

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

US DOMINION, INC., DOMINION
VOTING SYSTEMS, INC., and
DOMINION VOTING SYSTEMS
CORPORATION,

Plaintiffs,

v.

FOX NEWS NETWORK, LLC,

Defendant.

Case No. N21C-03-257 EMD

CONSOLIDATED

REDACTED PUBLIC VERSION

Filed on March 8, 2023

US DOMINION, INC., DOMINION
VOTING SYSTEMS, INC., and
DOMINION VOTING SYSTEMS
CORPORATION,

Plaintiffs,

v.

FOX CORPORATION and FOX
BROADCASTING COMPANY, LLC,

Defendants.

Case No. N21C-11-082-EMD

**DOMINION'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT AGAINST FOX NEWS NETWORK, LLC AND
FOX CORPORATION**

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INTRODUCTION

Finally. Fox has conceded what it knew all along. The charges Fox broadcast against Dominion are false. Fox does not spend a word of its brief arguing the truth of any accused statement. Fox has produced no evidence—none, zero—supporting those lies. This concession should come as no surprise. Discovery into Fox has proven that from the top of the organization to the bottom, Fox always knew the absurdity of the Dominion “stolen election” story. Now, having failed to put in any evidence to the contrary (because no such evidence exists), Fox has conceded the falsity of the Dominion allegations it broadcast.

That concession is no small thing. Thirty percent or more of Americans still believe the lie that the 2020 election was stolen. The heart of that lie remains the false conspiracy theory that Fox legitimized and mainstreamed starting on November 8—that Dominion stole the election, using secret algorithms in its software originally designed for a Venezuelan dictator. Because of these lies, Dominion now may be “one of the most demonized brands in the United States or the world.” Ex.139, Richer 73:9-14. Dominion employees *still* endure threats and harassment. So it matters that Fox in private ridiculed—and never believed—the lie. And it matters that Fox has now in this litigation conceded these allegations were false.

If Fox cared about the truth that it now acknowledges, Fox would have its top personalities reporting that truth to its audience. Today. If not for Dominion’s sake, then for the sake of the significant percentage of Americans who still wrongly believe the 2020 election was stolen—including so many of Fox’s own loyal viewers, who heard it over and over again on Fox’s airwaves. After all, as Rupert Murdoch himself admitted, Fox is “uniquely positioned to state the message that the election was not stolen,” Ex.600, R.Murdoch 257:19-258:3—though Fox failed to do so back when it most mattered.¹

Fox is at another inflection point, yet it still refuses to level with its audience. Despite having conceded it was all a lie, and despite internal documents proving they knew it was a lie all along, Fox *still* will not retract the lies and tell its audience the truth. What is Rupert Murdoch’s rationale for not retracting? Not that the truth is still in doubt. He admitted he “never believed” that Dominion rigged the election. Ex.600, R.Murdoch 29:19-30:23, 46:15-47:13; *see also* 24:10-13, 27:16-59:15. And he “could have” stopped the defamatory statements from airing at the time “[b]ut I didn’t.” *Id.* 317:2-6. Yet he believes it is “too late” to retract and refuses to apologize. *Id.* 321:2-4, 331:25-333:16. Apology or not, Fox’s viewers deserve the

¹ Exhibit numbers refer to exhibits in the summary judgment record. *See* Dom.Opp.p.4.n.4. Accused broadcasts are cited as ¶179(#), referring to sub-sections of ¶179 of Dominion’s Complaint against FNN (“Complaint”). All emphases to quotations are added unless otherwise specified. “Fox” refers to both FNN and FC.

truth. Yet Fox continues to say it is “proud” of its election coverage, sending the unmistakable message that Fox stands by the lies.

Rather than grapple with the truth, Fox again devotes its energy to protecting its franchise, just as it did back in late 2020. Backed into a corner by mountains of evidence of its own actual malice, Fox asks the Court to spare it by bringing down decades of established First Amendment jurisprudence.

Fox seeks a First Amendment license to knowingly spread lies. Fox would have this Court create an absolute legal immunity for knowingly spreading false allegations—lies—for profit, regardless of how absurd the lies are, regardless how many people in the chain of command know the lies are false, and regardless how many people are hurt—so long as the false claims are “newsworthy.” Fox proffers a completely made-up “rule,” contrary to decades of jurisprudence since *New York Times v. Sullivan*. As Judge Nichols ruled in rejecting MyPillow’s analogous argument that the First Amendment provides “blanket protection” from defamation for statements about a “‘public debate in a public forum,’” “there is no such immunity. Instead, the First Amendment safeguards our ‘profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open,’ by limiting viable defamation claims to provably false statements made with actual malice.” *US Dominion, Inc. v. Powell*, 554 F. Supp. 3d

42, 57 n.8 (D.D.C. 2021), *cert. denied sub nom. MyPillow, Inc. v. US Dominion, Inc.*, 143 S. Ct. 294 (2022) (internal citations omitted).

Adopting a freewheeling “newsworthy allegation” immunity would make decades of cases, including from the U.S. Supreme Court, come out the other way. But what about all the precedents and secondary sources that Fox cites in support of its one-factor “newsworthy allegation” rule? None of them support Fox’s drastic rewriting of defamation law.

Most of the cases and secondary sources Fox cites address the “neutral reportage” defense—an affirmative defense that requires the party invoking it to prove far more than just that it was publishing “newsworthy allegations.” Those cases thus do not support Fox’s one-factor “newsworthy allegation” test.

As Dominion has explained at length in prior briefing, “neutral reportage” is not a valid doctrine, and Fox could never meet its requirements even if it were an available defense. *See* Dom.MSJ.pp.161-72; Dom.Opp.pp.4, 30, 83-85; Ex.600, R.Murdoch 361:8-362:21 (Rupert Murdoch: Fox hosts “endorsed” the “false notion of a stolen election.”). Apparently, Fox has figured that out, too, as it now tells the Court it is not even pursuing a “neutral reportage” defense in this case. *See* FNN.MSJ.Opp.p.61.n.11 (Fox insisting it is not invoking an “affirmative defense” or “privilege”). Fox does not even mention the “neutral reportage” defense in the lengthy appendix submitted with FNN’s brief. With Fox no longer pursuing a

“neutral reportage” affirmative defense, the cases and secondary sources addressing that defense are irrelevant; they do not help Fox.

The other cases Fox cites, outside of the “neutral reportage” context, likewise adopt no such “newsworthy allegation” immunity to defamation liability, and address fact patterns nowhere near Fox’s conduct in this case. Fox’s lead cases, *Page* and *Brian*, never so much as mention the concept of “newsworthiness,” despite Fox’s repeated descriptions of both cases as having turned on the concept. The Court should see through Fox’s confusing attempt to mash together various doctrines and cases, none of which support Fox’s proposed “newsworthy allegation” immunity. It is also impossible to square Fox’s position with the New York Appellate Division’s recent decision affirming that Smartmatic’s lawsuit against Fox can proceed on many of these same broadcasts. *See Smartmatic USA Corp. v. Fox Corp.*, 2023 WL 1974442, at *1 (N.Y. App. Div. Feb. 14, 2023).

Fox claims that without this “newsworthy allegation” immunity, nobody would ever be able to report on even the most obvious and terrible lies being told by public officials. Nonsense. Fox is trying to conflate telling the truth with knowingly spreading a lie. News outlets across the political spectrum—*including Rupert Murdoch’s own Wall Street Journal and New York Post*—reported on the lies being told about Dominion, back in the immediate aftermath of the 2020 election. Dom.MSJ.p.22, 94. But most of these media organizations *reported the truth*: that

these lies were false. You cannot sue someone for reporting the truth. Fox, in stark contrast, in the accused broadcasts and social media posts at issue here, did *not* report the truth. Fox spread the lies. It is wrong, legally and morally, to knowingly spread lies. The Court should not accept Fox's invitation to ignore that simple truth.

This lawsuit seeking to hold Fox accountable for spreading lies is in the heartland of what the First Amendment not just allows, but also encourages. “[T]he use of the known lie as a tool is at once at odds with the premises of democratic government and with the orderly manner in which economic, social, or political change is to be effected....[T]he knowingly false statement and the false statement made with reckless disregard of the truth, do not enjoy constitutional protection.” *Garrison v. Louisiana*, 379 U.S. 64, 75 (1964). Truth and shared facts form the foundation of a free society. Even more so here. The false idea that Dominion rigged the 2020 Presidential Election undermines the core of democracy. Fox knew the truth yet spread and endorsed those lies anyway. Yes, the truth matters. And lies have consequences. The First Amendment demands as much.

With the correct legal frame, this Court should grant Dominion summary judgment on liability. Fox never cites the actual elements of a defamation claim—and for good reason. Dominion satisfies each one. *See* Dom.MSJ.p.45 (listing elements and citing FNN MTD Order p.38); *see also Smartmatic USA Corp. v. Newsmax Media, Inc.*, 2023 WL 1525024, at *14 (Del. Super. Ct. Feb. 3, 2023).

First, falsity. Fox does not contest the obvious falsity of the statements about Dominion that Fox published. Nor could it. *See supra* p.1; *infra* §I.

Second, defamatory per se. All reasonable jurors would find that Fox’s false statements “charge[] [Dominion] with a serious crime” and “tend[] to injure [Dominion in its] business or profession.” *Smartmatic v. Newsmax*, 2023 WL 1525024, at *14. Once again, Fox does not even purport to argue this point. The words “*per se*” do not appear in its opposition. Not only is *per se* defamation a question of law, no reasonable juror would find it does not exist here. Fox tries to dodge the issue by arguing that publishing “newsworthy allegations” is “not defamatory” as a matter of law, but that argument defies precedent and logic, and would overturn decades of defamation law. *Infra* §II.

Third, publication. Both Fox entities published the statements. FNN concedes it did. FC, however, contests publication on the ground that its executives did not participate in the publication of these statements. Citing primarily to one case addressing a different legal doctrine, *Ertel v. Patriot News Co.*, 674 A.2d 1038, 1043 (Pa. 1996), Fox argues that failing to stop a publication is insufficient to establish participation. The case does not so hold. FC’s reliance on it emphasizes that its legal position once again runs contrary to law. As this Court has recognized, “all who take part in the procurement, composition, and publication of a libel are responsible in law, and equally so.” Dom.MSJ.p.84. Case after case establishes this

principle. Either people are accountable or they are not. On this record, both Fox entities have confirmed that individuals up and down the chain of command share responsibility. Dom.MSJ.101-148; Dom.Opp.pp.7, 144-157. Moreover, senior level FC executives made a decision not to upset Donald Trump even as they did not believe the allegations. As Rupert Murdoch said on November 16, “We don’t want to antagonize Trump further, but Giuliani taken with a large grain of salt.” Ex.239. *See infra* §IV.

Fourth, of and concerning. Fox does not contest that these statements were of and concerning Dominion. Nor can they. Each broadcast refers to Dominion by name. *See infra* §III.

Fifth, actual malice. Dominion has shown actual malice, and no reasonable juror could find otherwise. Dominion explained in detail the extensive evidence demonstrating direct knowledge of falsity at the time on the part of multiple Fox employees in the chain of command. Fox primarily either does not dispute that evidence, or says documents or quotes are taken out of context but does not provide any other context. Whatever the context, phrases like “Sidney Powell is lying”; “complete BS”; and “MIND BLOWINGLY NUTS” speak for themselves. In their own words, these people knew in real time the allegations were false. Dominion only must show actual malice for one person per broadcast. For each broadcast, Dominion has identified multiple people with that knowledge. *Infra* §V. Indeed,

for many broadcasts, Fox effectively concedes actual malice on the part of those who participated but argues (wrongly) that they did not have the requisite participation.

Sixth, no affirmative defenses. For the reasons explained above and in prior briefing, Fox has no viable affirmative defenses. *Infra* §VI.

In short, Fox spread and endorsed one of the most damaging lies in this country's history: that Dominion was complicit in a massive fraud that rigged the 2020 Presidential Election. Direct evidence demonstrates that Fox knew it was false yet kept airing the allegations even in the face of thousands of communications by Dominion pointing out their falsity and multiple credible sources debunking the allegations in real time. If this case does not qualify as defamation, then defamation has lost all meaning. This Court should grant summary judgment to Dominion on each element of liability.

ARGUMENT

I. Dominion Is Entitled to Summary Judgment on Falsity.

The defamatory statements Fox broadcast about Dominion were false, and obviously so. Dominion thoroughly demonstrated their falsity through contemporaneous public documents, election officials' sworn testimony,² and Fox's

² The record contains affidavits from election officials in Georgia (Raffensperger, Ex.222, and Sterling, Ex.303) and Michigan (Brater, Ex.306); deposition testimony from election officials in Pennsylvania (Boockvar, Ex.100) and Arizona (Gates, Ex.120, and Richer, Ex.139); and a declaration from U.S. Elections Assistance Commission Director Benjamin Hovland (Ex.186).

own admissions, among other evidence. *See* Dom.MSJ.pp.46-82. The unassailable truth is that Dominion did not rig the 2020 Presidential Election, through vote-flipping software, Venezuelan connections, kickbacks, or otherwise. These basic truths undergird the legitimacy of the 2020 Presidential Election's outcome. They are indisputable historical facts.

Fox rebutted none of these facts. Nor could it. As Rupert Murdoch testified:

Q. [D]o you believe that today Fox should be telling people that Dominion committed election fraud by rigging the 2020 presidential election? ...

A. No.

Q. Do you think that today Fox should be telling people that Dominion's software and algorithms manipulated vote counts in the 2020 presidential election?

A. No.

Q. Do you think that today Fox should be telling people that Dominion is owned by a company founded in Venezuela to rig elections for the dictator Hugo Chavez?

A. No.

Q. Do you think that today Fox should be telling people that Dominion paid kickbacks to governmental officials who used its machines in the 2020 presidential election?

A. No.

Ex.600, R.Murdoch 337:13-338:8.

Fox's answering brief does not argue that any of the accused statements are substantially true. Fox does not assert that Dominion lacks clear and convincing

evidence of falsity. Most importantly, Fox has not identified a shred of evidence that Dominion rigged the 2020 election, much less “specific facts showing that there is a genuine issue for trial.” Del. Super. Ct. Civ. R. 56(e).

That ends the inquiry. “[Dominion] is entitled to judgment as a matter of law.” *Kelley v. ILC Dover, Inc.*, 787 A.2d 751, 753 (Del. Super. Ct.), *aff’d*, 784 A.2d 1080 (Del. 2001); *see Dibble v. WROC TV Channel 8*, 142 A.D.2d 966, 966 (N.Y. App. Div. 1988) (affirming summary judgment for plaintiff on defendants’ affirmative defenses of truth and fair reporting where “Plaintiff sustained his burden of proving the falsity of the publication and defendants have failed to raise a triable issue of fact”).

Fox’s attempt to muddy the water on whether to grant summary judgment on falsity fails. Fox contends that Dominion should have conducted a “statement-by-statement analysis,” citing *Greenberg v. Spitzer*, 155 A.D.3d 27 (N.Y. App. Div. 2017), which Fox asserts “criticiz[ed the] parties and trial court” for analyzing statements by category. FNN.Opp.p.40. But *Greenberg* did no such thing. In *Greenberg*, the appellate department found on the facts of the case that particular statements within a given category used by the parties and trial court were “factually distinct,” and then decided “*to analyze the statements by category*, but within the context in which each statement was made.” *Greenberg*, 155 A.D.3d at 47 (emphasis on the portion Fox’s brief omitted). *Greenberg* never held that utilizing

categories to organize proof of falsity was impermissible, and no subsequent court has cited *Greenberg* for Fox’s desired rule. Regardless, Fox has not argued, much less shown, that the categories Dominion used to organize its brief were inaccurate or would affect the falsity of the statements. Nor could Fox.

But perhaps more to the point, Fox’s criticism rests on obvious mischaracterizations of Dominion’s proof of falsity, ignoring the falsity section of Dominion’s brief and the evidence therein. Contrary to Fox’s claim, Dominion did not “lump[]” statements into categories, “deem[]” them false, and “call[] it a day.” FNN.Opp.p.1. Dominion specifically identified the accused statements, with citations to the complaint and an appendix setting forth their text, identified specific examples in its brief, and proved each of the accused statements false with undisputed record evidence.

Take the Venezuela lie for example. In its summary judgment motion, Dominion identified, by accused broadcast, several variations of the lie: “that Dominion was owned by a company founded in Venezuela, Smartmatic, ¶¶179(b), 179(c), 179(f), 179(g), 179(h), 179(k), that Dominion and/or its supposed owner Smartmatic were formed to rig elections in Venezuela and elsewhere, ¶¶179(b), 179(c), 179(e), 179(g), 179(i), 179(j), 179(q), and that Dominion machines used Smartmatic software to count votes, ¶¶179(b), 179(d), 179(g), 179(i), 179(j),

179(l).” Dom.MSJ.pp.73-74. Dominion then proved claim each was false with extensive evidence and Fox’s own admissions. *Id.* pp.74-76.

Similarly, consider the algorithms lie. Dominion identified specific false statements aired by Fox, including quotes from the broadcasts, along with references to other broadcasts that contained similar false statements, in the body of its brief. *See id.* pp.63-64. Dominion then proved each variation of the lie—from the notion that Dominion’s software was “where the fraud took place, where they were flipping votes,” ¶179(a), to the fantastic fable that when “you know you’re behind,” Dominion “notifies you, you call off the counting and then you start doing ballots like this [gesturing],” ¶179(g), to the idea that Dominion used Smartmatic software to flip votes, ¶179(various), and had a hidden “controller,” ¶179(q), among other lies—to be absolutely false. *Id.* pp.64-73. Fox ignores all of that analysis and offers zero proof such claims were true.

Likewise, for the kickbacks lie, Dominion identified both the general claim at issue in the broadcasts and specific variations of the lie, such as the Georgia contracts claim and the “election insurance” fiction, including quotations of the specific language at issue, and then disproved each with conclusive evidence, including sworn affidavits denying the allegations from Dominion CEO John Poulos and Georgia’s Republican Secretary of State Brad Raffensperger. *Id.* pp.76-77.

On the lie that Dominion rigged the election, Dominion correctly identified that falsehood as running through each broadcast, both in specific claims and as an overall narrative. Dominion set forth the accused statements in its appendix and disproved the lie with conclusive written and testimonial evidence. *Id.* pp.50-62.

Fox's criticism also ignores that Dominion has accused both the overall false narrative that "portrayed Dominion as a villain in a grand scheme to steal the 2020 Presidential Election," and "separately actionable individual claims, which themselves are also false." *Id.* pp.46-47. A statement-by-statement analysis requires looking at both the entire broadcast and the individual false claims. Dominion's brief did just that. And, as Fox concedes, each and every false statement is a "cause of action," which means both the overall false narrative and the specific false claims impose liability. FNN.Opp.p.39.

Were further analysis necessary (and there is no reason to think it is, given that Fox has not contested falsity for a single statement), the task at issue would be straightforward. As stated in the New York Pattern Jury Instructions, "A statement is false if it is not substantially true." NY PJI 3:27. To determine falsity, a fact-finder must "determine from the evidence presented what the truth was and then compare that with the (written, oral) statement which you find was made by the defendant, taking that statement according to the ordinary meaning of the words."

Here, that task is easy because both the overall narrative and individual claims are false. Fox does not purport to challenge the falsity of the overall narrative that Dominion rigged the election or the fact that the narrative runs across each broadcast. That alone suffices to find falsity on each of the twenty accused broadcasts. *See* Revised Appendix D.

Fox also does not contest the individual statements’ falsity. Analyzing the falsity of the individual claims one by one within each broadcast as opposed to by category in no way diminishes their falsity. Take four statements from the November 12, 2020 *Lou Dobbs Tonight* broadcast, ¶179(b), again focusing on the Venezuela lie, as an illustration:

Statement	Falsity Evidence
¶179(b): “ <u>Giuliani</u> : Dominion is a company that’s owned by another company called Smartmatic ... formed really by three Venezuelans who were very close to – very close to the dictator Chavez of Venezuela and it was formed in order to fix elections. That’s the company that owns Dominion.”	<i>See</i> Dom.MSJ.pp.74-75 (citing Ex.319, FNN.RFAs No.176 (“FNN...admits ‘DOMINION is not owned by a company founded in Venezuela to rig elections for the dictator Hugo Chavez’”), No.180 (“FNN...admits ‘DOMINION is not a company that is currently owned by Smartmatic.’”) No.194 (similar); Ex.138, Poulos 30(b)(6) 895:15-18 (Dominion is not “owned by a company founded in Venezuela to rig elections for the dictator Hugo Chavez”); Ex.325, Ex.326, Ex.327, Ex.328, Ex.329, Ex.187, Ex.184 (corporate documents); Ex.354 at pp.225-226 (4/15/2020 letter from Dominion to the Committee on House Administration); Ex.188 (Georgia proposal, Section 1)).

