisting of 150,129 Lifetime Partners and of 27,839 persons who have partially paid for Lifetime Partnerships v. James O. Bakker, in the United States District Court for the Western District of North Carolina, Civil Action No. 3:87CV514, (June 28, 1996).

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Deposition of Daniel R. Fischel In Re: Household Commercial Financial Services, Inc. a citizen of the states of Delaware and Illinois v. Julius Trump, a citizen of the State of Florida, Edmond Trump, a citizen of the state of Florida, James M. Jacobson, a citizen of the State of New York, and Parker, Chapin, Flattau & Klimpl, a citizen of the states of New York and New Jersey, in the United States District Court, for the Northern District of Illinois Eastern Division, 92 C 5010 (February 1, 1996).

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Deposition of Daniel R. Fischel In Re: Keith C. Bogard, et al., v. National Community Bank Inc., et al., in the United States District Court, District of New Jersey, No. 90-5-32 (HAA) (December 20, 1994).

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Testimony of Daniel R. Fischel In Re: Computer Associates International Inc. Securities Litigation, United States District Court, Eastern District of New York, CV-90-2398 (JBW) (May 26 and 27, 1994).

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Deposition of Daniel R. Fischel In Re: Gillette Securities Litigation, United States District Court, District of Massachusetts, No. 88-1858-K (April 1, 1993).

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of New York, 89 Civ. 6821 (LBS) (March 25, 1993).

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Deposition of Daniel R. Fischel In Re: Amos M. Ames, Helen M. Ames, Robert F. Bourke, Louise L. Bourke, Leo E. Corr, April C. Corr, Wence M. Horak, Ruth Horak, Robert T. Freas, Maurita Freas, Bruce Fink, Jr., William H. Jones, Candace A. Jones, Richard Paul, William L. Paul, Carole Paul, Steven J. Paul, Best Power Technology, Incorporated, and Best Power Technology Sales Corporation, in the State of Wisconsin, Circuit Court, Juneau County, Consolidated Case Nos. 92-CV-31, 92-CV-32 (January 26, 1993).

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Deposition of Daniel R. Fischel In Re: Jennifer A. Florin and Alan L. Mundt, on behalf of themselves and all others similarly situated v. Wesray Capital Corp., Citizens and Southern Trust Company, a subsidiary of Citizens and Southern Corporation, Robert K. Barton, Leonard S. Gaby, Allen G. Lacoce, Robert A. Magnusson, Anthony A. Saliture, Harlan B. Smith, Thomas F. Stutzman, Raymond G. Chambers, Frank E. Richardson, E. Burke Ross, Jr., William E. Simon and Frank W. Walsh, Jr., in the United States District Court, Western District of Wisconsin, Civil Action No. 91C-0948 (August 12, 1992).

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Testimony of Daniel R. Fischel In Re: State of West Virginia v. Morgan Stanley & Co. Incorporated, in the Circuit Court of Kanawha County, State of West Virginia, Civil Action No. 89-C-3700 (April 27, 1992).

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Deposition of Daniel R. Fischel In Re: Capital Bank of California v. Morgan Stanley & Co., Incorporated, United States District Court, Central District of California, No. 91-1650-R (January 24, 1992).

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Affidavit of Daniel R. Fischel In Re: Gillette Securities Litigation, United States District Court, District of Massachusetts, Civil Action No. 88-1858-K (October 7, 1991)

Deposition of Daniel R. Fischel In Re: Capital Maritime Corporation v. Amfels, Inc., Far East Levingston Shipbuilding Ltd., John B. Allison and Patrick A. McDermid, United States District Court for the Southern District of Texas Houston Division, C.A. No. H-90-3417 (September 12, 1991).

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Affidavit of Daniel R. Fischel In Re: Moise Katz, Frederick Rand, Elias Weissman, Richard D. Morgan, Marion R. Morgan and Mortimer Schulman v. Raymond A. Hay, United States District Court, Southern District of New York, No. 86 Civ. 5640 (JES) (March 29, 1991).

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Deposition of Daniel R. Fischel In Re: Polycast Technology Corporation, and Uniroyal Plastics Acquisition Corp. v. Uniroyal, Inc., et al., United States District Court Southern District of New York, No. 87 Civ. 3297 (December 6, 1990 and November 28, 1990).

Deposition of Daniel R. Fischel In Re: Ellen Rudd, on behalf of herself and all others similarly situated, and Mayer Corporation on behalf of themselves, and all others similarly situated, and Louis Brandt, and Israel Baker, Jay R. Kuhne, Pininfarina Corp., and American Transfer Co., on behalf of themselves and all others similarly situated v. Kirk Kerkorian, et al., Superior Court of the State of California, County of Los Angeles, Nos. CA 000980, CA 000981, CA 001017, CA 620279 (June 21, 1990).