<p>¶179(b) “<u>Giuliani</u>: So, we’re using a foreign company that is owned by Venezuelans who are close to – were close to Chavez, are now close to Maduro, have a history – they were founded as a company to fix elections, they have a terrible record.”</p>	<p>same</p>
<p>¶179(b) “<u>Dobbs</u>: It’s stunning. And they’re private firms and very little is known about their ownership, beyond what you’re saying about Dominion. It’s very difficult to get a handle on just who owns what and how they’re being operated.”</p>	<p>same</p>
<p>¶179(b) “<u>Giuliani</u>: Dominion is a Canadian company, but all of its software is Smartmatic software, so the votes actually go to Barcelona, Spain.”</p>	<p><i>See Dom.MSJ.pp.75-76 (citing Ex.137, Poulos 30(b)(6) 430:7-21; Ex.183, Poulos Aff. ¶13 (“Dominion voting machines used in the 2020 Presidential Election did not run or use Smartmatic software or technology.”)); see also Ex.183, ¶16 (“No votes are sent overseas.”).</i></p>

Dominion’s Appendix D appropriately identified each accused statement along with the categories of falsehoods espoused in each. Nonetheless, to further assist the Court, Dominion herewith submits a “Revised Appendix D” highlighting each accused statement to identify the multiple falsehoods espoused in each.³

Regardless of whether analyzed individually or by category, the key point is this: *the accused statements are false when compared to the truth*. And the proof

³ Dominion’s Revised Appendix D also corrects typographical errors and amends the falsity categories labeled on ¶179(r) to match Figure 1 of Dominion’s motion, which correctly identified the falsity categories within each broadcast.

of each individual falsehood only strengthens the proof of the falsity of each broadcast's overall election-rigging narrative.

To the extent Fox argues that certain of its hosts' statements are non-actionable opinions, Fox.Opp.p.73, Dominion has explained at length in prior briefing that this argument misses the point, in multiple ways. First, Fox's hosts were endorsing the underlying false facts of both the individual claims and the overall narrative. Second, even if the hosts' endorsements are deemed opinions, they are actionable because they are based on false facts, or "mixed opinions" based on undisclosed (false) facts, and also because the speakers did not believe what they were saying. *See* Dom.Opp.pp.78-80; Dom.MSJ.pp.78-82; *see also* Dom.Opp.MTD.pp.42-51. Dominion also addressed Fox's opinion arguments about particular broadcasts in its opposition to Fox's summary judgment motions, which Dominion incorporates herein. *See* Dom.Opp.pp.80-130.

Moreover, as Dominion explained in its motion, Fox's corporate representative did not assert a single time that any broadcast was mere opinion. Dom.MSJ.p.80. Fox does not respond to this point. On this ground alone, this Court can rule that no accused statement is non-actionable opinion.

In sum, the defamatory statements Fox broadcast about Dominion were false, and Fox's unfounded and irrelevant criticisms of Dominion's briefing should not forestall the decision on falsity. Denying summary judgment would in effect result

in a trial on the legitimacy of the 2020 Presidential Election. No such trial is necessary because no genuine dispute of material fact exists about the falsity of the defamatory statements Fox broadcast about Dominion. Dominion is entitled to summary judgment on falsity as a matter of law.

II. Dominion Is Entitled to Summary Judgment on Whether the Statements Are Defamatory.

Unable to dispute falsity, Fox instead insists that the statements at issue are not defamatory. That is the very first argument in its answering brief. FNN.Opp.p.43 (“Coverage of and Commentary on Newsworthy Allegations Is Not Defamatory”). “[W]hen the press covers newsworthy allegations made by others,” Fox insists, “that coverage is not defamatory, even if those allegations ultimately turn out to be false.” *Id.* p.41.

No case adopts such a rule. Certainly not *Page v. Oath*, 270 A.3d 833 (Del. 2022), the Delaware Supreme Court case Fox references there; *Page* never mentions “newsworthiness.” *See generally id.* The “rule” Fox urges on the Court is a made-up doctrine that Fox tries to legitimize by piecing together quotes and mischaracterizing holdings from cases addressing a variety of distinct defamation law concepts.

But before we get to that, we start with actual law.

A. Under the Actual Law, These False Statements Are Defamatory.

Under New York law, a false statement is defamatory if it “tends to expose a person to public contempt, hatred, ridicule, aversion, or disgrace.” *Kasavana v. Vela*, 172 A.D.3d 1042, 1044 (N.Y. App. Div. 2019); *Smartmatic*, 2023 WL 1525024, at *14. Certain statements, “including, as relevant here, (a) an accusation of a serious crime or (b) business harm,” are *per se* defamatory. FNN MTD Order p.38 (citing *Kasavana*, 100 N.Y.S.3d at 85-86).

The statements at issue accused Dominion of serious criminal conduct and tended to injure Dominion in its business, and thus were defamatory *per se*. Dom.MSJ.pp.85-87. If more were needed, the record shows Dominion in fact *did* face an avalanche of “public hatred, contempt, ridicule [and] disgrace” fueled by the lies Fox broadcast. Dom.Opp.pp.181-182, 185-186. But Fox does not dispute that the accusations leveled at Dominion on Fox’s airwaves and social media posts—rigging an election; treason; bribery—are defamatory *per se*.

That ends the inquiry. Each accused statement is false and exposes Dominion to contempt, indeed is *per se* defamatory.

B. Fox’s Attempt to Expand Defamation Immunity Has No Basis in Precedent or Logic.

1. Precedent (and Treatises).

So how does Fox argue that the accused broadcasts and social media posts are “not defamatory”? Smoke and mirrors.

Most of the cases and treatise sections Fox cites in support of its argument that the accused statements are “not defamatory” are actually about the “neutral reportage” doctrine. See *Edwards v. Nat’l Audubon Soc., Inc.*, 556 F.2d 113, 120 (2d Cir. 1977) (creating the doctrine); *Cianci v. New Times Pub. Co.*, 639 F.2d 54, 68-69 (2d Cir. 1980) (applying the doctrine, but finding it unavailable on the facts at issue there); see also, e.g., *Konikoff v. Prudential Ins. Co. of Am.*, 234 F.3d 92, 105 n.11, 106 (2d Cir. 2000) (discussing *Edwards*); *Price v. Viking Penguin, Inc.*, 881 F.2d 1426, 1434 (8th Cir. 1989) (same); *Coliniatis v. Dimas*, 965 F. Supp. 511, 519-520 (S.D.N.Y. 1997) (same); *Barry v. Time, Inc.*, 584 F. Supp. 1110, 1126 (N.D. Cal. 1984) (same); *In re United Press Int’l*, 106 B.R. 323, 329 (D.D.C. 1989) (same); *Orr v. Lynch*, 60 A.D.2d 949, 950 (N.Y. App. Div. 1978), *aff’d*, 45 N.Y.2d 903(1978) (pre-*Hogan*, citing *Edwards*); *Campo Lindo for Dogs, Inc. v. New York Post Corp.*, 65 A.D.2d 650, 650 (N.Y. App. Div. 1978) (citing *Orr*); *Weiner v. Doubleday & Co.*, 549 N.E.2d 453, 456 (N.Y. 1989) (noting *Hogan*’s rejection of neutral reportage doctrine under New York law).

The same is true of Fox’s repeated citations to *Sack on Defamation*. Judge Sack never proposes or endorses Fox’s rule of blanket immunity for reporting on “newsworthy allegations.” The section Fox repeatedly cites of Judge Sack’s treatise

(FNN.MSJ.Opp.pp.45,⁴ 49 n.6, 52, 54, 57 n.9)—section 7:3.5[D]—is all about the neutral reportage doctrine. *See* Robert D. Sack, Sack on Defamation, §7:3.5[D] (5th ed. 2021). The article by Judge Boasberg—which Judge Boasberg wrote when he was a law clerk, one year out of law school—is also about the neutral reportage doctrine. James E. Boasberg, *With Malice Toward None: A New Look at Defamatory Republication and Neutral Reportage*, 13 Hastings Comms. & Ent. L.J. 455 (1991).

As Dominion has explained in detail in prior briefing, “neutral reportage” is a wrongheaded doctrine numerous courts, including New York’s highest court, have squarely rejected. If Fox were still asserting a “neutral reportage” defense—*but see* FNN.MSJ.Opp.61.n.11 (Fox is not asserting any “affirmative defense” or “privilege”)—the Court should follow *Hogan* and *Weiner* and reject the defense as a matter of law. Dom.MSJ.p.163-168; Dom.Opp.pp.52-53; Dom.Opp.MTD.pp.11-17.

But at least “neutral reportage” is a real doctrine, with real rules. The doctrine does *not* hold that “newsworthy allegations” are “not defamatory” (as Fox would have it). Rather, the doctrine *acknowledges* the baseline common-law rule that “one who republishes a libel is subject to liability just as if he had published it originally,”

⁴ Fox cites generally to Sack §7:3.5 here, but the text it quotes is from n.193 in the neutral report section.

Cianci, 639 F.2d at 60-61 (citation omitted), but then provides an affirmative defense to liability for “accurate and disinterested reporting” “of newsworthy accusations made by a responsible and well-noted organization,” but not for “a publisher who in fact espouses or concurs in the charges made by others or who deliberately distorts these statements to launch a personal attack of his own on a public figure,” *id.* at 68-69 (quoting *Edwards*). Fox as a matter of law could never meet these requirements. Dom.Opp.p.54.⁵

None of the cases or secondary sources Fox cites that deal with the neutral reportage defense endorse Fox’s one-factor “newsworthy allegation” test. If anything, these cases, in which courts like the Second Circuit stress the importance

⁵ In a very recent decision, an intermediate New York appellate court (on facts similar to those at issue here) “decline[d] to find” the Smartmatic entities “should be deemed limited purpose public figures.” *Smartmatic*, 2023 WL 1974442, at *2. While “public figure” status is irrelevant to the application of the actual malice standard here (because of N.Y. Civil Rights Law 76-a), it *is* relevant to the “neutral reportage” defense. Some courts have held that a defendant can only invoke that defense in a case where the plaintiff is a “public figure.” *See, e.g., Khalil v. Fox Corp.*, 2022 WL 4467622, at *7 (S.D.N.Y. Sept. 26, 2022) (assuming without deciding that the neutral report doctrine applied, and holding “Mr. Khalil is not a public figure, rendering the neutral report doctrine inapplicable”). While the Court need not reach that issue, given all the other reasons “neutral reportage” defense is unavailable as a matter of law, should it become relevant, Dominion asks that the parties be permitted to brief the issue, given the prior exclusive focus on whether or not the “actual malice” standard would apply. In any event, in light of the intervening decision in *Smartmatic*, Dominion is not a limited purpose public figure.

of carefully limiting the “neutral reportage” defense, illuminate just how extreme Fox’s one-factor “newsworthy allegation” immunity is.

The mix of other caselaw Fox cites outside of the “neutral reportage” line of cases, like *Brian v. Richardson*, 660 N.E.2d 1126 (N.Y. 1995) or *Page v. Oath*, do not support Fox’s extreme immunity rule, as Dominion has already explained at length. Dom.MSJ.pp.78-82, 163-168; Dom.Opp.pp.52-53, 57-70. The Court of Appeals’ opinion in *Brian* about a one-time op-ed never once mentioned the concept of “newsworthiness,” and certainly did not adopt a blanket rule granting media companies (or anyone) immunity for publishing “newsworthy allegations,” regardless of actual malice. The same is true of *Page*. Dom.MSJ.Opp.pp.63-66. *Croce* expressly imposes liability where there is actual malice. *Croce v. N.Y. Times Co.*, 930 F.3d 787, 795-96 (6th Cir. 2019). And none of the other cases Fox cites embrace Fox’s blanket rule or help Fox’s cause, for reasons Dominion explained in prior briefing. Dom.MSJ.Opp.pp.67-70 & n.13 (addressing *Vengroff v. Coyle*; *Green v. CBS Inc.* (which wrongly interpreted Texas law anyway); *Janklow v. Newsweek, Inc.*; *Goldwater v. Ginzburg*; *Immuno AG v. Moor-Jankowski*; *Duci v. Daily Gazette Co.*; *Boulos v. Newman*; *GS Plasticos Limitada v. Bureau Veritas*; and *Sandals Resorts Int’l Ltd. v. Google, Inc.*).⁶

⁶ The two new cases Fox mentioned in its answering brief also do not help Fox. Neither of them adopt Fox’s blanket “newsworthy allegation” immunity, and they

Finally, Fox repeatedly quotes Dominion’s counsel Rodney Smolla, who wrote in his *Law of Defamation* treatise: “It is unthinkable that any competent plaintiff’s lawyer would advise a client to sue the likes of CBS, FOX, or CNN for live transmission of the defamatory remarks uttered by, let us say, President Trump.” Smolla, *Law of Defamation* §4:97. What Fox does not share with the Court, however, is that this sentence is part of a section explaining the *weaknesses* in the policy arguments typically advanced for adoption of a sweeping “newsworthiness” or “neutral report” privilege, exposing as nonsense the claims that such a super-sized privilege is needed to preserve First Amendment values. *Id.* (titled: “Neutral report privilege—Commentary: Weakness of the policy arguments supporting adoption of the privilege”). The entire point of this passage is to underscore why decisions such as *Hogan*, *Dickey*, *Glen*, and others rejecting the “neutral reportage” doctrine are sound. *See id.* Other existing common-law and First Amendment doctrines, such as the fair reports privilege or the actual malice standard, provide all the protection needed or justified. Here is the full passage, with the sentence Fox quotes placed in its actual context:

are easily distinguished on their facts. *See Kesner v. Dow Jones & Co.*, 515 F.Supp.3d 149, 179 (S.D.N.Y. 2021) (holding challenged statement not actionable because it “did not suggest that [reporter] was basing her forecast on any undisclosed facts that would render it a mixed statement of opinion and fact”); *Bellavia Blatt & Crossett, P.C. v. Kel & Partners LLC*, 151 F.Supp.3d 287, 289, 294-97 (E.D.N.Y. 2015) (finding comment posted to a webpage was not actionable in context).

[The argument for recognition of a republication privilege] fails to take into account the myriad other defenses that already exist to protect republishers in such circumstances.

Broadcasters have presented the live broadcasts of government officials from the dawn of electronic media. Radio and television broadcasters, and now cable, satellite, and internet media, have long fearlessly presented the live statements of political leaders, from Franklin Roosevelt’s “fireside chats” to the spontaneous remarks of President Trump walking on to board Air Force One. It is unthinkable that any competent plaintiff’s lawyer would advise a client to sue the likes of CBS, FOX, or CNN for live transmission of the defamatory remarks uttered by, let us say, President Trump.

Such suits are never brought, and for good reason. Modern First Amendment fault requirements could not be pled in good faith, let alone proven, when a media outlet transmits the live statements of government officials. There is absolutely no need to warp the contours of the fair report privilege in order to ensure that live broadcasts of the statements of government officials will continue, because other existing doctrines, most notably fault standards, already do the trick.

Id. Dominion has sued Fox for repeatedly booking guests that it knew would make false statements against Dominion, in programs that invited, endorsed, and amplified those false accusations. That is worlds apart from what Dean Smolla is discussing here.

2. Logic.

Stripped of the false support of all the cases and treatises Fox cites, can Fox’s proposed rule, granting complete immunity for publishing “newsworthy allegations” even knowing they are false, stand on its own merits? Absolutely not.

We start with the “black-letter rule that one who republishes a libel is subject to liability just as if he had published it originally, even though he attributes the

libelous statement to the original publisher, and even though he expressly disavows the truth of the statement.” *Cianci*, 639 F.2d at 60-61 (citation omitted). Fox excoriates Dominion for citing this rule, acting as if Dominion dreamed up this proposition out of whole cloth. FNN.Opp.pp.44-48. These are not Dominion’s words, though. They are the words of Judge Friendly, applying New York law for the Second Circuit. *Cianci*, 639 F.2d at 60-61. Judge Friendly recites the baseline common law rule, and Fox cites no authority to the contrary.

What Fox is proposing, then, is an exception to the baseline common law rule that goes much further than even the “neutral reportage” defense rejected by New York courts. Fox would have the Court grant defendants complete immunity for publishing “newsworthy allegations,” regardless of actual malice. A “one-factor” test, in effect. *See* Dom.Opp.pp.2-3, 80-86. And it would be a test, moreover, that renders New York Civil Rights Law Sections 74 and 75 superfluous—a point Dominion made in its briefing, which Fox did not even try to address. *See* Dom.MSJ.pp.163-165, 172-174; *see also* Dom.Opp.pp.60-62.

Fox’s argument is fundamentally incoherent. *Almost all* publications and broadcasts that trigger defamation suits are anchored in allegations by third parties. Journalists rarely witness alleged wrongdoing first-hand. They instead build stories around the allegations of sources, who are quoted in print or placed on the air in broadcasts. If all it takes to avoid liability is attribution to a source when the subject

matter is newsworthy, the law of libel in America would all but disappear. The hundreds of judicial decisions examining claims of actual malice in cases in which the defamation arises from republishing or broadcasting newsworthy allegations would all have been entirely unnecessary, if the mere repetition by a publisher or broadcaster of a source's newsworthy allegations were enough, standing alone, to cut off a case at its knees.

But even more, adoption of Fox's theory would render inexplicable any case in which a court *affirmed* liability under the actual malice standard, where a defendant reported the newsworthy allegations of third parties. Adoption of Fox's legal position would require this Court to effectively presume to overrule opinions of the United States Supreme Court affirming plaintiff's verdicts in such circumstances. Consider, for example, *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657 (1989). In *Harte-Hanks* the Supreme Court affirmed a jury verdict in a case brought by a judicial candidate running for municipal judge against a newspaper. The newspaper's story was entirely grounded in accusations by a third party, quoted by the newspaper. *Id.* at 660-663. The Supreme Court upheld the verdict in favor of the plaintiff on the ground that the record supported a finding that the paper had deliberately avoided the truth, and therefore acted with actual malice. *Id.* at 690-693. Under Fox's theory, however, the Supreme Court got it wrong, since the paper had reported newsworthy allegations.

So, too, consider *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967). This was the seminal decision of the Supreme Court extending the actual malice standard to public figures. The controlling opinion of Chief Justice Warren affirmed a verdict against *The Saturday Evening Post* in a defamation action brought by the head football coach of the University of Georgia, who was accused of fixing a game against the University of Alabama. *Id.* at 136-137. The article was grounded entirely in accusations by a third party. The story was newsworthy. Yet Chief Justice Warren’s controlling opinion found that the plaintiff’s recovery was justified because the *Saturday Evening Post* published with actual malice. *Id.* at 170. Under Fox’s theory, the *Post* would have been entirely immune from liability.⁷

What of Fox’s claim that Dominion is trying to prevent *any* reporting on newsworthy false allegations? That is not true. Media companies may always report the truth, including reporting on false allegations *while explaining that the allegations are false*, and Dominion did not sue the many media companies that did just that in 2020. That, for instance, is precisely what MSNBC did in the segment Fox cites. FNN.Opp.pp.4, 47. The same is true of newspaper articles like the *New*

⁷ Adoption of Fox’s rule would render inexplicable any decision from New York, or anywhere in the nation, affirming a finding of actual malice when the defamation at issue involved publishing “newsworthy allegations.” *See, e.g., Celle v. Filipino Reporter Enterprises Inc.*, 209 F.3d 163 (2d Cir. 2000) (Second Circuit, applying New York law, affirmed jury verdict for plaintiff in an actual malice case involving newsworthy publications in which the publisher relied on accusations by a third-party source).

York Times' article on Vince Foster. *Id.* pp.45-46. The Court should watch the MSNBC clip and read the *New York Times* article; the difference is clear.

When a publisher is considering whether to publish newsworthy allegations—particularly allegations that severely defame and damage a particular target—what matters for potential liability is whether the publisher knows or is recklessly disregarding the truth. That is the line the Supreme Court has drawn, and upheld, for more than 50 years. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 279-280 (1964); *Garrison*, 379 U.S. at 75. A publisher who knows ***the truth*** can still publish the allegations, but must tell its audience ***the truth***—that the allegations are false—or face defamation liability. That is not Dominion rewriting First Amendment law; it is the bedrock of decades of First Amendment precedent.

Fox's argument in favor of a one-factor "newsworthy allegations" immunity has no foundation in any part of defamation law. The many "neutral reportage" cases Fox cites do not support such sweeping immunity. They offer a far more limited (yet still ill-advised) affirmative defense for defendants who can show they were accurately and dispassionately reporting newsworthy allegations from a prominent and responsible source, without endorsing or concurring in the charges (a showing Fox cannot make). The other cases, dealing with diverse concepts such as the opinion/fact distinction or "defamatory meaning," likewise do not support Fox's proposed blanket immunity for publishing "newsworthy allegations."

Fox's attempt to locate its proposed immunity within this latter set of cases is the most dangerous part of Fox's argument. If Fox is right, and no reasonable viewer would ever understand the publication of "newsworthy allegations" as being defamatory, FNN.Opp.pp.61-62, then defendants obtain immunity from liability *even if they made the whole thing up and even if they are not a media entity*. On that logic, all anyone ever has to do to render a false assertion non-defamatory (and thus non-actionable) is characterize it as someone else's allegation. "People are saying," "sources say," "a well-placed insider claims," and so forth, become magic words of immunity for any publisher—whether the "people" or "sources" or "insider" exists or not. And not just media companies. *Anyone* who simply prefaces the most horrible (but newsworthy) lie with "my sources are telling me" is immune from suit, because in Fox's world, no reasonable listener would understand that statement to be conveying a defamatory fact. The "logic" of that rule would immunize Sidney Powell just as surely as Fox. That is an absurd result, contrary to common sense and decades of common law.

Repetition of "allegations" is not a talisman insulating Fox from liability. This is not the law of New York, nor the law anywhere in the United States. For "[n]or does the news media acquire a privilege solely because cautionary language, identifying a third party as the source, is utilized in conveying a factual statement." *Huggins v. Moore*, 253 A.D.2d 297, 305 (N.Y. App. Div.), *rev'd on*

other grounds, 726 N.E.2d 456 (N.Y. 1999). “[I]t is well established that libelous statements do not become less libelous when they are repeated by a subsequent declarant; hence, respondents cannot insulate themselves, assuming falsity, by characterizing the repetition of a libel as legitimate reportage...or by the expedient of attributing the statements to a source.” *Id.* (citing *Alianza Dominicana, Inc. v. Luna*, 229 A.D.2d 328, 329 (N.Y. Sup. Ct. 1996); *Hogan v. Herald Co.*, 84 A.D.2d 470 (N.Y. App. Div. 1982)).

Fox tries to make the same argument a different way in a passage buried on footnote 15 on page 67 of its brief, asserting that the Court should deny Dominion’s motion for summary judgment on falsity because “[t]he question is whether the press reported the ‘true’ fact that the President made those allegations.” FNN.Opp.p.67.n.15. That is not the question for falsity, and accepting Fox’s framing would be legal error. “It is well settled that Defendants cannot escape liability simply because they are conveying someone else’s defamatory statements without adopting those viewpoints as their own.” *Biro v. Conde Nast*, 883 F.Supp.2d 441, 461 (S.D.N.Y. 2012) (citing *Cianci*, 639 F.2d at 60 and *Weiner*, 549 N.E.2d at 456). Just as with Fox’s attempt to declare all reporting of “newsworthy allegations” as “not defamatory,” Fox’s attempt to redefine “falsity” for “newsworthy allegations” would overturn decades of caselaw, including *Harte-Hanks* and *Curtis Publishing*.

Defamation actions are often brought against defendants who insert self-serving cautionary language, yet the mere insertion of such qualifiers does not insulate the defendant from liability. “Thus, notwithstanding the cautionary language used by [the defendant], such as ‘they say’ or ‘rumor in the streets say,’ these particular statements are actionable.” *Alianza Dominicana*, 229 A.D.2d at 329 (citing *Gross v. New York Times Co.*, 82 N.Y.2d 146, 154–55 (1993)).

Finally, it bears noting that Fox’s extreme position on what a media defendant can air contradicts testimony from its own witnesses. Rupert Murdoch, for example, confirmed that Fox cannot give a platform to guests if “we know they’re going to say” something false—for instance, that drinking bleach cures COVID—and should “instantly” correct them if they nevertheless do so. Ex.600, R.Murdoch 338:17-340:16; *see also* Dom.Opp.pp.1-2. As Suzanne Scott stated, even for newsworthy stories, “you are presenting the facts as you have them.” Ex.143, Scott 396:24-397:7; *see* Ex.108, Cooper 284:8-25.

Fox also has admitted that it’s “important to put the allegations in proper context.” Ex.128, Lowell 30(b)(6) 478:6-8; *see also id.* 557:6-8. That context, by Fox’s own admission, includes either calling it false or stating “that there is no evidence currently at hand to support the president’s specific claims” and “thus far there’s insufficient evidence to back up that claim.” *Id.* 479:24-481:4. As Fox

admitted, it has a responsibility to “make sure our reporting aligned with the facts that were available at that point in time.” *Id.* 623:12-624:19.

Fox’s witnesses have it right on this point. The Court should reject Fox’s radical new rule of complete immunity for knowingly publishing false “newsworthy allegations,” and leave in place the careful balance struck since *New York Times v. Sullivan* between the protection of free speech and the protection of hard-earned reputations. *See also US Dominion, Inc. v. Powell*, 554 F. Supp. 3d at 57 n.8; *supra* pp.3, 6.

III. Fox Concedes Publication and that the Accused Statements Were “Of and Concerning” Dominion.

Fox’s Opposition further narrows the disputed issues by conceding two additional elements: publication, and of and concerning Dominion. *See* FNN MTD Order p.38 (stating the five elements). Dominion established that Fox News published the accused statements. *See* Dom.MSJ.pp.82-85. FNN has not contested this element. FC contests it only by alleging that its executives did not participate. *See infra* §IV (responding to FC’s arguments on this issue). Dominion also established that the statements were “of and concerning” Dominion. *See* Dom.MSJ.p.82. Neither FNN nor FC contest this element.

Since Fox has not contested these elements and has not “set forth specific facts showing that there is a genuine issue for trial,” Del. Super. Ct. Civ. R. 56(e), Dominion is entitled to summary judgment for that reason alone on both elements

as to FNN (FC’s participation is addressed below) and on “of and concerning” as to both Fox entities. *Id.*; *Kelley*, 787 A.2d at 753.

IV. Fox News and Fox Corporation Executives are Among the Individuals Responsible for the Accused Broadcasts.

A. Executives In the Chain of Command Who Knew Fox Was Broadcasting the Dominion Lies and Allowed Fox To Keep Doing It Are Responsible For Those Broadcasts.

Fox cannot escape its executives’ responsibility for broadcasting false statements that those executives knew about, had authority to prevent (or to correct prior to rebroadcasting), and nevertheless allowed on air with knowledge or reckless disregard of the truth. Fox’s lead argument for the non-liability of its executives is its claim that failing to prevent false broadcasts when they had authority to do so does not make them “responsible individuals.” Fox, however, misapplies the law and misconstrues the facts. As this Court has correctly held, under New York law, “all who take part in the procurement, composition and publication of a libel are responsible in law and equally so.” FC MTD Order p.15 (quoting *Treppel v. Biovail Corp.*, 2005 WL 2086339, at *3 (S.D.N.Y. Aug. 30, 2005)). The record shows that Fox’s executives, at both FNN and FC, participated in the publication of the accused broadcasts. They made the conscious business decision air lies in what they now call “newsworthy” allegations—

_____ They chose to provide precisely the same “type of

conspiratorial reporting” as was appearing on rival networks, [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]

Fox cites *Dongguk University v. Yale University*, 734 F.3d 113 (2d Cir. 2013), for the proposition that “When there are multiple actors involved in an organizational defendant’s publication of a defamatory statement, the plaintiff must identify the individual responsible for publication of a statement, and it is that individual the plaintiff must prove acted with actual malice.” FNN.Opp.p.84. But *Dongguk* did *not* hold that only a single person could be deemed responsible for a publication for purposes of defamation liability. The court there only considered a single individual because evidence of actual malice was only presented for that individual—indeed, it expressly noted that it *need not reach the question* of who was responsible, given that the only person for whom the plaintiff alleged actual malice lacked that actual malice. *Dongguk Univ.*, 734 F.3d at 124-25 & n.3. Notably, the person *Dongguk* claimed acted with actual malice was *not* the speaker, but rather the Deputy General Counsel who allegedly allowed the statements to be published. *Id.* at 125 n.3. *Dongguk* thus cannot possibly stand for the proposition that only a speaker’s actual malice is relevant. *See id.* at 126-127 (“*Dongguk* has failed to present any evidence that *any* individual at Yale who was responsible for publication of a defamatory statement acted with actual malice.”). Indeed, it is a “tautological proposition that

evidence of managerial pressure to produce sensationalistic or high-impact stories *with little or no regard for their accuracy* would be probative of actual malice.” *Tavoulaareas v. Piro*, 817 F.2d 762, 796-97 (D.C. Cir. 1987) (emphasis in original).

Who the responsible individuals are for a publication will depend on the facts, and here, FC’s Chief Legal and Policy Officer has ***admitted*** that executives within the “chain of command” have an obligation “to prevent and correct known falsehoods.” Ex.601, Dinh 316:5-25. Moreover, the facts of this case are truly extraordinary. It is not normal that executives receive constant communications from a defamation plaintiff during the course of the defamation, flagging the truth and begging the network to stop airing lies on the programs those executives oversee. It is not normal for an executive in the chain of command to receive so many such correspondences that he jokes he has them “tattooed on [his] body”—and yet does nothing to prevent the ongoing defamation. Dom.MSJ.p.32. It is not normal for a network’s CEO and its President to receive personal outreach from the former White House Deputy Press Secretary on behalf of the defamation target, flagging the defamatory broadcasts and begging the executives to do something about it. *Id.* pp.32-33. It is not normal for the Chairman of the parent corporation with direct participation in network decisions to receive “consistent” “advice” throughout the course of a defamatory campaign from one of his Board Members counseling that the network should change course. Ex.620, Ryan 411:4-9; *see also* Dom.Opp.p.24.

Given these facts, it cannot be the case that the actual malice of that executive (David Clark), that CEO (Suzanne Scott), that President (Jay Wallace), that Chairman (Rupert Murdoch), and the numerous other executives in similar positions is irrelevant as a matter of law.

Both FNN and FC rely on *Ertel v. Patriot-News Co.*, 674 A.2d 1038 (Pa. 1996), for the proposition that “to demonstrate that a specific person is ‘responsible’ for the publication, the defamation plaintiff must show that the person ‘affirmatively act[ed] to direct or participate in the publication’ of the allegedly defamatory statement.” FNN.Opp.p.85; *see* FC.Opp.pp.27-28. Fox omits the immediately preceding sentence, which makes clear that rather than addressing who within a defendant organization is responsible for a publication under *New York Times v. Sullivan*, the *Ertel* Court was addressing an *entirely different doctrine*—procurement by a third party. *Ertel*, 674 A.2d at 1043. Fox nevertheless cites *Ertel* repeatedly as its sole support for the proposition that “‘merely failing to hinder its publication’ is not enough.” FNN.Opp.pp.85, 118, 123, 125, 127-29; FC.Opp.pp.27-28. But *Ertel* does not help Fox. “Procuring” a publication *as a third party* requires more than simply failing to prevent a defendant from publishing—otherwise liability could attach to *any* knowledgeable third party, regardless of whether they have any role in the publication process at all. Third parties are in a very different position vis-à-vis a corporate defendant than that defendant’s own executives. *Ertel*’s

requirements for attributing procurement responsibility to a third party do not prevent an executive within the chain of command who knows of a false publication and makes the business decision to allow it anyway from being a responsible individual under *Sullivan*. It cannot be the law that such an executive is not responsible for the known false publication under his or her control—which would explain why Fox could not find a single case that actually supports that conclusion.

Fox additionally cites *Palin* to suggest that only the actual malice of the “author” or “speaker” is relevant. This Court has already recognized that that is not the law, *see* FC MTD Order p.15; and indeed, the Second Circuit in *Palin* correctly noted that in a defamation case, “the critical question is the state of mind of *those* responsible for the publication,” before going on to identify the speaker, Bennet, as the relevant individual under the particular facts alleged by Palin. *Palin v. New York Times Co.*, 940 F.3d 804, 810 (2d Cir. 2019). Fox asserts that in *Palin*, it did not matter that “the original author of the Editorial, several other editors, and a fact checker read the draft after Bennet’s revision and before publication,” FNN.Opp.pp.84-85, but Fox omits the key clause of the quoted sentence: “none flagged the new language as inaccurate.” *Palin v. New York Times Co.*, 588 F.Supp.3d 375, 381 (S.D.N.Y. 2022); *see also id.* at 382 (finding no evidence of actual malice for “Bennet *or The New York Times Co.*”). The entire point of discussing that chain of individuals in *Palin* was that *none recognized any error* in

the draft, and the author's adherence to this verification process demonstrated lack of actual malice. *Palin* does **not** stand for the proposition that if one of those people had in fact recognized a mistake and nevertheless ignored it, their knowledge of the truth would have been legally irrelevant.

Courts have found that where an editor or executive responsible for a publication knows it is false or seriously doubts its truth, that editor or executive's actual malice suffices for liability. Take *Stone v. Essex County Newspapers, Inc.*, 330 N.E.2d 161 (Mass. 1975). There, the reviewing editor "allowed the story to be printed despite serious doubts as to its accuracy with respect to the plaintiff," and the court found that his actual malice satisfied the requirement for defamation liability regardless of whether the statement's author knew or recklessly disregarded the truth. *Id.* at 174; *see also Hunt v. Liberty Lobby*, 720 F.2d 631, 646 (11th Cir. 1983); *Phoenix Newspapers, Inc. v. Church*, 537 P.2d 1345, 1359 (Ariz. App. 1975); *Bandido's, Inc. v. Journal Gazette Co., Inc.*, 575 N.E.2d 324, 327-28 (Ind. Ct. App. 1991); Dom.Opp.pp.135-136. Under settled law, if any participants in the publication know the statement to be false, their actual malice is relevant. FC MTD Order pp.15-16; Seelman, E. P., *The Law of Libel and Slander in the State of New York* § 141 (1941) ("But with respect to libels, if one repeat and another write, and a third approve what is written, they are all makers of the libel, for all persons who

concur, and show their assent or approbation to the doing of an unlawful act are guilty” (citation omitted).⁸

Fox strains to present *Solano v. Playgirl, Inc.*, 292 F.3d 1078 (9th Cir. 2002), as supporting Fox’s position that actual malice concerns only one or two “final decisionmakers.” FNN.Opp.p.119. The case does not do so. Rather, the record there contained “conflicting evidence regarding the existence of actual malice on the part of Playgirl editors,” and the court thus discussed the knowledge or serious doubts of an associate editor, senior vice president, art director, and associate art director. The defendant argued that only two were “final decisionmakers”—but the court did not need to address that argument given that the record demonstrated their actual malice. *Solano*, 292 F.3d at 1086. *Solano* confirms that actual malice of high-ranking editorial decision-makers—in that case, a senior vice president and a director—satisfies the requirement for liability. It does not stand for the proposition that only certain individuals’ actual malice matters, to the exclusion of all others in the chain of command.

⁸ Neither of Fox’s additionally cited cases stands for the proposition that only a single individual’s state of mind matters for defamation liability. In *Mimms v. CVS Pharmacy, Inc.*, 889 F.3d 865 (7th Cir. 2018), the court referenced the speaker’s state of mind in the context of explaining that general organizational knowledge is not sufficient—it must be brought home to “the persons” with responsibility. *Id.* at 868-69. Dominion addresses *Blankenship v. Fox News Network, LLC*, 2022 WL 321023 (S.D. W.Va. Feb. 2, 2022), appeal filed, No. 22-1207 (4th Cir. Mar. 2, 2022), which Fox previously raised at the motion to dismiss stage, in its Response to Fox’s Motions. *See Dom.Opp.pp.133-134.*

Fox misquotes *Flotech, Inc. v. E.I. Du Pont de Nemours & Co.*, 814 F.2d 775 (1st Cir. 1987), claiming that that case limited responsibility to “those with a ‘primary role[]’ in the alleged defamation, which in context meant the individual ‘who made the decision to issue’ the challenged press release.” FNN.Opp.pp.85-86 (alteration by Fox). In fact, the court looked at the persons with “primary roles,” only one of whom was the person “who made the decision to issue” the statement. *Flotech*, 814 F.2d at 781. The court *also* considered the actual malice of a “Product Specialist and Product Program Coordinator” who did *not* play any role in the final decision to issue the accused statement, but instead provided the data upon which the decisionmaker relied. *Id.* at 781. This underscores that identifying the responsible parties is fact- and context-specific; it is certainly not limited as a matter of law to any single person.

Fox also cites *Tavoulaareas v. Piro* for the proposition that a plaintiff “must demonstrate actual malice *in conjunction* with a false defamatory statement,” FNN.Opp.p.84 (emphasis in original), but Dominion has done so. Indeed, the facts of *Tavoulaareas* make clear that the knowledge of every individual in the chain of command is relevant: there, the final reviewing editor wrote a memorandum that the court agreed demonstrated disbelief in some aspect of the story, but the record did not demonstrate that she knew or recklessly disregarded the truth *of any false statement*. *Tavoulaareas*, 817 F.2d at 794. Her state of mind was certainly relevant,

as indicated by the court's analysis. *See id.* Here, each individual in the chain of command knew or recklessly disregarded the truth as to the false claims that Dominion committed electoral fraud and rigged the 2020 election, whether through algorithms, nefarious ties to Venezuela, kickbacks to government officials, or otherwise.

Fox repeatedly warns that if its executives are considered responsible for the defamatory broadcasts, then courts presiding over defamation cases will have to consider the culpability of the Editor-in-Chief of any publication every time the paper publishes a defamatory article. That is not so. It will always depend on the facts. If an outlet is publishing defamatory articles that executives in the chain of command (1) know about, and (2) know to be false, but nevertheless allow because they believe the false claims will be popular with readers, then yes, of course those executives' actual malice is relevant to the paper's liability. If, on the other hand, different executives oversee a paper's Travel and Sports sections, and a Sports reporter publishes a false story, then the Travel editor's knowledge of falsity will not establish the necessary actual malice for any subsequent defamation claim.

None of this is new or controversial. Indeed, the facts of *New York Times v. Sullivan* confirm this: the entire genesis of the requirement that actual malice be brought home to a responsible individual arose in a circumstance where *someone*, *somewhere* in the organization, with no responsibility for the accused publication,

had knowledge of the truth. That knowledge of an individual completely outside the chain of command cannot establish actual malice for a defamation claim. That holding does not and cannot insulate executives in the relevant chain of command who knowingly allow false publications for the sake of their own bottom line.

Undisputed evidence shows that on November 16, 2020, Dominion’s consultant and former Deputy White House Press Secretary Tony Fratto personally reached out to Scott and Wallace confronting them with the fact of the ongoing false broadcasts about Dominion and begging them to put a stop to it once and for all. Dom.MSJ.pp.32-33. They had the ability to do so. Yet under Fox’s theory, the knowledge or reckless disregard of Scott and Wallace—the CEO and President of FNN, with “responsib[ility] for everything on Fox News” and “ultimate editorial control over the content of Fox News,” respectively (Ex.600, R.Murdoch 72:22-24; Ex.147, Wallace 171:6-13)—is entirely irrelevant. That cannot be the law—and indeed, as a review of the caselaw, *supra*, makes clear, it is not.

The analysis is actually quite simple. Dominion begged Scott and Wallace to stop broadcasting the horrible lies. Scott and Wallace knew they were lies, and could have stopped the broadcasts any time they chose. But despite Dominion’s direct outreach to both of them, they chose to keep broadcasting the lies. They made their choices, and Fox bears legal responsibility for what came of those choices.

Dominion further discusses Fox’s erroneous claim that its executives’ actual malice is irrelevant to establishing defamation liability in its opposition to Fox’s summary judgment motions, and incorporates that briefing here by reference. Dom.Opp.p.135 (citing cases); *id.* pp.131-137.

B. The Undisputed Evidence Establishes that Fox Corporation and Fox News Executives Participated in the Broadcasts.

Fox executives participated in the accused broadcasts, and no reasonable juror could find otherwise. These executives (1) were in the chain of command for the accused broadcasts; (2) knew the broadcasts were airing; (3) knew the claims about Dominion were false; and (4) allowed those false broadcasts to continue in order to increase Fox’s ratings. In short, a reasonable juror would necessarily find that Fox’s executives were among those who took part in the publication of the accused statements at the time they were originally broadcast. This is doubly so for the *rebroadcasts* of each episode. Programming-level decisions—such as whether to re-air an episode of *Sunday Morning Futures* or *Lou Dobbs Tonight* (as every accused broadcast was re-aired)—are management-level decisions. *See, e.g.*, Ex.142, Schrier 131:20-25. Fox cannot avoid its executives’ responsibility for the accused broadcasts.

1. Fox’s Executives are Responsible for the Originally Aired Broadcasts.

Rupert Murdoch. As set forth in Dominion’s opposition brief, Rupert is in constant communication with Suzanne Scott (*see, e.g.*, Ex.600, R.Murdoch 163:24-164:14, 228:1-233:17) and closely involved in all aspects of FNN, Dom.Opp.pp.144-150; *see id.* pp.10-37. Rupert knew of the ongoing broadcasts featuring wild claims by Powell and Giuliani (*see, e.g.*, Dom.Opp.pp.20, 29-31, 149-150; Ex.600, R.Murdoch 316:4-8 (“I knew that—about Rudy.”)). He had the authority to stop them. He did not. *See, e.g.*, Ex.600, R.Murdoch 317:2-6; *see also id.* 331:25-332:14. [REDACTED]

[REDACTED] *Id.* 139:14-22, Dom.Opp.pp.29-30, 32; *see also id.* pp.35-36. Rupert further testified that having Powell and Giuliani on air was justified at the time because they were “newsworthy”—belying any claim that he did not know of them or their content. Ex.600, R.Murdoch 130:10-20 (“Q: And *you were aware that Fox News was having these people appear on the television under Fox’s banner to spread these charges?* A: We report the news, and we have dozens of people a day on the channels that are talking about the news. *And this was big news.* The President of the United States was making wild claims, but that is news.”).

On the day that Tony Fratto reached out to Scott and Wallace asking them to intervene and stop broadcasting lies, November 16, Rupert emailed Scott and

followed up by phone. Ex.239; Ex.600, R.Murdoch 246:12-19. Rupert told Scott, “Trump will concede eventually and we should concentrate on Georgia, helping any way we can. We don’t want to antagonize Trump further, but Giuliani taken with a large grain of salt. Everything at stake here.” Ex.239. Of course, Rupert decidedly did not prohibit having Giuliani on air, though he concedes he could have. Rupert knew Giuliani was “pushing” his lies on Fox News, Ex.600, R.Murdoch 129:22-130:9, 316:4-8, and he embraced that as part of Fox’s strategy not to “antagonize Trump further,” and to retain his supporters as viewers. Similarly, though he knew Dobbs was an “extremist” as of September 2020, he allowed Dobbs—who he also knew to be a Trump favorite, Ex.707—to remain on air. Ex.600, R.Murdoch 177:6-14; *see also id.* 172:19-22.