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Deposition of Daniel R. Fischel In Re: Consolidated Capital Securities Litigation, United States District Court, Northern District of California, No. C-85-7332 AJZ (January 22, 1990).

Declaration of Daniel R. Fischel In Re Plaintiffs' Damages in Re: Liquidity Fund, et al. v. Southmark Corporation, et al. in the Superior Court of the State of California for the County of San Mateo, No. 332435 (January 18, 1990).

Deposition of Daniel R. Fischel In Re: Norman Kamerman, Shirley Brown, Edward Rosen, Lexim Investors Corp., and Dohsa Anstalt, on behalf of themselves and all others similarly situated, and Barnett Stepak v. Saul Steinberg, Reliance Group Holdings, Inc., Reliance Group, Inc., Reliance Financial Services corp., and Reliance Insurance Company, United States District Court, Southern District of New York,

No. 84 Civ. 4440 (September 13, 1989).

Affidavit of Daniel R. Fischel In Re: Edward A. Taylor, et al. v. A. O. Smith Corporation et al., Circuit Court for Lincoln County, Tennessee, No. 098-84 (August 11, 1989).

Deposition of Daniel R. Fischel In Re: Container Products Inc. v. Pace Industries, United States District Court, Southern District of New York, No. 88-CIV. 3549 (KMW) (July 19, 1989).

Deposition of Daniel R. Fischel In Re: Joseph B. Moorman, et al. v. Southmark Corporation, et al., Liquidity Fund, et al. v. Southmark Corporation, et al., Superior Court of the State of California for the County of San Mateo, Nos. 322135 and 332435 (July 11, 1989).

Testimony of Daniel R. Fischel In Re: Tessie Wolfson, et al. v. Frederick S. Hammer, and Meritor Financial Group, United States District Court for the Eastern District of Pennsylvania, Civil Action No. 87-8471 (June 20, 1989).

Deposition of Daniel R. Fischel In Re: Richard J. Heckmann, et al. v. C. L. Ahmanson, et al., and Consolidated Cases, Superior Court of the State of California for the County of Los Angeles, Nos. CA000851 and C642081 (June 8, 1989).

Deposition of Daniel R. Fischel In Re: Tessie Wolfson, et al. v. Frederick S. Hammer, United States District Court for the Eastern District of Pennsylvania, Civil Action No. 87-8472 (May 11, 1989).

Testimony of Daniel R. Fischel In Re: Tessie Wolfson, et al. v. Frederick S. Hammer, United States District Court for the Eastern District of Pennsylvania, Civil Action No. 87-8472 (April 13, 1989).

Deposition of Daniel R. Fischel In Re: National Union Fire Insurance Company of Pittsburgh, PA v. Wells Fargo Bank, N.A., District Court of Harris County, Texas, 125<sup>th</sup> Judicial District, No. 88-49246 (April 10 and 11, 1989).

Deposition of Daniel R. Fischel In Re: Susan Rothenberg, as Custodian for Stephen J. Rothenberg v. Charles E. Hurwitz, United Financial Corporation, United Savings Association of Texas, et al., United States District Court for the Southern District of Texas, Houston Division, Civil Action No. H-86-1435 (March 30, 1989).

Deposition of Daniel R. Fischel In Re: Jose Nodar, et al. v. William Weksel, Albert Bromberg, Henry B. Turner, IV, Frank L. Bryant, Leo Kuperschmid, Bennett S. Lebow, Ernst & Whinney and Oppenheimer & Co., Inc., United States District Court, Southern District of New York, No. 84 Civ. 3870 (VLB) and consolidation case No. 84 Civ. 5132 (VLB) (December 15 and 16, 1988).

Deposition of Daniel R. Fischel In Re: William Steiner, et al. v. Whittaker Corporation, et al., Superior Court of the State of California for the County of Los Angeles, No. CA000817 (December 7, 1988).

Deposition of Daniel R. Fischel In Re: Arnold I. Laven, et al. v. Western Union Corporation, et al., United States District Court for the District, Western District of Washington, MDL No. 551 (August 30 and 31, 1988).

Deposition of Daniel R. Fischel In Re: Washington Public Power Supply System Securities Litigation, United States District Court, Western District of Washington, MDL No. 551 (August 16 and 22, 1988).