For further evidence regarding Rupert’s knowledge and control, *see* Dom.MSJ.pp.102-103; Dom.Opp.pp.9-37, 144-150, 167.

Lachlan Murdoch. Lachlan likewise knew of the ongoing defamatory broadcasts (*see, e.g.,* Dom.Opp.pp.152-153) and had the authority to prevent them (*see, e.g., id.* pp.150-151; Ex.128, Lowell 30(b)(6) 355:9-15) but did not do so. For further evidence regarding Lachlan’s knowledge and control, *see* Dom.MSJ.pp.102-103, 114; Dom.Opp.pp.9-37, 150-153, 167.⁹

⁹ In the recent *Smartmatic* appeal decision, the New York Appellate Division allowed Smartmatic to re-plead its allegations against FC, after its complaint (unlike

Viet Dinh. Dominion’s opposition to Fox’s summary judgment motions sets forth evidence of Dinh’s responsibility for the accused broadcasts. Dom.Opp.pp.153-155. Dinh testified that he would be consulted by shows about having particular guests on because of “legal concerns.” Ex.601, Dinh 109:8-16.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Dinh admitted researching (and debunking) the Dominion-Smartmatic-Venezuela lie at some point from November to mid-December 2020, belying any claim that he was unaware of Dominion prior to mid-December. Ex.601, Dinh 26:11-27:19.

As noted in Dominion’s opposition, counsel asserted privilege over questions going to Dinh’s knowledge and authority at Dinh’s deposition, warranting an inference that he had such knowledge and authority at the relevant times. Dom.Opp.p.155.n.22. Fox has since refused to log Dinh’s communications with lawyers (internal or external) relating to Dominion, Smartmatic, Giuliani or Powell, which go directly to when Dinh knew Fox was providing a platform to spread the

Dominion’s) contained no allegations specific to FC. The decision held that in addition to direct participation, FC will be liable if Smartmatic demonstrates that FC “wholly dominated” FNN. *Smartmatic*, 2023 WL 1974442, at *2. The evidence in this case supports such a finding here.

Dominion lies, and thus had the opportunity (as someone in the chain of command for issues involving legal threats) to put a stop to it.

In particular, for instance, Fox will not confirm (via a privilege log entry) whether, and if so, when Dinh received Dominion's November 20, 2020 letter debunking in detail the lies Fox had been broadcasting about Dominion. Fox's refusal even to log such communications warrants an inference that Dinh knew Fox was broadcasting the Dominion lies no later than November 20, 2020. Such an inference is all the more plausible given (1) that Dinh admitted he personally researched the Dominion/Venezuela theory at the time (and easily debunked it himself), and (2) that as the highest-ranking legal officer in the corporate hierarchy and the direct supervisor of Lily Claffee, who received the November 20 Dominion letter, he surely would have quickly been informed about the letter when Claffee received it. All of this supports an inference of Dinh's responsibility for the accused broadcasts.

Raj Shah. Evidence regarding Shah's awareness and involvement is likewise set forth in Dominion's opposition to Fox's summary judgment motions. *See* Dom.Opp.pp.155-157.

Editorial Meetings. Fox tries to downplay the editorial meetings attended by FNN executives, as well as Rupert and Lachlan Murdoch, but Fox's own corporate representative confirmed that "given the frequency of [Powell's and Giuliani's]

news conferences,” he assumed they would have come up at those meetings. Ex.128, Lowell 30(b)(6) 368:25-269:25. [REDACTED]

[REDACTED] Fox’s entire justification for inviting Powell and Giuliani on air is that they were purportedly exceptionally “newsworthy.” Moreover, senior executives including Scott and Wallace receive advance notice of guests precisely so that they can weigh in on them and prevent them from coming on if necessary. Ex.106, Clark 183:16-184:7; Dom.MSJ.pp.102-103.

Turning to FNN’s executives, Dominion’s prior briefing sets forth undisputed evidence that FNN’s executives were within the “chain of command” for the accused broadcasts and were aware of those broadcasts:

- **Suzanne Scott** (all shows): Dom.MSJ.pp.26-27, 31-33, 36, 38, 101-105, 113-114, 117, 135 n.17; Dom.Opp.pp.10, 20-21, 25-26, 30; Ex.600, R.Murdoch 72:19-24, 157:21-158:12; *see also* FC.MSJ.p.21 (Bartirromo would have listened to a directive from her “bosses,” including Scott—and the Murdochs).
- **Jay Wallace** (all shows): Dom.MSJ.pp.27, 32-33, 101-103, 105, 115-117; *see also* FC.MSJ.pp.23-24 (citing Wallace’s testimony that he is “the executive editor with ultimate editorial control over the content of Fox News” as evidence of FNN’s control over the broadcasts).
- **Lauren Petterson** (*Lou Dobbs Tonight* (“Dobbs”); *Sunday Morning Futures* (“SMF”)): Dom.MSJ.pp.12, 102-103, 109-111, 117; *see also*, e.g., Ex.133, Petterson 243:20-25 (“Q: You do have the power to approve whether a guest appears on any show, correct? A: I do.”). FNN’s claim that Petterson did not have authority over content of *SMF* is belied by testimony. E.g., Ex.106, Clark 188:6-18 (“Q: Sir, this is one text you sent to Mr. Gary Schreier, Ms. Lauren Petterson, and Mr. Jay Wallace, correct?

A: Correct. Yes. Q: Why did you send it to them? A: Just to make them aware of what Mr. Giuliani said and make them aware he was on Maria Bartiromo’s show the next day. Q: **Because any one of them could have said, hey, hold off, don’t do it. Right? A: They could have, yes.**”); *see also* Ex.401 at FNN018_02443309 (Petterson to Wallace, re Dobbs: “I spoke to his booker today. Time to pivot.”); Ex.106, Clark 37:18-41:19 (Petterson control over *SMF* rebroadcasts, along with Wallace and Scott); Ex.128, Lowell 30(b)(6) 583:16-584:15.

- **Meade Cooper** (*Justice with Judge Jeanine* (“*JJJ*”); *Hannity*; *Tucker Carlson Tonight* (“*TCT*”)): Dom.MSJ.pp.23, 101-105, 135 n.17, 142; *see also, e.g.*, Ex.375 at FNN019_03270756 (Cooper email to Suzanne Scott, “Clearly, I reject the notion that the hosts don’t have bosses exercising judgment.”); Dom.Opp.pp.15-16.
- **Ron Mitchell** (*Hannity*; *TCT*): Dom.MSJ.pp.102-104, 108-109, 142, 146; *see also, e.g.*, Ex.129, Mitchell 19:3-10 (admitting he exercised “some level of editorial oversight” over primetime broadcasts during the relevant period).
- **David Clark** (*SMF*; *JJP*): Dom.MSJ.pp.23, 101-103, 105-107, 117, 135 n.17, 138. Fox’s claim that Clark lacked authority over Bartiromo and Pirro’s shows is belied by his own testimony admitting that he did. For instance, with respect to instructing Bartiromo not to host certain guests, **“I had the authority to do so.”** Ex.106, Clark 44:3-5; *see also id.* 46:4-18 (regarding *SMF*, “Q: How does the process work within Fox or how did it work during this timeframe from September 2020 through April of 2021, regarding the decision not to book a particular guest? A: I would say it was done—**it could be done just by me.** It would be done by me in consultation with people such as Jay Wallace.”); *id.* 22:7-17 (Clark “often consulted” with *SMF* and *JJJ* about guests in the relevant timeframe and also consulted with both shows on content “to some extent”); *id.* 26:6-27:6 (he discussed Powell and Giuliani prior to their appearances). Indeed, while FNN tries to paint Clark as merely a middleman, the only executives with authority higher than Clark at FNN were Scott and Wallace. *Id.* 18:3-19:13, 23:8-24. [REDACTED]

[REDACTED]

- **Gary Schreier** (*Dobbs*; rebroadcasts of *SMF*): Dom.MSJ.pp.102-103, 111-113, 124; *see also, e.g.*, Ex.413 [REDACTED]
[REDACTED] Fox does not contest that Schreier had authority not to rebroadcast *SMF* on FBN. FNN.Opp.p.129.

Fox’s response to this evidence of FNN executives’ editorial responsibility is to either mischaracterize the cited evidence or to argue that its executives—despite knowing of upcoming and ongoing broadcasts and rebroadcasts—simply chose not to involve themselves. FNN.Opp.pp.122-133. With respect to the former, the evidence speaks for itself, and Dominion welcomes the Court’s review of the record. With respect to the latter, conscious and purposeful inaction by executives within the chain of command does not absolve Fox of liability.

The fact that Fox’s executives were responsible for the broadcasts featuring Sidney Powell, Rudy Giuliani, and Mike Lindell is underscored by the fact that those very executives *did* repeatedly exercise their control to prevent false programming—when they saw fit to do so. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

These examples underscore executive responsibility for preventing known false broadcasts from airing—responsibility Fox itself acknowledges. Ex.601, Dinh 287:12-19, 316:5-25. The entire purpose of providing executives with advance notice of booked guests is so that, if “senior executives” have concerns about what those guests were expected to say to Fox’s viewers, they can step in. *See* Ex.106, Clark 183:21-184:7; *see also, e.g., id.* at [REDACTED]

[REDACTED] In each of the instances above, Fox’s executives stepped in and “participated in the broadcasts,” determining what content could or could not be aired. Fox cannot absolve itself of its executives’ actual malice by pointing to their failure to do so when they believed allowing false claims to air was in Fox’s business interests.

FC’s brief makes much of the fact that no Fox Corporation executives are listed as “Responsible Employees” under each show in Dominion’s summary judgment motion, FC.Opp.p.17. FC ignores that Dominion specifically listed FNN employees under each show and separately addressed FC, stating that the evidence set forth “demonstrates editorial responsibility for at least Rupert and Lachlan

Murdoch,” and that Dominion would supplement with additional evidence regarding FC as appropriate, Dom.MSJ.pp.116-117—and necessarily so, given that Dominion had yet to depose almost all of FC’s witnesses (including Rupert Murdoch) at the time of that filing.

2. Fox’s Executives are Responsible for Rebroadcasts.

Finally, Fox does not even address the fact that each broadcast was subsequently *rebroadcast* by Fox. Whether to re-air a show is a programming decision made by executives. And shows can be edited to remove falsehoods prior to rebroadcast—indeed, Schreier has instructed Dobbs’ team to edit shows prior to rebroadcast in the past. Ex.142, Schreier 42:1-21; *see also* Ex.106, Clark 39:20-41:12 (Clark, Petterson, Scott, and Wallace could direct shows to edit prior to rebroadcast). In no case did that happen here. For that reason, too, Fox’s executives are responsible for the accused broadcasts each time they re-aired.

V. Fox News and Fox Corporation Acted with Actual Malice.

The evidence demonstrates why a reasonable juror would find actual malice for at least one person responsible for each broadcast.

A. Actual Malice Exists For Every Responsible Person Based on the Publicly Available Evidence and Dominion’s Correspondence

As a threshold matter, all who share responsibility at every level knew or recklessly disregarded the truth based on credible public evidence and Dominion’s correspondence. Dom.MSJ.pp.92-100. Fox tries to wave away the conclusion that

third parties, Fox employees, and *Fox's own research department* quickly reached in real time: These charges were false.

This wealth of real-time information demonstrates why *every* person acted with actual malice. Nineteen of the twenty broadcasts occurred *after* Dominion began sending “Setting the Record Straight” (“STRS”) notifications to Fox. *E.g.*, Dom.MSJ.pp.92-95. [REDACTED]

[REDACTED]

By itself, the continuation of these broadcasts after the November 12 STRS email demonstrates Fox’s actual malice for the broadcasts occurring after those dates. And reliance on a source who claims to receive messages from the wind establishes at minimum reckless disregard for the truth for the November 8 *Sunday Morning Futures* broadcast. *Id.* pp.118-119.

All these facts are undisputed: Everyone with responsibility at FNN received the Dominion emails. Dom.MSJ.p.95. These emails contained more than denials; they included credible third-party information debunking the accusations. *Id.* pp.93-95. FNN’s corporate representative could not explain what, if anything, Fox did to investigate these claims, and admitted that Sidney Powell never provided Fox with evidence. *Id.* p.97; Ex.128, Lowell 30(b)(6) 501:18-502:10. FNN’s corporate representative also repeatedly could not answer when FNN concluded the charges

were false or what specifically it did to investigate their veracity,¹⁰ and he admitted that facts debunking the allegations were known within Fox.¹¹ [REDACTED]

[REDACTED] The Brainroom is “used regularly to fact check.” Ex.106, Clark 270:7-12. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Some shows stopped airing the allegations because they knew they would have to “tell the truth” if they did so. Ingraham admitted at her deposition that by November 12, she “made the decision not to air the false allegations of Dominion.” Ex.125, Ingraham 201:20-202:7. (Of course, she did not tell her audience then the

¹⁰ Exs.127 & 128, Lowell 30(b)(6) 54:24-57:3, 76:13-80:25, 99:4-106:23, 110:19-111:2, 121:18-122:14, 123:23-125:4, 127:6-128:25, 131:7-132:17, 273:9-274:10, 282:9-292:3, 294:22-295:6, 298:24-299:13, 306:7-307:3, 315:14-316:13, 323:8-324:5, 329:20-332:9, 335:15-337:3, 339:16-341:25, 362:12-25, 372:11-24, 375:22-376:12, 379:20-381:2, 384:7-16, 386:21-388:7, 395:6-396:22, 400:6-15, 428:15-24, 435:14-436:3, 437:20-438:9, 447:25-449:23, 469:3-470:3, 489:17-490:5, 490:17-492:9, 493:11-494:14, 502:20-504:20, 505:21-509:22, 510:4-21, 511:22-515:5, 515:10-521:9, 544:6-545:6, 558:2-559:8, 569:12-570:9, 594:20-595:6.

¹¹ *Id.* 247:13-248:7, 258:17-259:12, 300:25-302:5, 316:14-317:18, 318:12-320:13, 321:10-322:20, 325:18-326:12, 328:5-13, 333:15-20, 337:21-338:5, 364:18-366:18, 371:13-372:10, 373:22-374:20, 376:14-20, 381:3-383:16, 468:11-469:23, 505:21-508:23; Dom.MSJ.pp.92-95.

allegations were false—and still has not.) In the words of her executive producer Tommy Firth to Fox executive Ron Mitchell on November 12: “This dominion shit is going to give me a fucking aneurysm.... [REDACTED]

[REDACTED]

[REDACTED]

Since Dominion’s summary judgment motion, consistent with FNN witnesses, multiple FC witnesses have testified that they have not seen credible evidence to support the allegations.¹² Rupert Murdoch himself testified that he never saw any credible evidence about the allegations and never believed them. Ex.600, R.Murdoch 24:6-13, 26:8-57:23. Indeed, not a single Fox witness has testified that they *ever* affirmatively believed the allegations about Dominion. *See* Dom.MSJ.pp.96-97.

As the New York Appellate Division just ruled in allowing Smartmatic’s claim against FNN to move forward, FNN “easily could have known had they not purposely avoided public knowledge...that the vote switching claims [] had no support.” *Smartmatic*, 2023 WL 1974442, at *2. Exactly. On this record, no reasonable juror could find otherwise here.

¹² Ex.600, R.Murdoch 24:6-13, 26:8-57:23; Ex.601, Dinh 284:19-285:14; Ex.620 Ryan 96:2-118:15; Ex.605, Shah 47:12-52:1. *See* also Ex.130, L.Murdoch 418:5-17.

B. Specific Evidence of Each Person's Actual Malice

In addition to the above evidence relevant to all individuals, Dominion has provided specific evidence of each person's actual malice. Fox's attempt to create a factual issue ignores its employees' own words and admissions. The highlights here are no substitute for the full evidence presented in Dominion's summary judgment motion. *See* Dom.MSJ.pp.104-148; *see also* Dom.Opp.pp.157-165.

As a threshold matter, Fox does not discuss many of the documents at all. Instead, it tries to dismiss many of them as a class by saying they lack proper "context," but then does not provide that context. It is difficult to imagine further context for statements such as "Sidney Powell is lying" or the lawsuit is "complete BS" or the allegations are "MIND BLOWINGLY NUTS," to name but a few. Dom.MSJ.pp.9, 34, 131.

For many individuals, instead of disputing their actual malice, Fox rests primarily—or entirely—on its legally erroneous argument that those individuals lack responsibility. Not only is Fox incorrect, it raises a separate legal issue. To the extent the Court finds a factual issue exists regarding responsibility for any one person, this Court can still rule as a matter of law on their actual malice.

The below includes some early examples establishing actual malice, as well as specific responses to Fox's arguments. These—while by no means the only evidence Dominion has presented—suffice to establish actual malice for subsequent

broadcasts for which that individual was responsible, given that *no* Fox witness has testified to having seen any credible evidence that would have changed their early views. *See* Dom.MSJ.p.96-97.nm.12-13.

1. FNN Executives.

David Clark (responsibility over *Sunday Morning Futures* with Maria Bartiromo (“*SMF*”) and *Justice with Judge Jeanine* (“*JJJ*”)): Fox quotes Clark as saying, regarding the allegations, that he “was not aware that they were false theories at the time.” FNN.Opp.p.134. But FNN ignores his testimony two pages later where he changed his story when presented with the evidence: “Q. By November 6, sir, you did know that there were false conspiracy theories circulating generally, correct? A. I am going to say yes.” Ex.106, Clark 150:20-151:1. Five pages later, again after equivocating, he admitted that he knew by November 6 the election had not been stolen. *Id.* 155:22-156:2. [REDACTED]

[REDACTED] Yet Clark allowed Bartiromo’s show to air the next day. By November 14, Clark had received Dominion’s emails so many times he joked they were “tattooed” on his body. *Id.* pp.32, 107.

Meade Cooper (*JJJ*, *Hannity*, *Tucker Carlson Tonight* (“*Carlson*”)): Cooper knew by November 6 that it was “very hard to credibly cry foul everywhere,” as stated in the email she received and agreed with, and she admitted at her deposition

that saying “the election is being stolen” as of that date “would not be based in fact at that point.” Dom.MSJ.pp.20-21.

Ron Mitchell (*Hannity, Carlson*): By November 12, Mitchell referred to the claims as the “Bill Gates/microchip angle to voter fraud” in texts with Firth [REDACTED]

[REDACTED] On November 18, Mitchell told Scott and Wallace regarding Newsmax that “[t]his type of conspiratorial reporting might be exactly what the disgruntled FNC viewer is looking for.” *Id.* p.35.

Lauren Petterson (*Lou Dobbs Tonight (“Dobbs”), SMF, F&F*): FNN tries to neutralize the Petterson-Schreier text on November 8 stating Bartiromo “has gop conspiracy theorists in her ear” by arguing Petterson thought Bartiromo “did well” with her coverage. FNN.Opp.p.136. But this statement only confirms that Petterson’s decisions (including the rebroadcast later that day) were deliberate. Fox makes no attempt to address Petterson’s knowledge of falsity from November 16 (Wallace, after email from Dominion’s consultant Tony Fratto: “We need to keep an eye out here on this storyline.” Petterson: “Oh boy.”); November 17 (email from AP reporter stating Dominion claims “have been debunked”); or November 24 (“time to pivot”). Dom.MSJ.pp.110-111. Nor does Fox discuss Petterson’s November 5 email about the ease of debunking false fraud claims (“Jesus Christ. Does anyone do a fucking simple google search or read emails?”). *Id.* p.96.

Additional evidence of FC’s executives’ actual malice is set forth in Dominion’s opposition to Fox’s summary judgment motions at pages 8-37 and 159-168.¹³

3. Fox Hosts and Producers.

Each Fox host and producer also acted with actual malice. Dominion explained each show in detail in its motion. Dom.MSJ.pp.117-148. Fox does not address large swaths of Dominion’s evidence, and for others, tries to wish away the words in documents or admissions in depositions.

Bartiromo and producers: FNN fails to adequately explain the November 7 “wackadoodle” email. It was not just *a* document. It was the *only* document Powell sent Bartiromo purporting to show Dominion’s involvement in some massive conspiracy. FNN does not rebut Bartiromo’s concession that the email was “nonsense,” nor does it try to explain away comments from her November 7 interview with Powell [REDACTED]

Dobbs and producers: Dobbs admitted that by November 13 he had never “seen any verifiable, tangible support” for the claims against Dominion. *Id.* p.127. And despite FNN’s attempt to explain it away, Dobbs admitted that by December 9,

¹³ The Court granted the parties leave to supplement the record with evidence obtained after filing initial summary judgment briefs in its January 6, 2023 Order on summary judgment briefing.

Powell had lost credibility and Dobbs had doubts about her as a source. Ex.111, Dobbs 199:16-200:12. And FNN’s claim that Fawcett’s email calling Powell’s suits “complete BS” does not establish his actual malice defies explanation. FNN.Opp.p.109. Evidence of Dobbs’ team’s actual malice is set forth in Dominion’s motion, pp.123-134.

Regardless, Dobbs’ own testimony concedes actual malice for at least the Tweet Dobbs sent *after* the December 10 show (Statement 179(r)) and the December 10 rebroadcast (Statement 179q)), as Dobbs *admits* his own statements that Powell had revealed evidence were false at the time. *Id.* 269:2-271:5; Dom.MSJ.pp.132-134. Fox does not address this, conceding the point.

Pirro and producers: Fox does not address Scott’s email to Rupert stating Pirro (and Hannity) thought the November 19 Giuliani/Powell press conference about Dominion was “terrible stuff.” Dom.MSJ.pp.13-14. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Hannity and producers: If Hannity’s testimony, “I did not believe it for one second,” is not conclusive evidence that he harbored serious doubts about the veracity of Powell’s allegations against Dominion, it is hard to imagine what *would* show such doubts. Fox points to his subsequent statement that he was open to future proof as disproving his actual malice, FNN.Opp.p.98; but his purported openness to future proof does not change that he, by his own admission, *never believed the claims were true*. Ideally, everyone is open to changing their existing views if new evidence comes to light. But his (correct) view *at the time* was that it was false.

Fox also quibbles with the timing of Hannity’s admission that he knew prior to the November 30 broadcast that the claims were false, but the transcript speaks for itself: “Question: Sir, I think you testified when [Powell] said that to you on your radio show this afternoon, that was the nail in the coffin for you; right? Answer: For me it was, yes. I felt like there was never going to be forthcoming evidence.” Ex.122, Hannity 417:3-6; *see also id.* 417:8-13 (admitting he brought her onto his subsequent Fox show “with that knowledge”).

As for Hannity’s producers Fazio and Samuel, Fox has no answer for the multiple emails demonstrating their knowledge of falsity. *See Dom.MSJ.pp.143-144*. Instead, FNN rests almost entirely on the false notion that they did not participate in the creation of the broadcast. *See supra* §IV.A.

Carlson and producers: Fox’s claim that Carlson had no idea what Lindell would say on air is contravened by the evidence, Dom.MSJ.p.147, and entirely ignores that, regardless, Fox *re-aired* the broadcast without editing, Dom.Opp.pp.172. Carlson testified that Lindell was making these claims in “any interview that he does.” Ex.105, Carlson 197:19-198:4. Fox executives did not allow Lindell to appear on Dobbs’ show that very same day—and banned him from the Fox Business airwaves entirely. Dom.MSJ.p.144. Dominion’s MSJ Introduction and Background detail Carlson’s and his team’s extensive real-time debunking of the allegations. *Id.* pp.1, 34-35, 41-43, 144-145. And regardless of Fox’s attorney argument now, Carlson admitted that he did not push back. Ex.105, Carlson 198:5-201:13. Far from “pushing back” on Lindell, Carlson’s comment that Dominion was “not making conspiracy theories go away” by telling Lindell he was wrong only cast doubt on Dominion and demonstrates Carlson’s endorsement of Lindell.

Fox further tries to refute Carlson’s actual malice regarding the claims peddled by Sidney Powell—which Lindell repeated on Carlson’s show—by claiming that Carlson “respected and trusted” Powell. FNN.Opp.p.149; *see also id.* 103-104. Carlson’s contemporaneous documents speak for themselves. Ex.150 (“Sidney Powell is lying. Fucking bitch.”); Ex.240 [REDACTED] Ex.530 at FNN035_03891200 [REDACTED] [REDACTED] Ex.503 [REDACTED] [REDACTED]; Ex.528 (“Nutcase”).

Fox and Friends: Dominion’s motion sets forth evidence establishing the actual malice of Cain, Hegseth, and Campos-Duffy, Dom.MSJ.pp.139-141; and Fox’s lead argument against it—their deposition testimony that they were uncertain about the claims and kept an open mind—is addressed, *infra* §V.C.

C. Fox’s Brief Does Not Justify Denying Summary Judgment on the Actual Malice of its Witnesses.

In attempting to overcome the undeniable evidence of its actual malice set forth in Dominion’s motion (some of which is referenced above), Fox relies primarily on six strategies, none of which succeeds.

First, Fox ignores the evidence of widespread knowledge of the truth, claiming that the knowledge of individuals outside the chain of command (such as, for instance, Bret Baier and Chris Stirewalt) is “irrelevant” and an attempt to “misdirect.” FNN.Opp.pp.79-80, 86-87. Fox distorts Dominion’s argument: widespread knowledge of the truth supports finding actual malice. *Hinerman v. Daily Gazette Co.*, 423 S.E.2d 560, 577 (W.Va. 1992) (“[T]he fact that in this case the truth was both generally known and generally available is further circumstantial evidence of ‘actual malice.’”). The extensive evidence of knowledge within Fox, Dom.MSJ.pp.96-100—on top of all of the other evidence for actual malice—demonstrates that “the truth was both generally known and generally available,” and thus provides further support for the responsible individuals’ actual malice.

Second, Fox repeatedly relies on the fact that its witnesses claimed, in testimony provided in the course of litigation, that they did not know whether the allegations about Dominion were true at the time. *See, e.g.*, FNN.Opp.pp.90-116. This deposition answer, unsupported by any contemporaneous documents, cannot neutralize what is clear from the contemporaneous record.

Yet even on its own terms, this testimony does not help Fox. Expressing uncertainty does not negate actual malice—on the contrary, courts have found uncertainty itself can *support* actual malice. For instance, in *Rebozo v. Washington Post Co.*, 637 F.2d 375 (5th Cir. 1981), the reporter who printed an allegedly defamatory article “expressed uncertainty” prior to publication about whether the claim in his article was true. *Id.* at 382. This expression of uncertainty supported submission of the actual malice issue to the jury; here, where the record contains extensive evidence of actual malice on top of repeated professions (in litigation) of uncertainty, no reasonable juror could find that Fox acted without actual malice.

The Supreme Court observed in *Herbert v. Lando*, 441 U.S. 153 (1979) that plaintiffs typically rely on circumstantial evidence to establish actual malice because “defendants themselves are prone to assert their good-faith belief in the truth of their publications.” *Id.* at 170. *Herbert* does not stand alone. *See, e.g.*, *Eastwood v. Nat’l Enquirer, Inc.*, 123 F.3d 1249, 1253 (9th Cir. 1997) (“[W]e have yet to see a defendant who admits to entertaining serious subjective doubt about the authenticity

of an article it published”). But Fox’s witnesses do not even go this far. There is a vast difference between professing “good faith belief” in a published statement and saying “I didn’t know,” and Fox’s witnesses universally do the latter.¹⁴ To be sure, simply not knowing whether something is true may not *on its own* meet the actual malice threshold, *Lieberman v. Gelstein*, 80 N.Y.2d 429, 438 (1992); but responsible individuals’ consistent (after-the-fact) proclamations of uncertainty with respect to the claims they broadcast and rebroadcast for months—claims that would, if true, amount to “the single greatest crime in American history” (Ex.170 at FNN018_02408904)—further support summary judgment for Dominion in light of the many direct communications from Dominion pointing those individuals to credible evidence of falsity and the unreliable nature of the claims’ sources.

Fox similarly tries to position witness’ professed openness to future evidence as somehow negating their knowledge or serious doubts at the time. *See, e.g.*, FNN.Opp.p.98 (trying to explain away Hannity’s testimony that “I did not believe it for one second,” addressed *supra* §V.B.3). But willingness to change one’s mind based on future evidence cannot negate contemporaneous knowledge. To hold otherwise would make actual malice a dead letter because every defendant would claim to be open to contrary proof.

¹⁴ FNN.Opp.pp.93 (Dobbs), p.95 (Pirro), p.99 (Cain), p.100 (Campos-Duffy, Hegseth), p.104 (Carlson), p.105 (Grossberg), p.106 (Field), p.108 (Fawcett), p.110 (Andrews), p.113 (Fazio), p.115 (Wells, Pfeiffer:); *see also* p.90 (Bartirromo).

Third, Fox treats the responsible individuals' reliance upon obviously unreliable sources and purposeful avoidance of the truth as mere failures to investigate that would not on their own support actual malice. *See, e.g.*, FNN.Opp.pp.147-149. A look at the caselaw again demonstrates that Fox has twisted the standard beyond recognition. In *St. Amant v. Thompson*, 390 U.S. 727 (1968), the Supreme Court counseled that "recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports." *Id.* at 732. It is hard to image a more obvious reason to doubt the accuracy of a report than, for instance, the November 7 email Bartiromo received from Powell as the *sole* support for her accusations against Dominion. Dom.MSJ.pp.118-119; Ex.154 at FNN001_00000011 ("The Wind tells me I'm a ghost, but I don't believe it."). Indeed, Bartiromo herself admitted at her deposition that the email was "kooky" and "not evidence." Ex.98, Bartiromo 135:5-7, 141:18-24. The record is replete with examples of the unreliable nature of Powell, Giuliani, and Lindell, and Fox's own recognition of that unreliability. *See, e.g.*, Dom.MSJ.pp.8-9, 34-35, 41-43, 148-153. Fox does not contend with any of the caselaw holding that reliance on such obviously unreliable sources evidences actual malice. *See, e.g.*, *St. Amant*, 390 U.S. at 732; *Zuckerbrot v. Lande*, 167 N.Y.S.3d 313, 335-336 (N.Y. Sup. Ct. 2022).

Fox's argument that Powell and Giuliani were automatically credible because they were the "President's lawyers" fails because contemporaneous documents show

that (1) responsible individuals within Fox nevertheless recognized their unreliability, Dom.MSJ.pp.148-153; (2) Fox billed Powell as Michael Flynn's lawyer, not Trump's, for her November 8 appearance, Ex.1 at 1:8-11; (3) Powell was expressly disavowed by the Trump campaign on November 22 and never had a retention agreement with Trump or his campaign, Ex.273 (Trump Campaign statement); Ex.605, Shah 273:14-20; and (4) none of the suits Giuliani filed in connection with the Trump campaign made the allegations he leveled on Fox's airwaves against Dominion, *see* Dom.Opp.pp.44-47, 182-283.

Fox's own corporate representative acknowledged the importance of Fox ensuring it had reliable information, under the circumstances:

Q. Sir, you agree that the charges made of a massive election fraud deserved investigation, correct?

A. Yes.

Q. You agree that on such a serious charge it's important to get the facts right, correct?

A. Yes.

Q. Do you agree that when someone is making such a serious charge, that it deserves an extra level of scrutiny?

A. Yes.

Q. Do you agree that when many people call something a conspiracy theory, it deserves an extra level of scrutiny?

A. Yes.

Ex.128, Lowell 30(b)(6) 304:10-305:5.

Fox cannot escape liability in the face of its purposeful avoidance of the truth. In *Harte-Hanks Communications, Inc. v. Connaughton*, the Supreme Court found the defendant newspaper acted with actual malice when it published a story on a candidate for judicial office without interviewing a key witness when the paper knew the person was a key witness, and without listening to tapes of an interview that could have confirmed the probable falsity of reported charges. 491 U.S. 657, 689-691 (1989). Here, any of the responsible individuals could have submitted claims to Fox’s Brainroom, which executive David Clark explained is “a professional research wing of Fox News” that Fox shows “used regularly to fact check” show content. Ex.106, Clark 270:7-20. [REDACTED]

[REDACTED] *See id.* 273:1-277:15; Ex.168 (fact-check on Dominion claims); Ex.318 (same).

Any responsible individual likewise could have followed the links Dominion provided (and that Fox internally circulated) over and over again in thousands of communications from November 2020 through January 2021. Despite these many communications, and personal outreach to Wallace and Scott (among others) by Fratto flagging the false broadcasts, Fox’s corporate representative could not identify any steps Fox took to look into the evidence Dominion provided. Dom.MSJ.p.97. And at the same time, multiple responsible individuals for every show have admitted they never saw any credible evidence for the claims against

Dominion. Dom.MSJ.p.97.n.13. On these facts, the decision to broadcast the claims of Powell, Giuliani, and Lindell was not a mere “failure to investigate,” it was purposeful avoidance of the truth.¹⁵

Fourth, Fox ignores that the responsible individuals knew what the broadcasts would contain in advance. For instance, Fox argues that Carlson had “no idea” Lindell would bring up Dominion on air, FNN.Opp.pp.101; but Fox does not address the pre-show interview notes indicating otherwise, or the fact that it admittedly brought Lindell on air to discuss his ban from Twitter—which Lindell received because of his Tweet about Dominion. Dom.MSJ.pp.144, 147. And Suzanne Scott suggested Lindell as a guest to get “ratings” after Lindell made crazy allegations on a rival channel—Newsmax. Dom.Opp.pp.35-36; *see also* Dom.MSJ.p.157. Fox’s “it was live TV” argument is also belied by the fact that the segment was re-broadcast unedited at 1am ET, *see* Ex.148, Wells 26:17-25, and remains *to this day* on TCT’s Facebook page.

FNN similarly argues that Jerry Andrews could not be responsible for Jeanine Pirro’s opening monologue on November 21 because Pirro spoke the words.

¹⁵ In the case of Bartiromo, Pirro, and Dobbs, their active involvement in shaping the false narrative further buttresses their purposeful avoidance of the truth. *See* Dom.MSJ.pp.39-40. Likewise, Hannity’s history in the weeks prior to his November 30 broadcast of mischaracterizing articles and letters about the voting industry generally, or about Dominion’s competitors, as being about Dominion further demonstrates his purposeful avoidance. Dom.Opp.pp.122-123, 171.

FNN.Opp.p.112. [REDACTED]

[REDACTED] (including the “popping” of overnight votes claim that Dominion accuses), Dom.MSJ.pp.137-138, Fox simply ignores that Pirro’s monologue was *pre-taped*. Nowhere in Fox’s briefing does it address the fact that shows were routinely both pre-taped and rebroadcast, allowing multiple opportunities to edit out false claims. *See, e.g.*, Ex.106, Clark 269:16-19 [REDACTED]

[REDACTED] Ex.601, Dinh 108:2-14 [REDACTED]

Fifth, Fox suggests that a witness’s belief that the 2020 Presidential Election was legitimate is irrelevant to whether or not he or she believed or harbored serious doubts about the claims about Dominion. This argument draws a distinction without a difference. It is impossible to believe that Joe Biden was legitimately elected President while simultaneously believing that Dominion rigged the election, through algorithms and software or bribery or otherwise. Similarly, if one disbelieves—or seriously doubts—that Dominion rigged the election, it would require at minimum reckless disregard of the truth to believe the accompanying claim that Dominion was founded in Venezuela to rig elections, given that it was part and parcel of the

overarching fraud narrative placing Dominion at the center of a plot to steal the election.

The converse is also true. For instance, Viet Dinh testified that the claim that Smartmatic owns Dominion is the kind of “extraordinary thing that you can look up,” Ex.601, Dinh 26:23-27:3, so he did back at the time, and found it was untrue, *id.* 27:3-19. Knowledge that an integral piece of the claims pushed by Powell, Giuliani, and Lindell was false renders all those claims even more obviously unreliable. *See* Dom.Opp.p.165. If you’ve confirmed a central part of their story is plainly false, crediting the rest of the story demonstrates a reckless disregard for the truth.

Sixth, Fox simply ignores or mischaracterizes the evidence. For each broadcast, the Court need find only **one** responsible individual had actual malice. Here, many did, and Fox’s attempts to explain away isolated examples while ignoring the multitude of factors and other evidence supporting actual malice proves the strength of Dominion’s case for summary judgment.

With respect to Fox’s hosts, the arguments are largely duplicative of FNN’s summary judgment motion, and Dominion has thus responded to them in its opposition in addition to above. Dom.Opp.pp.168-172; *supra* §V.B.3. One specific example of Fox ignoring bad facts, though, bears emphasis.

Fox nowhere addresses Dobbs' December 10 statement that "we have tremendous evidence already," which he now admits was not true when he said it, or his Tweet that same day *after* his show, stating that Powell "reveals groundbreaking new evidence indicating our Presidential election came under massive cyber-attack orchestrated with the help of Dominion, Smartmatic, and foreign adversaries," which he likewise admits was not true. Dom.MSJ.pp.132-133. This entirely unrebutted evidence that Dobbs proclaimed existence of evidence he now admits he had not actually "have" and that Powell had not "revealed" on his show renders summary judgment in Dominion's favor as to that broadcast and that Tweet straightforward.

While Fox tries to raise a question of fact as to the other accused broadcasts, Dominion has set forth in detail the record evidence demonstrating Fox's actual malice by clear and convincing evidence. *See* Dom.MSJ.pp.14-44, 87-161. In light of this overwhelming evidence, no reasonable juror can dispute that at least one person per broadcast acted with actual malice, even considering anything Fox points to as evidence in the light most favorable to Fox. It is the rare case to grant summary judgment of actual malice, but it is also the rare case where direct evidence of actual malice exists, as it does here. *See* Dom.MSJ.pp.3-10.

D. Fox Cannot Avoid the Additional Circumstantial Evidence of Actual Malice.

Fox's attempt to run away from circumstantial evidence supporting its actual malice fails.

Preconceived narrative. Fox's briefing does not address the evidence that its broadcasts adhered to a preconceived narrative of a stolen election, with Dominion cast as the villain. *See, e.g.,* Dom.MSJ.pp.24 [REDACTED] pp.39-40 [REDACTED], pp.159-161. Far from disputing Fox's adherence to a pre-conceived narrative, FNN's brief underscores it: Fox argues that "the people have a right to know what their elected officials are saying even if—perhaps especially if—their government officials are lying." FNN.Opp.p.54. But the critical point here is that what is newsworthy is *the fact that they are lying*. Rupert Murdoch likewise agreed at his deposition that "it's newsworthy that this whole stolen election narrative was false." Ex.600, R.Murdoch 341:13-342:2. But in the accused broadcasts Fox did *not* report that the "Big Lie" placing Dominion at the center of an election fraud narrative was, in fact, a big lie, despite the admitted newsworthiness of this fact. Instead, Fox fed its viewers a false story of election fraud that it knew conformed to what those viewers wanted to hear. *See Gertz v. Robert Welch, Inc.*, 680 F.2d 527, 539 (7th Cir. 1982), *cert. denied*, 103 S. Ct. 1233 (1983).

Financial motive to lie. Fox’s answering brief barely addresses the extensive evidence demonstrating its financial motive to broadcast false claims against Dominion. Fox suggests that such evidence is irrelevant, FNN.Opp.p.150, but *Harte-Hanks* does not stand for that proposition. Rather, it counsels that profit motive standing *on its own* does not suffice, but makes clear that such motivation may be a relevant factor. 491 U.S. at 668. Indeed, it found that the appellate court’s decision, considering motive as part of the full record, applied the correct standard. *Id.* See also, e.g., *Celle*, 209 F.3d at 183 (“These facts should provide evidence of ‘negligence, *motive*, and intent such that *an accumulation of the evidence and appropriate inferences* supports the existence of actual malice.”) (citation omitted) (second emphasis in original)).

Fox also now claims it was not *actually* worried about declining ratings or emerging competition from Newsmax. The record tells a different story. See, e.g., Dom.MSJ.pp.18-44, 153-157.

Finally, Fox argues that ratings “did not drive revenues.” FNN.Opp.p.151. FC Board Member Paul Ryan testified otherwise: in his words, “If ratings go down, revenue goes down.” Ex.620, Ryan 158:3-4. Per Fox News Media’s EVP of Advertising Sales Jeff Collins: “You can charge more for a 30-second ad if your audience is larger.” Ex.107, Collins 113:16-18; see *id.* 113:8-15 (explaining why FNN was seeing the “highest revenue from...ad sales,” despite fewer commercials:

“Audience levels would have a lot to do with it, so we would sell at elevated audience levels for the day, knowing that the day’s audience was going to be very, very large.”). This, too, supports Fox’s actual malice.

Dominion’s STRS emails. Fox once again frames Dominion’s thousands of communications to Fox as “self-serving denials,” simply ignoring that those communications provided links to credible evidence debunking the claims about Dominion. Dom.MSJ.pp.93-96. Fox’s conscious decision to ignore the evidence provided by Dominion likewise supports Fox’s actual malice.

Evidence debunking the claims. Fox’s attempts to discredit the credible public evidence demonstrating the falsity of the claims against Dominion is almost entirely copied and pasted from its motion. Dominion accordingly addressed Fox’s argument in Dominion’s opposition brief, which Dominion incorporates here by reference. Dom.Opp.pp.172-178.

One instance of Fox’s repetition bears highlighting, though: Fox has reasserted its troubling characterization of paper ballot recounts presided over by Republican state officials as “self-serving audits.” FNN.Opp.p.143; FNN.MSJ.p.141. As explained in Dominion’s opposition, Fox has no basis for its dismissive characterization.¹⁶ Yet Fox’s briefing repeatedly, openly embraces a

¹⁶ Other examples of Fox’s mischaracterizations of the record abound, though none matter to this motion’s resolution. For example, in the fact section of its answering

conspiracy theory argument that would, if credited, mean that the legitimate winner of the 2020 election will never be known. That is not what Fox's corporate representative testified to when he admitted that audits could provide evidence supporting a lack of voting machine fraud, Ex.128, Lowell 30(b)(6) 371:22-372:10; and it is not what Rupert Murdoch testified to when he said that Fox should not, today, "encourage the false notion that the election was stolen," Ex.600, R.Murdoch 312:19-24.

brief, Fox quotes a portion of former Dominion employee Eric Coomer's text message as evidence that "He lamented that '[a]lmost all' of Dominion's technological failings were 'due to our complete f--- up in installation.'" FNN.Opp.p.17. But Coomer's text message actually said "Almost all of it was due to..." with the preceding text message referring to "Texas, unanimous denial." In other words, Coomer was attributing a single event—the denial of certification in Texas—to Dominion's "f--- up in installation" (*i.e.*, problems with the installation for Dominion's demonstration of its equipment for Texas certification). Fox omitted the word "it" (referring to the Texas certification denial) and instead suggested, incorrectly, that Coomer was talking about "technical failings" at the company more broadly. *See* H3.