Affidavit of Daniel R. Fischel In Re: District Business Conduct Committee for District No. 3 v. Blinder, Robinson & Company Inc., et al., National Association of Securities Dealers, Inc. National Business Conduct Committee, Complaint No. DEN-666 (July 21, 1988).

Deposition of Daniel R. Fischel In Re: Joseph Seidman, et al. v. Stauffer Chemical Company, et al., United States District Court for the District of Connecticut, No. B 84-543 (TFGD) (June 10, 1988 and May 5, 1987).

Deposition of Daniel R. Fischel In Re: Edlin Cattle Co., Inc. and James Edlin v. A. O. Smith Harvestore Products, Inc., et al., United States District Court for the Northern District of Texas, Amarillo Division, No. CA-2-86-0122 (May 12, 1988).



Deposition of Daniel R. Fischel In Re: MicroPro Securities Litigation, United States District Court for the Northern District of California, No. C-85-7428-EFL (A) (May 2, 1988).

Affidavit of Daniel R. Fischel In Re: Pizza Time Theatre Securities Litigation, United States District Court for the Northern District of California, Civil File No. 84-20048-(A)-RPA (March 25, 1988).

Affidavit of Daniel R. Fischel and Robert A. Sherwin In Re: First National Bank of Louisville v. Brooks Farms, and George C. Brooks, et al., Third-Party Plaintiffs v. A. O. Smith Corporation, et al., Circuit Court for Maury County, Tennessee, No. 2058 (March 3, 1988).

Testimony of Daniel R. Fischel In Re: Nucorp Energy Securities Litigation, United States District Court for the Southern District of California, M.D.L. 514 (March 15, 16, 17, and 18, 1988).

Deposition of Daniel R. Fischel In Re: Nucorp Energy Securities Litigation, United States District Court for the Southern District of California, M.D.L. 514 (January 27, 1988).

Deposition of Daniel R. Fischel In Re: Anheuser-Busch Companies, Inc. v. W. Paul Thayer, et al., United States District Court for the Northern District of Texas, Dallas Division, No. CA- 3-85-0794-R (January 21, 1988; December 4, 1987; and November 5, 1987).

Testimony of Daniel R. Fischel In Re: Securities and Exchange Commission v. First City Finance Corporation Ltd., and Marc Belzberg, United States District Court for the District of Columbia, Civil Action No. 86-2240 (December 18, 1987).

Testimony of Daniel R. Fischel In Re: The Irvine Company v. Athalie Irvine Smith and Athalie R. Clarke, Trustee, State of Michigan Circuit Court for the county of Oakland, Civil Action No. 8327011-CZ (December 14, 15, and 16, 1987).

Deposition of Daniel R. Fischel In Re: Securities and Exchange Commission v. First City Finance Corporation, Ltd. and Marc Belzberg, United States District Court for the District of Columbia, Civil Action No. 86-2240 (December 11, 1987).

Affidavit of Daniel R. Fischel In Re: Gerald D. Broder and Constance D. Broder v. Alphonse H. Bellac and William B. Weinberger v. Combustion Equipment Associates, Inc., et al., and William B. Weinberger v. Coopers & Lybrand, United States District Court for the Southern District of New York, 80 CIV 6175 (CES) 80 CIV 6839 (CES) 84 CIV 8217 (CES) (July 22, 1987).

Deposition of Daniel R. Fischel In Re: The Irvine Company v. Athalie Irvine Smith and Athalie R. Clarke, Trustee, State of Michigan, Circuit Court for the County of Oakland, Civil Action No. 83270011-CZ (June 1, 1987).

Deposition of Daniel R. Fischel In Re: Fortune Systems Securities Litigation, United States District for the Northern District of California, Master File No. 83-3348A-WHO (May 7, 1987).

Deposition of Daniel R. Fischel In Re: Victor Technologies Securities Litigation, United States District Court for the Northern District of California, Master File No. C-83-3906(A)-RFP (FW) (January 8, 1987 and October 30, 1986).

Reply Declaration of Daniel R. Fischel in Support of the Motion by the Activision Defendants for Summary Judgment In Re: Activision Securities Litigation, United States District Court for the Northern District of California, Master File No. C-83-4639(A)-MHP (October 27, 1986).

Testimony of Daniel R. Fischel In Re: NVHomes, L.P. v. Ryan Homes, Inc.; and Ryan Homes, Inc. v. NVHomes, L.P., et al., United States District Court for the Western District of Pennsylvania, Civil Action No. 86-2139 (October 24, 1986).

Supplemental Affidavit of Daniel R. Fischel In Re: NVHomes, L.P. v. Ryan Homes, Inc.; and Ryan Homes, Inc. v. NVHomes, L.P. and NVAcquisition L.P., et al., United States District Court the Western District of Pennsylvania, Civil Action No. 86-2139 (October 24, 1986).