Fox also distorts Dominion witnesses' deposition testimony, for example, by stating that Mark Beckstrand testified that a voting machine was "hacked" in Michigan, even though Beckstrand defined a "hacking instance" as "an attempt at hacking or somebody gets ahold of our equipment illicitly." The immediately preceding and ensuing deposition transcript pages (which Fox failed to provide the Court) show that Beckstrand was talking about an aberrational event from 2022 in which a Michigan county lost custody of a Dominion voting machine, which ended up being turned over to Goodwill and sold on eBay. Beckstrand made clear in his testimony that the county losing custody of the machine had nothing to do with an issue with Dominion or its equipment, and with respect to the machine being on eBay, "nothing can happen to it, nobody can do anything with it."

In any event, Dominion internal documents and witness testimony about events are irrelevant to Fox employees' state of mind unless they knew about those documents or events at the time (and they did not).

Failure to investigate. Dominion addresses Fox’s mis-framing of its purposeful avoidance of the truth as a simple failure to investigate above. *Supra* §V.C; *see also* Dom.Opp.pp.178-179. Fox’s examples purportedly showing its hosts in fact investigated only underscore their actual malice:

- **Dobbs:** The “independent investigation” Fox claims Dobbs’ team performed includes an email from Dobbs’ producer to himself on November 12—prior to all of the accused Dobbs broadcasts—attaching a New York Times article entitled “*No, Dominion voting machines did not delete Trump votes.*” Ex.I12. This email demonstrates why this is the rare case in which summary judgment is appropriate on a defendant’s actual malice: as Fox itself highlights, Dobbs’ producer researched the claims and found responsible reporting deeming them false. *Id.* Other emails cited by Fox only reinforce that Dobbs’ team were interested only in a preconceived storyline. And Fox’s claim that Dominion declined to have its CEO appear on Dobbs’ program ignores that when Dominion subsequently requested to appear in early December, Dobbs’ team did not respond. *See* Ex.662.
- **Pirro:** The statements by Senators Warren and Klobuchar that Pirro supposedly “unearthed” were regarding electronic voting security generally and entirely inapposite to the fraud claims peddled by Powell and Giuliani. Pirro herself did not recall whether she saw any “affidavit” about Dominion prior to airing the allegations, Ex.135, Pirro 102:12-103:12, and in any event, her own colleagues recognized the inadequacy of that supposed “evidence,” Ex.743 (Carlson called it an “irrelevant redacted affidavit from Venezuela”).
- **Bartiromo:** The email Fox points to from Abby Grossberg shows that she performed a simple internet search and found Dominion was *not* founded in Venezuela, but in Canada; and the article she cites to for this information describes the fraud claims as “unfounded.” Ex.I13. The ease with which she confirmed this point—and her citation to responsible reporting debunking the fraud claims—underscore her reckless disregard for the truth. The examination report Bartiromo forwarded to Grossberg prior to the November 15 broadcast, Ex.I14, is a system test report related to certification from 2019 that in no way supports fraud allegations.

- **Hannity:** Hannity’s testimony on his “investigation” into Dominion demonstrated his history of misrepresenting various articles and letters about the voting industry as a whole, or about Dominion’s competitors, as being about Dominion instead. Ex.122, Hannity 196:24-230:22, 254:15-262:3. His so-called investigation only demonstrated his attempts to [REDACTED] [REDACTED] by twisting facts to suit a narrative that would appeal to viewers. Ex.226 at FNN022_03852183.
- **Carlson:** The email Fox cites regarding Carlson’s “investigation,” Ex.115, cites a CNN package from 2016, unrelated to the 2020 election allegations. Moreover, Carlson knew the fraud claims pushed by Powell—and repeated by Lindell on his program—were false. *See, e.g.*, Ex.150 (“Sidney Powell is lying.”).

Departure from journalistic standards. Fox claims that its departure from established journalistic standards is irrelevant, citing *Harte-Hanks* for this proposition. FNN.Opp.p.152. However, while failure to adhere to professional standards does not alone satisfy actual malice, it is not “irrelevant”; the Supreme Court in *Harte-Hanks* affirmed a finding of actual malice that took such departure into consideration in view of the full record. *Harte-Hanks*, 491 U.S. at 693. Fox’s failure to adhere to any journalistic standards here is just further circumstantial evidence of its actual malice. *See* Dom.MSJ.pp.158-159; *see* D.I. 1062 (Dominion’s Opp. to Motion to Exclude Sesno, citing cases holding that departure from journalistic standards is relevant to actual malice inquiry).

Obviously unreliable sources and inherent implausibility. Dominion has provided extensive evidence, including contemporaneous documents, setting forth exactly what responsible individuals at Fox thought about the credibility of Powell

(per Rupert Murdoch, “that crazy would be lawyer,” Ex.634; Ex.600, R.Murdoch 138:18-21), Giuliani, Lindell, and their claims about Dominion, Dom.MSJ.pp.30, 34-35, 41-43, 148-153; Dom.Opp.pp.164-165, and has likewise addressed Fox’s argument that despite this contemporaneous evidence of obvious unreliability, Fox relied on Powell and Giuliani because they were the “President’s lawyers,” *see* Dom.Opp.pp.179-180; *supra* pp.69-70. And Fox’s assertion that general allegations of voting machine hacking are not “inherently implausible” is inapposite, as general claims of hacking are not what Dominion has accused. *See, e.g.*, Dom.Opp.pp.39-40.

Rebroadcasting and failure to retract. Contrary to Fox’s claim, both rebroadcasting false statements for which Fox knew or recklessly disregarded the truth and refusing to retract are probative of actual malice. *See, e.g., Nunes v. Lizza*, 12 F.4th 890, 900-901 (8th Cir. 2021); *Zerangue v. TSP Newspapers, Inc.*, 814 F.2d 1066, 1071-1072 (5th Cir. 1987); *see also generally* Restatement (Second) of Torts §580A cmt.(d).

VI. No Affirmative Defenses Justify Denying Summary Judgment.

Dominion briefed both the neutral report and fair report privileges extensively in both its summary judgment motion and opposition, along with its opposition to FNN’s motion to dismiss. Dom.MSJ.pp.163-172 (neutral report); *id.* pp.172-176 (fair report); Dom.Opp.pp.52-71 (neutral report); *id.* pp.71-78 (fair report); Dom.

Opp. to FNN MTD pp.11-41. This Court has already opined on this subject in this very case. FNN MTD Order pp.40-47.

Fox's footnote 11 notwithstanding, FNN.Opp.p.61.n.11, "neutral reportage" is an affirmative defense. FNN MTD Order pp.38-40 (treating as an affirmative defense); *Cianci*, 639 F.2d at 59 (describing as a defense); *US Dominion, Inc. v. Newsmax Media, Inc.*, 2022 WL 2208580, at *28 (Del. Super. Ct. June 16, 2022) (treating as an affirmative defense); *Gubarev v. BuzzFeed, Inc.*, 340 F. Supp. 3d 1304, 1312 (S.D. Fla. 2018) (same). And as noted already, Fox has confirmed it is not asserting an affirmative "neutral reportage" defense in this case. *See* FNN.Opp.p.61.n.11 (Fox insisting it is not invoking an "affirmative defense" or "privilege"); *see also* FNN Appendix (not mentioning "neutral reportage" defense).

Finally, as Dominion noted in its motion, Fox waived its affirmative defenses in its 30(b)(6) testimony, Dom.MSJ.pp.161-162, by focusing almost exclusively on truth/falsity. Fox does not respond to this point, and on this ground alone, the Court can rule for Dominion on Fox's affirmative defenses.

CONCLUSION

Dominion respectfully asks the Court grant its motion for summary judgment on liability.

Dated: February 20, 2022

Respectfully submitted,

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APPENDIX A

REVISED APPENDIX D
Falsity of Fox’s Statements

Revised Appendix D identifies the falsity categories within each accused broadcast, first in summary form and then by broadcast, along with the language of each accused statement. Revised Appendix D highlights the falsity category espoused in each accused statement. The rightmost column identifies “Additional Falsity Categories” where multiple categories apply.

BROADCASTS & FALSITY CATEGORIES OVERVIEW					
Falsity Categories:					
Category 1:	Dominion committed election fraud by rigging the 2020 Presidential Election (the fraud lie)				
Category 2:	Dominion’s software and algorithms manipulated vote counts in the 2020 Presidential Election (the algorithm lie)				
Category 3:	Dominion is owned by a company founded in Venezuela to rig elections for the dictator Hugo Chavez (the Venezuela lie)				
Category 4:	Dominion paid kickbacks to government officials who used its machines in the 2020 Presidential Election (the kickback lie)				
Defamatory Broadcasts:					
<i>Sunday Morning Futures,</i> Nov. 8, 2020	x	x			FNN Compl. ¶179(a); Ex.1
<i>Lou Dobbs Tonight,</i> Nov. 12, 2020	x		x		FNN Compl. ¶179(b); Ex.2
<i>Lou Dobbs Tonight,</i> Nov. 13, 2020	x	x	x	x	FNN Compl. ¶179(c); Ex.3
Tweet from Lou Dobbs, Nov. 14, 2020	x	x	x		FNN Compl. ¶179(d); Ex.4
<i>Justice with Judge Jeanine,</i> Nov. 14, 2020	x	x	x		FNN Compl. ¶179(e); Ex.5
<i>Fox & Friends Sunday,</i> Nov. 15, 2020	x	x	x	x	FNN Compl. ¶179(f); Ex.6
<i>Sunday Morning Futures,</i> Nov. 15, 2020	x	x	x	x	FNN Compl. ¶179(g); Ex.7
<i>Lou Dobbs Tonight,</i> Nov. 16, 2020	x	x	x		FNN Compl. ¶179(h); Ex.8
<i>Lou Dobbs Tonight,</i> Nov. 18, 2020	x	x	x		FNN Compl. ¶179(i); Ex.9
<i>Lou Dobbs Tonight,</i> Nov. 19, 2020	x	x	x		FNN Compl. ¶179(j); Ex.10

<i>Justice with Judge Jeanine</i> , Nov. 21, 2020	x	x	x		FNN Compl. ¶179(k); Ex.11
<i>Lou Dobbs Tonight</i> , Nov. 24, 2020	x	x	x		FNN Compl. ¶179(l); Ex.12
<i>Lou Dobbs Tonight</i> , Nov. 30, 2020	x	x		x	FNN Compl. ¶179(m); Ex.13
<i>Hannity</i> , Nov. 30, 2020	x	x			FNN Compl. ¶179(n); Ex.14
<i>Lou Dobbs Tonight</i> , Dec. 4, 2020	x	x			FNN Compl. ¶179(o); Ex.15
Tweet from Lou Dobbs, Dec. 10, 2020	x	x			FNN Compl. ¶179(p); Ex.16
<i>Lou Dobbs Tonight</i> , Dec. 10, 2020	x	x	x		FNN Compl. ¶179(q); Ex.17
Tweet from Lou Dobbs, Dec. 10, 2020	x				FNN Compl. ¶179(r); Ex.18
<i>Fox & Friends</i> , Dec. 12, 2020	x				FNN Compl. ¶179(s); Ex.19
<i>Tucker Carlson Tonight</i> , Jan. 26, 2021	x				FNN Compl. ¶179(t); Ex.20

SUNDAY MORNING FUTURES BROADCAST ¶179(a)	
Date:	November 8, 2020
Host:	Maria Bartiromo
Falsity:	Category 1: Dominion committed election fraud by rigging the 2020 Presidential Election
	Category 2: Dominion's software and algorithms manipulated vote counts in the 2020 Presidential Election
Transcript:	Additional Falsity Categories
<u>Powell:</u>	<p>There has been a massive and coordinated effort to steal this election from we the people of the United States of America, to delegitimize and destroy votes for Donald Trump, to manufacture votes for Joe Biden.</p> <p>...</p> <p>[B]ut they also used an algorithm to calculate the votes they would need to flip, and they used the computers to flip those votes from Biden to – I mean, from Trump to Biden...</p>

	...	
<u>Bartiromo:</u>	Sidney, I want to ask you about these algorithms and the Dominion software.	
	...	
	Sidney, we talked about the Dominion software. I know that there were voting irregularities. Tell me about that.	
<u>Powell:</u>	That's putting it mildly. The computer glitches could not and should not have happened in – at – at all.	
	Those – that is where the fraud took place where they were flipping votes in the computer system or adding votes that did not exist.	
	We need an audit of all the computer systems that were – played any role in this fraud whatsoever.	
	...	
	They had this all planned, Maria. They had the algorithms. They had the paper ballots waiting to be inserted if and when needed.	
	And notably, President Trump's vote in the blue states went up enormously. That's when they had to stop the vote count and go in and replace votes for Biden and take away Trump votes.	
<u>Bartiromo:</u>	I never seen voting machines stop in the middle of an election. Stopped, downed and assessed the situation.	
	...	
	What can you tell us about the interest on the other side of this Dominion software?	
<u>Powell:</u>	Well, obviously, they have invested in it for their own reasons, and are using it to commit this fraud to steal votes.	
Cite:	Ex. 1; <i>see</i> FNN Compl. ¶179(a); Fox Corp Compl. ¶224(a)	
LOU DOBBS TONIGHT BROADCAST ¶179(b)		
Date:	November 12, 2020	
Host:	Lou Dobbs	
Falsity:	Category 1: Dominion committed election fraud by rigging the 2020 Presidential Election	
	Category 3: Dominion is owned by a company founded in Venezuela to rig elections for the dictator Hugo Chavez	
Transcript: :		Additional Falsity Categories
<u>Dobbs:</u>	Let's talk about, just for a moment, an update on Dominion....	
	...	

<u>Giuliani:</u>	<p>Dominion is a company that's owned by another company called Smartmatic, through an intermediary company named Indra. Smartmatic is a company that was formed way back in about 2004; 2003-2004. You're going to be astonished when I tell you how it was formed. It was formed really by three Venezuelans who were very close to – very close to the dictator Chavez of Venezuela and it was formed in order to fix elections. That's the company that owns Dominion.</p> <p>Dominion is a Canadian company, but all of its software is Smartmatic software, so the votes actually go to Barcelona, Spain.</p> <p>So, we're using a foreign company that is owned by Venezuelans who are close to – were close to Chavez, are now close to Maduro, have a history – they were founded as a company to fix elections, they have a terrible record....</p> <p>...</p>	
<u>Dobbs:</u>	<p>It's stunning. And they're private firms and very little is known about their ownership, beyond what you're saying about Dominion. It's very difficult to get a handle on just who owns what and how they're being operated.</p> <p>And by the way, the states, as you well know now, they have no ability to audit meaningfully the votes that are cast because the servers are somewhere else and are considered proprietary and they won't touch them.</p> <p>They won't permit them being touched.</p> <p>...</p>	
<u>Dobbs:</u>	<p>This looks to me like it is the end of what has been a four-and-a-half – the endgame to a four-and-a-half year-long effort to overthrow the president of the United States. It looks like it's exactly that.</p> <p>That there is –</p>	
<u>Giuliani:</u>	<p>Yeah, Lou.</p>	
<u>Dobbs:</u>	<p>These are all parts of a piece here.</p> <p>...</p>	
<u>Dobbs:</u>	<p>It's extraordinary.</p> <p>...</p>	
<u>Dobbs:</u>	<p>This election has got more firsts than any I can think of and Rudy, we're glad you're on the case and pursuing what is the truth.</p>	
Cite:	<p>Ex.2; see FNN Compl. ¶179(b); Fox Corp Compl. ¶224(b)</p>	

LOU DOBBS TONIGHT BROADCAST ¶179(c)	
Date:	November 13, 2020
Host:	Lou Dobbs
Falsity:	<p>Category 1: Dominion committed election fraud by rigging the 2020 Presidential Election</p> <p>Category 2: Dominion’s software and algorithms manipulated vote counts in the 2020 Presidential Election</p> <p>Category 3: Dominion is owned by a company founded in Venezuela to rig elections for the dictator Hugo Chavez</p> <p>Category 4: Dominion paid kickbacks to government officials who used its machines in the 2020 Presidential Election</p>
Transcript:	Additional Falsity Categories
<u>Dobbs:</u>	<p>Well, joining us tonight is Sidney Powell...a great American and prominent appellate lawyer. Great to have you with us, Sidney.</p> <p>...</p> <p>Let's start with Dominion, a straight out disavowal of any claim of fraud against the company, its software or machines. Your reaction.</p>
<u>Powell:</u>	<p>Well, I can hardly wait to put forth all the evidence we have collected on Dominion, starting with the fact it was created to produce altered voting results in Venezuela for Hugo Chavez and then shipped internationally to manipulate votes for purchase in other countries, including this one.</p> <p>It was funded by money from Venezuela and Cuba, and China has a role in it also. So, if you want to talk about foreign election interference, we certainly have it now. We have staggering statistical evidence, we have staggering testimony from witnesses, including one who was personally in briefings when all of this was discussed and planned, beginning with Hugo Chavez and how it was designed there and then saw it happening in this country.</p> <p>As soon as the states shut down on election night and stopped counting, those are the states where the most egregious problems occurred.</p> <p>We also need to look at and we're beginning to collect evidence on the financial interests of some of the governors and Secretaries of State who actually bought into the Dominion Systems, surprisingly enough – Hunter Biden type graft to line their own pockets by a getting voting machine in that would either make sure their election was successful or they got money for their family from it.</p>
<u>Dobbs:</u>	Well, that's straightforward.

...

Powell: Well, for fraud this serious, I think even if states are stupid enough to go ahead and certify the votes where we know the machines were operating and producing altered election results, if they're stupid enough to do that, then they will be set aside by the fraud also.

...

Dobbs: With these allegations, these charges, is the FBI already carrying out an investigation of these voting companies and where their servers are domiciled and in at least two instances – three instances, we know they're in foreign countries.

...

Powell: We are on the precipice of – this is essentially a new American revolution, and anybody who wants this country to remain free needs to step up right now.

These are federal felonies. Altering a vote or changing a ballot is a federal felony. People need to come forward now and get on the right side of this issue and report the fraud they know existed in Dominion Voting Systems, because that's what it was created to do. It was its sole original purpose. It has been used all over the world to defy the will of people who wanted freedom.

Dobbs: Sidney, at the outset of this broadcast I said that this is the culmination of what has been an over a four-year effort to overthrow this president; to first deny his candidacy, the election, but then to overthrow his presidency. This looks like the effort to carry out an endgame in the effort against him.

Do you concur?

Powell: Oh, absolutely...I'm going to release the kraken.

Dobbs: Well, good, because this is an extraordinary and such a dangerous moment in our history.

...

Sidney, we're glad that you are on the charge to straighten out all of this. It is a foul mess, and it is far more sinister than any of us could have imagined, even over the course of the past four years.

You get the last word, Sidney.

Powell: It is indeed a very foul mess.

It is farther and wider and deeper than we ever thought, but we are going to go after it, and I am going to expose every one of them.

Dobbs: Sidney Powell, thanks for being with us, and thanks for all that you're doing.

Great American.*

Notes:	* “Great American” is not included at the end of the transcript in Ex.3; however, it is in Fox News’ transcript of the broadcast, <i>see</i> Ex.40 at FNN002_00004672, and the full recording of the broadcast, <i>see</i> Ex.56.
Cites:	Ex.3; <i>see</i> FNN Compl. ¶179(c); Fox Corp Compl. ¶224(c)
Tweet from Lou Dobbs ¶179(d)	
Date:	November 14, 2020
Host:	Lou Dobbs (@loudobbs)
Falsity:	Category 1: Dominion committed election fraud by rigging the 2020 Presidential Election
	Category 2: Dominion’s software and algorithms manipulated vote counts in the 2020 Presidential Election
	Category 3: Dominion is owned by a company founded in Venezuela to rig elections for the dictator Hugo Chavez
Tweet:	Additional Falsity Categories
<u>@loudobbs</u> :	<p>Read all about Dominion and Smartmatic voting companies and you’ll soon understand how pervasive this Democrat electoral fraud is, and why there’s no way in the world the 2020 Presidential election was either free or fair. #MAGA @realDonaldTrump #AmericaFirst #Dobbs</p> <p><i>Retweeted by Dobbs and embedded in his tweet was the post below from Rudy Giuliani.</i></p> <p><u>@RudyGiuliani</u>: Did you know a foreign company, DOMINION, was counting our vote in Michigan, Arizona and Georgia and other states.</p> <p>But it was a front for SMARTMATIC, who was really doing the computing.</p> <p>Look up SMARTMATIC and tweet me what you think?</p> <p>It will all come out.</p>
Cite:	Ex.4; <i>see</i> FNN Compl. ¶179(d); Fox Corp Compl. ¶224(d)

JUSTICE WITH JUDGE JEANINE BROADCAST ¶179(e)

Date:	November 14, 2020
Host:	Jeanine Pirro
Falsity:	Category 1: Dominion committed election fraud by rigging the 2020 Presidential Election
	Category 2: Dominion’s software and algorithms manipulated vote counts in the 2020 Presidential Election
	Category 3: Dominion is owned by a company founded in Venezuela to rig elections for the dictator Hugo Chavez

Transcript:	Additional Falsity Categories
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<u>Pirro:</u>	<p>The Dominion Software system has been tagged as one allegedly capable of flipping votes.</p> <p>Now, you'll hear from Sidney Powell in a few minutes, who will explain what she has unearthed in the creation of Dominion.</p> <p>...</p>	
<u>Powell:</u>	<p>I'm working on the massive aspect of systemwide election fraud, definitely impacting the swing states, and likely going far beyond that.</p> <p>We're talking about the alteration and changes in millions of votes, some being dumped that were President Trump, some being flipped that were for President Trump, computers being overwritten to ignore signatures, all kinds of different means of manipulating the Dominion and Smartmatic software that, of course, we would not expect Dominion or Smartmatic to admit.</p> <p>...</p>	
<u>Pirro:</u>	<p>[B]ut at the same time, as you put together your case, Sidney, I assume that you are getting to the bottom of actually what Dominion is, who started Dominion, how it can be manipulated, if it is manipulated at all, and what evidence do you have to prove this?</p> <p>...</p>	
<u>Pirro:</u>	<p>If you can establish that there is corruption in the use of this software, this Dominion Software, as you allege and you say you have evidence, how do you put that together and prove that on election night, or immediately after, that at the time that the votes were being either tabulated or put in, that we can prove that they were flipped?</p> <p>...</p>	

<u>Powell:</u>	It was created for the express purpose of being able to alter votes and secure the reelection of Hugo Chavez and then Maduro. They've used it in Argentina. There is an American citizen who has exported it to other countries and it is one huge, huge criminal conspiracy that should be investigated by military intelligence for its national security implications.	
<u>Pirro:</u>	Yes. And hopefully the Department of Justice, but who knows anymore. Sidney Powell, good luck on your mission. ...	
<u>Pirro:</u>	Anyway, I'm Jeanine Pirro advocating for truth, justice, and the American way.	

Cite: FNN Compl. ¶179(e); Fox Corp Compl. ¶224(e); Ex.5

FOX & FRIENDS SUNDAY BROADCAST ¶179(f)

Date:	November 15, 2020
Host:	Will Cain, Pete Hegseth, Rachel Campos-Duffy, Maria Bartiromo (guest)
Falsity:	Category 1: Dominion committed election fraud by rigging the 2020 Presidential Election
	Category 2: Dominion's software and algorithms manipulated vote counts in the 2020 Presidential Election
	Category 3: Dominion is owned by a company founded in Venezuela to rig elections for the dictator Hugo Chavez
	Category 4: Dominion paid kickbacks to government officials who used its machines in the 2020 Presidential Election

Transcript: **Additional Falsity Categories**

<u>Bartiromo:</u>	This morning on Sunday Morning Futures I am talking with Rudy Giuliani, the president's personal attorney. He is my lead guest and he is breaking so much news on the software that was used in the voting machines on election night.	
	There is much to understand about Smartmatic, which owns Dominion Voting Systems. They have businesses in Venezuela, Caracas.	
 We're going to talk about it with Rudy Giuliani and why he does believe he will be able to overturn this election with evidence.	
	He will join me along with Sidney Powell to give us an update on their investigation.	

	<p>This is very important to understand what was going on with this software.</p> <p>Sidney Powell is also talking about potential kickbacks that government officials, who were asked to use Dominion, actually also enjoyed benefits to their families. We're going to talk about that coming up as well.</p>	<div style="background-color: yellow; height: 20px; width: 100%;"></div> <div style="background-color: #d3d3d3; height: 20px; width: 100%;"></div>
Cites:	Ex.6; see FNN Compl. ¶179(f); Fox Corp Compl. ¶224(f)	
SUNDAY MORNING FUTURES BROADCAST ¶179(g)		
Date:	November 15, 2020	
Host:	Maria Bartiromo	
Falsity:	<p>Category 1: Dominion committed election fraud by rigging the 2020 Presidential Election</p> <p>Category 2: Dominion’s software and algorithms manipulated vote counts in the 2020 Presidential Election</p> <p>Category 3: Dominion is owned by a company founded in Venezuela to rig elections for the dictator Hugo Chavez</p> <p>Category 4: Dominion paid kickbacks to government officials who used its machines in the 2020 Presidential Election</p>	
Transcript:		Additional Falsity Categories
<u>Bartiromo:</u>	<p>Coming up President Trump's Legal team with new evidence this morning of back doors on voting machines, ballot tampering and election interference.</p> <p>Rudy Giuliani with new Affidavits and lawsuits charging fraud; why the swing states delayed or stopped counting ballots on election night; on the Venezuela connection and whether kickbacks were involved for those taking on Dominion Voting Machines as a hand recount of nearly 5 million ballots is underway in Georgia.</p> <p>...</p>	<div style="background-color: yellow; height: 20px; width: 100%;"></div> <div style="background-color: #d3d3d3; height: 20px; width: 100%;"></div>
<u>Giuliani:</u>	<p>[I]t’s way beyond what people think, including a very, very dangerous foreign company that did the votes in 27 states. A company that's not American. A company that's foreign. A company that has close, close ties with Venezuela and, therefore, China, and using Venezuela company software that's been used to steal elections in other countries.</p> <p>...</p> <p>And the software that they use is done by a company called Smartmatic. It's a company that was founded by Chavez, and by Chavez' two allies and still own it.</p>	

It's been used to cheat in elections in South America. It was banned by the United States several – about a decade ago. It's come back now as a subcontractor to other companies, and, sort of, hides in the weeds.

But Dominion sends everything to Smartmatic. Can you believe it? Our votes are sent overseas. Sent to someplace else. Some other country. Why do they leave our country?

And this company has tried and true methods for fixing elections by calling a halt to the voting when you're running too far behind. They've done that in prior elections.

...

Giuliani:

In Detroit, we have evidence that a hundred thousand ballots were brought in at 4:30 in the morning and counted, and to the extent there are witnesses, and there are four of them saw it, and one of them is an ex-employee of Dominion.

According to them, every single ballot was for Biden. And not only that, but whatever ballots they could see – because they weren't Republicans so they could get closer – every ballot they could see, it just had Biden's name on it. Nobody else, not even another Democrat.

Now, why does that happen? It happens because you know you're behind, Dominion notifies you, you call off the counting, and then you start doing ballots like this...

You can't do the down ticket. That's why you have Biden and no down ticket because they just had enough time to get Biden's name in.

...

Bartiro:

Look, I want to show this graphic of the swing states –

...

Bartiro:

– that were using Dominion this software, the Smartmatic software. I mean, you just said it all.

This is a Smartmatic, a Delaware entity, registered in Boca Raton Florida, activities in Caracas, Venezuela. The voting machines were used, Dominion voting machines were used in Arizona, Georgia, Michigan, Nevada, Pennsylvania and Wisconsin.

And I have a graphic showing the states where they stopped counting, which I thought was also strange to stop counting in the middle of election night.

One source says that the key point to understand is that this Smartmatic system has a back door that allows it to be – that allows

the votes to be mirrored and monitored, allowing an intervening party a real time understanding of how many votes will be needed to gain an electoral advantage.

Are you saying the states that use that software did that?

Giuliani: Well, I know – I can prove that they did it in Michigan. I can prove it with witnesses.

...

They did it in big cities where they have corrupt machines that will protect them. Meaning, Pennsylvania, Philadelphia, and Pittsburg. In Detroit.

They didn't have to do it in Chicago, New York or Boston. They could have. They have corrupt machines there.

They did it absolutely in Phoenix, Arizona. They did it absolutely in Milwaukee, Wisconsin.

...

[A]nd, yes, there is a back door.

...

Giuliani: We have people that I can't really disclose that can describe the hardware in great detail.

We have some of the people, former government employees, our government employees and others that were there at the creation of Smartmatic, that can describe it.

...

Giuliani: They can draw it. They can show it.

And then we have proof that I can't disclose yet.

...

Giuliani: And the Governors who gave contracts to this company never bothered to do their due diligence.

I mean, I can't imagine you would give a contract to a company if you went one step further and found out it's really being run by people that are close to Maduro and Chavez.

...

Bartiromo: Wow.

All right. Rudy, we're going to be following your investigation. Thank you very much for breaking all of this news...

Cites: Ex.7; see FNN Compl. ¶179(g); Fox Corp Compl. ¶224(g)

SUNDAY MORNING FUTURES BROADCAST ¶179(g) cont.

Date:	November 15, 2020
Host:	Maria Bartiromo
Falsity:	Category 1: Dominion committed election fraud by rigging the 2020 Presidential Election
	Category 2: Dominion’s software and algorithms manipulated vote counts in the 2020 Presidential Election
	Category 3: Dominion is owned by a company founded in Venezuela to rig elections for the dictator Hugo Chavez
	Category 4: Dominion paid kickbacks to government officials who used its machines in the 2020 Presidential Election

Transcript:	Additional Falsity Categories
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<u>Bartiromo:</u>	<p>According to public records, Dominion Voting Machines are used in 2000 jurisdictions in 30 states...</p> <p>That's troubling, given we already know that at least two software glitches in Georgia and Michigan occurred on election night.</p> <p>Attorney Sidney Powell is leading the charge against Dominion, and she says she has enough evidence of fraud to launch a massive criminal investigation.</p> <p>...</p> <p>I want to get right into it.</p> <p>We just heard about the software made by Smartmatic from Rudy...</p> <p>...</p>	<div style="border: 1px solid black; width: 20px; height: 40px; background-color: yellow; margin: 0 auto;"></div>
<u>Powell:</u>	<p>And President Trump won by not just hundreds of thousands of votes, but by millions of votes that were shifted by this software that was designed expressly for that purpose.</p> <p>We have sworn witness testimony of why the software was designed. It was designed to rig elections. He was fully briefed on it. He saw it happen in other countries.</p> <p>It was exported internationally for profit by the people that are behind Smartmatic and Dominion.</p> <p>They did this on purpose. It was calculated. They've done it before.</p> <p>We have evidence from 2016 in California. We have so much evidence, I feel like it's coming in through a fire hose.</p>	<div style="border: 1px solid black; width: 20px; height: 300px; background-color: yellow; margin: 0 auto;"></div>
<u>Bartiromo:</u>	<p>Wow.</p> <p>So, Sidney, you feel that you will be able to prove this?</p>	

Do you have the software in your possession? Do you have the hardware in your possession? How will you prove this, Sidney?

Powell: Well, I've got lots of ways to prove it, Maria, but I'm not going to tell on national TV what all we have. I just can't do that.

...

Powell: [T]his is a massive election fraud, and I'm very concerned it involved not only Dominion and its Smartmatic software, but that the software, essentially, was used by other election machines, also. It's the software that was the problem.

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

It's absolutely brazen how people bought the system and why they bought the system.

In fact, every state that bought Dominion, for sure, should have a criminal investigation or, at least, a [serious*] investigation of the officers in the states who bought the software.

We've even got evidence of some kickbacks, essentially.

Bartiromo: Kickbacks.

I want to take a short break and come back on that and I want to ask you about the kickbacks, who took kickbacks, in which [states**].

...

[Y]ou said that there have been kickbacks to some people who accepted the Dominion software.

Tell me what you mean.

Powell: Well, I mean, we are collecting evidence now from various whistle blowers that are aware of substantial sums of money being given to family members of state officials who bought the software.

I mean, we're talking about hundred million dollar packages for new voting machines suddenly in multiple states and benefits ranging from financial benefits for family members to, sort of, what I would call election insurance because they know that they can win the election if they are using that software.

...

Bartiromo: Which governor or which government official accepted hundreds of millions of dollars in benefits for their family as they took on this software?

Powell: If I said hundreds of millions of dollars there, I misspoke.

I don't know the exact amount of money yet. We are still collecting the evidence on that, but it's more than one.

Bartiromo: Okay.

So, you can't say who you believe took kickbacks.

...

Bartiromo: [A]n IT specialist, told me that he knows the software and...

He said there was an unusual patch that was put into the software while it was live and it's highly unusual to put a patch in there.

Is that what you're referring to? Tell me how it's done and how these backdoors work.

...

Powell: They can watch votes in real time. They can shift votes in real time.

We've identified mathematically the exact algorithm they used and planned to use from the beginning to modify the votes in this case to make sure Biden won.

...

Well, it's massive election fraud. It's going to undo the entire election, and they can do anything they want with the votes.

They can have the machines not read the signature. They can have the machines not read the down ballot. They can make the machines read and catalog only the Biden votes.

It's like drag and drop whatever you want, wherever you want, upload votes.

Bartiromo: Yeah.

...

Bartiromo: And Sidney, you say you have an Affidavit from someone who knows how the system works and was there with the planning of it.

You believe you can prove this [in court***]?

Powell: Yes.

Oh, yes. We have a sworn – essentially, a Sworn Statement from a witness who knew exactly how it worked from the beginning, why it was designed to work that way and saw when things started shutting down and they started, you know, stopped counting the votes here. That was the same play that had worked in other countries.

Bartiromo: Wow. This is explosive, and we certainly will continue to follow it.

	Sidney, thank you so much for your work. We will be catching up with you soon. Thank you so much.	
Notes:	*, **, *** The recording of the broadcast reflects the language indicated. Ex.58.	
Cites:	Ex.7; <i>see</i> FNN Compl. ¶179(g); Fox Corp Compl. ¶224(g)	
LOU DOBBS TONIGHT BROADCAST ¶179(h)		
Date:	November 16, 2020	
Host:	Lou Dobbs	
Falsity:	Category 1: Dominion committed election fraud by rigging the 2020 Presidential Election	
	Category 2: Dominion's software and algorithms manipulated vote counts in the 2020 Presidential Election	
	Category 3: Dominion is owned by a company founded in Venezuela to rig elections for the dictator Hugo Chavez	
Transcript:		Additional Falsity Categories
<u>Dobbs:</u>	<p>Well, now to the widespread irregularities, anomalies and cheating in the presidential election. President Trump's Legal team says potentially, rigged voting machines demand a National Security investigation.</p> <p>They are pointing to Dominion Voting Systems widely used ballot scanning machines who's software is suspected of inflating vote totals for Joe Biden.</p> <p>Dominion Systems used in more than 24 dozen states. Dominion, also one of three companies accounting for almost 90 percent of the voting equipment in U.S. elections.</p> <p>The radical dems, the [RINOs], left wing national media are, of course, quick to dismiss any concerns about Dominion Voting Machines being manipulated as a, quote/unquote, conspiracy theory. Quote/unquote.</p> <p>...</p> <p>Dominion has connections to UK based Smartmatic, a voting technology company established in 2000 that had ties to Venezuela's Hugo Chavez.</p> <p>Smartmatic wants the subject of the Treasury Department investigation into its connections with the Venezuelan government. Three of their employees were also charged in 2016 with illegally altering code on an election server in the Philippines National election.</p> <p>...</p>	<div style="background-color: yellow; height: 150px; width: 100%;"></div> <div style="background-color: pink; height: 150px; width: 100%;"></div>

Your reaction to what the Trump Legal team and others are doing about Dominion, Smartmatic and many of the other voting companies, which almost seems like, and at least a very – very much election terms probable cause for a complete and thorough investigation.

...

Dobbs: This is a president, this is the nation that has just been wronged mightily.

Only an idiot would try to claim that there were no irregularities. That there were no anomalies that. There were insufficient evidence and documents suggesting fraud, and inexplicable mathematical ratios that tell us very quickly there is something terrible afoot here.

...

Dobbs: This is the worst in our country's history. There is no election in our presidential history, our nation's history, in which there were so many anomalies, so many irregularities and so much.

...

Dobbs: And much clear evidence of fraud.

...

Dobbs: Documents show that Dominion Voting Systems submitted a bid to the city of Philadelphia in 2018 to be considered as their contractor for voting machines. Those same documents revealed very little about the company's foreign connections.

When asked by the City to list any foreign ownership or investors in either the parents company and/or its subsidiaries, Dominion had something to say but nothing to show.

The section you see there on your screen is entirely redacted, blacked out because Dominion ultimately was denied the contract.

...

The question is: Was the president ever informed of this attempted bid by a company with foreign ties? And why are they being so secretive?

...

Dobbs: The Dominion Voting Systems seems to be figuring larger and larger in the interest of your legal team and what is the latest?

Powell: Oh, definitely, Lou.

I've just gotten some stunning evidence from a firsthand witness, a high-ranking military officer, who present when Smartmatic was

designed in a way that – and I'm going to just read to you some of these statements, if you don't mind so I get them exactly right.

Dobbs: Sure.

Powell: From the affidavit.

“Designed in a way that the system could change the vote of each voter without being detected. He wanted the software itself to [] function* in such a manner that if the voter were to place their thumbprint or fingerprint on a scanner, then the thumbprint would be tied to a record of the voter's name and identity as having voted, but that voter would not be tracked to the changed vote.”

He made it clear that “the system would have to be set up but not leave any evidence of the changed vote for a specific voter, and that there would be no evidence to show and nothing to contradict that the name or the fingerprint or thumbprint was going with a changed vote.[”]

“Smartmatic agreed to create such a system and produce [the]** software and hardware that accomplished the result for President Chavez.[”]

“After the Smartmatic electoral managed – the electoral management system was put in place, [he]*** closely observed several elections where the results were manipulated using the Smartmatic software.[”]

...

“Persons controlling the vote[]**** tabulation computer had the ability to change the reporting of votes by moving votes from one candidate to [] another***** by using the Smartmatic software”

Dobbs: And Smartmatic –

Powell: Smartmatic owns Dominion.*****

Dobbs: Yes.

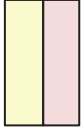
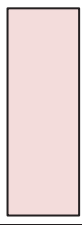

...

Dobbs: It is a deeply, deeply troubling election, as I said earlier, the worst in this country's history, bar none, and we have seen official – official investigative and Justice Department officials slow to move, and it is infuriating to everyone.

Powell: Willful blindness.

They have adopted a position of willful blindness to this massive corruption across the country.

And the Smartmatic software is in the DNA of every vote tabulating company's software and system.

<u>Dobbs:</u>	<p>Yes.</p> <p>Sidney, it is more than just a willful blindness. This is people trying to blind us to what is going on.</p> <p>We don't even know who the hell really owns these companies, at least most of them. That's gotta change. We've gotta find out exactly what's going on, and thank God we've got a president who will stay in the fight all the way through until we get those answers.</p> <p>Sidney Powell, thanks so much. We appreciate it as always.</p>	 	
Notes:	<p>*, **, ***, ****, ***** The recording of the broadcast reflects the language indicated. Ex.59.</p> <p>***** “Smartmatic owns Dominion” does not appear in the transcript in Ex.3; however, it is in the Complaint against Fox News Network, <i>see</i> FNN Compl., Ex.8 at 4:11, and clearly stated in the recording of the broadcast, <i>see</i> Ex.59 at 21:28.</p>		
Cite:	Ex.8; <i>see</i> FNN Compl. ¶179(h); Fox Corp Compl. ¶224(h)		
LOU DOBBS TONIGHT BROADCAST ¶179(i)			
Date:	November 18, 2020		
Host:	Lou Dobbs		
Falsity:	Category 1: Dominion committed election fraud by rigging the 2020 Presidential Election		
	Category 2: Dominion’s software and algorithms manipulated vote counts in the 2020 Presidential Election		
	Category 3: Dominion is owned by a company founded in Venezuela to rig elections for the dictator Hugo Chavez		
Transcript:	Additional Falsity Categories		
<u>Dobbs:</u>	<p>Our first guest tonight has been fighting for a free and fair election in Pennsylvania and indeed, around the country...Rudy Giuliani, the president’s attorney...now leading the fight for a free and fair election.</p> <p>...</p> <p>It’s nonsensical, it’s an insult and indeed, this whole fraud is an insult against this country.</p> <p>I want to share with the audience one of the affidavits that has been given to us by an unidentified whistleblower and it pertains to Dominion....</p> <p>...</p>		
<u>Dobbs:</u>	<p>The whistleblower says this, if we ever get it up: I am alarmed because of what is occurring in plain sight during this 2020 election</p>		

for president of the United States. The circumstances and events are eerily reminiscent of what happened with Smartmatic software electronically changing votes in the 2013 presidential election in Venezuela. What happened in the United States was that the vote counting was abruptly stopped in five states using Dominion software. At the time that vote counting was stopped, Donald Trump was significantly ahead in the votes. Then during the wee hours of the morning when there was no voting occurring and the vote count reporting was offline, something significantly changed. When the vote reporting resumed the very next morning, there was a very pronounced change in voting in favor of the opposing candidate, Joe Biden.

That from a whistleblower who was present both in Venezuela in 2013 and in this country as we were counting votes overnight on November 3rd. Your thoughts.

Giuliani:

...Our votes in 27, 28 states that are counted by Dominion and calculated and analyzed, they're sent outside the United States and they're not sent to Canada, they're sent to Germany and Spain, and the company counting it is not Dominion, it's Smartmatic, which is a company that was founded in 2005 in Venezuela for the specific purpose of fixing elections.

That's their expertise, how to fix elections.

They did it a number of times in Venezuela, they did it in Argentina...

Well, that's the company that was counting and calculating on election night. And they did all their old tricks. They stopped it, they also switched votes around suddenly, maybe ten per district, so you don't notice it. They got caught in Antrim County, which is how we found out about them. And we are in the process now of investigating this in great, great detail.

But I mean just the mere fact that we have a foreign country, we had this in a foreign country, done by friends of an enemy of the United States, Maduro, is outrageous and has to stop immediately.

Dobbs:

It's outrageous....

...

Giuliani:

We shouldn't be using this company that was founded by Chavez, to call votes in America because their specialty in Venezuela is cheating.

...