Affidavit of Daniel R. Fischel in Support of the Motion by the Activision Defendants for Summary Judgment In Re: Activision Securities Litigation, United States District Court for the Northern District of California, Master File No. C-86-2139 (October 20, 1986).

Declaration of Daniel R. Fischel in Support of the Motion by the Activision Defendants for Summary Judgment In Re: Activision Securities Litigation, United States District Court for the Northern District of California, Master File No. C-83-4639(A)-MHP (October 2, 1986).

Affidavit in Support of Defendants Motion for Summary Judgment In Re: MCorp Securities Litigation, United States Court for the Southern District of Texas, Civil Action No. H-85- 5894 (September 25, 1986).

Deposition of Daniel R. Fischel In Re: Activision Securities Litigation, United States District Court for the Northern District of California, No. C 83 4639 (August 18 and 19, 1986).

Deposition of Daniel R. Fischel In Re: John Mancino v. James A. McMaghan, et al., United States District Court for the Northern District of California, Civil No. C-84-0407-TEH (August 14, 1986).

Testimony of Daniel R. Fischel In Re: Charles W. Leigh, et al. and George Johnson, et al. v. Clyde William Engle, et al., United States District Court for the Northern District of Illinois, Eastern Division, Case No. 78 C 3799 (August 1, 1986).

Reply Affidavit of Daniel R. Fischel In Re: The Amalgamated Sugar Company v. NL Industries, United States District Court for the Southern District of New York, 86 Civ. 5010 (VLB) (July 28, 1986).

Affidavit of Daniel R. Fischel In Re: The Amalgamated Sugar Company v. NL Industries, United States District Court for the Southern District of New York, 86 Civ. 5010 (VLB) (July 18, 1986).

Deposition of Daniel R. Fischel In Re: Charles W. Leigh, et al. and George Johnson, et al. v. Clyde William Engle, et al., United States District Court for the Northern District of Illinois, Eastern Division, Case No. 78 C 3799 (July 1, 1986).

Deposition of Daniel R. Fischel In Re: Seafirst Corporation v. William M. Jenkins, et al.; and Seafirst Corporation v. John R. Boyd, et al., United States District Court for the Western District of Washington at Seattle, Case No. C83-771R (February 27, 1986).

Deposition of Daniel R. Fischel In Re: Kreindler v. Sambo's Restaurants, Inc., United States District Court for the Southern District of New York, Case No. 79 Civ. 4538 (December 17, 1985).

Affidavit of Daniel R. Fischel In Re: United States of America v. S. Richmond Dole and Clark J. Matthews II (March 19, 1985).

Deposition of Daniel R. Fischel In Re: Craig T. McFarland, et al. v. Memorex Corporation, United States District Court for the Northern District of California, No. C 79-2926-WAI, C 79-2007-WAI, C 79-241-WAI (February 26, 1985; January 29 and 30, 1985).

Testimony of Daniel R. Fischel In Re: Robert J. Lawrence v. Grumman Corp. Pension Plan, et al., United States District Court for the Eastern District of New York, No. CV-81-3530 (December 19, 1983).

Testimony of Daniel R. Fishel In Re: Telvest, Inc. v. Junie L. Bradshaw, et al. and American Furniture Company, United States District Court, for the Eastern District of Virginia Richmond Division, No. CA-79-0722-R (December 4, 1981).

#### **OTHER ACTIVITIES**

Member, American Economic Association, American Finance Association.

Former Member of the Board of Overseers of the Becker-Friedman Institute at the University of Chicago.

Former Advisor to the Harvard Program on Corporate Governance at Harvard University. Former

Member, Board of Directors, Center for the Study of the Economy and the State. Former Member, Mid-America Institute Task Force on Stock Market Collapse.

Have acted as a consultant and/or advisor to the New York Stock Exchange, the National Association of Securities Dealers, the Chicago Board of Trade, the Chicago Board Options Exchange, the Chicago Mercantile Exchange, the New York Mercantile Exchange, the Federal Trade Commission, the Department of Labor, the Securities and Exchange Commission, the Canadian Securities and Exchange Commission, the United States Department of Justice, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Federal Housing Finance Agency, and the Office of Thrift Supervision.

Referee, Journal of Financial Economics, Journal of Law and Economics, Journal of Legal Studies.

Participant and speaker at multiple conferences on the Economics of Corporate, Securities and Commodities Law and the Regulation of Financial Markets.

Former Chairman, American Association of Law Schools' Section on Law and Economics.