	And they're using a Venezuelan company as the vote counter which is known for changing votes and also known to have the most insecure computers in this business.	
Cite:	Ex.9; <i>see</i> FNN Compl. ¶179(i); Fox Corp Compl. ¶224(i)	

LOU DOBBS TONIGHT BROADCAST ¶179(j)

Date:	November 19, 2020
Host:	Lou Dobbs
Falsity:	Category 1: Dominion committed election fraud by rigging the 2020 Presidential Election
	Category 2: Dominion’s software and algorithms manipulated vote counts in the 2020 Presidential Election
	Category 3: Dominion is owned by a company founded in Venezuela to rig elections for the dictator Hugo Chavez

Transcript:	Additional Falsity Categories
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<u>Dobbs:</u>	Another issue at the center of today’s news conference, the use of Dominion voting machines, and Smartmatic software. Defense attorney Sidney Powell cited a whistleblower’s stunning affidavit. It says, “Smartmatic’s technology was used to rig elections in Venezuela. It is now in the, quote, DNA of every vote tabulating company software and system.” Smartmatic and Dominion deny those charges, but Sidney Powell argues that algorithms in the Smartmatic software were used to change results in the presidential election.		
<u>Powell:</u>	The software itself was created with so many variables and so many back doors that can be hooked up to the internet, or a thumb drive stuck in it, or whatever, but one of it's most characteristic features is its ability to flip votes. ...		
<u>Dobbs:</u>	We'll have much more on today's powerful news conference and the powerful charges put forward by the President's legal team, one of the team members, Sidney Powell, among our guests here tonight. She will be providing more details on how Dominion voting machines and Smartmatic software were used to help Joe Biden. ...		
<u>Dobbs:</u>	Breaking news. Now, Dominion Voting Systems today once again distanced itself from Smartmatic, saying "Dominion – Dominion is an entirely separate company and fierce competitor to Smartmatic."		

In quote, "Dominion and Smartmatic do not collaborate in any way and have no affiliate relationship or financial ties."

Yeah, and then in a 2009 lawsuit in which Smartmatic sued Dominion, a very clear relationship between the two companies was laid out.

...

So despite what appears to have been at least a relationship, and it is all but impossible to find any record of either proving or disproving a relationship because the two firms are privately-owned, it becomes a thorny matter at the very least.

...

Dobbs: And joining us now by phone is Sidney Powell. She is a member of, obviously, of the President's legal team, also General Michael Flynn's defense attorney. A great American. One of the country's leading appellate attorneys.

...

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

Powell: Oh, they are definitely linked. I would call them inextricably intertwined. They have the same history from their inception. I'm sure they're trying to distance themselves from each other, but the fact is that the Dominion machines run the Smartmatic software, or parts of the key code of it, and that is what allows them to manipulate the votes in any way the operators choose to manipulate them. And every time there was a glitch, as they called it, or a connection to the Internet, they also violated state laws that required the machines to be certified and nothing to be changed before the vote.

...

Powell: [T]hat one is of the server centers, there is also one in Barcelona, so it is related to the entire Smartmatic/Dominion software operation.

...

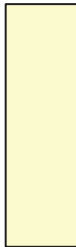
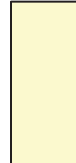




[T]here should be scabs of evidence of frankly, an international conspiracy, criminal conspiracy of the worst sort.

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

Powell: Yes, the way it works, the votes can be changed either on the ground as they come in, people can watch the votes stream in live, for example, there was a Dominion employee high up, high ranking, at

	<p>the Detroit center the night of the election. He could have watched the votes come in live and manipulated them in that process.</p> <p>It could have run an automatic algorithm against all the votes, which we believe is what happened originally and then the machines had to stop and then the – or the counting had to stop in multiple places because President Trump's lead was so great at that point []* they had to stop the counting [and come in]** and backfill the votes they needed to change the result.</p> <p>...</p> <p><u>Powell</u>: We've got, well, let me put it this way, there are thousands of people in federal prisons on far less evidence of criminal conduct than we have already against the Smartmatic and Dominion Systems companies, and most of the companies in the country have run the same sort of software, or have that code in their software.</p> <p>...</p> <p><u>Dobbs</u>: We have just watched – to everyone in this audience tonight, our election is run by companies, the ownership of which we don't know.</p>		
Notes:	*, ** The recording of the broadcast reflects the language indicated. Ex.61.		
Cite:	Ex.10; see FNN Compl. ¶179(j); Fox Corp Compl. ¶224(j)		
JUSTICE WITH JUDGE JEANINE BROADCAST ¶179(k)			
Date:	November 21, 2020		
Host:	Jeanine Pirro		
Falsity:	<p>Category 1: Dominion committed election fraud by rigging the 2020 Presidential Election</p> <p>Category 2: Dominion's software and algorithms manipulated vote counts in the 2020 Presidential Election</p> <p>Category 3: Dominion is owned by a company founded in Venezuela to rig elections for the dictator Hugo Chavez</p>		
Transcript:		Additional Falsity Categories	
<u>Pirro</u> :	<p>The President's lawyers alleging a company called Dominion, which they say started in Venezuela with Cuban money, and with the assistance of Smartmatic software, a backdoor is capable of flipping votes.</p> <p>...</p> <p>Why was there an overnight popping of the vote tabulation that cannot be explained for Biden?</p>		

Cite:	Ex.11; <i>see</i> FNN Compl. ¶179(k); Fox Corp Compl. ¶224(k)
LOU DOBBS TONIGHT BROADCAST ¶179(l)	
Date:	November 24, 2020
Host:	Lou Dobbs
Falsity:	<p>Category 1: Dominion committed election fraud by rigging the 2020 Presidential Election</p> <p>Category 2: Dominion’s software and algorithms manipulated vote counts in the 2020 Presidential Election</p> <p>Category 3: Dominion is owned by a company founded in Venezuela to rig elections for the dictator Hugo Chavez</p>
Transcript:	Additional Falsity Categories
<u>Dobbs:</u>	Joining us tonight by phone is Sidney Powell...a great American. ...
<u>Powell:</u>	[T]here's no doubt that the software was created and used in Venezuela to control the elections and make sure that Hugo Chavez was always reelected as the dictator of Venezuela in what appeared to be, quote, free and fair elections, end quote, but they were manipulated by the software used in the Dominion machines – and used by other machines in the United States, frankly, and we are just continuing to be inundated by evidence of all the frauds here and every manner and means of fraud you could possibly think of.
<u>Dobbs:</u>	Yeah. I think many Americans have given no thought to electoral fraud that would be perpetrated through electronic voting; that is, these machines, these electronic voting companies, including Dominion, prominently Dominion, at least in the suspicions of a lot of Americans. We don't even know who has actually seen this software work. We don't know where their servers are for sure. We know a couple of them are overseas, and by "overseas" I mean in Germany and in Spain.
Cite:	Ex.12; <i>see</i> FNN Compl. ¶179(l); Fox Corp Compl. ¶224(l)
LOU DOBBS TONIGHT BROADCAST ¶179(m)	
Date:	November 30, 2020
Host:	Lou Dobbs
Falsity:	<p>Category 1: Dominion committed election fraud by rigging the 2020 Presidential Election</p> <p>Category 2: Dominion’s software and algorithms manipulated vote counts in the 2020 Presidential Election</p> <p>Category 4: Dominion paid kickbacks to government officials who used its machines in the 2020 Presidential Election</p>

Transcript:	Additional Falsity Categories
<p><u>Dobbs:</u> Joining us now is Sidney Powell...a great American...</p> <p>...</p>	
<p><u>Powell:</u> We're going to ask for emergency review of that, where we sought to impound all the voting machines in Georgia and we need, frankly, to stop the election that's supposed to happen in January because all the machines are infected with the software code that allows Dominion to shave votes for one candidate and give them to another, and other features that do the same thing...</p> <p>...</p>	
<p>Different states shaved different amounts of votes, or the system was set up to shave and flip different votes in different states. Some people were targeted as individual candidates. It's really the most massive and historical egregious fraud the world has ever seen.</p> <p>...</p>	
<p><u>Dobbs:</u> You know, people don't go to jail for their attitude, but in the case of the Secretary of State and the governor of Georgia right now, one would be tempted to prosecute, based on their conduct so far.</p> <p>What is going on with those two individuals?</p>	
<p><u>Powell:</u> I think there's a lot going on, Lou. I think there's a lot of corruption there, underneath the surface. We've gotten tips from different people that we haven't been able to verify completely yet, but it seems that there were significant benefits for both Governor Kemp and perhaps Mr. Raffensperger also, and maybe others on their team, for deciding at the last minute to rush in a contract for Dominion for \$107 million for the State.</p> <p>...</p>	
<p><u>Dobbs:</u> Now, do we know – you know, I just can't – I think most Americans right now cannot believe what we are witnessing in this election. We have, across almost every state, whether it's Dominion, whatever the company – voting machine company is, no one knows their ownership, has no idea what's going on in those servers, has no understanding of the software, because it's proprietary.</p> <p>It is the most ludicrous, irresponsible, and rancid system imaginable in the world's only superpower.</p> <p>...</p>	
<p><u>Powell:</u> Meanwhile, Dominion and its minions and other State officials everywhere are apparently out there trying to destroy everything</p>	

	<p>they can get to before we can seize it and our Department of Justice and FBI are nowhere to be found.</p> <p>...</p> <p><u>Dobbs:</u> Let me be straightforward with you.</p> <p>I'd damn sight rather have Sidney Powell and Rudy Giuliani on the case than...the corrupt fools that lead the FBI, and day. I wish it were otherwise, but the American people understand what we now are up against in this country.</p> <p>And as I said at the outset of the broadcast, Sidney, this is no longer about just voter fraud or electoral fraud, this is something much bigger and this president has to take, I believe, drastic action, dramatic action, to make certain that the integrity of this election is understood, or lack of it, the crimes that have been committed against him and the American people.</p> <p>...</p> <p><u>Dobbs:</u> Sidney Powell, thanks for being with us.</p> <p>We appreciate it, and thanks for everything you're doing for this country.</p>
Cite:	Ex.13; <i>see</i> FNN Compl. ¶179(m); Fox Corp Compl. ¶224(m)
HANNITY BROADCAST ¶179(n)	
Date:	November 30, 2020
Host:	Sean Hannity
Falsity:	<p>Category 1: Dominion committed election fraud by rigging the 2020 Presidential Election</p> <p>Category 2: Dominion's software and algorithms manipulated vote counts in the 2020 Presidential Election</p>
Transcript:	Additional Falsity Categories
<u>Hannity:</u>	<p>Let me ask you – and I asked you about this on the radio show today: I have gone over everything I have been able to find out, nobody liked Dominion Voting Systems.</p> <p>...</p> <p>And my question is to you: ... has anybody forensically examined these machines since the election?</p>
<u>Powell:</u>	We have only been allowed access to a few of them.
<u>Powell:</u>	The machine ran an algorithm that shaved votes from Trump and awarded them to Biden. They used the machines to trash large

	batches of votes that should have been awarded to President Trump. And they used a machine to inject and add massive quantities of votes for Mr. Biden.	
Cite:	Ex.14; <i>see</i> FNN Compl. ¶179(n); Fox Corp Compl. ¶224(n)	
LOU DOBBS TONIGHT BROADCAST ¶179(o)		
Date:	December 4, 2020	
Host:	Lou Dobbs	
Falsity:	Category 1: Dominion committed election fraud by rigging the 2020 Presidential Election	
	Category 2: Dominion’s software and algorithms manipulated vote counts in the 2020 Presidential Election	
Transcript:		Additional Falsity Categories
<u>Dobbs:</u>	At the center of it all, Dominion Voting Systems. Are they the culprit here? Not the only culprit, but are they the principal culprit?	
	...	
<u>Dobbs:</u>	But, concomitantly, Dominion Voting Systems, which you have described it with algorithms in which – which were designed to be inaccurate rather than to be a secure system.	
	...	
<u>Dobbs:</u>	[T]hose legislators’ elected officials don’t even know how the hell they were elected. They have no understanding whatsoever of the technology that’s being used. The state election officials look like utter buffoons. They’ve signed multi-million dollar contracts, not only with Dominion, but others and they haven’t got – you can – you have to watch their vacant eyes when they start talking about algorithms and software systems.	
	I mean, my God, Phil, this is an outrage, and I can’t even imagine what the redress here is, but I would like to have your opinion about what we should do, knowing what we know now.	
Cite:	Ex.15; <i>see</i> FNN Compl. ¶179(o); Fox Corp Compl. ¶224(o)	
Tweet from Lou Dobbs ¶179(p)		
Date:	December 10, 2020	
Host:	Lou Dobbs (@loudobbs)	
Falsity:	Category 1: Dominion committed election fraud by rigging the 2020 Presidential Election	
	Category 2: Dominion’s software and algorithms manipulated vote counts in the 2020 Presidential Election	
Tweet:		Additional

Falsity Categories	
<u>@loudobbs:</u>	<p>The 2020 Election is a cyber Pearl Harbor: The leftwing establishment have aligned their forces to overthrow the United States government #MAGA #AmericaFirst #Dobbs</p> <p><i>Embedded in the tweet was a typewritten document with no other markings or attributions which stated, in part:</i></p> <p>We have a warning to the mainstream media: you have purposely sided with the forces that are trying to overthrow the US system. These four people and their collaborators executed an electoral 9-11 against the United States, with the cooperation and collusion of the media and the Democrat Party... It is a cyber Pearl Harbor.</p> <p>We have identities, roles, and background of Dominion. Smartmatic people. This will turn into a massive RICO filing. It is Smartmatic, Dominion Voting Systems, Sequoia, SGO.</p> <p>...</p> <p>We have technical presentations that prove there is an embedded controller in every Dominion machine...</p> <p>...</p> <p>We have the architecture and systems, that show how the machines can be controlled from external sources, via the internet, in violation of voting standards, Federal law, state laws, and contracts.</p>
Cite:	Ex.16; <i>see</i> FNN Compl. ¶179(p); Fox Corp Compl. ¶224(p)
LOU DOBBS TONIGHT BROADCAST ¶179(q)	
Date:	December 10, 2020
Host:	Lou Dobbs
Falsity:	<p>Category 1: Dominion committed election fraud by rigging the 2020 Presidential Election</p> <p>Category 2: Dominion’s software and algorithms manipulated vote counts in the 2020 Presidential Election</p> <p>Category 3: Dominion is owned by a company founded in Venezuela to rig elections for the dictator Hugo Chavez</p>
Transcript:	Additional Falsity Categories
<u>Dobbs:</u>	<p>Good evening, everybody. We have a blockbuster of a story and a show for you tonight.</p> <p>We will be joined in just a few moments by attorney Sidney Powell, who this evening appears to have delivered on her promise kracken thunderbolt that she promised America two weeks ago.</p>

...

Dobbs: Our first guest tonight has new information regarding electoral fraud in the radical left's efforts [to] steal an election; and she charges four individuals as authors of what she calls a Pearl Harbor-style cyber attack on the 2020 presidential election.

...

Joining us now is Sidney Powell, a distinguished attorney ... and as we all know, a great American.

Sidney, great to have you with us. You say these four individuals led the effort to rig this election. How did they do it?

Powell: Well, Lou, they designed and developed the Smartmatic and Dominion programs and machines, that include a controller module that allows people to login and manipulate the vote, even as it's happening.

We're finding more and more evidence of this. We now have reams and reams of actual documents from Smartmatic and Dominion, including evidence that they planned and executed all of this.

...

We have evidence of how they flipped the votes, how it was designed to flip the votes. And that all of it has been happening just as we have been saying it has been.

...

Powell: [T]he entire system was created for the benefit of Venezuela and Hugo Chavez to rig elections to make sure he continued winning. And then it was passed onto Mr. Maduro to do the same. And we know it was exported to other countries by virtue of some of the Dominion executives that proceeded to go about and essentially sell elections to the highest bidder.

...

Powell: It is a very –

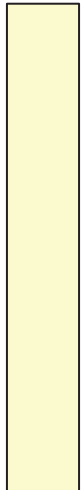
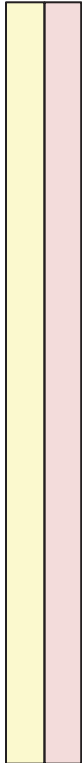
...

Powell: – concerning and troubling and illegal web of conduct that all of which focused on rigging the election in this country. And we're seeing the results in multiple states where we're now identifying specific votes flipped, like in a couple of Georgia counties.

...

We knew from Antrim County, for example, in Michigan that 6,000 votes—

Dobbs: Uh-huh.



Powell: – magically were flipped on election night.

...

Dobbs: We're going to examine in some detail the – the reasons for what is apparently a broadly coordinated effort to – to actually bring down this President by ending his second term before it could begin.

...

Dobbs: [I]t's important as we look at these four names, we're talking about very large – a very large foreign intrusion and interference in the – in the election of 2020.

Give us – it's – it's outrageous that we have an Attorney General, Sidney, who has said that he sees no sign of – of any significant fraud that would overturn the election. We had a head of the cyber intelligence unit for the Department of Homeland Security who is suing some people, apparently, for saying that his report, basically, was – it was nonsense when he declared it was the most secure election in the country's history.

What are we dealing with here, and how can we get to this, if we have a -- an Attorney General who has apparently lost both his nerve and his commitment to his oath of office, and to the country; we have an FBI director who seems to be as politically corrupt as anyone who preceded him, and a Homeland Security department that doesn't know what the hell it's talking about and is spending more time playing politics, at least as it applies to Mr. Krebs, than securing the nation.

...

Powell: President Trump won so many votes, he blew up their algorithm. The American people blew up the algorithm they created before the election to shave votes from Biden and give them to Trump. And we're now seeing direct evidence of that happening in – in multiple counties and multiple states, and we know it happened across the country.

...

Dobbs: Let me – let me make you an offer, very straightforwardly: We will gladly put forward your evidence that supports your claim that this was a Cyber Pearl Harbor. We have tremendous evidence already but we – of fraud in this election, but I will be glad to put forward on this broadcast whatever evidence you have, and we'll be glad to do it immediately.

Powell: Awesome.

<u>Dobbs:</u>	We'll work overnight. We will – we will take up whatever air we're permitted beyond this broadcast, but we have to get to the bottom of this.
	...
<u>Dobbs:</u>	I mean the governor and the state – Secretary of State have got to find, if not the integrity, the – the primal fear of the voters in Georgia to stop what's going on and stop it now.
	...
<u>Dobbs:</u>	[H]ow much time do you need to get that evidence to this broadcast, and we'll put it on the air?
<u>Powell:</u>	I will get you some more information that's just stunning tonight.
<u>Dobbs:</u>	All right. Sidney Powell, thank you for all you're doing. It is the Lord's work.
Cite:	Ex.17; <i>see</i> FNN Compl. ¶179(q); Fox Corp Compl. ¶224(q)

Tweet from Lou Dobbs ¶179(r)	
Date:	December 10, 2020
Host:	Lou Dobbs (@loudobbs)
Falsity:	Category 1: Dominion committed election fraud by rigging the 2020 Presidential Election
Tweet:	Additional Falsity Categories
<u>@loudobbs:</u>	Cyber Pearl Harbor: @SidneyPowell1 reveals groundbreaking new evidence indicating our Presidential election came under massive cyber-attack orchestrated with the help of Dominion, Smartmatic, and foreign adversaries. #MAGA #AmericaFirst #Dobbs
Cite:	Ex.18; <i>see</i> FNN Compl. ¶179(r); Fox Corp Compl. ¶224(r)
FOX & FRIENDS BROADCAST ¶179(s)	
Date:	December 12, 2020
Hosts:	Will Cain, Pete Hegseth, Rachel Campos-Duffy
Falsity:	Category 1: Dominion committed election fraud by rigging the 2020 Presidential Election
Transcript:	Additional Falsity Categories
<u>Giuliani:</u>	[W]e have a machine, the Dominion machine, that's as filled with holes as Swiss cheese and was developed to steal elections, and being used in the states that are involved.

Cite:	Ex.19; <i>see</i> FNN Compl. ¶179(s); Fox Corp Compl. ¶224(s)
TUCKER CARLSON TONIGHT BROADCAST ¶179(t)	
Date:	January 26, 2021
Host:	Tucker Carlson
Falsity:	Category 1: Dominion committed election fraud by rigging the 2020 Presidential Election
Transcript:	Additional Falsity Categories
<u>Carlson:</u>	Well, of course you will likely recognize our next guest. His name is Mike Lindell. He runs MyPillow. He advertises every night on this show and across FOX News. He is one of our biggest sponsors, and we are grateful for that. He is sponsoring free speech when he does it. ...
<u>Lindell:</u>	[S]omeone put up on – on the internet, actual machine – "new machine election fraud," I – I re-Tweeted it... ... Dominion... said they [were]* going to go after Mike Lindell. Well, they did. They hired hit groups, bots and trolls went after all my vendors, all these box stores to cancel me out. ... I'm not backing down. We can't back down out of fear this time...
<u>Carlson:</u>	I totally agree. ...
<u>Lindell:</u>	I've been all in trying to find the machine fraud, and I – we found it. We have all the evidence. ... [E]very outlet in the country, they go, 'Mike Lindell, there's no evidence, and he's making fraudulent statements.' No. I have the evidence. I dare people to put it on. I dare Dominion to sue me because then it will get out faster. So, this is – it – you know, they don't -- they don't want to talk about it.
<u>Carlson:</u>	No. They don't.
Notes:	* The recording of the broadcast reflects the language indicated. Ex.69.
Cite:	Ex.20; <i>see</i> FNN Compl. ¶179(t); Fox Corp Compl. ¶224(t)

CERTIFICATE OF SERVICE

I, Brian E. Farnan, hereby certify that on March 8, 2023, a copy of the foregoing document was served via LexisNexis File&Serve on the following:

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